

CHIEF EXAMINER COMMENTS WITH SUGGESTED POINTS FOR RESPONSES

JANUARY 2022

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 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

In Section A, some candidates provided only a short answer with little or no explanation of detail required to score well.

For Section B, a thorough knowledge and understanding of the law was 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.

For example, in Scenario 1 Q1(c) many candidates failed to identify the defence of 'lawful excuse'. Similarly, in Q2(a) and Q2(b) many candidates did not correctly identify the defence of self-defence.

In Scenario 2 Q2(a) and Q2(b) many candidates did not identify/apply the partial defence of 'loss of control', incorrectly choosing self-defence or duress.

In Scenario 3 Q1(a) many candidates incorrectly identified the offence of 'murder' when the correct defence was 'unlawful act manslaughter'. In Q3(a) and Q3(b) there was a lack of detailed understanding of the defence of 'intoxication'.

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 such 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 to score the higher marks, and many candidates did not mention legal authorities to reinforce their answer(s).

CANDIDATE PERFORMANCE FOR EACH QUESTION

SECTION A

Question 1

Generally, well answered. A mark was available for stating that intention can be direct or indirect (oblique).

Question 2

Generally well answered. Some candidates did not identify 'duty situations'.

Question 3

Many candidates failed to identify or explain that intention/recklessness as to the endangerment of life must be by means of the damage/destruction.

Question 4

Well answered, although a mark was available for explaining that arson is not a separate offence from basic/aggravated criminal damage.

Question 5

Generally well answered.

Question 6

Many candidates did not identify or explain the objective Ghosh[1982] test (as amended).

Question 7

Many candidates did not identify that the principle(s) of strict liability is/are an exception to the general rule that *mens rea* is required.

Question 8

Many candidates did not identify that intent can be direct or indirect.

Question 9

Many candidates failed to identify that involuntary intoxication can be a defence to offences of specific and basic intent.

Question 10

Generally well answered.

SECTION B**Scenario 1****Question 1(a)**

This tested the candidates' ability to identify the offence of 'simple' damage, and its constituent elements. The question was generally well answered.

(b)

Many candidates did not properly conclude that the offence had been committed.

(c)

Some candidates incorrectly stated that the defence was 'consent'. Many candidates did not identify that there must be a belief that the property must be in need of 'immediate' protection. Many candidates did not conclude that the defence was likely to be successful.

Question 2(a)

Many candidates did not explain that the defence is a complete defence (if successful). Also, candidates often did not identify the subjective nature of part of the test and objective nature of part of the test.

(b)

Many candidates did not identify that the possibility of retreat may be a relevant issue.

Question 3(a)

Many candidates incorrectly identified the offence of 'attempted theft'.

(b)

Many candidates incorrectly applied the offence of 'attempted theft'.

This was the most popular question. Candidates tend to connect well with the topic of Criminal Damage.

Candidates did not apply the law of theft well, and failed to realise that the full offence had been committed (it was not an 'attempted theft').

Scenario 2

Question 1(a)

Generally, well answered.

(b)

Some candidates did not apply the offence of murder thoroughly. E.g. there was a direct intention to kill (aim/purpose).

(c)

Generally, well answered. Candidates tend to understand and apply the principles of causation in detail.

Question 2(a)

Many candidates did not explain the partial defence of 'loss of control' in detail. E.g. It need not be sudden; revenge (or premeditated) killings are excluded from the defence; infidelity (on its own) cannot be used.

Many candidates did not identify a relevant case.

(b)

Some candidates did not apply all of the elements of the partial defence.

Question 3(a) Generally, well answered.

(b)

Generally, well answered.

Although the offence of murder is easily identified by candidates, the application of the elements lacks sufficient detail on many occasions.

Candidates will often not explain the partial defence of 'loss of control' in sufficient detail in order to score well. This has a knock-on effect where the candidate will then be unable to apply the partial defence with sufficient accuracy.

Scenario 3

Question 1(a)

Many candidates incorrectly identified the offence as murder.

(b)

Because many of the key components of the offence of constructive manslaughter had not been identified in part (a), many candidates did not therefore apply them to this part of the question. Those who had correctly identified the offence often did not then apply the elements of the offence to the circumstances.

Question 2(a)

Many candidates concentrated on the issue of causation (as part of gross negligence manslaughter), and did not explain the other elements of the offence.

(b)

Many candidates correctly identified that there was a duty which had been breached, although some did not specifically state that the conduct was an 'omission'.

Question 3(a)

Although many candidates identified 'intoxication', they did not explain the rules in detail. E.g. when voluntary intoxication can be used as a defence, and when involuntary intoxication can be used as a defence.

