

**CHIEF EXAMINER COMMENTS WITH  
SUGGESTED POINTS FOR RESPONSES**

**JANUARY 2021**

**LEVEL - 3 UNIT - 3 CRIMINAL LAW**

**Note to Candidates and Learning Centre Tutors:**

The purpose of the suggested points for responses 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 points for responses sets out a response that a good (merit/distinction) candidate would have provided. Candidates will have received credit, where applicable, for other points not addressed by the marking scheme.

Candidates and learning centre tutors should review the suggested points for responses 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**

In Section A, some candidates provided only a short answer with little or no explanation.

For Section B, a thorough knowledge and understanding of the law is essential to then progress and apply the law. Those candidates who achieved low marks, did so because there was insufficient depth in their answer to award more than a few marks. Where candidates stated the law, they often failed to then apply the law, either at all, or thoroughly enough.

Often there was also a lack of correct legal terminology which, in some cases, left it to the examiner to try and determine what the candidate meant. The use of correct legal terminology is essential for a subject where words and phrases take on a meaning within the legal context in which they are used.

Use of relevant case law/statute is also essential in order to score the higher marks.

This examination was completed online. Some candidates typed their answers to some of their questions in the wrong answer response area (e.g. answering

Q1(a) and then also including the answer to Q(1)(b) in the Q1(a) answer response area). It is vital to answer the question posed, in order to do well. For example, some questions asked for explanation of an offence, whereas others asked for it to be applied to the scenario.

## CANDIDATE PERFORMANCE FOR EACH QUESTION

### SECTION A

**Q1.** Generally, well answered. A mark was available for mention of a relevant case.

**Q2.** Many candidates repeated the same point – elements to be present at the same time. A mark was available for mention of a relevant case.

**Q3.** Candidates performed well and were prepared for this type of question (elements of a crime).

**Q4.** 4 marks were available for 4 points covered. Many candidates only achieved one or two marks. 'malice aforethought' is a key term.

**Q5.** Generally, well answered. Many candidates did not identify that the sentence would be at the discretion of the judge/lesser sentence/not mandatory life sentence.

**Q6.** Many candidates incorrectly stated that reasonable steps would have to be taken (s2(1)(c)) (it is only a belief that the owner could not be found by taking reasonable steps).

**Q7.** Many candidates did not identify that recklessness is not (normally) sufficient, nor that the intention could be direct/oblique.

**Q8.** Generally, well answered.

**Q9.** Generally, well answered.

**Q10.** Candidates performed well in this question - a recall of knowledge.

### SECTION B

**Scenario 1** – This was the most popular choice of scenario.

**Q1(a)** This tested the candidates' ability to apply their knowledge, and many candidates incorrectly identified the offence as 'attempted theft'.

**Q1(b)** In respect of 'dishonesty', some candidates failed to identify that none of the exceptions in s2 applied. Additionally, some candidates failed to apply the modified Ghosh [1982] test.

The *actus reus* elements were applied well.

**Q1(c)** Many candidates stated incorrectly that theft was a basic intent offence. Additionally, many candidates did not identify the point that in order for the defence to be successful, Alex must have been so intoxicated as to be unable to form the *mens rea*. Most candidates identified a key case - e.g. Majewski[1976].

**Q2(a) and Q2(b)** Generally, well answered.

**Q3(a)** Most candidates correctly identified the offence of arson (and aggravated damage). Many candidates did not explain that intention or recklessness applies to the damage/destruction, as well as the endangerment of life.

**Q3(b)** Many candidates did not identify that life need not actually be endangered, and many did not mention relevant case law in relation to the endangerment of life by means of the damage – e.g., Steer [1987].

Theft has often been considered as a popular topic, and this year is no different. Candidates tend to 'connect' well with the subject matter.

## **Scenario 2**

**Q1(a)** Some candidates applied the elements of the offence, rather than identifying the elements, as the question asked. There were also several instances where candidates failed to identify all of the elements.

**Q1(b)** Application of the offence of murder. Generally, well answered.

**Q1(c)** Generally, well answered. Most candidates identified and explained factual and legal causation in sufficient detail.

**Q2(a)** Generally, well answered.

**Q2(b)** Some candidates did not apply all of the elements of diminished responsibility to the scenario.

**Q3(a)** Generally, well answered. Some candidates missed out key case law e.g., Boyle and Boyle [1987].

**Q3(b)** Generally, well answered.

Although fewer candidates attempted this scenario than the previous one, those who did tended to score well. This is an indication of the preparedness of those candidates for what is an easy topic to understand in terms of the elements of the offence (murder), but a more difficult one to apply thoroughly to a problem scenario. The same observation applies to the (partial) defence of diminished responsibility.

