

**CHIEF EXAMINER COMMENTS WITH
SUGGESTED ANSWERS**

JANUARY 2021

LEVEL 3 - UNIT 11 – CRIMINAL LITIGATION

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 2021 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

Overall, the paper was done reasonably well by the majority of candidates. Some candidates excelled and had prepared adequately for the exam whilst others were very under prepared and either had not put the work in or were not ready to sit the paper. Previous examinations show that candidates generally answer certain topics better than others. In this examination the Chief Examiner felt that candidates generally had a good understanding of most of the topics assessed and picked up some marks across most of the questions.

This paper saw some focus on procedural aspects such as allocation and bail and many candidates fared reasonably well on these questions. However, there is scope for some candidates to revise more of the details for processes to ensure they can pick up more of the available marks. There were also questions which required the candidates to work with documents they would see in practice, such as sentencing guidelines. Many candidates did well with this question.

This paper saw an indictable only offence in the case study and many candidates showed a reasonably good knowledge of the processes relating to this type of offence. Candidates and centres should remember that every

learning outcome in the unit specification has to be examined and should therefore be revised. This includes disclosure and appeals, as these topics saw a lower number of marks gained by candidates. It is highly recommended that candidates attempt past papers and carefully look at the suggested answers, in particular what each question asks, and the kind of answer expected to see the level of detail required. Finally, several candidates are still not citing legislation in full the first time it is cited. This must be done to pick up the marks before then abbreviating in the remainder of the paper for example s41 Police and Criminal Evidence Act 1984 (PACE).

Overall, the performance was good and the Chief Examiner was pleased to see that most candidates attempted all questions and some scored very highly and had clearly prepared very well.

CANDIDATE PERFORMANCE FOR EACH QUESTION

Question 1

Generally, candidates scored well in question 1, showing a good knowledge of stop and search powers and aspects of detention, such as detention review and PACE Code C breaches. However, candidates did tend to confuse bail in question 1c, confusing police bail with court bail. Police bail decisions are governed by Section 38 PACE 1984 and many candidates cited Bail Act 1976 provisions.

Question 2

This was reasonably well completed by most with many candidates picking up some marks for each part question. Question 2b posed some difficulties for some who explained the procedure for applying for a Representation Order rather than the Duty Solicitor Scheme. Most candidates picked up most of the available marks for the initial appearance matters. However, many candidates struggled to identify the rights of audience matters in Question 2e.

Question 3

This question was generally done very well by candidates with many scoring very well across both parts of the question.

Question 4

This was a mixed question. Some candidates struggled to clearly explain one of the provisions by which the confession might be excluded in part a. In part b the IDPC question saw only a small number of candidates scoring highly. These are both areas for candidates to ensure they revise. The allocation in part c was generally answered well.

Question 5

The bail questions in part a were answered well. Part b caused some difficulty for some candidates who confused features with advantages. The advice is to ensure that candidates read the question closely and carefully. The part c defence statement question was generally answered well with many candidates picking up several of the marks.

SUGGESTED ANSWERS

LEVEL 3 - UNIT 11 – CRIMINAL LITIGATION

Question 1

- (a) (i) In relation to the search of Trevor, section 32 Police and Criminal Evidence Act (PACE) 1984 gives the police powers to carry out the search. The police would need reasonable grounds for believing that Trevor may present a danger to himself or others; that he may have concealed on him anything which he might use to escape from custody; or may have concealed on him anything which might be evidence relating to an offence. The search was not conducted lawfully. Section 32 PACE 1984 provides that the police can only require a person to remove an outer coat, jacket or gloves when conducting a search in a public place. This search was carried out in a public place and therefore the request for Trevor to remove his jumper, tee shirt and shoes was unlawful.
- (ii) One article of the European Convention on Human Rights (ECHR) that may apply to the search of Trevor is Article 3, which prohibits torture and inhuman or degrading treatment. Arguably being asked to remove clothing such as tee shirt in a public place constitutes degrading treatment. Alternatively, Article 8, which provides a right to respect for private life could be used for the same reason outlined above.
- (b) (i) Assuming that Trevor's account to Connie is true, three possible breaches of the PACE 1984 which have occurred during Trevor's detention at the police station are that Trevor was not allowed to exercise and also that he was not offered any refreshments. These are breaches of Code C. Also, he was not offered any legal advice at the police station which is a breach of section 58 PACE. Candidates may have given other valid breaches, such as Trevor not being allowed to have someone informed of his arrest which is a breach of section 56 PACE.
- (ii) The requirement to review Trevor's detention pre-charge can be found in section 40 of the PACE 1984. This provision requires an initial review of the detention after the first six hours and then further reviews at nine-hour intervals after the initial review. There was no initial review and no further reviews at all. Therefore, the correct procedures were not followed in this case.
- (c) The governing provision is section 38 of the PACE 1984. One reason for the refusal to grant bail could be a risk that Trevor would commit further offences if released on bail. This is supported by his extensive criminal record and/or the fact that he is a known drug user and/or the commission of offences while on bail previously. Alternatively, a reason for the refusal to grant bail could be a risk that he would fail to attend court. This is supported by the seriousness of this matter and/or his previous conviction for failing to surrender.

