

## CHIEF EXAMINER COMMENTS WITH SUGGESTED POINTS FOR RESPONSES

JUNE 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 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

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. For example, in Section B, candidates performed well in identifying the offence of murder (Sc1 Q1a), but often performed less well in the application of the law to the scenario (Sc1 Q1b). This was replicated in other questions such as Sc2 Q1a (identifying the offence of theft) and Sc2 Q1b (applying the offence of theft to the circumstances). This is a common issue, and emphasises the point that candidates need to apply the law in order to do well.

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.

Some questions asked for explanation of an offence, whereas others asked for it to be applied to the scenario. Candidates often put an 'explanation' in an 'application' answer, and *vice versa*. It is vital for candidates to understand the question posed in order to do well.

## CANDIDATE PERFORMANCE FOR EACH QUESTION

### SECTION A

#### Question 1

Generally, well answered. A mark was available for stating 'a positive act (or omissions)' as well as a mark for saying 'the guilty act'.

#### Question 2

Generally well answered (marks were available for identification of the terms 'gross negligence' and 'dishonesty').

#### Question 3

Defence(s) of 'lawful excuse' to an offence of Criminal Damage. 6. Many candidates did not accurately describe the defence(s)

#### Question 4

Well answered. Some candidates did not state that the killing must be 'unlawful'.

#### Question 5

Many candidates incorrectly answered 'Diminished Responsibility' or 'Loss of Control'.

#### Question 6

Generally well answered. Note that many candidates defined the whole offence of theft, when all that was asked for were the *actus reus* elements.

**Question 7** Generally, well answered.

#### Question 8

The question asked about voluntary intoxication. Many candidates incorrectly discussed involuntary intoxication, and some candidates incorrectly stated that intoxication is not a defence at all.

#### Question 9

The question asked about self-defence. Some candidates incorrectly stated that the defence is not available for offences of murder/attempted murder.

## **Question 10**

The question asked for two of the factors which help to determine whether an offence is one of strict liability. Many candidates merely mentioned advantages and disadvantages of the topic.

### **SECTION B**

#### **Scenario 1**

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

This tested the candidates' ability to identify the offence of murder, and its constituent elements. Some candidates incorrectly stated that 'recklessness' was relevant to the offence. However, the question was generally well answered.

**(b)** Many candidates did not apply the *mens rea* thoroughly and should have identified that there was a direct intention.

##### **(c)**

Many candidates gave answers which did not apply the law, and some candidates explained factual and legal causation in incorrect terms (e.g. an explanation of legal causation using factual causation terminology). A conclusion was needed in order to obtain full marks.

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

Generally, well answered- although some candidates did not correctly identify both of the qualifying triggers in enough detail.

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

##### **Question 3(a)**

Many candidates correctly identified the offence of gross negligence manslaughter. However, some lacked the detail needed in order to score good marks. E.g. there must be a creation of the risk of death – obvious to a reasonable person

**(b)** Many candidates did not apply all of the elements of the offence.

Homicide regularly appears in the question paper and is a popular topic. Candidates 'connect' well with the subject matter.

## **Scenario 2**

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

Some candidates applied the elements of the offence, rather than identifying the elements, as the question asked. Some candidates also incorrectly stated that this was an attempt.

**1(b)** Some candidates did not apply the law in sufficient detail and merely quoted the elements of the offence.

**Question 2(a)** Generally, well answered.

**(b)** Some candidates did not apply all of the elements (e.g. there was an intent to commit the offence)

**Question 3(a)** Generally, well answered.

**(b)** Generally, well answered. It was important to identify the term 'arson'.

**(c)**

Many candidates correctly identified the defence of duress by threats and that Betty has associated with those who she knew might put pressure on her. Few candidates explained or applied many other elements (e.g. the threat must be made against the defendant/someone whom they regard themselves as responsible for...)

Many candidates scored well with this scenario. 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, albeit it is more difficult to apply thoroughly to a problem scenario. The same observation applies to the defence of duress.

