

CHIEF EXAMINER COMMENTS WITH SUGGESTED POINTS FOR RESPONSES

JUNE 2021 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 June 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

Overall, the paper was done well by the majority of candidates. Several candidates performed to a very high standard, achieving good marks across the questions, resulting in a high percentage of merit and distinction grades.

In line with other previous examinations, some topics proved easier for candidates than others. Detention and custody questions, for example, were answered to the usual high standard by candidates. This paper saw some areas examined which have not been commonly examined in past papers and yet candidates still performed well.

Funding, bail and appeal questions were done fairly well by candidates. Many students worked hard to apply the case study material to the questions were required such as the defence statement question. This paper saw an either way and an indictable offence in the case study. Many candidates showed a reasonable knowledge of procedural aspects relating to either way offences such as PBV and allocation.

It is important for candidates to read questions carefully to ensure that their answer is directly addresses the specific question posed. An example of this is question 3a which asked candidates to describe any three ways in which a Crown Court trial can be distinguished from a Magistrates' Court trial. Many did answer

this correctly, but some outlined pros and cons of each which is not what the question required.

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.

The Chief Examiner would like to take the opportunity to remind candidates that the case study material is designed to give an appreciation of the area of questions. There will be a mix of application style questions but also some general knowledge questions, for which the case study provides a contextual backdrop.

CANDIDATE PERFORMANCE FOR EACH QUESTION

Question 1

Generally, candidates scored well showing a good knowledge of detention and custody including the question relating to voluntary attendance at the police station.

Question 2

Was reasonably well completed by most with many candidates. Many showed a good knowledge of either way offences and the procedures relating to those, ie PBV and allocation plus the reasons why the confession could be argued to have been unlawfully obtained. The bail questions were well done, with the exception of the procedural questions at 2(e)(ii) but this carried only 2 marks.

Question 3

This question was done well by most candidates.

Question 4

This question was generally done well by candidates with many scoring well in the funding and disclosure parts. The defence statement question did stretch candidates. Some produced excellent responses and scored full marks but others did struggle to apply the case study material to the question effectively.

SUGGESTED POINTS FOR RESPONSES
LEVEL 3 – UNIT 11 – CRIMINAL LITIGATION

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 June 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.

Question Number	Suggested points for responses	Max Marks
Q1(a)	<ul style="list-style-type: none"> • time of arrival at the police station • property taken from Marcia • times of interviews • times of refreshments • requests for access to a lawyer • times of detention reviews • time and duration of lawyer visit • representations by defence lawyers 	3
Q1(b)	<ul style="list-style-type: none"> • s.29 PACE 1984 , • entitled to leave police custody at any time <p>if questioned,</p> <ul style="list-style-type: none"> • they must be cautioned; • told they are not under arrest • told that they are free to leave at any time • told that they may obtain legal advice. 	4
Q1(c)(i)	<ul style="list-style-type: none"> • regulated by Code D PACE • Aim of Code D is to ensure the quality/reliability of eyewitness ID 	2
Q1(c)(ii)	<p>The requirements include:</p> <ul style="list-style-type: none"> • video ID line-up must be arranged by an officer not connected to the investigation • the suspect must be told of the first description that the witness gave • there must be 8 other people in the line-up • who must resemble the suspect as much as possible (e.g. age, height, etc.) • If the suspect has an unusual mark, e.g. tattoo or scar, it must be replicated or covered up • it is the suspect's choice where his image appears in the line up, • the witness must be told that the suspect may not be in the line up • and the witness may view the video as many times as he/she wishes 	2

Q1(d)(i)	<ul style="list-style-type: none"> • section 34 CJPOA 1994 • If Elisha fails to mention during questioning a fact • Which she later relies on in her defence at trial, • The court may draw adverse inferences from her silence • Her failure to mention the self-defence must be reasonable, • Hoare [2005] • True question is whether Elisha remained silent because she had no or no satisfactory explanation to give 	4
Q1(d)(ii)	<ul style="list-style-type: none"> • Para 15 Annex B Code C and/or s 58(8) PACE 1984 • Elisha would enjoy an unqualified right to silence • Adverse inferences cannot be drawn • Modified caution to be given 	2
Question 1 Total: 17 marks		

