

## CHIEF EXAMINER COMMENTS WITH SUGGESTED POINTS FOR RESPONSES

JANUARY 2022

LEVEL 6 – 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

### Essay Questions

Generally, essay Questions are not very popular, and they remain, the least preferred option for most candidates overall. However, in this session, the second and third most popular Questions on the paper were essay Questions.

Candidates still seem to be afraid of essay Questions instead of seeing them as a way to express themselves in respect of the subject area. This does not mean that it is acceptable to write everything that they know about an area, but they are not as tied to specific areas as they are with problem Questions.

The performance for essay Questions this session was better than recent sessions. The results were 50/50 with equal numbers of candidates passing, as failing the Questions that they attempted. Question 3 was the most popular essay Question and the second most popular Question on the paper. However, Question 2 produced the best essay results with many candidates who attempted it, passed it well.

### Problem Questions

The vast majority of candidates do still prefer problem Questions to essays. This is illustrated by the fact that the most popular Question on the paper was a problem Question (Section B Question 2).

The main problem with problem Questions is that candidates seem to want to speculate whether anything and everything in the Question is a reference to an offence. They are still seeing what they want to see and waste a lot of time writing an answer which isn't relevant to the Question, or they try to include too much detail in respect of peripheral matters.

Time management or understanding of what was required seemed to be a problem as some candidates failed to complete 4 Questions. Candidates would, no doubt, have passed this exam had they answered 4 Questions. The majority of candidates did manage to complete four Questions which indicates that there wasn't a problem with the amount of information required in respect of the Questions.

There was also a problem this session with a number of candidates not going into enough detail. They should know that for a 25 mark answer they have to write more than 350 words.

It cannot be reiterated enough the importance of reading the Question Paper carefully and following the instructions provided on it.

## CANDIDATE PERFORMANCE FOR EACH QUESTION

### SECTION A

#### **Question 1**

The Question set out that the answer required evaluation in respect of whether the law is confusing and unsatisfactory in relation to the defences of Insanity, Automatism and Diminished Responsibility.

A number of the candidates failed to mention one of the three defences. Others went off on a tangent discussing provocation and loss of control which were not applicable to this Question. Some just defined some or all of the defences but failed to evaluate.

The main problem was that candidates didn't seem to understand that it is the overlap between the defences which gives rise to the confusion when applying them.

#### **Question 2(a)**

This was the least popular essay Question on the paper. The majority of candidates did really well and passed this part of the Question easily. They displayed relevant knowledge in relation to strict liability and, generally, evaluated the arguments for and against strict liability well.

#### **2 (b)**

A number of candidates clearly attempted this Question based on their perceived knowledge of part (a), as part (b) was also not answered well. Candidates generally, did not provide enough detail or evaluation in respect of this area.

#### **Question 3**

This was the most popular essay Question and candidates seemed to understand what was expected of them.

However, in terms of lower performing responses, the reasons generally were:

- The duties were just defined and there was little or no evaluation;
- A number of the duties were missed out;
- The criteria for an offence by omission wasn't mentioned;
- There was no mention of when a duty ceased to exist; and
- Candidates seemed to think that setting out the duties in bullet points would be sufficient.

#### **Question 4**

This Question was the second most popular essay Question .

Some candidates defined murder when there was no need. Some went into great detail about the defence of diminished responsibility – this was not asked for. Others did not mention both the subjective and the objective parts of provocation when defining it.

Some candidates confused provocation and loss of control throughout the essay and others just didn't evaluate as instructed.

### **SECTION B**

#### **Question 1**

This was the least most popular problem Question on the paper. The Question was either answered very well or very poorly. Some candidates applied Fraud to parts (a) and (b), this was incorrect as both parts were concerned with theft.

##### **1 (a)**

There were two main problems with this part of the Question. In respect of the overpayment of wages, a number of candidates did not apply the correct section /statute which was s5(4) Theft Act 1968. S3 Fraud Act 2006 was applied or s24 Theft Act - both of these are incorrect in relation to this scenario.

The other problem was that a number of candidates failed to apply the taking of the magazine at all.

##### **1 (b)**

This has proved to be a tricky area over the years, yet performed satisfactorily this session. The issue was consent to/dishonest appropriation. Whilst some candidates were spot on others floundered badly by either applying the Fraud Act not the Theft Act or by totally missing the point.

#### **Question (2)**

This Question was the most popular problem Question and the most popular overall.

A number of candidates said that the verbal abuse of Julia by Patrick was common assault. This was incorrect, and is a prime example of the need to read the Question properly. The Question says that when Patrick verbally abused Julia, she walked away from him into the kitchen, and when he tried to grab her, she pushed him away. There is no evidence or signposting of Julia apprehending immediate, unlawful violence from Patrick – so no common assault.

