

CHIEF EXAMINER COMMENTS WITH SUGGESTED ANSWERS –

LEVEL 3 - UNIT – 3 CRIMINAL LAW

JANUARY 2020

Note to Candidates and Learning Centre Tutors:

The purpose of the suggested answers is to provide candidates and learning centre tutors with guidance as to the key points candidates should have included in their answers to the January 2020 examinations. The suggested answers set out a response that a good (merit/distinction) candidate would have provided. The suggested answers do not for all questions set out all the points which candidates may have included in their responses to the questions. Candidates will have received credit, where applicable, for other points not addressed by the suggested answers.

Candidates and learning centre tutors should review the suggested answers in conjunction with the question papers and the Chief Examiners' **comments contained within this report** which provide feedback on candidate performance in the examination.

CHIEF EXAMINER COMMENTS

Where candidates failed to gain high marks, it was due to a lack of application and explanation. Those candidates who achieved low marks, did so because there was insufficient depth in their answer to award more than one or two marks in Section B of the paper. In Section A, some candidates provided only a short answer with little or no explanation. As in previous years, candidates must state the law and then apply the law to the scenario. A large number of candidates did manage to state the law, but failed to then go ahead and apply the law, instead they restated the law and gained a limited number of marks.

The work produced by candidates ranged from very poor to outstanding. There was also a lack of correct legal terminology which, made it difficult to determine what the candidate meant to say. Candidates must be aware when sitting any examination for a 'technical' subject, that broad statements will not be sufficient to gain high marks.

There are still a number of candidates who do not provide the correct authority, be that case law or statute or, if they do, they use the abbreviated form of a statute without firstly stating it in full. Simply by adopting this and also stating the correct section of a statute will gain marks and is a straightforward way to achieve better results.

CANDIDATE PERFORMANCE FOR EACH QUESTION

SECTION A

Question 1

Generally, well answered.

Question 2

Generally, well answered.

Question 3

Generally, well answered.

Question 4

The majority of candidates performed extremely well, with almost all gaining full marks for this question.

Question 5

Generally, well answered.

Question 6

Some candidates found this question challenging, but most achieved good marks.

Question 7

The majority of candidates gained 1 mark for this question. Many of those wrote about intention to commit full/complete offence. However, only a handful of candidates stated that intention is required, and recklessness is not sufficient.

Question 8

Most candidates managed to provide sound answers, but the weaker candidates discussed protection of self and others.

Question 9

Generally, well answered.

Question 10

Most candidates gained high marks for this question.

SECTION B

Scenario 1 – This was the most popular choice of the candidates.

Question 1(a)

The majority of candidates provided competent answers. However, there were a number of candidates who failed to recognise the offence as attempted theft and went on to discuss theft, missing out on marks in the process.

(b)

Those candidates who correctly explained attempt, gained high marks but those who were confused by 1(a) failed to gain many marks. However, the marks available for cases improved the standard of those responses, as the poorer answers included the two cases.

(c)

Candidates struggled to gain high marks on this question. Very few candidates were able to identify the offence as an impossible attempt and went on to discuss attempt by restating the answer in 1(a).

Question 2(a)

Most candidates were able to gain a high level of marks.

(b)

While most candidates were able to gain a good level of marks, there were a number who failed to explain that the dress is property and belongs to Penny and is unrepairable, thereby applying the law to the case study. Application of the law is a continuing issue in scenario questions, despite the questions being divided into law and application.

Question 3(a)

Those candidates who correctly discussed aggravated criminal damage gained high marks for this question. Those who discussed basic criminal damage were awarded marks for those points relevant to the Sec 1(2) offence only. A number of candidates stated, incorrectly, that the offence was one of attempted murder.

(b)

Most candidates gained high marks for this question.

Question 4

The majority of candidates produced very competent answers gaining high marks. The stronger candidates discussed the defence only applying to crimes of specific intent, aggravated criminal damage is a basic intent offence and the defence will therefore not apply.

Scenario 2

Question 1(a)

Most candidates were able to gain a high level of marks.

(b) as per 1(a)

Question 2(a)

Candidates did well on this question.

(b)

Most candidates did well on this question. Weaker answers were as a result of lack of application.

Question 3(a)

Most candidates gained full marks for this question.

