



THE CHARTERED INSTITUTE OF LEGAL EXECUTIVES

UNIT 11 – CRIMINAL LITIGATION*

CASE STUDY MATERIALS

Information for Candidates on Using the Case Study Materials

- This document contains the case study materials for your examination.
- In the examination, you will be presented with a set of questions which will relate to these case study materials. You will be required to answer **all** the questions on the examination paper.
- You should familiarise yourself with these case study materials prior to the examination, taking time to consider the themes raised in the materials.
- You should take the opportunity to discuss these materials with your tutor/s either face-to-face or electronically.
- It is recommended that you consider the way in which your knowledge and understanding relate to these case study materials.

Instructions to Candidates Before the Examination

- A clean/unannotated copy of the case study materials is attached to this examination.

You are permitted to take your own clean/unannotated copy of the case study materials into the examination. You are **NOT** permitted to take any other materials including notes or textbooks.
- In the examination, candidates must comply with the CILEx Examination Regulations – Online Examinations or with the CILEx Examination Regulations – Online Examinations with Remote Invigilation.

Turn over

* This unit is a component of the following CILEx qualifications: **LEVEL 3 CERTIFICATE IN LAW AND PRACTICE** and **LEVEL 3 PROFESSIONAL DIPLOMA IN LAW AND PRACTICE**

CASE STUDY MATERIALS

ADVANCE INSTRUCTIONS TO CANDIDATES

You are a trainee lawyer working for Connie Martin, the lawyer in charge of the Criminal Litigation Department of Kempstons Solicitors, Manor House, Kempston, Bedford, MK42 7AB.

You have been asked to review the attached documents from the files of Trevor Bennett and Rupert Fountain.

ADVANCE INSTRUCTIONS TO CANDIDATES

Document 1 Court Attendance note and Record of First Appearance Before Magistrates' Court – re Trevor Bennett

Document 2 Extract from Sentencing Guideline (Robbery)

Document 3 Attendance Note – re Rupert Fountain

Document 4 File Note – re Rupert Fountain

DOCUMENT 1

**COURT ATTENDANCE NOTE AND
RECORD OF FIRST APPEARANCE BEFORE MAGISTRATES' COURT**

Client: Trevor Bennett
In attendance: Connie Martin
Date: 4 January 2021

TIME ENGAGED:

Attending Client: 30 minutes
Advocacy: 30 minutes

Connie Martin (CM) attended Trevor Bennett (TB) at Kempston Magistrates' Court in my role as Duty Solicitor.

TB is charged with robbery in relation to an offence which took place at 13:30 hours on Saturday, 2 January 2021.

TB was charged with the offence at 11:00 hours on Sunday, 3 January. TB was refused police bail and was remanded to this court today.

TB was not represented at the police station.

The circumstances of the offence are that TB allegedly robbed an elderly male at a cash-point in the Kempston town centre early on Saturday afternoon. During the robbery, the victim was threatened. TB allegedly demanded that the victim withdraw £250 in cash and hand it over. The victim refused. It is then alleged that TB produced a hypodermic syringe from his jacket pocket and threatened the victim, saying, 'Get me the money or I'll stab you.' The victim then withdrew £250 in cash. TB allegedly grabbed the cash from the victim's hands, pushed him to the ground and ran off.

There is CCTV footage of the incident, which the police have obtained from the bank. A police patrol car happened to be driving past, and PC Routledge witnessed TB, who is known to her, grab the cash and push the victim, before running off. PC Routledge pursued TB and arrested him at the end of the road.

When the victim was pushed to the ground by TB, he (the victim) sustained a gash to the head and a fractured skull. The victim has provided a witness statement, in which he stated that he is terrified of a repeat attack.

