



## THE CHARTERED INSTITUTE OF LEGAL EXECUTIVES

### UNIT 18 – CRIMINAL LITIGATION\*

**Time allowed: 3 hours plus 15 minutes' reading time**

#### **Instructions to Candidates**

- You have been provided with a clean copy of the case study materials for you to use in this examination.
- You have **FIFTEEN** minutes to read through this question paper and the case study materials before the start of the examination.
- **It is strongly recommended that you use the reading time to read this question paper fully.** However, you may make notes on this question paper or in your answer booklet during this time, if you wish.
- **All questions are compulsory. You must answer ALL the questions.**
- Write in full sentences – a yes or no answer will earn no marks.
- **Candidates may use in the examination their own unmarked copy of the designated statute book: Blackstone's Statutes on Criminal Justice and Sentencing, 6<sup>th</sup> edition Nicola Padfield, Oxford University Press, 2016.**
- Candidates must comply with the CILEx Examination Regulations.
- Full reasoning must be shown in answers. Statutory authorities, decided cases and examples should be used where appropriate.

#### **Information for Candidates**

- The mark allocation for each question and part-question is given and you are advised to take this into account in planning your work.
- Write in blue or black ink or ballpoint pen.
- Attention should be paid to clear, neat handwriting and tidy alterations.
- Complete all rough work in your answer booklet. Cross through any work you do not want marked.

**Do not turn over this page until instructed by the Invigilator.**

\* This unit is a component of the following CILEx qualifications: **LEVEL 6 CERTIFICATE IN LAW, LEVEL 6 PROFESSIONAL HIGHER DIPLOMA IN LAW AND PRACTICE** and the **LEVEL 6 DIPLOMA IN LEGAL PRACTICE**

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## Question 1

Reference: Question relates to **CASE ONE: GARY FOX and DOCUMENT 1** of the case study materials.

Gary Fox asks you to explain the basis upon which his legal representation can be funded from public funds both currently and on the assumption that he will be charged and become the defendant in criminal proceedings.

- (a) Explain the various schemes for providing legal advice and representation at public expense as they will apply to Gary Fox.

**(6 marks)**

DS Shaheed informs you that he proposes to undertake a VIPER identification procedure.

- (b) Advise Gary Fox what this procedure entails, what his options are and the consequences of exercising them, and your role in protecting his interests in relation to the procedure.

**(7 marks)**

Gary Fox agreed to participate in the VIPER procedure and was released under investigation to await the outcome of this. Pamela Simpson identified Gary Fox as being the person concerned in the robbery at her home. The jeweller purported to identify one of the comparators as the person who visited his shop. DNA analysis of the replica gun taken from Gary Fox's workplace shows the presence of DNA matched to Gary Fox with a one in 1 million chance of error. There is also DNA present, contributed by at least two other males. DS Shaheed has recalled Gary Fox in order to carry out an interview under caution.

- (c) Advise Gary Fox as to the approach he should take to answering questions in interview.

**(6 marks)**

Gary Fox is charged with robbery. He is granted unconditional bail to appear in court in seven days' time. You apply for a representation order on his behalf. Four days later, you are notified by the CPS that they have received information from the police informing them that Neil Simpson has complained that he has been contacted by an individual claiming to act on behalf of Gary Fox who warned him not to proceed with the case.

- (d)(i) Explain the scope and function of the hearing which is scheduled to take place in this case.

**(5 marks)**

- (ii) Explain what application the CPS is likely to make in relation to the complaint received from Neil Simpson and the criteria on which the application will be determined.

**(6 marks)**

**(Total: 30 marks)**

## Question 2

Reference: Question relates to **CASE ONE: GARY FOX and DOCUMENT 1** of the case study materials.

You have formed the view that the identification evidence of Pamela Simpson is tainted by the fact that she previously saw the photographs taken by her son Neil at the motor enthusiasts' event. The photographs have not been disclosed by the prosecution in either primary or secondary disclosure.

- (a) Explain the further step you can now take and the criteria for resolving the issue of disclosure of the photographs.

**(5 marks)**

- (b) Explain the procedure for securing the exclusion of the identification evidence of Pamela Simpson and the criteria which will be applied by the court.

**(7 marks)**

Prior to the Plea and Case Management Hearing the CPS serves on you a further statement, which is in addition to the original case file based on **DOCUMENT 1**.