(b)

A few candidates struggled with this question, as they were able to explain loss of control and s.54, qualifying trigger, loss need not be sudden, but were unable to correctly explain the other elements of the defence in any detail. Most candidates were able to gain a good number of marks.

(c)

Those who did not gain high marks on this question, did so because they failed to apply the law to the facts of the case.

(d)

This was not well-answered by the majority of candidates. Most were able to explain voluntary manslaughter, but only the stronger candidates provided all the elements required for a good answer.

(e)

All candidates gained full marks on this question.

Scenario 3

Question 1(a)

Most candidates gained the full marks on this question.

(b)

Candidates who were unable to achieve full marks for this question, missed out because they failed to apply the law.

Question 2(a)

Most of the candidates provided a competent answer and gained most of the marks available for this question.

(b)

Weaker candidates were not able to recognise that the unlawful act was Yusuf being pushed and hitting his head on the kerb. Weaker answers included a discussion of theft being the unlawful act. Only a small number of candidates mentioned the test for dangerousness being objective.

(c)

Very well answered, with most candidates gaining full marks.

(d)

A number of candidates struggled with this question. This area (gross negligence manslaughter when medical treatment is involved) is challenging, particularly for those candidates who have not revised this topic. Answers ranged from Ulla being careless and therefore making a mistake to a few very strong answers where most elements of the offence were discussed.

(e)

This question incorporated both law and application and some candidates struggled. The majority of candidates were able to explain factual and legal causation with the case law, and then went on to apply this to the facts of the case. However, a number of candidates failed to discuss negligent medical treatment and this possibly breaking the chain of causation.

SUGGESTED ANSWERS

LEVEL 3 - UNIT – 3 CRIMINAL LAW

SECTION A

Question 1

The *mens rea* for murder is the intention to kill or cause grievous bodily harm.

Question 2

The five elements required to prove gross negligence manslaughter are that a duty of care was owed; there was conduct (either an act or an omission) which resulted in a breach of the duty of care; the breach created a risk of death; the conduct amounted to gross negligence; and the conduct caused the death of the victim.

Question 3

The *actus reus* of theft is the appropriation of property belonging to another.

Question 4

Arson is governed by section 1(3) Criminal Damage Act 1971. It means that when property belonging to another is destroyed by fire, criminal damage, simple or aggravated, it will be arson. Relevant cases are Hunt (1997), R v G (2003).

Question 5

Direct intention occurs where the result is the defendant's (D's) aim or purpose. Indirect/oblique intention occurs when the result is not D's aim or purpose but it is virtually certain to occur and D foresees or knows this to be true.

Question 6

The intention to permanently deprive is a *mens rea* element of theft. Section 6 of Theft Act 1968 defines intention to permanently deprive as the intention to treat the thing as his own, to dispose of regardless of others rights. Borrowing can also amount to theft. Cases can include Lloyd (1985), Velumyl (1989).

Question 7

The *mens rea* of an attempt is the intention to commit the full/complete/principal offence. Recklessness is not usually sufficient.

Question 8

The defence of self-defence requires the use of some force, but the actual force must be proportionate. Excessive force will negate the defence. There is no duty to seek to avoid the confrontation, whether by retreat or other means, Martin (2000). It will be judged on the facts as the defendant honestly believed them.

Question 9

To establish causation for result crimes, it is necessary to establish factual and legal causation. Factual causation is determined by the 'but for' test; but for the actions of the defendant, would the outcome have been the same. Leading case White (1910).

Question 10

Strict liability is the exception to the general rule requiring *mens rea* in relation to all aspects of the *actus reus*. Examples might include preparation and sale of alcohol, food and pharmaceutical products, road traffic, pollution, health and safety at work, construction, trade descriptions.