## **Scenario 3**

**Q1** Many candidates identified the defence of self-defence, but then did not explain the key components of the defence.

**Q2** Because many of the key components of the defence had not been identified in part (a), many students did not therefore apply them to this part of the question.

**Q3(a)** Generally well answered for those who identified the correct offence.

**Q3(b)** Generally well answered for those who identified the correct offence.

**Q4** Many candidates did not apply potential breaks in the chain in enough detail (e.g. brittle bones/refusal to fly) to draw a conclusion.

**Q5(a)** Many candidates did not correctly identify the key principles, e.g., the mistake need not be 'reasonable'/ the claim must be based on a mistake of facts.

**Q5(b)** Many candidates did not identify that Sylvie is claiming that she did not have the *mens rea*, or that the belief appears to be honest.

Candidates have often found the principles of self-defence difficult to understand in sufficient detail. This may be the reason why so few attempted this question (even though other questions in the scenario covered different areas of law). The relatively low numbers who answered the question means that it would be difficult to draw further conclusions.

## SUGGESTED POINTS FOR RESPONSE

### LEVEL - 3 UNIT - 3 CRIMINAL LAW

The purpose of this document 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 Points for Responses 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.

Candidates and learning centre tutors should review this document in conjunction with the question papers and the Chief Examiners' reports which provide feedback on candidate's performance in the examination.

#### SECTION A

Question Number	Suggested Points for Responses	Marks (Max)
Q1	<ul style="list-style-type: none"><li>• The <i>mens rea</i> can be transferred from the intended target to another</li><li>• If <i>mens rea</i> is for a different crime, then the malice cannot be transferred</li><li>• Relevant case, e.g. <b>Latimer(1886)</b>, <b>Mitchell(1983)</b>, <b>Pembliton(1874)</b></li></ul>	2
Q2	<ul style="list-style-type: none"><li>• Both elements of the offence to be present at the same time (a continuing act)</li><li>• ...not necessarily throughout</li><li>• Case e.g. <b>Thabo Meli(1954)</b>, or <b>Fagan v MPC(1968)</b></li></ul>	3
Q3	<ul style="list-style-type: none"><li>• Destroying or damaging</li><li>• Property</li><li>• Belonging to another</li><li>• Mention of any relevant case e.g. <b>Hardman(1986)</b>, <b>Samuels v Stubbs(1972)</b></li></ul>	3
Q4	<ul style="list-style-type: none"><li>• Malice aforethought</li><li>• Intention to kill</li><li>• Intention to cause GBH</li><li>• Intention can be direct or indirect</li></ul>	4
Q5	<ul style="list-style-type: none"><li>• This partial defence reduces liability from murder to <b>(voluntary) manslaughter (can include reduces liability pursuant to s54-55 CoRJA)</b></li><li>• The sentence is at the discretion of the judge</li></ul>	2
Q6	<ul style="list-style-type: none"><li>• A belief in the right in law to deprive V of the property</li><li>• A belief he would have consent from the victim</li><li>• A belief that the person to whom the property belongs cannot be discovered by taking reasonable steps</li></ul>	3

Q7	<ul style="list-style-type: none"> <li>• intent to commit the full/complete offence (<b>can mention indictable/either-way</b>)</li> <li>• It must be intention (<b>can mention specific intent</b>)</li> <li>• Normally recklessness is not sufficient</li> <li>• This can be direct or oblique/indirect</li> </ul>	3
Q8	<p>Duress is not available for offences of</p> <ul style="list-style-type: none"> <li>• Murder</li> <li>• Attempted murder</li> </ul> <p>Or in circumstances where....</p> <ul style="list-style-type: none"> <li>• The defendant has been at fault in associating himself with a person/group whom he knew might put pressure on him to commit an offence (exact wording not needed)</li> <li>• Any other reasoned point can be credited</li> </ul>	3
Q9	<ul style="list-style-type: none"> <li>• To protect themselves (or others)</li> <li>• To protect property</li> <li>• To prevent crime</li> </ul>	3
Q10	<ul style="list-style-type: none"> <li>• Causing pollution/general damage to the environment</li> <li>• Adulterating food and drink</li> <li>• Selling food unfit for human consumption</li> <li>• Road traffic offences</li> <li>• Health and Safety regs.</li> <li>• Misdescription of quality/price of goods and services</li> </ul>	4
<b>Section A Total: 30 marks</b>		

