

**LEVEL 3 - UNIT 3 – CRIMINAL LAW
SUGGESTED ANSWERS – JANUARY 2018**

Note to Candidates and Tutors:

The purpose of the suggested answers is to provide candidates and tutors with guidance as to the key points candidates should have included in their answers to the January 2018 examinations. 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 tutors should review the suggested answers in conjunction with the question papers and the Chief Examiners' reports which provide feedback on candidate performance in the examination.

SECTION A

1. *Actus reus* can consist of conduct, circumstances and consequences. *Actus reus* can be fulfilled by acts, omissions, or by state of affair, for example, being an illegal immigrant.
2. Legal causation is essential in finding liability for result crimes. It has been defined as 'operating' and 'substantial cause'. It includes the thin skull rule. Cases that could have been mentioned include Dalloway (1847), Pagett (1983), Cheshire (1991), Blaue (1975).
3. Aggravated criminal damage is governed by section 1(2) of the Criminal Damage Act 1971. The *actus reus* is 'destroys or damages property belonging to themselves or another without lawful excuse'. Life does not actually have to be endangered.
4. *Mens rea* for criminal damage is recklessness and intention. The leading case for recklessness in relation to criminal damage is R v G (2003). It sets a two-part test which is subjective: 'A person acts recklessly within the meaning of section 1 of the Criminal Damage Act 1971 with respect to (i) a circumstance when he is aware of a risk that it exists or will exist; and (ii) a result when he is aware of a risk that it will occur; and it is, in the circumstances known to him, unreasonable to take the risk.' It used to be an objective test. Other cases mentioned might include Cunningham (1957) or Caldwell (1982).
5. Involuntary intoxication is not a defence. However, there is no liability if D did not form the required *mens rea* e.g. Kingston (1994).
6. 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, and trade descriptions.

7. Attempts are governed by Criminal Attempts Act 1981, section 1. The *actus reus* is defined as 'an act more than merely preparatory', whether the defendant has got sufficiently close to committing the full offence. Cases might include Jones (1990), Campbell (1991).
8. Two main types of involuntary manslaughter are unlawful act manslaughter and gross negligence manslaughter.
9. 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).
10. Loss of control is a partial defence to murder. It is governed by Coroners and Justice Act 2009 s. 4 on loss of control. Loss of control need not be sudden. It includes a three-part test:
 - (i) the defendant's acts or omissions resulted from loss of control;
 - (ii) there was a qualifying trigger;
 - (iii) a reasonable person of the defendant's sex and age with a normal degree of tolerance and self-restraint might have acted the same way.

Under s.55 Coroners and Justice Act 2009, the qualifying trigger can be the fear of serious violence or can be anger/words or actions of extremely grave character that caused a justifiable sense of being wronged. Cases can include A.G. for Jersey v Holley (2005).