## **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** Generally well answered.

**Question 3(a)**

Many candidates did not identify some of the basic principles of the defence, e.g. the difference between specific intent and basic intent offences.

**(b)**

In applying intoxication, many candidates incorrectly classified constructive manslaughter as a specific intent offence.

**Question 4(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.

**(b)**

Many candidates did not identify that Richard is claiming that he did not have the *mens rea*, or that the belief appears to be honest.

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, candidates are often unsure as to how to apply the defence of mistake.

**SUGGESTED POINTS FOR RESPONSES  
LEVEL 3 – UNIT 2 – CONTRACT 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 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.

## Section A

Question Number	Suggested points for responses	Max Marks
Q1	<ul style="list-style-type: none"> <li>• The guilty act</li> <li>• It is the conduct element of a crime</li> <li>• Usually a positive act (mark can be given if S mentions omissions)</li> </ul>	2
Q2	<ul style="list-style-type: none"> <li>• Intention</li> <li>• Recklessness</li> <li>• Gross negligence</li> <li>• Dishonesty</li> </ul>	2
Q3	<p>A defendant has a lawful excuse if:</p> <ul style="list-style-type: none"> <li>• S5(2) Criminal Damage Act 1971</li> <li>• He believed he had, or would have the consent of any person he genuinely/honestly believed was entitled to consent</li> <li>• <b>Case e.g. Denton (1982) or Blake v DPP (1993)</b></li> <li>• Or he believed that the property was in immediate need of protection</li> <li>• the means adopted were reasonable having regard to all the circumstances</li> <li>• <b>Case, e.g. Hill;Hall (1988), or Johnson v DPP (1994) or Hunt (1977), or Chamberlain v Lindon (1998)</b></li> </ul>	4
Q4	<ul style="list-style-type: none"> <li>• The unlawful killing</li> <li>• Of a human being</li> <li>• Within the Queen's Peace</li> <li>• Causation [in fact and in law]</li> </ul>	3
Q5	<ul style="list-style-type: none"> <li>• Corporate Manslaughter (Corporate Manslaughter and Corporate Homicide Act 2007)</li> <li>• Familial Homicide (s5 Domestic Violence, Crime and Victims Act 2004)</li> <li>• Vehicular Homicide (under any of the statutes – e.g. s1 Road Traffic Act 1988/s20 Road Safety Act 2006...)</li> </ul>	2
Q6	<ul style="list-style-type: none"> <li>• Appropriation</li> <li>• Property</li> <li>• Belonging to another</li> </ul>	3
Q7	<p>The offence requires:</p> <ul style="list-style-type: none"> <li>• (the defendant) did an act</li> <li>• More than merely preparatory</li> <li>• <b>Case e.g. Campbell (1991), Jones (1990), Boyle and Boyle (1987), Tosti and White (1997)</b></li> <li>• To the commission of an indictable offence</li> <li>• With intent to commit that offence</li> </ul>	4

	<ul style="list-style-type: none"> <li>• Cannot be committed by an omission</li> </ul>	
Q8	<ul style="list-style-type: none"> <li>• Offences are classified according to whether they are specific intent or basic intent offences</li> <li>• <b>Case e.g. Majewski (1976), Lipman (1970)</b></li> <li>• Voluntary intoxication can only be a defence where the offence is one of specific intent</li> <li>• The defendant was incapable of forming the necessary intent</li> <li>• <b>Case e.g. Brown and Stratton (1998), Gallagher (1963)</b></li> <li>• A mistaken belief can sometimes suffice [<b>Jaggard and Dickinson (1981)</b>]</li> </ul>	4
Q9	<ul style="list-style-type: none"> <li>• Use of some force must be necessary</li> <li>• Force must be proportionate</li> <li>• Excessive force will negate the defence</li> <li>• No duty to seek to avoid the confrontation</li> <li>• Will be judged on the facts as the defendant honestly sees them</li> <li>• E.g <b>Martin (2000), Clegg (1995)</b> (or similar case)</li> </ul>	4
Q10	<ul style="list-style-type: none"> <li>• The severity of the punishment/whether the offence is truly criminal in nature</li> <li>• Whether the offence applies to specific groups/specific activities (e.g. the selling of food)</li> <li>• Whether the offence deals with issues of social concern/public safety (e.g. pollution)</li> <li>• Whether it will promote greater vigilance</li> </ul>	2
<b>Total: 30 marks</b>		