(b)

Many candidates did not specify theft as a specific intent offence, or that her intoxication has not negated the mens rea of the offence

Candidates have often found it difficult to differentiate between murder and unlawful act manslaughter. This may be the reason why fewer candidates attempted this question. Similarly, the recurring issue was present here, where candidates are often not well prepared in their understanding and application of the defence of intoxication.

SUGGESTED POINTS FOR RESPONSE

LEVEL 3 - UNIT 3 - CRIMINAL LAW

Section A

Question Number	Suggested points for responses	Max Marks
1	<ul style="list-style-type: none"> • The 'guilty mind' • Intention • Can be direct or indirect (oblique) • Recklessness 	2
2	<ul style="list-style-type: none"> • The crime is defined in a way that it makes sense to say an omission will suffice (statutory offences) • A duty to act/duty situations • Credit for any case e.g. Pittwood [1902] or facts of a relevant case 	2
3	<ul style="list-style-type: none"> • Intention or recklessness • As to the destruction/damage of any property • Intention or recklessness as to the endangerment of life • By means of the damage/destruction 	4
4	<ul style="list-style-type: none"> • S1(3) Criminal Damage Act 1971 • The offence is destroying/damaging criminal damage by fire • The offence can be committed as basic criminal damage • Or by aggravated criminal damage • It is not a separate offence in its own right 	4
5	<ul style="list-style-type: none"> • Abnormality of mental functioning • Arising from a recognised medical condition • Substantially impairs D's ability to understand his conduct, form a rational judgement, exercise self-control • Provides an explanation for the killing 	3
6	<ul style="list-style-type: none"> • There are three occasions under s2 Theft Act 1968 when statute will say that a person is not dishonest. • It is now also an objective test as below • Based on what the defendant knew about the facts • Was the conduct dishonest by the standards of ordinary decent people • Case e.g. Ghosh(1982) as amended by Ivey(2017), Patterson v DPP[2017] Bartonand Booth(2020)(1) or Ivey[2017] 	3
7	<ul style="list-style-type: none"> • It is an exception to the general rule of mens rea • The mens rea is not required (to be proven) 	2
8	<ul style="list-style-type: none"> • The conduct/consequence must be intended • The intent can be direct • Or indirect/oblique • Mention of case e.g. Jones [1990] Woollin[1998] • Recklessness will not suffice 	4
9	<ul style="list-style-type: none"> • Involuntary intoxication is where the defendant has consumed an intoxicant without knowing it was an intoxicant 	3

	<ul style="list-style-type: none"> • E.g. where a drink is spiked • Involuntary intoxication can be a defence to offences of specific and basic intent • Providing the defendant was so intoxicated as to be unable to form the mens rea of the offence 	
10	<ul style="list-style-type: none"> • Must be a mistake of fact (not law) • The mistake must be genuine/honest • But need not be reasonable • Case e.g. Beckford (1987) or Gladstone Williams (1987) 	3
Section A Total:		30 marks

Section B - Scenario 1

Question Number	Suggested points for responses	Max Marks
Q1a	<p>An explanation of 'simple' criminal damage:</p> <ol style="list-style-type: none"> 1. Simple/basic criminal damage - s1(1) Criminal Damage Act 1971 2. Intentionally or recklessly 3. Destroys or damages property (needs both + 'property') 4. Belonging to another 5. Mention of relevant case law e.g. Hardman (1986), G and Another(2003) 	5
Q1b	<p>An application of the offence of simple damage, to Adam's situation</p> <ol style="list-style-type: none"> 1. Adam had the direct intention to damage the fence 2. It was his aim/purpose 3. There is damage/or destruction to the fence which is property 4. The fence belongs to another 5. Conclude that the offence of 'simple' Criminal Damage has been committed 	4
Q1c	<p>Explanation and application of the defence of 'lawful excuse'</p> <ol style="list-style-type: none"> 1 Adam may be able to raise the defence of 'lawful excuse'(S5(2)(b)) Criminal Damage Act 1971) 2 If successful then this is a complete defence 3 He would need to show that <u>he believed/a belief</u> the property was in immediate need of protection 4 And the means adopted were reasonable in the circumstances 5 Mention of case law e.g. Hill;Hall(1988), Chamberlain v Lindon(1998);Denton[1982] 6 Whether Adam acted <u>in order</u> to protect property, is an objective test (Johnson(1994)) 7 Conclude that the defence is likely to be successful 	6
Question 1 Total:		15 marks