Turn over

CASE STUDY MATERIALS

Attending Trevor Bennett

TB admits the offence. He says he did not plan to rob the man. He had gone to the cash-point machine to withdraw some cash, but the machine took his bank card and there was no money in his account. TB says he was very upset about having no money as it was his grandfather's funeral that afternoon and he would not be able to buy any drinks at the wake. TB also told me that he is a heroin user and has been for many years. He says he had no heroin and was desperate to get some to help him cope with the funeral. TB says he panicked when he saw the man at the cashpoint and just decided, on the spur of the moment, to rob him of the cash. TB says he pushed the man to get away, and that he did not intend to hurt him. TB told me that he is genuinely sorry for what he did and for what happened to the victim. TB intends to plead guilty to the robbery.

TB informed me that the police searched him in the street at the time of his arrest in full view of passers-by. TB says he was told to take off his jacket, jumper, t-shirt and shoes for the search, which he did.

TB gave me the following account: After the arrest, he was taken to Kempston Police Station and put in a cell and left there overnight until his interview the following morning. (I reviewed the custody record and noted that TB arrived at the police station at 14:00 hours on Saturday, 2 January and was not interviewed until 10:00 hours on Sunday, 3 January.) While in the cell, he was not given anything to eat or drink or allowed out for fresh air or exercise. He was not permitted to call anyone, and he did not see a solicitor at all.

TB is really worried that he will be going back to prison. He is keen to avoid this, because he recently got engaged to his girlfriend and she gave birth to their first child only two months ago.

Previous convictions

TB has the following previous convictions:

7 years previous	Criminal damage
5 years previous	Possession of class A drug/theft
4 years previous	Burglary/possession of class A drug/failure to surrender
3 years previous	Theft/possession of class A drug/offences committed on bail.

Attending before Kempston Magistrates' Court

The court asked for an indication of plea. TB indicated an intention to plead guilty.

The CPS opposed bail.

CM made an application for bail.

Bail was refused.

TB was remanded to HMP Kempston.

Next hearing listed for 20 January 2021.

EXTRACT FROM SENTENCING GUIDELINES

**Robbery – street and less sophisticated commercial**

Theft Act 1968, s.8(1)

Effective from: 1 April 2016

Triable only on indictment

Maximum: Life imprisonment

Offence range: Community order – 12 years' custody ...

...

Street/less sophisticated commercial robbery refers to robberies committed in public places, including those committed in taxis or on public transport. It also refers to unsophisticated robberies within commercial premises or targeting commercial goods or money. ...

...

It applies to all offenders aged 18 and older, who are sentenced on or after 1 April 2016, regardless of the date of the offence.

Step 1 – Determining the offence category

The court should determine the offence category with reference **only** to the factors listed in the tables below. In order to determine the category the court should assess **culpability** and **harm**.

The court should weigh all the factors set out below in determining the offender's culpability.

Where there are characteristics present which fall under different levels of culpability, the court should balance these characteristics to reach a fair assessment of the offender's culpability.

Culpability demonstrated by one or more of the following
<p>A – High culpability</p> <ul style="list-style-type: none"> • Use of a weapon to inflict violence • Production of a bladed article or firearm or imitation firearm to threaten violence • Use of very significant force in the commission of the offence • Offence motivated by, or demonstrating hostility based on any of the following characteristics or presumed characteristics of the victim: religion, race, disability, sexual orientation or transgender identity
<p>B – Medium culpability</p> <ul style="list-style-type: none"> • Production of a weapon other than a bladed article or firearm or imitation firearm to threaten violence • Threat of violence by any weapon (but which is not produced) • Other cases that fall between categories A or C because: <ul style="list-style-type: none"> ○ Factors are present in A and C which balance each other out and/or ○ The offender's culpability falls between the factors as described in A and C

Turn over

CASE STUDY MATERIALS

C – Lesser culpability

- Involved through coercion, intimidation or exploitation
- Threat or use of minimal force
- Mental disability or learning disability where linked to the commission of the offence

Harm

The court should consider the factors set out below to determine the level of harm that has been caused or was intended to be caused to the victim.