Question 2

- (a) Section 46(1) of PACE 1984 provides that Trevor should be brought before a magistrates' court as soon as is practicable within 24 hours, excluding Sundays and Bank Holidays, and in any event not later than the first sitting of the court after he has been charged with an offence.
- (b) Connie's attendance on Trevor at the magistrates' court would be funded by the duty solicitor scheme. This scheme applies to Trevor because he is charged with an imprisonable offence. Under this scheme, representation at court by a duty solicitor is free and is not subject to a merits test.
- (c) Three matters which will be dealt with at Trevor's initial appearance in the magistrates' court are bail; sending the case to the Crown Court pursuant to section 51 Crime and Disorder Act 1998 and listing for the Plea and Trial Preparation Hearing (PTPH) in the Crown Court. Other valid answers are possible such as the defendant being asked for an indication of plea.
- (d) The earliest stage in the criminal proceedings when Trevor can enter his guilty plea is at the Plea and Trial Preparation Hearing (PTPH) in the Crown Court.
- (e) Types of Crown Court matter for which a Chartered Legal Executive Advocate has rights of audience are:
- Bail hearings;
 - Appeals from the magistrates' court;
 - Committal for sentence.

Question 3

- (a) A plea in mitigation in Trevor's case could contain the following points. Firstly, it would contain matters relating to the offence. In Trevor's case, this could include the fact that the crime was committed on impulse. It would also contain matters relating to the offender. In Trevor's case, this could include the fact that he has recently lost a close family member, due to the funeral that he was planning to attend. It could also include the fact that he is a heroin addict and that his addiction has led to the commission of the offence. It could also include that he has had no convictions in the last 3 years and the fact that he has recently had a child and become engaged.

The plea in mitigation would also include matters relating to the investigation, such as the fact that Trevor co-operated with the investigation and entered a guilty plea at the earliest opportunity. Finally, the plea would include matters relating to future reform including the fact that Trevor showed remorse.

- (b) The court will determine Trevor's sentence by determining the seriousness, which is done by assessing culpability and harm. In this case, there is a high level of culpability (Band A) because of the use of the syringe, which is an article with a sharpened point, to threaten violence. There is category 1 harm to the victim, because the victim suffers serious physical and/or psychological harm with a gash to head/

fractured skull and they are terrified of a repeat attack. The starting point for sentence (Band A plus Category 1) is 8 years custody and the category range is between 7 to 12 years custody. Therefore, the likely sentence would be between 8 and 12 years custody. However, the sentence should be reduced by one third for Trevor's guilty plea.

Question 4

- (a) The confession made by Rupert in the car before he was taken to the police station would not be admissible as the interview was not conducted under the conditions which comply with PACE 1984. This includes that it was not held in the police station and it was not recorded. There was no solicitor present and Rupert had not been able to seek legal advice prior to the 'interview'. Additionally, no caution was given to Rupert prior to the 'interview'. Although confession evidence obtained in breach of the PACE 1984 is not automatically excluded, Connie could seek to challenge its admissibility by relying on either section 76 PACE, section 78 PACE or section 82 PACE. Under section 76 PACE 1984, the confession may be excluded if it was obtained in consequence of police actions which are likely to render it unreliable. It could be excluded under section 78 PACE 1984, if its inclusion would have an adverse effect on the fairness of the proceedings. Alternatively, it could be excluded under section 82 PACE 1984, if its prejudicial effect outweighs its value.
- (b) The IDPC (formerly known as advance information) is the initial details of the prosecution case. It is the disclosure of used material by the prosecution that will form part of the prosecution case against the defendant. Part 8 of the Criminal Procedure Rules requires the prosecution to provide IDPC in all cases. Candidates could provide the following pieces of information which may be contained in the IDPC: the Defendant's previous convictions; a summary of the circumstances of the offence. Candidates may also suggest items such as an account given by the defendant in interview, written witness statements or exhibits.
- (c) The purpose of an allocation hearing is to determine trial venue, i.e. Magistrates' or Crown Court. This applies to Rupert's case, as he is being tried for an either way offence. The procedure at an allocation hearing is governed by section 19 Magistrates' Courts Act (MCA) 1980. The procedure is that the prosecution makes representations, followed by the defence representations and finally the magistrates make their decision.

Question 5

- (a) (i) If the CPS decides to oppose bail, the procedure at Rupert's bail hearing would be that the prosecution outlines its objections, followed by the defence making its submissions. The magistrates would then make their decision, stating reasons. There is the possibility of appeal.
- (ii) A *prima facie* right to bail means a presumption in favour of bail for the defendant. This is provided for in Section 4 of the Bail Act 1976.
- (b) There are several features of a Crown Court trial and candidates could give examples such as: trial by jury; jury decide guilt; presence of a

legally qualified judge; judge decides upon points of law; judge attends to evidential matters; and barristers advocating on the client's behalf.

- (c) The contents of a defence statement are governed by Section 6A Criminal Procedure and Investigations Act 1996. Information that a defence statement must contain includes the nature of the defendant's defence; any matters of fact with which the defendant takes issue and reasons for the same; any matters of fact the defendant intends to rely on; the disclosure of relevant points of law and any alibi or defence that the defendant intends to rely on.