The statement is that of Andrew Martin, who states that he sold Gary Fox a motorcycle in June 2019, agreeing to leave part of the purchase price, £750, outstanding for a month. He further states, that Gary Fox failed to pay the balance as agreed, and that he repeatedly pressed him for payment between July and November, eventually threatening to take the motorcycle back. Then, on 8 November 2019, Gary Fox contacted him to say that he had the money to pay him. They met that evening and Gary Fox handed over the amount due, together with an additional £50 "for the inconvenience".

Subsequently, the prosecution notifies you of developments concerning a co-accused, Stephen Richards. Following further police enquiries based on information received from members of the public, Richards was arrested on suspicion of involvement in the robbery. He is a workmate of Gary Fox. He was identified by Pamela Simpson as being the "delivery man" involved in the robbery. His DNA has also been found on the replica gun.

Stephen Richards made full admissions during the course of his interview under caution and is expected to plead guilty at the earliest opportunity once his case has been progressed to the Crown Court. His admissions are, to the effect, that Gary Fox asked him whether he was prepared to get involved, with what he said was getting back some money that was owed to him. The whole scheme was planned by Gary Fox who also recruited the third participant, who Richards is not prepared to name.

Gary Fox instructs you that he did indeed owe money to Andrew Martin and had been struggling to put together the necessary funds, but at the end of October he received his annual bonus from his employers and used this money to pay off his debt to Martin. He accepts that Stephen Richards is a fellow employee, but emphatically rejects his evidence.

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Further, he asserts that Richards must be incriminating him, knowing that he has already been charged, in order to protect the other perpetrators. Gary Fox maintains his plea of not guilty and the case is being prepared for trial. Having regard to the various evidential and procedural issues which have been mentioned in the case study materials and in this question paper, and, on the assumption that the identification evidence of Pamela Simpson will be admitted:

- (c) Explain the legal and evidential burden on the prosecution; how it may be satisfied; and how the defence will seek to deal with the matters relied on by the prosecution.

**(16 marks)**

**(Total: 28 marks)**

### Question 3

Reference: Question relates to **CASE TWO: LUIGI DANIELE** of the case study materials.

Shaun Smith, who is referred to in the case study materials, contacts Kempstons to ask whether they will act for him. He has apparently also been charged with violent disorder.

(a) Explain how you will respond to this request.

**(5 marks)**

You manage to ascertain the full scope of the proceedings. One adult and one juvenile have been charged with inflicting grievous bodily harm with intent, and you understand that they are proposing to plead not guilty. Six adults and five juveniles have been charged with violent disorder. Your client, one other adult and two juveniles are proposing to plead not guilty. You understand the other defendants propose to enter guilty pleas.

(b) Explain where the various defendants will, or may, be tried and, if appropriate, sentenced.

**(9 marks)**

In the event, your client's case is to be heard in the Crown Court. Prior to the trial date, Luigi Daniele instructs you that he would be prepared to plead guilty on the basis that, while not part of the planning of the incident, he did participate to the extent of approaching members of the opposing group and aiming kicks and punches at them, none of which connected.

(c) Explain what steps you can take on your client's behalf in the light of this development and how they will impact on the outcome of the case.

**(8 marks)**

**(Total: 22 marks)**

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#### **Question 4**

Reference: Question relates to CASE THREE – **ROSIE JONES** of the case study materials.

Your client, Rosie Jones, continues to maintain a plea of not guilty. She is due to make her first appearance in the Magistrates Court. At the Plea before Venue stage, she confirms her not guilty plea.

- (a) Explain the factors which the court will take into consideration when making its allocation decision and the factors which Rosie Jones should take into consideration if she has a choice of venue.

**(10 marks)**

In the event, the trial takes place in the Magistrates Court. Rosie Jones is convicted after a trial. Sentencing is adjourned for a pre-sentence report. The report indicates that Rosie Jones does now accept responsibility for her actions. She is assessed as representing a low risk of reoffending. The report also indicates that she would be suitable for a community order with a range of requirements including an unpaid work requirement.

- (b) Outline the matters that you would include in a plea in mitigation, including your submissions as to the appropriate disposal.

**(5 marks)**

Rosie Jones is sentenced to an immediate term of 26 weeks imprisonment. You consider this excessive and inappropriate.

- (c) Explain the procedure for appeal, the powers of the appellate court and the criteria on which these powers will be exercised.

**(5 marks)**

**(Total: 20 marks)**

**End of Examination Paper**

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