SECTION B

Scenario 1 Questions

- 1(a)** The offence is one of attempted theft. Attempt is dealt with in s.1(1) of the Criminal Attempts Act (CAA) 1981. There needs to be positive act, an omission will not generally suffice. The act must be more than merely preparatory. The *mens rea* (MR) of the offence is the intention to commit the full/complete/principal offence, the defendant must intend the consequences of his act. It must be an indictable or either way offence.
- (b)** Balki had a dishonest intention to steal the money from the savings tin Whybrow (1951). She opened the savings tin to remove the money, but she was unable to do so as the tin was empty. Her actions could be considered more than merely preparatory as she opened the savings tin and would have taken the money, if there had been any money in there, Campbell (1991).
- (c)** Under s.1(2) CAA 1981, a person may be guilty of attempting to commit an offence, even though the facts are such that the commission of the offence is impossible, e.g Shivpuri (1987), Jones (2007). In this case, there was no money in the savings tin to steal, so commission of the offence would have been impossible, however, if Balki had the requisite MR to carry out the offence, she may be guilty of attempted theft of the contents of the savings tin.
- 2(a)** The offence is arson, s.1(3) Criminal Damage Act (CDA) 1971. The offence requires damage or destruction of property belonging to another by fire. There will need to be intention or recklessness as to the destruction or damage, Miller (1983). The damage, as in all aspects of criminal damage, will be assessed on the time and cost of repairing the property.
- (b)** Balki has destroyed the dress, which is property that belongs to another, Penny. Balki intended to damage the dress. The dress has been destroyed, it is unrepairable, but Penny may be able to claim compensation from Balki to enable her to buy a new dress.
- 3(a)** Aggravated criminal damage is a statutory offence under section 1(2) CDA 1971. For aggravated criminal damage it must be shown that property, which might belong to the defendant or someone else, was destroyed or damaged. The *mens rea* is intention or recklessness as to damage to property and an intention to endanger life of another through the damage, or recklessness as to whether life of another is endangered. Life does not actually have to be endangered.
- (b)** By cutting some of the cables in Alex's car, Penny has damaged the car (property), as it would require cost and effort to repair the car, if it were repairable. Property belonged to the defendant or another; it belonged to Alex. Penny obviously intended to either destroy or

damage the car. Even though she may not have intended to endanger life, she has at least been reckless as to whether life might be endangered. Relevant cases are Webster (1995), Warwick (1995).

- 4** The defence that will be pleaded is intoxication. The rules in DPP v Majewski (1976) deal with intoxication. Penny was voluntarily intoxicated as she chose to drink four large glasses of wine. The defence of voluntary intoxication only applies to specific intent offences.

Aggravated criminal damage is an offence that requires basic intent. Therefore, voluntary intoxication would not apply. The defence will not be available to Penny in relation to the damage caused to Alex's car.

Scenario 2 Questions

- 1(a)** The offence is basic criminal damage, s.1(1) Criminal Damage Act (CDA) 1971. There needs to be the destruction or damage of property belonging to another. Damage will be determined by the time and cost of repairing. The *mens rea* of the offence is intention or recklessness.

- (b)** Mandy has destroyed the lead crystal snooker trophy, which is property that belongs to another, Steffan. Mandy intended to damage the trophy and, in fact, destroyed it so that it would be unrepairable.

- 2(a)** The offence is murder and murder is a common law offence. The definition of murder is the unlawful killing of a human being in the Queen's peace with malice aforethought. This includes the intention to kill and the intention to cause grievous bodily harm (GBH). Intention can be direct or indirect/oblique.

- (b)** This answer requires application of the law to the facts. Mandy stabbed Steffan, who is a human being. This is an unlawful killing as it was not done in self-defence. It is likely that when Mandy stabbed Steffan with a knife, in the chest a number of times, that she intended to kill him or cause GBH. Even if she did not intend to kill or cause GBH, she should have foreseen that by stabbing him in the chest she would cause him death or GBH, therefore indirect/oblique intent would be present.

- 3(a)** The two types of statutory partial defence available are diminished responsibility and loss of control.

- (b)** The partial defence of loss of control was established in the Coroners and Justice Act (CJA) 2009 s.54. It includes three parts: firstly, the defendant's acts or omissions resulted from loss of control. Secondly, that there was a qualifying trigger. And finally, that a reasonable person, of the defendant's age and sex, with a normal degree of tolerance and self-restraint might have acted the same way; relevant case is Jersey v Holley (2005).

The definition of a qualifying trigger is found in s.55 CJA 2009. A qualifying trigger can be fear of serious violence, or it can be anger/words or actions of extremely grave character that caused a justifiable sense of being wronged. Loss of control need not be sudden, but neither qualifying trigger will apply if the defendant's fear of serious

violence is caused by things that the defendant incited to provide an excuse to use violence.