Patrick then punches Julia, she falls to the floor hitting her head and dies. For this you need to work backwards from the result. Consider murder and discard as there is no direct or indirect intention. You are then left with involuntary manslaughter (UDAM). Identify the unlawful/dangerous act -the punch which would be charged as Battery s39 Criminal Justice Act 1988. Apply the rules of causation and conclude.

Then there was an assault on Tori which involved threats so would be common assault.

Finally, defences. We are told that Patrick is drunk so intoxication is relevant as is self-defence as Julia pushed Patrick and he reacted by punching her.

The main problems were that some candidates identified the punch as ABH or even GBH; candidates identified murder not UDAM based on s39, some candidates did not apply the assault on Tori, a number of candidates failed to mention self-defence as an alternative defence for Patrick.

### **Question (3)**

This was the third most popular problem Question.

One of the problems with this Question were that some candidates identified a conspiracy between Fiona and Aaron re theft of the jacket. It cannot be reiterated enough how important it is to read the Question and make sure you understand it before answering it.

There was no conspiracy as the Question says, 'without any warning, Aaron took Fiona's hand and they got up and walked towards to door'. He hadn't mentioned to her that he was going to steal the jacket so there was no conspiracy.

Some candidates identified leaving the taxi without paying as making off. This is not incorrect and is briefly mentioned in the unit specification. The offence that should have been identified and applied was obtaining services dishonestly – s11 Fraud Act 2006.

Some candidates did not mention the burglary or theft of the goods from the property. Others failed to mention that Fiona's sale of the laptop was fraud as she told Bart that the laptop wasn't stolen. The correct section/statute was s2 Fraud Act. Some candidates said this was handling which does not form part of the unit specification.

Some candidates wasted a lot of time discussing defences when the Question clearly states that they should not be considered.

There were also problems with the amount of information/words used and in some cases there was little or no application.

There was a mixed bag of answers, some were very good, some were borderline passes/fails and some were very poor.

### **Question 4**

This was the second most popular problem Question.

The main problem here was that candidates speculated that Dean was drunk when there was no mention of that in the body of Question. Do not speculate, work on the facts that you are given.

There was also some confusion with the potential burglary at Valerio's flat. Some correctly identified it as attempted burglary as Dean did not enter the flat at all. Others incorrectly stated that it was a burglary even though there was no entry.

There was no consideration of the defence of consent in relation to the battery on Rob and some failed to even mention the battery on Rob.

A number of candidates mentioned possible defences that might be applicable to Valerio when the instructions clearly state that defences should be considered for Dean only. Candidates are advised to read the question thoroughly.

**SUGGESTED POINTS FOR RESPONSE**

**LEVEL 6 – UNIT 3 – CRIMINAL LAW**

**SECTION A**

Question Number	Suggested Points for Responses	Max Marks
<b>1</b>	<p>Responses should include:</p> <ul style="list-style-type: none"> <li>• An explanation of general defences relating to mental capacity and the outcomes if pleaded successfully</li> <li>• A definition of the general defences affecting the MR</li> <li>• An explanation of why the law is confusing</li> </ul> <p>Responses could include:</p> <ul style="list-style-type: none"> <li>• The ability to decipher the defences and the points that differentiate them from each other</li> </ul> <p>Additional relevant case law</p>	<b>25</b>
<b>Question 1 Total:</b>		<b>25 marks</b>
<b>2(a)</b>	<p>Responses should include:</p> <ul style="list-style-type: none"> <li>• Identification that strict liability offence can be common law or statutory offences</li> <li>• Discussion of the presumption of MR in statutory offences</li> <li>• Arguments to support strict liability</li> <li>• Arguments against strict liability</li> </ul> <p>Responses could include:</p> <ul style="list-style-type: none"> <li>• Additional case law to support the points discussed</li> <li>• A detailed academic critique of strict liability offences</li> </ul>	<b>15</b>
<b>2(b)</b>	<p>Responses should include:</p> <ul style="list-style-type: none"> <li>• Discussion of the doctrine of transferred malice</li> <li>• Explanation of the operation of the doctrine of transferred malice</li> <li>• Correct application of caselaw</li> </ul> <p>Responses could include:</p>	<b>10</b>