**Section B - Scenario 1**

Question Number	Suggested points for responses	Max Marks
Q1(a)	<p>Identification and explanation of the offence of murder</p> <ul style="list-style-type: none"> <li>• Identification of the offence of murder</li> <li>• Mens rea - malice aforethought</li> <li>• Mens rea – an intention – direct</li> <li>• or oblique e.g. <b>Nedrick (1986), Woollin (1998)</b></li> <li>• Mens rea – to kill</li> <li>• or cause GBH</li> <li>• Actus Reus – the unlawful killing</li> <li>• Actus reus - of a human being</li> <li>• Actus reus within the Queen’s Peace</li> </ul>	7
Q1(b)	<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 Dave has a direct intention to kill Monique</li> <li>• i.e. aim or purpose</li> <li>• Indirect intention is an alternative for the jury to consider if they see fit</li> <li>• The killing is unlawful i.e. there is no lawful excuse for Dave’s actions</li> <li>• Monique is a human being and it is within the Queen’s Peace</li> </ul>	4
Q1(c)	<p>Explanation and application of causation</p> <ul style="list-style-type: none"> <li>• Factual causation – the ‘but for’ test</li> <li>• <b>Case e.g. White (1910), Pagett (1983)</b></li> <li>• But for Dave stabbing Monique, she would not have died</li> <li>• Legal causation must be more than a minimal cause</li> <li>• It need not be the sole cause</li> <li>• Dave’s actions were the operating and substantial cause/made a ‘significant contribution’ to the death</li> <li>• <b>Case e.g. Smith (1959), Cheshire (1991)</b></li> <li>• There were no breaks in the chain of causation</li> <li>• Conclusion that Dave’s actions ‘caused’ Monique’s death</li> </ul>	7
	<b>Question 1 Total</b>	<b>18 marks</b>

Q2(a)	<p>Identification and explanation of 'loss of control'</p> <ul style="list-style-type: none"> <li>• Dave may be able to use the partial defence of 'loss of control'</li> <li>• Loss of control comes under Ss 54-55 Coroners and Justice Act 2009)</li> <li>• If successful then this reduces the conviction to 'voluntary manslaughter'</li> <li>• There must be a loss of self-control</li> <li>• The loss of control need not be sudden, although revenge killings are excluded from the defence</li> </ul> <p>There are two qualifying triggers:</p> <ul style="list-style-type: none"> <li>• Fear of serious violence from the victim against the defendant or another identified person (s55(3))</li> <li>• Things said or done (or both) which constituted circumstances of an extremely grave character and caused the defendant to have a justifiable sense of being seriously wronged (ss55(4))</li> </ul> <p>And..</p> <ul style="list-style-type: none"> <li>• A person of the defendant's sex and age, and with a normal degree of tolerance/self-restraint, and in the circumstances of the defendant, might have reacted in the same or similar way (s54)</li> <li>• <b>Case, e.g. Richens (1993), Pearson (1992), Dawes, Bowyer and Hatter (2013), Clinton, Parker and Evans (2012), Camplin (1978)</b></li> </ul>	6
Q2(b)	<p>Application of 'loss of control' to the situation</p> <ul style="list-style-type: none"> <li>• Dave would appear to have lost self-control</li> <li>• The second limb (things said or done...) should be considered here because of the taunting/criticism/her infidelity</li> <li>• The test is objective</li> <li>• Sexual infidelity on its own is not a relevant consideration (s55(6)(c))</li> <li>• However, it can be considered if mixed with other factors ,so the second limb may be satisfied here</li> <li>• The objective 'third' test may also be satisfied – a person of the defendant's sex and age .....might have reacted in the same or a similar way</li> <li>• A reasoned conclusion as to the success of this defence</li> </ul>	5
<b>Question 2 Total</b>		<b>11 marks</b>
Q3(a)	Identification and explanation of 'gross negligence' manslaughter	6

