

CHIEF EXAMINER COMMENTS WITH SUGGESTED POINTS FOR RESPONSES

JANUARY 2022

LEVEL 3 - UNIT 11 – CRIMINAL LITIGATION

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 2022 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

Candidates generally did well with this paper. Notable areas done well were the questions relating to investigation and detention (Learning Outcome 1) such as finger printing and arrest. This is a topic which often proves popular with, and fruitful for, candidates in criminal litigation examinations. Some candidates did struggle with the level of detail needed for the higher marks. For example, when preparing for questions relating to arrest, it is important that candidates distinguish between conditions needed to undertake an arrest, (ie involvement in an offence and necessity to perform the arrest) and information to be given on arrest to make that arrest lawful. Some candidates confused or conflated these areas. The question required candidates to reference s24 Police and Criminal Evidence Act 1984 (PACE). Some cited and described s28 PACE. It is also important for candidates to be as detailed and specific as possible when describing statutory provisions. The correct section number and, where applicable, subsection number should be cited. To obtain the higher marks, this level of detail will be needed, for example s24(1)-(3) for the involvement condition and section 24(4) and (5) for the necessity conditions. The application questions tended to be done to a very good standard and many candidates gained many of the available marks for these such as Question 1(a)(ii).

Other areas done well tended to be funding, stages in a trial and plea in mitigation. The application style questions tended to be done reasonably well by candidates, but it should be noted that with

such questions it is often necessary for candidates to explain clearly why something is the case and this is not always well done. An example would be question 1(a)(ii). This was an application style question. Candidates were asked for a view on lawfulness of the arrest. In order to gain full marks therefore the answer needed to give a view, with reasoning, supported logically by the facts drawn from the case study. In order to obtain full marks for this question, candidates also needed a good level of detail about the statutory provisions. The question specifically stated, "Applying those aspects **and giving statutory references**, explain whether you consider PC Alton's arrest of Jonty Adams was lawful." It is important that candidates note sufficient detail when preparing for examinations. More generally across the paper candidates lost marks for not being able to cite relevant provisions such as the Criminal Appeal Act 1968 for the appeal question or Legal Aid, Sentencing and Punishment of Offenders Act 2012 as part of the funding question.

Areas where candidates struggled, were disclosure, appeals and allocation. These are areas that centres should continue to focus on to ensure that candidates become comfortable with these areas.

CANDIDATE PERFORMANCE FOR EACH QUESTION

Question 1(a)(i)

Done well and the question worked well to sort the stronger candidates who could cite specific sections and subsections and the weaker who spoke more generally. Some candidates discussed s28 instead of 24 but not enough to raise concerns with the question. Many picked up 2 of the 3 marks.

(ii)

The application was done fairly well, and many candidates picked up at least half of the available marks

(b)

Many candidates picked up half marks, but many did not provide the statutory provision as part of the answer and lacked other details regarding the operation of the s34 provision.

(c)(i)

These two questions concerning fingerprinting were done well by almost all candidates, with many scoring full marks across both questions.

1(c)(ii)

These two questions concerning fingerprinting were done well by almost all candidates, with many scoring full marks across both questions. If anything, the application part in (ii) was a little easy and did not do an effective job of a usual application question of separating out stronger candidates.

Question 2(a)

Most candidates did very well with this question and scored 3 or 4 marks. Some missed the allocation aspect but not many.

(b)(i)

Many candidates struggled to cite the specific section and Act but generally people dealt well with the question and picked up 2 or 3 of the other available marks.

(ii)

Another application style question which proved a little easy and many candidates picked up full marks.

(c)(i)

Disclosure is never a popular subject and candidates picked up some of the marks but lacked the detail for full marks.

(ii)

This question proved difficult for many. Some candidates gave reasons but not ones which gained marks, such as referring to the overriding objective. The question specifically stated in either way cases and this did enable some candidates to determine that the relevance lay in advising on venue and plea.

Question 3(a)

Many candidates correctly identified the custody officer and gained one mark. Some, but not a large number supported this with reference to the correct statutory provision. Credit was awarded for reference to either s34, s37 or s38 PACE. Many candidates stated a police officer of the rank of inspector or superintendent but did not cite the correct provision for this. Credit has not been awarded for this. There is a provision under s30A Pace which allows for this, but this is unlikely to be what the candidates were referring to and it does not fit within the question as stated.