	<ul style="list-style-type: none"> <li>Precise and well structured answers which explore the question in greater depth</li> </ul>	
<b>Question 2 Total:</b>		<b>25 marks</b>
<b>3</b>	<p>Responses should include:</p> <ul style="list-style-type: none"> <li>Identification that a failure to act is related to the AR of a crime</li> <li>Most crimes require a positive act, liability for a failure to act is an exception to the general rule</li> <li>There is no general duty to act</li> <li>The two requirements for a crime to be committed by omission</li> <li>Discussion of the situations when a statutory duty to act may arise</li> <li>Discussion of the situations when a contractual duty or a duty based on office may arise</li> <li>Discussion of the situations when a common law duty to act may arise</li> <li>Discussion of the situations when a duty to act may cease</li> </ul> <p>Responses could include:</p> <ul style="list-style-type: none"> <li>A detailed critique of whether there should be a general duty to act</li> </ul> <p>Additional caselaw to support points discussed</p>	<b>25</b>
<b>Question 3 Total:</b>		<b>25 marks</b>
<b>4</b>	<p>Responses should include:</p> <ul style="list-style-type: none"> <li>Background knowledge – Provocation repealed by Loss of Control under C&amp;JA 2009</li> <li>Definition of old law – Provocation</li> <li>Definition of new law Loss of Control</li> <li>Intention of reforms</li> <li>Requirements under Loss of Control</li> </ul> <p>Responses could include:</p> <ul style="list-style-type: none"> <li>Exhibit comprehensive knowledge and understanding of the old and new law providing authority from statute and case law</li> </ul>	<b>25</b>
<b>Question 4 Total:</b>		<b>25 marks</b>

## SECTION B

Question Number	Suggested Points for Responses	Max Marks
<b>1(a)</b>	<p>Responses should include:</p> <ul style="list-style-type: none"> <li>Discussion of Theft Act 1968 offences in particular s6(1), s5(4), s3(1) and s2 – Sophie's offences</li> <li>Identify and define offence/s</li> <li>Application of above areas to facts</li> </ul> <p>Responses could include:</p> <ul style="list-style-type: none"> <li>A detailed discussion on the identified relevant parts of the Act, drilling down to form a sound decision</li> </ul>	<b>13</b>

<b>1(b)</b>	<p>Responses should include:</p> <ul style="list-style-type: none"> <li>• Discussion of Theft Act 1968 offences in particular s6(1), s3(1) and s2 – Niall's offences</li> <li>• Identify and define offence/s</li> <li>• Application of above areas to facts</li> </ul> <p>Responses could include:</p> <ul style="list-style-type: none"> <li>• A comprehensive discussion of dishonesty and the principles of appropriation of a valid gift</li> </ul>	<b>12</b>
<b>Question 1 Total:</b>		<b>25 marks</b>
<b>2</b>	<p>Responses should include:</p> <ul style="list-style-type: none"> <li>• Discussion and definition of common assault AND battery s39 Criminal Justice Act 1988 – Initial battery on Julia and assault on Tori both by Patrick</li> <li>• Discussion of involuntary manslaughter, to include a discussion about causation. Base act for involuntary manslaughter is battery. - Death of Julia</li> <li>• Discussion of intoxication and self defence as potential defences – re all assaults carried out by Patrick.</li> <li>• Application of above areas to the facts</li> <li>• A considered response which clearly addresses the purpose of the question</li> </ul> <p>Responses could include:</p> <ul style="list-style-type: none"> <li>• Additional relevant case law illustrating principles outlined above</li> </ul>	<b>25</b>
<b>Question 2 Total:</b>		<b>25 marks</b>
<b>3</b>	<p>Responses should include:</p> <ul style="list-style-type: none"> <li>• A detailed discussion and definition of s's 1 to 6 of the Theft Act 1968 – Jacket and house</li> <li>• A detailed discussion and definition of s9(1)(a) and 9(1)(b) Theft Act 1968 - house</li> <li>• A detailed discussion and definition of s2 and s11 of the Fraud Act 2006 – taxi and sale of laptop and Ipad</li> <li>• A considered response which clearly addresses the purpose of the question</li> </ul> <p>Responses could include:</p> <ul style="list-style-type: none"> <li>• Making off without payment s3 Theft Act 1978</li> </ul>	<b>25</b>
<b>Question 3 Total:</b>		<b>25 marks</b>
<b>4</b>	<p>Responses should include:</p> <ul style="list-style-type: none"> <li>• Discussion and definition of common battery s39 Criminal Justice Act 1988 – assault on Rob</li> <li>• Discussion of the defence of consent and whether it is applicable – assault on Rob</li> <li>• Discussion of s1(1) Criminal Attempts Act 1981 (CAA) - attempted burglary of Valeri's flat. No defence applicable</li> </ul>	<b>25</b>

	<ul style="list-style-type: none"> <li>• Discussion of s18/s20 Offences Against the Person Act 1861 (OAPA) - stabbing of Dean by Valeri. No defence applicable, unprovoked assault on Dean.</li> <li>• A considered response which clearly addresses the purpose of the question</li> </ul> <p>Responses could include:</p> <ul style="list-style-type: none"> <li>• Additional relevant case law illustrating principles outlined above</li> </ul>	
<b>Question 4 Total:</b>		<b>25 marks</b>