	<ul style="list-style-type: none"> <li>• Gross negligence manslaughter can be considered</li> <li>• The <i>mens rea</i> is less than that of murder</li> <li>• It can be committed by an act or omission</li> <li>• The defendant must owe a duty of care to the victim, and the duty must be breached</li> <li>• There must be creation of the risk of death by the breach of the duty</li> <li>• The risk of death must be obvious to a reasonable person (an objective test)</li> <li>• The ordinary principles of causation apply</li> <li>• There must be a further element which makes the conduct so bad as to amount to a criminal offence (gross negligence rather than mere negligence)</li> <li>• <b>Case e.g. Adomako (1994), Gemma Evans (1994), Reeves (2012), Bateman (1925), Garg (Sudhanshu) (2012), A-G's reference (No.2 of 1999) (2000)</b></li> </ul>	
Q3(b)	<p>Application of the offence of 'gross negligence' manslaughter</p> <ul style="list-style-type: none"> <li>• Dr Jones does not have the mens rea for murder</li> <li>• The failure to order the scan is an omission</li> <li>• As a doctor, he owes a duty of care to the officer (e.g. <b>Prentice (1993), Adomako (1994)</b>)</li> <li>• The duty appears to have been breached, because of the inadequate care (e.g. <b>Gar (Sudhanshu) (2012)</b>)</li> <li>• The objective test appears to be satisfied as well – the risk of death would have been obvious to a reasonable person (<b>Adomako (1994)</b>)</li> <li>• The conduct has caused death factually, and legally (both parts required)</li> <li>• The negligence appears to be 'gross' in that it has moved from civil culpability, into an incident deserving of criminal punishment (e.g. <b>Bateman (1925)/Adomako (1994)</b>)</li> </ul>	5
	<b>Question 3 Total</b>	<b>11 marks</b>
<b>Total Scenario 1: 40 marks</b>		

## Section B - Scenario 2

Question Number	Suggested points for responses	Marks
Q1(a)	<p>An explanation of the offence of theft (s1 Theft Act 1968)</p> <ul style="list-style-type: none"> <li>• Theft under 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
Q1(b)	<p>Application of the law of theft</p> <ul style="list-style-type: none"> <li>• Dishonesty – none of the exceptions in s2 apply</li> <li>• Betty may be dishonest under the <b>Ivey (2017)</b> test (or as per the recent case of <b>Barton and Booth (2020) CA</b>)</li> <li>• Appropriation – Betty assumes the right of the owner by picking it up/placing in her bag</li> <li>• Property – the skirt is real/tangible</li> <li>• Belonging to another -the skirt is the store’s property as they have possession/control of it</li> <li>• Intention to permanently deprive – Betty intended to treat the skirt as her own</li> <li>• Betty formed the intention before she left the store</li> <li>• Betty is guilty of theft</li> </ul>	6
	<b>Question 1 Total</b>	<b>10 marks</b>
Q2(a)	<p>An explanation of the offence of attempted theft</p> <ul style="list-style-type: none"> <li>• The offence is <u>attempted</u> theft</li> <li>• S1(1) Criminal Attempts Act 1981)</li> <li>• It requires proof that the defendant did an act</li> <li>• which is more than merely preparatory</li> <li>• <b>Case (e.g. Boyle and Boyle (1987), Tosti and White (1997), Jones (1990) - or any other relevant case</b></li> <li>• In relation to an indictable offence [which includes either-way offences]</li> <li>• With intent to commit the offence [e.g. <b>Khan (1990)</b>]</li> </ul>	6