SECTION B

Scenario 1 Questions

1.
 - (a) Murder is defined as the unlawful killing of a human being under the Queen's peace with malice aforethought. This includes the intention to kill or to cause grievous bodily harm (GBH). The intention can be direct or oblique.
 - (b) This requires application of the rule in (a) to the scenario. Dele poisoned Victor, who is a human being, this is an unlawful killing. Dele had the intention to kill and this took place during the Queen's peace. Furthermore, the death is caused by Dele's action, as it was the 'operating' and 'substantial cause'. Cases can include Dalloway (1847), Pagett (1983), Cheshire (1991), Blaue (1975).
 - (c) The prosecution will need to prove factual and legal causation. Factual causation e.g. the 'but for' test - White (1910). Legal causation e.g. defined as 'operating' and 'substantial cause'. Cases can include Dalloway (1847), Cheshire (1991), Blaue (1975). The defendant's actions need not be 'sole' cause of death e.g. Pagett (1983).
 - (d) Applying this rule to the scenario: Dele and Olga are the factual causation following 'but for' test. Their actions are the 'operating' and 'substantial cause' of death, therefore, both Olga and Dele caused Victor's death.
2.
 - (a) Dele might be charged with aggravated criminal damage which is governed by section 1(2) of the Criminal Damage Act 1971. This includes: destroying or damaging property belonging to themselves or another without lawful excuse. The *mens rea* is intention or recklessness as to the damage to property and the intention to endanger life/the life of another through the damage/ recklessness as to whether the life of another is endangered. Life does not actually have to be endangered.
 - (b) This requires application of the rule to the scenario. By cutting the brake cables, Dele damages property. He has no lawful excuse and he has the intention to damage it (he intentionally cuts them). He also has the intention to endanger life. Cases can include Webster (1995) and Warwick (1995).
3. Criminal attempts are governed by section 1 Criminal Attempts Act 1981. The *actus reus* for attempts is that the act must be more than merely preparatory. It must be an act, not an omission. Dele's act is more than preparatory as it leads to a crash. Cases that could be mentioned include Jones (1990) and Campbell (1991). The *mens rea* for attempt is the intention to commit the full/complete offence. There must be intention, normally recklessness is not sufficient e.g. Woollin (1998). Dele has the intention to kill. Cases might include Whybrow (1951) or Shivpuri (1986).
4.
 - (a) The *actus reus* of murder is the unlawful killing of a human being under the Queen's peace. Tina has died and this is the unlawful killing of a human being. The crash was caused by Dele's actions as he was the factual and legal causation.
 - (b) Dele had the intention to kill, which is the *mens rea* for murder. The *mens rea* can be transferred from the intended target to another

victim. Here, the intention was to kill Martin, but the *mens rea* was transferred to Tina. Case that could be mentioned is Latimer (1886).

Scenario 2 Questions

1. (a) Appropriation is an *actus reus* element of theft. Appropriation is governed by s.3 Theft Act 1968. It is the assumption by a person of any of the rights of ownership over property. Assuming a single right of the owner is sufficient for appropriation and it is possible to appropriate even with owners consent. Cases that could be mentioned include Gomez (1993), Morris (1984), Hinks (2006).

(b) This requires application of the rule to the scenario. Sonia appropriated the cake when she took it off the shelf. When *actus reus* and *mens rea* coincide, liability arises. It does not matter that she changed her mind later, as theft was already complete. Case to apply is Morris (1984).
2. (a) Dishonesty is a *mens rea* of theft. There is only a negative definition/what dishonesty is not in s.2 of Theft Act 1968. The test has been developed by courts. The objective/subjective test from the case of Ghosh (1982) is a two-part test: i) Would reasonable and honest people think what the defendant did was dishonest? ii) Did the defendant realise that their actions were dishonest by those standards?

(b) This requires application of the rule to the scenario. None of the exclusions in s.2 of Theft Act 1968 apply, therefore, candidates must apply the Ghosh test. Applying the first part of Ghosh test: Would reasonable and honest people think what the defendant did was dishonest? A jury is likely to find that it is not dishonest to take free samples. Therefore, it is not necessary to consider second part of the test.
3. (a) Belonging to another is an *actus reus* element of theft. It is explained in s.5 of Theft Act 1968. Property shall be regarded as belonging to any person having possession or control of it, or having any proprietary right or interest in it. It is possible to steal your own property from someone who has a lesser right than ownership in the property. Case to mention might include Turner (1971), Ricketts v Basildon Magistrates (2010).

(b) This requires application of the rule to the scenario. The bags are in the collection box which belongs to the charity shop. They belonged to someone else, the charity; they were not abandoned. Case to apply Ricketts v Basildon Magistrates (2010).
4. Basic criminal damage is governed by s.1(1) of the Criminal Damage Act 1971. The *actus reus* is to destroy or damage property belonging to another without lawful excuse. The *mens rea* is intention to destroy/damage or be reckless as to destruction or damage. The leading case is R v G (2003). Sonia fulfils the *actus reus*: scratching the door would be damage; the damage does not have to be irreparable/ cause impairment of use. The collection box is property that belonged to the charity and Sonia had no lawful excuse. Applying R v G (2003), she was at the very least reckless as to whether property damaged.