(b)

Many candidates pick up half marks as they were able to explain something about the difference between police bail and court bail. Some gave answers which were too basic or nebulous to gain marks and many were not able to give sufficiently full responses for the full marks, although a small number did.

3(c)

Many candidates picked up most of the available marks. Some did not attempt the question or made a rudimentary attempt at it, but this would suggest poor preparation. This was a standard funding style question about Crown Court funding and many candidates did well with the question.

(3d)

This was a basic question about stages in a Crown Court trial. The question was deliberately worded to focus on the defence case only, to make the question slightly more difficult. Many candidates scored the full 5 marks for the question. A small number missed the point of the question and mentioned defence statement or other points but generally it was done very well.

(e)

Many candidates picked up the mark for the purpose of the judge's summing up. Many were also able to identify one point it may contain with many referring to other the standard of proof or the need for a unanimous decision. This is not a commonly examined area and CE was impressed that many of the candidates picked up half or full marks.

Question 4(a)(i)

Almost all candidates were able to state the purpose of the plea in mitigation, gaining one of the marks. Many were able to identify some of the general requirements. Some candidates understood the remit of the question and scored full marks but many did not, and some strayed into the application stage in (i) when this was quite clearly a general question.

(ii)

This was an application question which required candidates to use the available information in the case study materials to pick out some points which could be used in plea in mitigation for Maria. Many candidates picked up several of the available marks.

(b)

Many candidates correctly identified some of the stated aims. Some identified sufficient for full marks for that part of the question. Only a small number correctly identified the statutory provision.

(c)

Many candidates identified the correct court but very few correctly stated the statutory provision. Some candidates cited High Court, but this suggests lack of preparation.

SUGGESTED POINTS FOR RESPONSE

LEVEL 3 - UNIT 11 – CRIMINAL LITIGATION

Question Number	Suggested Points for Responses	Max Marks
1(a)(i)	<ul style="list-style-type: none"> • Involvement in an offence or reasonable grounds for suspecting involvement with an offence • Reasonable grounds for believing it is necessary to make the arrest • s24(1-3) – involvement • s24(4) and (5) – necessity <p>1 mark available for correctly citing the sections and subsections of PACE for one of the conditions.</p>	3
1(a)(ii)	<p>Involvement:</p> <ul style="list-style-type: none"> • Radio message confirmed offence had been committed- • (s24(3)) • PC Alton had reasonable grounds to suspect Jonty guilty of the offence because: <ul style="list-style-type: none"> • Jonty partially matched description given • Similarity of Jonty’s phone • Jonty’s behaviour observed/acting suspiciously <p>Max 3 marks for discussing involvement</p> <p>Necessity:</p> <ul style="list-style-type: none"> • Jonty Adam’s not giving name and address s24(5)(a) or (b) • To prevent loss of property/phone (s24(5)(ciii)) • To allow prompt and effective investigation of offence s24(5)(e) • therefore arrest lawful 	6
1(b)	<ul style="list-style-type: none"> • Court may draw conclusions (adverse or otherwise) • As he has now given an explanation for his involvement • Which he could have reasonably mentioned before • and which he now relies upon in his defence • S34 Criminal Justice and Public Order Act 1994. 	4
1(c)(i)	<ul style="list-style-type: none"> • Governed by s61 PACE 1984, • And Code D • May be taken with written consent of suspect • May be taken without consent 	4

	<ul style="list-style-type: none"> • And if necessary by using reasonable force • (s61(3) if it's a recordable offence) 	
1(c)(i)	<ul style="list-style-type: none"> • Yes the police would appear to have acted lawfully • He has been arrested and detained in relation to a recordable offence • Theft – either way – carries custodial if convicted. • Therefore, can use reasonable force and can take without consent 	3
Question 1 Total:		20 marks