Q2 (b)	<p>Application of the offence of attempted theft</p> <ul style="list-style-type: none"> <li>• Betty did an act - she put her hand in the handbag</li> <li>• in relation the offence of theft– which is an indictable offence</li> <li>• It was more than merely preparatory – Betty was sufficiently close to committing the full offence to be considered as attempting it</li> <li>• Betty intended to commit the offence of theft</li> <li>• Conclude that the offence of attempted theft is complete</li> </ul>	4
	<b>Question 2 Total</b>	<b>10 marks</b>
Q3(a)	<p>An explanation of ‘simple’ criminal damage by arson</p> <ul style="list-style-type: none"> <li>• Simple damage comes within s1(1) Criminal Damage Act 1971</li> <li>• Intentionally or recklessly</li> <li>• Destroys or damages property</li> <li>• belonging to another</li> <li>• <b>Case e.g. Hardman (1986), Woollin (1998), G and Another (2003)</b></li> <li>• Damage by fire is arson</li> <li>• The offence comes within s1(3) Criminal Damage Act 1971</li> </ul>	6
Q3(b)	<p>Application of the offence of ‘simple damage’ arson</p> <ul style="list-style-type: none"> <li>• Betty has intentionally</li> <li>• Destroyed property (the car)</li> <li>• Belonging to another (the rival gang)</li> <li>• As the destruction is by fire, it is arson</li> </ul>	4
Q3(c)	<p>Identification and application of the defence of duress by threats</p> <ul style="list-style-type: none"> <li>• Betty may be able to use the defence of duress</li> <li>• It is duress by threats</li> <li>• To be successful, it must be shown that the defendant has not been at fault in associating with a group whom he knew might put pressure on her to commit an offence</li> <li>• This element is not satisfied in this case</li> <li>• Case e.g. <b>Sharp (1987), Heath (2000), Hasan (2005)</b></li> <li>• The defendant’s will must have been overborne by the threat of death or serious injury – as in this case</li> <li>• It is a subjective test</li> <li>• The threat must be against the defendant / or for someone whom the defendant regards themselves as reasonably responsible for (as per the current circumstances) (<b>Shayler (2001)</b>)</li> <li>• The threat must be imminent, as per the circumstances here (<b>Hudson and Taylor (1971)</b>)</li> </ul>	10

	<ul style="list-style-type: none"> <li>• It must be made with the purpose of compelling the defendant to commit a particular type of crime – as in this case</li> <li>• A sober person of reasonable firmness sharing the characteristics of the defendant, would have responded as the defendant did – here the element may or may not be satisfied</li> <li>• Case e.g. <b>Graham (1982), Bowen (1996), Rogers (1999)</b></li> <li>• A conclusion that as not all of the elements are satisfied, then the defence would not be available</li> </ul>	
	<b>Question 3 Total</b>	<b>20 marks</b>
<b>Total Scenario 2: 40 marks</b>		