### Section B - Scenario 1

Question Number	Suggested Points for Responses	Marks (Max)
Q1a	<p>An explanation of the offence of theft (s1 Theft Act 1968)</p> <ul style="list-style-type: none"> <li>• Theft s1 Theft Act 1968</li> <li>• Dishonestly</li> <li>• Appropriates</li> <li>• Property</li> <li>• Belonging to another</li> <li>• Intention to permanently deprive</li> </ul>	4
Q1b	<p>Application of the law of theft</p> <ul style="list-style-type: none"> <li>• Dishonesty – <b>none</b> of the exceptions in s2 apply</li> <li>• Alex may be dishonest under the <b>Ghosh(1982)</b> test/<b>Ivey(2017)</b> (<b>Barton and Booth(2020)CA may be referred to</b>)</li> <li>• Appropriation – Alex assumes the rights of the owner</li> <li>• Property – the lawnmower is real/tangible in this instance</li> </ul>	6

	<ul style="list-style-type: none"> <li>• Belonging to another -the lawnmower is Sam's property as he has possession/control of it</li> <li>• Intention to permanently deprive – Alex intended to treat the lawnmower as his own</li> <li>• Alex is guilty of theft even though he changes his mind – as he had the necessary intent at the time of committing the AR</li> </ul>	
Q1c	<p>An explanation and application of the rules relating to intoxication</p> <ul style="list-style-type: none"> <li>• Intoxication can be introduced by the defendant</li> <li>• In order to refute the allegation of <u><i>mens rea</i></u></li> <li>• In the current circumstances it is an issue of voluntary intoxication</li> <li>• Voluntary intoxication may be a defence to crimes of specific intent</li> <li>• Voluntary intoxication is not a defence to crimes of basic intent</li> <li>• Mention of relevant case law – e.g. <b><u>Majewski(1976), Brown and Stratton(1998)</u></b></li> <li>• Theft is a specific intent offence, therefore voluntary intoxication may afford a defence</li> <li>• In order for the defence to be successful, Alex must have been so intoxicated as to be unable to form the necessary <i>mens rea</i></li> <li>• How the principle of 'Dutch Courage' may apply here - e.g. <b><u>Gallagher(1963)</u></b></li> <li>• Reasoned conclusion as to Alex' liability</li> </ul>	10
<i>Question 1 Total: 20 marks</i>		
Q2a	<p>An explanation of 'simple' criminal damage</p> <ul style="list-style-type: none"> <li>• Simple/basic criminal damage - <b>s1(1) Criminal Damage Act 1971</b> *<b>section/subsection to be included for the mark</b></li> <li>• Intentionally or recklessly</li> <li>• Destroys or damages property</li> <li>• Belonging to another</li> <li>• Mention of relevant case law e.g. <b><u>Hardman (1986), Woollin(1998), G and Another(2003)</u></b></li> </ul>	5
Q2b	<p>An application of the offence of simple damage, to Alex' situation</p> <ul style="list-style-type: none"> <li>• Alex did not have the direct intention (aim or purpose) to damage the post (<b>can just mention 'intention'</b>)</li> <li>• Alex did not have the indirect intention to damage the post (it was not virtually certain to occur)</li> <li>• Alex was reckless as to the damage – ( the subjective test )</li> <li>• There is damage to the post-which is property</li> </ul>	5

	<ul style="list-style-type: none"> <li>• The post belongs to another</li> <li>• Conclude that the offence of Criminal Damage has been committed</li> </ul>	
<i>Question 2 Total: 10 marks</i>		
Q3a	<p>Identification and explanation of the following offence</p> <ul style="list-style-type: none"> <li>• Aggravated Criminal Damage (by means of Arson).</li> <li>• Identify the offence of Aggravated Criminal Damage s1(2) Criminal Damage Act 1971</li> <li>• Intentionally or recklessly, destroying or damaging</li> <li>• Any property (whether belonging to the defendant or another)</li> <li>• Intending to endanger life by means of the destruction/damage</li> <li>• or being reckless as to the endangerment of life by means of the destruction/damage</li> <li>• Damage by fire is arson s1(3)</li> </ul>	5
Q3b	<p>Application of the offence</p> <ul style="list-style-type: none"> <li>• On the facts given, it is more of a direct intention (note subjective test) to destroy/damage</li> <li>• It would appear that Alex has at least been reckless as to the endangerment of life <u>by means of the damage</u></li> <li>• life need not be endangered in fact</li> <li>• Mention of any relevant case law e.g. <b>Steer(1987), Webster(1995)</b></li> <li>• The patio doors were damaged by fire, so this is arson</li> </ul>	5
<i>Question 3 Total: 10 marks</i>		
<b>Scenario Total: 40 marks</b>		