Q2a	<p>Identification of the defence of self-defence:</p> <ol style="list-style-type: none"> 1 There is a potential defence of self-defence 2 A complete defence if successful 3 There is no duty to retreat (or avoid...) 4 Although it can be taken into account 5 Adam may use reasonable force to protect himself 6 Or protect property or prevent crime 7 The use of force must be necessary - a subjective test 8 In relation to the facts as they were (or the defendant believed them to be) 9 It must be an honest belief 10 The use of force must be proportionate - an objective test 11 Excessive force is unreasonable 12 Mention of relevant case law e.g. Clegg(1995), Martin(2000) 	8
Q2b	<p>Application of the defence of self-defence:</p> <ol style="list-style-type: none"> 1 Adam may be able to use the defence of self-defence by claiming he was protecting himself 2 The possibility of retreat is a relevant issue here 3 He believed it was necessary to use force 4 It was an honest belief/reasonably held 5 In relation to the belief that he was going to be attacked 6 The amount of force used appears to be proportionate in the circumstances 7 A conclusion that the defence is likely to be successful 	6
Question 2 Total:		14 marks
Q3a	<p>Identification of the offence of theft (s1 Theft Act 1968):</p> <ol style="list-style-type: none"> 1 Theft s1Theft Act 1968 2 Dishonestly 3 Appropriates 4 Property belonging to another 5 Intention to permanently deprive 	5
Q3b	<p>Application of the law of theft</p> <ol style="list-style-type: none"> 1 Dishonesty – none of the exceptions in s2 apply 2 Adam may be dishonest under the Ghosh (1982) test/Ivey (2017) (Barton and Booth(2020) CA may be referred to) 3 Appropriation – Adam assumes the rights of the owner 4 Property – the sandwiches are real/tangible in this instance 5 Belonging to another -the sandwiches are Becky’s property 6 Intention to permanently deprive – Adam intended to treat the sandwiches as his own 	6

	7 Adam is guilty of theft even though he changes his mind	
Question 3 Total:		11 marks
Scenario Total:		40 marks

Section B - Scenario 2

Question Number	Suggested points for responses	Max Marks
Q1a	<p>Identification and explanation of the offence of murder:</p> <ol style="list-style-type: none"> 1. Identification of the offence of murder 2. the unlawful killing 3. of a human being within the Queen’s Peace 4. Malice aforethought 5. A direct intention or oblique/indirect intention 6. Mention of case law e.g. Nedrick(1986), Woollin(1998) in relation to oblique intention 7. to kill 8. or cause GBH/really serious injury 	7
Q1b	<p>How the elements of the offence of murder apply to the scenario:</p> <ol style="list-style-type: none"> 1. On the facts given Joel has a (direct) intention to kill 2. i.e. aim or purpose 3. Indirect intention is an alternative for the jury to consider 4. Indirect intention can be shown if the result was ‘virtually certain’ to occur (and the defendant knew this) 5. The killing is unlawful (there is no lawful excuse for Joel’s actions) 6. The killing is of a human being and it is within the Queen’s Peace 	5
Q1c	<p>An explanation of causation in fact and in law, as it applies to the circumstances:</p> <ol style="list-style-type: none"> 1 Factual causation – the ‘but for’ test 2 But for Joel putting poison in Dave’s soup he would not have died 3 Relevant case White (1910), Pagett (1983) 4 Legal causation 5 More than minimal cause 6 Need not be the sole cause 7 Joel’s actions were the operating and substantial cause of death/made a significant contribution 8 Case law e.g. Cheshire(1991),Smith(1959) 9 Dr Smith’s actions would not create a break in the chain (Jordan(1956)) 10 Conclude that Joel’s actions caused Ben’s death 	8
Question 1 Total:		20 marks

Q2a	<p>Identification of the partial defence of 'loss of control':</p> <ol style="list-style-type: none"> 1 Identification of loss of control 2 Under s54/S55 Coroner's and Justice Act 2009 3 If successful it reduces liability from murder, to (voluntary) manslaughter 4 There must be a loss of control 5 It need not be sudden 6 revenge/premeditated killings are excluded from the defence 7 Sexual infidelity is not (on its own) a qualifying trigger 8 There must be a qualifying trigger... which is either: 9 a fear of serious violence from the victim against the defendant/ another identified person 10 Or a thing/things said or done which constituted circumstances of an extremely grave character and caused the defendant to have a justifiable sense of being seriously wronged 11 The objective 'third' test' - a reasonable person of D's age and sex with a normal degree of tolerance and self-restraint would have acted in the same/similar way 12 Mention of a relevant case e.g. Richens(1993) Pearson(1992), Dawes(2013), Clinton(2012) 	8
Q2b	<p>Application of the partial defence of loss of control:</p> <ol style="list-style-type: none"> 1 Joel appears to have 'lost control' 2 There is no evidence of revenge 3 The relevant qualifying trigger is the 'fear of serious violence' against Henry 4 The objective third test may be met 5 A person of Joel's age and sex 6 And with a normal degree of tolerance /self-restraint and in Joel's circumstances 7 Might have acted in the same/similar way 8 Conclusion that the partial defence may apply here 	6
Question 2 Total:		14 marks
Q3a	<p>Explanation of the doctrine of transferred malice:</p> <ul style="list-style-type: none"> • The doctrine (principle) of transferred malice may apply here • where the mens rea for the intended offence is transferred (to the unintended victim) • The mens rea can be intention or recklessness • The crime actually committed must be of the same type • Relevant case e.g. Latimer(1886), Mitchell(1983), Pembliton(1874) or facts or relevant case 	3
Q3b	<p>Application of the doctrine of transferred malice:</p> <ul style="list-style-type: none"> • The mens rea is that of murder • In the current circumstances it is an Intention to kill 	3