Question Number	Suggested points for responses	Max Marks
Q2(a)(i)	<ul style="list-style-type: none"> • Either way offence • Plea before venue • Allocation • Magistrates' Courts Act 1980 	3
Q2(a)(ii)	<ul style="list-style-type: none"> • Magistrates decline jurisdiction <p>OR</p> <ul style="list-style-type: none"> • Magistrates retain jurisdiction, but • Marcia elects Crown Court trial 	3
Q2(b)	<ul style="list-style-type: none"> • Interview not conducted in compliance with PACE Code C • Caution only given afterwards • not in the police station • not recorded • no solicitor present and • Elisha not able to seek legal advice prior to the 'interview' 	3
Q2(c)(i)	<ul style="list-style-type: none"> • Elisha – indictable only • Marcia – related either way offence • S51 Crime and Disorder Act 1951 	2
Q2(c)(ii)	<ul style="list-style-type: none"> • Sending procedure • Sent immediately to Crown Court • Listed for PTPH • Within 28 days • Seek indication of plea 	3
Q2(d)	<ul style="list-style-type: none"> • Arrested for the breach, or taken back/returned to court • remanded in custody, and • subsequently refused bail 	2
Qu. 2e(i)	<p>Fail to surrender:</p> <ul style="list-style-type: none"> • Reporting to a police station , • Residence condition. <p>Interfere with prosecution witnesses:</p> <ul style="list-style-type: none"> • Not to contact victim/ witnesses , • Not to visit the Old Red Lion pub , • Residence condition: Not to reside in the same home as the victim . • No need for conditions to be matched to risk 	2
Qu 2e(ii)	<ul style="list-style-type: none"> • Pt IIA Sch 1 BA 1976 • Only one more application • Unless there has been a change of circumstances 	2
Question 2 Total: 20 marks		

Question Number	Suggested points for responses	Max Marks
Q3(a)	<ul style="list-style-type: none"> • Crown court has jury to decide fact • Magistrates' court, magistrates decide fact • Crown court – judge decides points of law • Magistrates' court, magistrates decide law, on advice of legal adviser • Crown court - Right of audience – higher rights reps, likely barrister • Magistrates' court - any legal rep, but likely solicitor or CLE 	6
Q3(b)	<ul style="list-style-type: none"> • CRM14 • Legal Aid Agency 	2
Q3(c)	<ul style="list-style-type: none"> • IOJ test • means test • IOJ automatically satisfied – Elisha as indictable only offence • IOJ automatically satisfied – Marcia as EW joined and send for CC trial • Means test – may have to pay contribution from income and or capital • Certain benefits – passported 	5
Q3(d)	<p>IOJ</p> <ul style="list-style-type: none"> • Need to satisfy IOJ test in mags trial funding application • RO will only be granted if the court considers the case "serious enough" for full legal representation • Crown Court – IOJ automatically satisfied <p>Means test</p> <ul style="list-style-type: none"> • Means test differences – income but not capital in mags court • No threshold in CC • Can be asked to make contribution to defence costs in CC 	2
Question 3 Total: 15 marks		

Question Number	Suggested points for responses	Max Marks
Q4(a)(i)	<ul style="list-style-type: none"> The production by one party, to the other, of the evidence relating to their case 	1
Q4(a)(ii)	<ul style="list-style-type: none"> Material generated during the investigation which does not form part of the prosecution case 	2
Q4(b)	<ul style="list-style-type: none"> S5 CPIA 1996 Following initial disclosure by prosecution DCS must be filed within 28 days 	2
Q4(c)	<ul style="list-style-type: none"> Denies the assault Wrongly identified as the person responsible/mistaken identity Luis Felipez was the only eye witness LF witnessed argument near toilets Description by LF conflicts with that of GS Picked out in VIPER by McGee but he did not witness assault 	4
Q4(d)	<ul style="list-style-type: none"> Prepared by the National Probation Service Contains an assessment about the likelihood of re-offending Contains an assessment of the risk posed by the defendant Contains a proposal by the Probation Service regarding most appropriate sentence 	3
Q4(e)(i)	<ul style="list-style-type: none"> Explain how a defendant may appeal a Crown Court decision Appeal can be made to the Court of Appeal (Criminal Division) S. 1 Criminal Appeal Act 1968 Leave to appeal is required Appeal against conviction if conviction is unsafe Appeal against sentence Appeal on point of law 	4
Q4(e)(ii)	<ul style="list-style-type: none"> Quash the conviction and order an acquittal Quash the conviction and order a re-trial Allow part of the appeal Dismiss the appeal Quash any sentence or order Impose a lesser sentence 	2
Total: 18 marks		