Category 1

- Serious physical and/or psychological harm caused to the victim
- Serious detrimental effect on the business
- Use of a weapon to inflict violence

Category 2

- Other cases where characteristics for categories 1 or 3 are not present

Category 3

- No/minimal physical or psychological harm caused to the victim
- No/minimal detrimental effect on the business

Step 2 – Starting point and category range

Having determined the category at step one, the court should use the corresponding starting point to reach a sentence within the category range below.

...

Harm	Culpability		
	A	B	C
Category 1	Starting point 8 years' custody	Starting point 5 years' custody	Starting point 4 years' custody
	Category range 7 – 12 years' custody	Category range 4 – 8 years' custody	Category range 3 – 6 years' custody
Category 2	Starting point 5 years' custody	Starting point 4 years' custody	Starting point 2 years' custody
	Category range 4 – 8 years' custody	Category range 3 – 6 years' custody	Category range 1 – 4 years' custody
Category 3	Starting point 4 years' custody	Starting point 2 years' custody	Starting point 1 year's custody
	Category range 3 – 6 years' custody	Category range 1 – 4 years' custody	Category range High level community order – 3 years' custody

CASE STUDY MATERIALS

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The list below contains a **non-exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the sentence arrived at so far. In particular, relevant recent convictions are likely to result in an upward adjustment. In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

Factors increasing seriousness

Statutory aggravating factors

- Previous convictions, having regard to a) the **nature** of the offence to which the conviction relates and its **relevance** to the current offence; and b) the **time** elapsed since the conviction
- Offence committed whilst on bail

Other aggravating factors

- High value goods or sums targeted or obtained (whether economic, personal or sentimental)
- Victim is targeted due to a vulnerability (or a perceived vulnerability)
- Significant planning
- Steps taken to prevent the victim reporting or obtaining assistance and/or from assisting or supporting the prosecution
- Prolonged nature of event
- Restraint, detention or additional degradation of the victim
- A leading role where offending is part of a group activity
- Involvement of others through coercion, intimidation or exploitation
- Location of the offence (including cases where the location of the offence is the victim's residence)
- Timing of the offence
- Attempt to conceal identity (for example, wearing a balaclava or hood)
- Commission of offence whilst under the influence of alcohol or drugs
- Attempts to conceal/dispose of evidence
- Established evidence of community/wider impact
- Failure to comply with current court orders
- Offence committed on licence
- Offences taken into consideration
- Failure to respond to warnings about behaviour

Factors reducing seriousness or reflecting personal mitigation

- No previous convictions or no relevant/recent convictions
- Remorse, particularly where evidenced by voluntary reparation to the victim
- Good character and/or exemplary conduct
- Serious medical condition requiring urgent, intensive or long-term treatment
- Age and/or lack of maturity where it affects the responsibility of the offender
- Mental disorder or learning disability (where not linked to the commission of the offence)
- Little or no planning
- Sole or primary carer for dependent relatives
- Determination and/or demonstration of steps taken to address addiction or offending behaviour

DOCUMENT 3

ATTENDANCE NOTE

Date/time: 8 January 2021 – 09:30 hours
Client: Rupert Fountain
Matter: Aggravated Vehicle-Taking (TWOC)
Attended by: Connie Martin (CM) – duty solicitor

Attendance with
Investigating Officer: 18 minutes

Reviewing Custody Record: 18 minutes

Attendance with client: 24 minutes

CM was called to attend Rupert Fountain at Kempston Police Station. On arrival, CM spoke to the custody officer and asked to consult the custody record.

CM then asked to speak with the investigating officer.

Attending the investigating officer, Paul Cook, who confirmed as follows:

At 02:00 hours on 8 January 2021 we received a telephone call from Portia Browne, reporting that her car had been stolen. She reported the stolen vehicle to be a red sports car, registration number YY66 000.

Portia Browne has provided a witness statement.