- 3(c)** In Mandy's case, the defence of loss of control would probably be successful. She satisfies the requirements for a qualifying trigger, fear of serious violence, due to the long-term abuse that she had suffered. The trigger caused her to lose her self-control and kill Steffan. Loss of control need not be sudden. She could also argue that a reasonable person of her characteristics who had suffered the levels of verbal, mental and physical abuse that she had over a period of 10 years might have reacted, in the circumstances, in the same way as she did.
- (d)** If the defence is successful, Mandy would not be found guilty of murder and she would be convicted of voluntary manslaughter. For voluntary manslaughter, the defendant had the *mens rea* for murder, but the killing is partly excused by the loss of control. The burden is on the prosecution to disprove beyond reasonable doubt.
- (e)** If the partial defence is not accepted, Mary would be convicted of murder.

Scenario 3 Questions

- 1(a)** The offence is theft under s.1 Theft Act 1968. There needs to be the dishonest appropriation of property belonging to another with the intention to permanently deprive.
- (b)** Jack was dishonest and took the drink which belonged to another. The drink belonged to the shop. Jack was dishonest, as he had appropriated the drink and did not pay for it. He had the intention to permanently deprive, as he was going to drink it. E.g. Basildon Magistrates' Court v (Rickets) (2010).
- 2(a)** Jack has assaulted Yusuf and, as Yusuf later died, the offence to consider is one of involuntary manslaughter, namely unlawful act manslaughter, also known as constructive manslaughter. There is a need for an unlawful act, not an omission, which needs to be of a dangerous kind. The defendant's actions must cause the death of the victim. There must be no intervening act, e.g. Franklin (1883), Lamb (1967).
- (b)** Jack has committed an unlawful act by assaulting Yusuf, pushing him, causing him to fall and hit his head on the kerb. Jack's actions were unlawful and dangerous and were causative to the death of Yusuf.
- (c)** The offence that Ulla might be charged with is involuntary manslaughter, namely, gross negligence manslaughter. For this type of crime there needs to be conduct, whether an act or an omission, together with a duty of care that has been breached. The breach must cause a risk of death that is obvious to a reasonable person. The breach needs to be so gross that it is not possible to punish it in the civil courts. There needs to be the death of a human being: Adomako (1994).
- (d)** As Ulla is a doctor and Yusuf is a patient, a duty of care clearly exists. Ulla has breached her duty of care, causing the death of Yusuf, by unplugging the life support machine.

The question hinges on whether Ulla's breach was grossly negligent in all the circumstances and whether there was an obvious risk of death to Yusuf.

It is obvious from the facts that Ulla did not think before unplugging the life support machine and was not aware that she was unplugging the life support machine. While unplugging the life support machine created an obvious risk of death to Yusuf, Ulla's action would seem more careless than grossly negligent.

- (e)** The test for factual causation is the 'but for' principle: Pagett (1983), White (1910). 'But for' Jack's initial actions, Yusuf would not have died, which is true. Legal causation is only considered if factual causation has been proved.

The defendant's actions need not be the sole cause but must be an operating and substantial cause of death. There must be no break in the chain of causation.

In this case, even though Jack's initial act (the assault) caused Yusuf to be critically ill, it wasn't the direct cause of Yusuf's death and we need to consider whether Ulla's actions broke the chain of causation or whether Jack's actions remained the operating and substantial cause of Yusuf's death; Smith (1959).

We are told that, although Yusuf was in a critical state, the signs were good, and that he was expected to recover. Therefore, in this case it would appear that the supervening action of Ulla was a causative effect that led to Yusuf's death. However, it would be up to the jury to decide whether the original actions of Jack significantly contributed to Yusuf's death: Cheshire and Mellor (1996).

The courts are very reluctant to hold that medics break the chain of causation, as primarily they would be trying to save the patient. Their actions would have to be palpably wrong and so independent of the defendant's acts, and, in themselves, so potent in causing death. As mentioned above, Ulla's actions were more careless than grossly negligent and, even though she may be found to be negligent, it is not likely that she will be found to be grossly negligent in this case.