### Section B - Scenario 3

Question Number	Suggested points for responses	Marks
Q1(a)	<p>Explanation of the offence of Unlawful Act (constructive) manslaughter</p> <ul style="list-style-type: none"> <li>• Marco may have committed the offence of Unlawful Act (constructive) manslaughter</li> <li>• There must be an unlawful act/crime</li> <li>• It must be an act and not an omission</li> <li>• The mens rea is the mens rea for the unlawful act</li> <li>• which is in itself a crime</li> <li>• <b>Case e.g. Franklin (1883), Lamb (1967), Lowe (1973)</b></li> <li>• The act must be objectively dangerous – mention one relevant case</li> <li>• Case e.g. <b>Church (1965), DPP v Newbury and Jones (1976)</b></li> <li>• The act must cause death</li> </ul>	6
Q1(b)	<p>Application of the offence of unlawful act manslaughter</p> <ul style="list-style-type: none"> <li>• In Marco's case he has committed a crime - assault</li> <li>• under the circumstances it would appear to be dangerous</li> <li>• Seen objectively</li> <li>• <b>Case e.g. Church (1965), Larkin (1943), Goodfellow (1986)</b></li> <li>• The principles of causation in fact (the 'but for' test)</li> <li>• ... and causation in law are satisfied</li> <li>• Conclusion that all of the elements of the offence appear to be satisfied</li> </ul>	4
<b>Question 1 Total</b>		<b>10 marks</b>
Q2	<p>Explanation and application of causation</p> <ul style="list-style-type: none"> <li>• There is 'factual' causation (the 'but for' test)</li> <li>• <b>Case e.g. White (1910), Pagett (1983)</b></li> <li>• There is 'legal' causation (operating and significant/substantial cause)</li> <li>• The injuries inflicted by Marco are a significant contribution to Emily's death</li> <li>• As regards potential breaks in the chain, Emily's beliefs come within the principle of 'refusal of treatment'</li> <li>• <b>Case e.g. Blaue (1976), Wallace (2018)</b></li> <li>• Conclusion that the refusal of treatment due to her beliefs, does not break the chain of causation</li> <li>• In relation to the ambulance delay, the question is not about reasonable foreseeability or even negligent treatment, but is</li> </ul>	9

	<p>about the significance of the contribution to the consequence</p> <ul style="list-style-type: none"> <li>• <b>Case e.g. Jordan (1956), Cheshire (1991), Mellor (1996)</b></li> <li>• The ambulance delay does not break the chain</li> <li>• Overall conclusion that there would not be a break in the chain and Marco would be liable for Emily's death</li> </ul> <p>Credit if relevant causation points are dealt with in Q1b</p>	
	<b>Question 2 Total</b>	<b>9 marks</b>
Q3(a)	<p>An explanation of the rules relating to intoxication</p> <ul style="list-style-type: none"> <li>• Intoxication can be voluntary or involuntary</li> <li>• In order to refute the allegation of mens rea</li> <li>• The defence can be available for offences of specific intent or basic intent</li> <li>• 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>• <b>Case e.g. Majewski (1976), Brown and Stratton (1998)</b></li> <li>• Specific intent offences require proof of intention</li> <li>• Basic intent offences only require proof of recklessness</li> <li>• The issue is not whether the defendant was capable of forming the intention, but whether he did or did not form the intention</li> <li>• 'Dutch courage' can never be used a defence (<b>Gallagher (1963)</b>)</li> </ul>	8
Q3(b)	<p>Application of the rules relating to intoxication</p> <ul style="list-style-type: none"> <li>• In the current circumstances Marco is voluntarily intoxicated</li> <li>• Marco's voluntary intoxication is in itself considered a reckless act</li> <li>• (Unlawful Act) Manslaughter is a basic intent offence</li> <li>• Marco's voluntary intoxication will not afford a defence</li> </ul>	3
	<b>Question 3 Total</b>	<b>11 marks</b>
Q4(a)	<p>Identification of the defence of mistake</p> <ul style="list-style-type: none"> <li>• The defence of mistake may be available</li> <li>• This is 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>• On the facts as the defendant believed them to be (subjective test)</li> <li>• But does not need to be reasonable.</li> <li>• <b>Case e.g. B (a Minor) v DPP (2000), Beckford (1987)</b></li> </ul>	6

Q4(b)	<p>Application of the elements of the defence</p> <ul style="list-style-type: none"> <li>• Richard thought that the phone belonged to Emily</li> <li>• This is a mistake of fact</li> <li>• He is thereby saying/claiming that the mistake prevented him from forming the mens rea for the offence of theft</li> <li>• The belief appears to be honest, based on the facts as he believed them to be</li> <li>• He appears to have satisfied the elements of the defence</li> </ul>	4
	<b>Question 4 Total</b>	<b>10 marks</b>
<b>Total Scenario 3: 40 marks</b>		