Portia says that the car was stolen from the house which she shares with her husband, Jeremy Fountain, her step-son Rupert Fountain and her son Maxwell Browne. She says that her car was parked in the garage. She woke up at approximately 02:00 hours, when she heard a car being driven along the gravel drive. She looked out of the bedroom window and saw someone whom she thought to be her step-son, Rupert, at the wheel of the car. She cannot be sure, as it was very dark and she only saw the back of his head for a brief moment. Portia confirms that she doesn't think it was her son, Maxwell, as he was out with friends that evening. Portia confirms that Rupert did not have her consent to take the car. She is willing to attend court in relation to this incident, if required.

The details of the stolen vehicle were circulated by radio. At 02:30 hours, the car was involved in a road traffic accident. The car was being driven at excess speed through a red traffic light, when it collided with a second vehicle, driven by Jide Adebayo. By the time the police arrived, the driver of the stolen vehicle had fled.

Jide Adebayo has provided a witness statement.

Jide Adebayo says he pulled across the junction when the traffic light changed to green, but he noticed a car approaching at speed from his left and it collided with his car. He states the car was a distinctive red sports car. Jide Adebayo saw the driver climb out and run off. He has named the driver of the vehicle as Rupert Fountain. Some time ago, Jide Adebayo used to live in the same road as Rupert's

CASE STUDY MATERIALS

family and he recognised Rupert as his former neighbour. Jide Adebayo suffered a broken collar-bone in the accident.

The sports car was recovered and a forensic examination was carried out. We are awaiting the results. Rupert Fountain was arrested at his home at 06:00 hours. While being driven to the police station he made a statement to the police admitting to taking the sports car. He is waiting to be formally interviewed.

Attending Rupert Fountain (DOB: 20 December 2000) on the matter of aggravated vehicle-taking

CM reviewed the custody record and discussed the police evidence with Rupert.

Rupert stated the following:

'I was out yesterday evening with old school friends. We had met up for drinks before going back to university. We had been on a bar crawl around Kempston. I left the group when the bar closed sometime after midnight and walked home. I got home in the early hours of the morning, but I'm not sure of the time. I was very drunk and couldn't find my key. I noticed that the garage door was open, no car was in the garage, and so I stumbled in there and passed out drunk on the sun lounger.

'The next thing I know, I was being rudely awoken by the police and told that I was under arrest. I was put into a police car and brought to the police station. On the way, one of the police officers kept questioning me about my step-mother's car and I panicked; I said I had taken the car. I don't know why I said that. I don't think I realised what was happening in the police car. The police said nothing about any rights which I had.'

Rupert has instructed me that he did not take his step-mother's car. He says that his step-brother is more likely to have done it. His step-brother looks very similar to Rupert and he went off the rails during his A-Levels and did not get a university place. He has been in trouble with the law ever since.

Rupert says that his step-mother does not like him and that she is jealous of the fact that he got a place at Cambridge University when her own son has messed up his life.

Rupert has no previous convictions.

Turn over

DOCUMENT 4

FILE NOTE

Date: 9 January 2021
Client: Rupert Fountain
Matter: Aggravated vehicle-taking
Fee Earner: Connie Martin

Yesterday, Rupert was interviewed under caution at Kempston Police Station. I was present during that interview in my role as Duty Solicitor.

Rupert admitted that he knows he did not have consent to drive his step-mother's car, but could not see that this was relevant, as he denied taking the car.

He was able to account for his whereabouts during the evening and supplied a list of venues where he was seen with friends during the evening. However, he left after midnight and walked home alone, and therefore none of the friends or other possible witnesses could provide an alibi for the time of the offence.

The police have obtained a witness statement from Rupert's step-mother, Portia Browne, in which she describes the suspect. She identifies Rupert Fountain but the eyewitness account is not strong. It was dark and she only saw the back of his head for a very short time.

Rupert has been charged with aggravated vehicle-taking. Rupert intends to plead not guilty on the basis of mistaken identity.

He has been bailed to appear before Kempston Magistrates' Court on 11 January 2021. There are no conditions attached to his bail.

We await forensic results.

End of Case Study Materials