Question Number	Suggested Points for Responses	Max Marks
2(a)	<ul style="list-style-type: none"> • Either way offence – Plea before venue • Enter plea – not guilty • Case proceeds to allocation hearing • Magistrates' decision regarding jurisdiction • If mags retain jurisdiction, Defendant choice of venue • If mags decline jurisdiction, case sent to CC for PTPH • Bail application 	4
2(b)(i)	<ul style="list-style-type: none"> • Any previous convictions of the Def • Representation of Prosecution and Defence regarding trial • Allocation guideline issued by the Sentencing Council • Any relevant Sentencing Guidelines for the offence of theft • Section 19 Magistrates Court Act 1980 • Whether the court feels it has sufficient sentencing powers (max 6 months custody) • Any aggravating features in the offence 	4
2(b)(ii)	<ul style="list-style-type: none"> • Yes – likely • Reason no previous conviction • and therefore sufficient sentencing powers 	3
2(c)(i)	<ul style="list-style-type: none"> • Part 8 Criminal Procedure Rules • Duty on prosecution to disclose used material • I.e. material that will form part of the Prosecution case against Def • Duty to serve IDPC as soon as practicable • No later than the beginning of the day of the first hearing 	4
2(c)(ii)	<ul style="list-style-type: none"> • As accused will be expected to indicate likely plea at the PBV • Defence lawyer is unable to advise on plea without sight of IDPC • Also cannot advise their client on which venue to choose at allocation 	2
Question 2 Total:		17 marks

Question Number	Suggested Points for Responses	Max Marks
3(a)	<ul style="list-style-type: none"> • Section 37 PACE 1984 - custody officer • Section 38 PACE 1984 • S34 PACE 1984 - custody officer 	2
3(b)	<p>Police bail (max 2 marks for explanation)</p> <ul style="list-style-type: none"> • Where the police grant bail either whilst investigations into the offence are still ongoing, or • where the individual has been charged but has not yet appeared in court. • Governed by Part 4 PACE 1984 <p>Court Bail (Max 2 marks for explanation)</p> <ul style="list-style-type: none"> • Where the court officials grant bail to a defendant between scheduled court hearings. • This is as an alternative to 'remand' • Governed by the Bail Act 1976 	4
3(c)	<ul style="list-style-type: none"> • Access to Justice Act (AJA) 1999 / Legal Aid, Sentencing and Punishment of Offenders Act (LASPOA) 2012 • full criminal legal aid / representation order may be available if • a defendant passes the interests of justice test and the means test. • In Maria's case, the offence being indictable only, the interests of justice test is automatically justified • means test will be based on a contributory scheme, assessing income and capital. • Maria will be assessed on income as she is in employment and therefore unlikely to be in receipt of any passporting benefit 	5
3(d)	<ul style="list-style-type: none"> • Cross examination of Prosecution witnesses • Possibility of making a no case to answer submission • May make opening speech • Examination in chief of Defence witnesses • Re-examination by Defence of own witnesses • Closing speech 	5
3(e)	<ul style="list-style-type: none"> • To direct the jury on relevant law (or what must be proved to establish guilt) <p>May include:</p> <ul style="list-style-type: none"> • Summary of relevant points of evidence that jury has heard • Standard of proof • How they should try to reach a unanimous verdict 	2
Question 3 Total:		18 marks

Question Number	Suggested Points for Responses	Max Marks
4(a)(i)	<p>Purpose – argue for leniency in sentence</p> <p>Requirements:</p> <ul style="list-style-type: none"> • Matters relating to offence • Matters related to offender • Matters related to investigation • Matters related to future reform • Matters related to type of sentence 	4
4(a)(ii)	<ul style="list-style-type: none"> • Employed and her job may be affected. • Only one previous conviction from several years previous • Carer for ill mother • Arguing self-defence • Suggestion that she did perhaps know the victim and had cause to perceive threat 	4
4(b)	<ul style="list-style-type: none"> • Section 142 Criminal Justice Act 2003 • Punishment of offenders • Reduction of crime • Reform/rehabilitation of offenders • Protection of public • Making reparation by offenders 	5
4(c)	<ul style="list-style-type: none"> • Court of Appeal (Criminal Division) • Section 1 Criminal Appeal Act 1968 	2
Question 4 Total:		15 marks