## Section B - Scenario 2

Question Number	Suggested Points for Responses	Marks (Max)
Q1a	<p>Identification and explanation of the offence of murder</p> <ul style="list-style-type: none"> <li>• <i>Mens rea</i> - malice aforethought</li> <li>• <i>Mens rea</i> - an intention - direct</li> <li>• or oblique e.g. <b>Nedrick(1986), Woollin(1998)</b></li> <li>• <i>Mens rea</i> - to kill</li> <li>• or cause GBH</li> <li>• <i>Actus Reus</i> - the unlawful killing</li> <li>• <i>Actus reus</i> - of a human being within the Queen's Peace</li> </ul>	7
Q1b	<p>How the elements of the offence of murder apply to the scenario</p> <ul style="list-style-type: none"> <li>• On the facts given Georgia has a direct intention to kill</li> </ul>	5

	<ul style="list-style-type: none"> <li>• i.e. aim or purpose</li> <li>• Indirect intention is an alternative for the jury to consider if they see fit</li> <li>• Indirect intention can be shown if the result was 'virtually certain' to occur (and the defendant knew this)</li> <li>• The killing is unlawful i.e. there is no lawful excuse for Georgia's actions</li> <li>• The killing is of a human being and it is within the Queen's Peace</li> </ul>	
Q1c	<p>An explanation of causation in fact and in law, as it applies to the circumstances</p> <ul style="list-style-type: none"> <li>• Factual causation – the 'but for' test</li> <li>• Relevant case <b>White (1910), Pagett (1983)</b></li> <li>• But for Georgia suffocating Ben he would not have died</li> <li>• Legal causation</li> <li>• More than minimal cause</li> <li>• It is the operating and substantial cause/made a 'significant contribution'</li> <li>• Georgia's actions of suffocating Ben were the operating and substantial cause of death</li> <li>• There must be no break in the chain of causation</li> <li>• There were no breaks in the chain of causation Georgia's actions caused Ben's death</li> </ul>	8
<i>Question 1 Total: 20 marks</i>		
Q2a	<p>Identification of the partial defence of diminished responsibility, under s52 Coroners and Justice Act 2009 (CorJA 2009)</p> <ul style="list-style-type: none"> <li>• The partial defence of diminished responsibility may apply, under s52 CorJA 2009</li> <li>• The defendant must suffer from an abnormality of mental functioning <b>Byrne (1960)</b></li> <li>• Which arose from a recognised medical condition</li> <li>• Which substantially impaired e.g. <b>Golds (2016)</b> the defendant's ability to understand their conduct, form a rational judgement, or exercise self-control</li> <li>• It provides an explanation for the defendant's acts/omissions - (cause/contributory factor)</li> </ul>	5
Q2b	<p>An explanation as to how the elements of diminished responsibility apply to Georgia's situation</p> <ul style="list-style-type: none"> <li>• She may be suffering from an abnormality of mental functioning an objective test</li> <li>• The recognised medical conditions are depression, or possibly schizophrenia</li> <li>• She may be 'substantially' impaired because of her depression in particular</li> </ul>	5

	<ul style="list-style-type: none"> <li>• Causation appears to be established in fact</li> <li>• Causation appears to be established in law</li> <li>• A conclusion as to whether the partial defence is likely to be successful</li> </ul>	
<i>Question 2 Total: 10 marks</i>		
Q3a	<p>An explanation of the offence of attempt</p> <ul style="list-style-type: none"> <li>• The offence is attempted murder</li> <li>• S1(1) Criminal Attempts Act 1981</li> <li>• It requires proof that the defendant did an act which is more than merely preparatory</li> <li>• Case <b>e.g. <u>Boyle and Boyle(1987)</u>, <u>Tosti and White(1997)</u>, <u>Jones(1990)</u></b> - or any other relevant case</li> <li>• In relation to an indictable offence</li> <li>• With intent to commit the offence e.g. <b><u>Khan(1990)</u></b></li> </ul>	6
Q3b	<p>Application of the offence of attempted murder</p> <ul style="list-style-type: none"> <li>• Georgia did an act -by putting the sleeping pills in the food and then placing the cushion over Ben's face</li> <li>• in relation to the offence of murder – which is an indictable offence</li> <li>• It was more than merely preparatory – Georgia was sufficiently close to committing the full offence to be considered as having attempted it</li> <li>• Georgia intended to commit the offence of murder</li> </ul>	4
<i>Question 3 Total: 10 marks</i>		
<b>Scenario Total: 40 marks</b>		