5. (a) Sonia might be liable for the common law offence of unlawful act manslaughter. The *actus reus* is an unlawful act which is objectively dangerous. The unlawful and dangerous act must cause the death of the victim. It must be an act, not an omission. The *mens rea* is the *mens rea* for the unlawful act. Cases that could be mentioned are Franklin (1883), Church (1965)
- (b) This requires application of the rule to the scenario. Sonia has committed an unlawful act (battery). Objectively, some harm might come of it (Church (1965)). The unlawful act caused the death; both factual causation e.g. the 'but for' test (White (1910)) and legal causation (Dalloway (1847), Pagett (1983)) are satisfied.

Scenario 3 Questions

1. (a) Murder is defined as the unlawful killing of a human being under the Queen's peace with malice aforethought. This includes the intention to kill or to cause GBH. The intention can be direct or oblique.
- (b) This requires application of the rule to the scenario. There was an unlawful killing as Alena fired at Olav and Bjorn, and Olav died. Olav was a human being and the event occurred under the Queen's peace. Alena had the intention to kill or to cause GBH; disabling with a shotgun would be likely to amount to the intention to cause GBH. Even if there was not direct intent, there was oblique intent e.g. Woollin (1997). The *mens rea* can be transferred from the intended target to another victim, so it doesn't matter that Alena intended to aim at Robie. E.g. Latimer (1886).
2. (a) The two types of statutory partial defence available are diminished responsibility and loss of control.
- (b) Diminished responsibility is governed by s.2 Homicide Act 1957, as amended by s.52 of Coroners and Justice Act 2009. It is a partial defence that reduces the charge of murder to voluntary manslaughter. To rely on the partial defence, the defendant must prove that:
 - (i) the defendant was suffering from an abnormality of mental functioning;
 - (ii) it arose from a recognised medical condition;
 - (iii) it provided an explanation for the defendant's acts or omissions in being party to the killing;
 - (iv) it substantially impaired his/her mental ability to either understand the nature of their conduct or form a rational judgment or exercise self-control.

Cases to discuss e.g. Byrne (1960)

- (c) This requires application of the rule to the scenario. Alena was suffering from an abnormality of mental functioning, as she had anxiety at the time. She was receiving medication for this and also for depression, so it stemmed from a recognised mental illness. It was impacting her at the time, as it made her particularly anxious and frightened, and is the explanation for her killing. Case to apply can include Anthony Martin (2001). In conclusion, Alena might be able to rely to the partial defence of diminished responsibility.

3. Alena might try to rely on the defence of self-defence. There is a common law right to protect oneself or others: self-defence is also governed by section 76 of Criminal Justice and Immigration Act 2008. The defendant's response should be to an actual or perceived threat. A mistaken view of the facts, even if it is not reasonable, does not exclude the defence; cases to mention can include Beckford (1987), Gladstone Williams (1987). It does not matter that Alena was mistaken as to the identity of the victim. Her anxiety will not be taken into account when assessing the reasonableness of the response, following the case of Martin (2000).

Alena must also show that she used reasonable force. Reasonableness of force will be judged on the facts and the circumstances as the defendant honestly believed them to be. The force that Alena used was not reasonable; the assumed intruders were outside and she went out with a gun. Cases to consider here could include Malnick v DPP (1989) or Martin (2000). There is a heightened threshold for home owners and they can use disproportionate force. However, Alena cannot rely on it as she was outside, not in the building. In conclusion, Alena probably will not be able to rely on self-defence.

4. (a) Alena might be charged with common law offence of murder.
- (b) A new intervening act means a new act that breaks the chain of causation. These can be divided into: victim interventions e.g. Roberts (1971); natural disasters / acts of God; third party interventions. Third party interventions can include police (Pagett (1983)) and medical interventions. Medical treatment does not normally break the chain of causation. Thin skull rule e.g. Blaue (1975) can also be mentioned.
- (c) This requires application of the rule to the scenario. Poor medical treatment does not normally break the chain of causation, and the threshold is higher than for other intervening events. Poor medical treatment would have to be 'so independent of the defendant's acts and in itself so potent in causing death' before the chain of causation is broken following Cheshire (1991). Wrong medication would not ordinarily break the chain of causation; only in exceptional cases if the treatment is palpably bad e.g. Jordan (1956). Therefore, it is unlikely that wrong medication would break the chain of causation and Alena is liable for the death of Bjorn.