	<ul style="list-style-type: none"> • This mens rea is transferred to the colleague • The crime committed is the same type of crime • Conclusion that transferred malice operates here 	
Question 3 Total:		6 marks
Scenario Total:		40 marks

Section B - Scenario 3

Question Number	Suggested points for responses	Max Marks
Q1a	<p>Explanation of the offence of Unlawful Act (constructive) manslaughter:</p> <ol style="list-style-type: none"> 1 Sonia may have committed the offence of Unlawful Act (constructive) manslaughter 2 There must be an unlawful act/crime 3 It must be an act and not an omission 4 The mens rea is the mens rea for the unlawful act 5 Case e.g. Franklin (1883), Lamb(1967), Lowe (1973) 6 The act must be objectively dangerous 7 Case e.g. Church(1965), DPP v Newbury and Jones (1976) 8 The act must cause death 	7
Q1b	<p>Application of the offence of unlawful act manslaughter</p> <ol style="list-style-type: none"> 1 In Sonia’s case she has committed an unlawful act – assault 2 under the circumstances it would appear to be dangerous 3 Seen objectively 4 Case e.g. Church(1965), Larkin(1943), Goodfellow(1986) 5 The principles of causation in fact (the ‘but for’ test) 6 ... and causation in law are satisfied 7 Conclusion that all of the elements of the offence appear to be satisfied 	5
Question 1 Total:		12 marks
Q2a	<p>Involuntary manslaughter – gross negligence manslaughter</p> <ol style="list-style-type: none"> 1 Involuntary manslaughter 2 Gross negligence manslaughter 3 The mens rea is less than that of murder 4 Conduct – an act or omission 5 There must be a duty of care 6 The duty must be breached 7 Breach of duty creates a risk of death 8 Which is obvious to a reasonable person 9 The breach causes the death 	10

	<p>10 In factual and legal terms</p> <p>11 Breach has to be so gross that it is not possible to punish it in civil courts/treated as a criminal offence</p> <p>12 Case law e.g. Adomako(1994), Pitwood(1902)(omissions), Evans(2009)</p>	
Q2b	<p>Application of gross negligence manslaughter</p> <p>1 .There is no intention to kill/cause really serious harm</p> <p>2 The conduct can be described as an omission</p> <p>3 There is a duty of care as doctor to patient</p> <p>4 The duty has been breached</p> <p>5 Gross negligence is assessed as an objective standard</p> <p>6 A reasonable person would likely find that the breach of duty was grossly negligent</p> <p>7 The breach has caused the death in factual and legal terms</p> <p>8 Conclusion that Dr. Jones has committed the offence of gross negligence manslaughter</p>	8
Question 2 Total:		18 marks
Q3a	<p>An explanation of the rules relating to intoxication:</p> <p>1 Intoxication can be voluntary or involuntary</p> <p>2 In order to refute the allegation of mens rea</p> <p>3 The defence can be available for offences of specific intent or basic intent</p> <p>4 Voluntary Intoxication may be a defence to crimes of specific intent, but not basic intent</p> <p>5 Case e.g. Majewski (1976), Brown and Stratton(1998)</p> <p>6 Specific intent offences require proof of intention</p> <p>7 Basic intent offences only require proof of recklessness</p> <p>8 The issue is not whether the defendant was capable of forming the intention, but whether he did or did not form the intention</p> <p>9 'Dutch courage' can never be used a defence (Gallagher(1963))</p>	7
Q3b	<p>Application of the rules relating to intoxication:</p> <ul style="list-style-type: none"> • In the current circumstances Sonia is voluntarily intoxicated • Theft is a specific intent offence, so voluntary intoxication is potentially available as a defence • Her intoxication has not negated the mens rea of the offence of theft (she had the intention) • Sonia's voluntary intoxication will not afford a defence 	3
Question 3 Total:		10 marks
Scenario Total:		40 marks