### Section B - Scenario 3

Question Number	Suggested Points for Responses	Marks (Max)
Q1	<p>Identification of the defence of self-defence</p> <ul style="list-style-type: none"> <li>• There is a potential defence of self-defence</li> <li>• A complete defence if successful</li> <li>• Sylvie may use reasonable force to protect (herself or) others</li> <li>• or protect property or prevent crime</li> <li>• The use of force must be necessary (a subjective test)</li> <li>• In relation to the facts as they were (or the defendant believed them to be)</li> <li>• The use of force must be proportionate</li> <li>• Excessive force is unreasonable (an objective test)</li> </ul>	5
<i>Question 1 Total: 5 marks</i>		

Q2	<p>Application of the defence of self-defence</p> <ul style="list-style-type: none"> <li>• Sylvie may be able to use the defence of self-defence by claiming she was protecting her property/preventing crime</li> <li>• She believed it was necessary to use force</li> <li>• In relation to the fact that her purse was being stolen</li> <li>• The amount of force used appears to be reasonable in the circumstances</li> <li>• Mention of one relevant case e.g. <b>Clegg(1995), Martin(2000)</b></li> <li>• A conclusion that the defence would probably be successful in the circumstances</li> </ul>	5
<i>Question 2 Total: 5 marks</i>		
Q3a	<p>Explanation of the offence of Unlawful Act (constructive) manslaughter</p> <ul style="list-style-type: none"> <li>• Sylvie may have committed the offence of Unlawful Act (constructive) manslaughter</li> <li>• There must be an unlawful act</li> <li>• which is in itself a crime</li> <li>• Mention of one relevant case e.g. <b>Franklin (1883), Lamb(1967), Lowe (1973)</b></li> <li>• The act must be objectively dangerous</li> <li>• One relevant case e.g. <b>Church(1965), DPP v Newbury and Jones (1976)</b></li> <li>• The act must cause death</li> </ul>	6
Q3b	<p>Application of the offence of unlawful act manslaughter</p> <ul style="list-style-type: none"> <li>• In Sylvie's case she has committed an unlawful act which is a crime</li> <li>• Applying the objective test, under the circumstances it would appear to be dangerous</li> <li>• The principle of causation in fact is satisfied as 'but for' Sylvie hitting Dave, he would not have died</li> <li>• ... and causation in law is satisfied as it is an operating and substantial cause of the death</li> </ul>	4
<i>Question 3 Total: 10 marks</i>		
Q4	<p>Explanation and application of causation</p> <ul style="list-style-type: none"> <li>• There is 'factual' causation (the 'but for' test)</li> <li>• e.g <b>White(1910), Pagett(1983)</b></li> <li>• There is 'legal' causation</li> <li>• This need not be the sole cause, but must be 'more than minimal'</li> <li>• Dave's brittle bones come within the principle of the 'thin skull rule' - you take your victim as you find him.</li> <li>• His initial refusal to get in the helicopter, which aggravated his injuries is a potential issue</li> </ul>	10

	<ul style="list-style-type: none"> <li>• Case. e.g. <b><u>Blaue (1976), Dhaliwal(2006), Dear(1996)</u></b></li> <li>• Conclusion that the brittle bones and the aggravation of injuries by initially refusing to fly do not break the chain of causation as you take your victim as you find him</li> <li>• The injuries that the defendant made were a significant contribution to the consequence / actions were not so independent.</li> <li>• The doctor's negligent/poor medical treatment does not break the chain</li> <li>• Case. e.g. <b><u>Jordan (1956), Cheshire(1991), Mellor(1996)</u></b></li> <li>• Conclusion that there would not be a break in the chain and Sylvie would be liable for Dave's death</li> </ul>	
<i>Question 4 Total: 10 marks</i>		
Q5a	<p>Identification of the defence of mistake</p> <ul style="list-style-type: none"> <li>• The defence of mistake is a claim of a denial of mens rea</li> <li>• The claim is based on a mistake of facts (not of law)</li> <li>• The mistake has to be honest</li> <li>• The mistake does not need to be reasonable</li> <li>• On the facts as the defendant believed them to be (subjective test)</li> </ul> <p>Mention of case e.g. <b><u>B (a Minor) v DPP (2000), Beckford(1987)</u></b></p>	6
Q5b	<p>Application of the elements of the defence</p> <ul style="list-style-type: none"> <li>• As Sylvie thought that the phone belonged to her, she may be able to claim that this was an honest mistake of fact</li> <li>• She is thereby saying that she did not have the mens rea of the offence of theft</li> <li>• The belief appears to be honest, based on the facts as she believed them to be</li> <li>• She appears to have satisfied the elements of the defence</li> </ul>	4
<i>Question 5 Total: 10 marks</i>		
<b>Scenario Total: 40 marks</b>		