

CHIEF EXAMINER COMMENTS WITH SUGGESTED POINTS FOR RESPONSES

JUNE 2021
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 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

Essay questions

Generally, the essay questions weren't very popular, and they remain, the least preferred option for most candidates overall. Generally, 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 quite poor with more candidates failing the attempted questions than passing, save for Question 3 which was the most popular essay question on the paper. It produced the best essays and those who passed it, passed it well.

The worst performing essay question, and also the least popular question, was Question 1.

Problem Questions

The vast majority of candidates do still prefer problem questions to essays. This is illustrated by the fact that the top 2 questions this session were problem questions. The most popular question on the paper was Section B Question 3). The main issue with problem questions is that candidates seem to speculate whether anything and everything in the question is a reference to an offence. A lot of time is wasted writing an answer which isn't relevant to the question or candidates try to include too much detail in respect of peripheral matters.

There seems to be less of a problem with time management as the majority of candidates did manage to complete four questions. This indicates that there wasn't a problem with the amount of information required to answer each question. There were a couple of candidates who answered 5 questions and the highest scoring 4 answers were credited.

The importance of reading the question paper carefully and following the instructions provided on it, cannot be reiterated enough.

CANDIDATE PERFORMANCE FOR EACH QUESTION

SECTION A

Question 1

This was the least popular question this session with only 8 candidates attempting it. There seemed to be a problem with understanding what was required. The question asked for an evaluation of whether the imposition of criminal liability on a defendant, who has not committed the AR for the FULL offence, is justified. Mention of the full offence was a signpost that this question was asking about inchoate offences – attempt/conspiracy. Most candidates seemed to think it was about omissions. The candidates who did identify inchoate offences didn't display very much knowledge of the area.

Question 2(a)

This was the second most popular essay question. It seems a lot of candidates view a two-part question as an opportunity to gain more marks than a single part question. In the main this part of the question was answered really well and didn't seem to cause any of the candidates any real problems.

(b)

Again, this part was quite well answered. Although a number of candidates clearly attempted this question on the basis of their knowledge of part (a) as part (b) was not as well answered. The candidates didn't display enough relevant information.

Question 3

This was the most popular essay question with 47 candidates attempting it. What was noticeable was that candidates either passed really well or failed very poorly; there weren't many borderline pass/fails. Candidates seem to understand what was expected of them and, in the main, delivered.

Question 4

This question wasn't very popular and wasn't very well answered. Only 13 candidates attempted the question. Some of the candidates who attempted the question seemed to be confused about duress of threats and duress of circumstance. The candidates who did this went into detail about duress of threats which was not asked for and then not providing enough information in relation to the relevant areas. The question was quite clear.

SECTION B

Question 1

This was the least popular problem question and the fifth most popular question overall, this session, with 24 candidates attempting it. The question was either answered very well or very poorly. This is a difficult area. A large number of candidates did not even explore conspiracy, joint enterprise, abetting an offence and secondary participation and this was a big part of the question. Most candidates identified the non-fatal offences correctly.

Question 2

This question was quite popular with 37 candidates attempting it. The question was about dishonesty offences, in particular theft and s2 and s11 of the Fraud Act 2006 (FA). Some of the main problems with this question were that some candidates did not identify any of the fraud offences. Some said that the use of Abdul's card was an attempt theft; this was incorrect as the complete offence was committed. The sticking point with this was whether Gail had the MR for theft. Some said that the use of Abdul's card was an abuse of position s4 FA, this was also incorrect as she didn't steal from the business (which would have been an abuse) she used Abdul's personal credit card so it was a theft. A number of candidates also failed to support their answer with up to date knowledge re dishonesty. Some quoted Ghosh and just stopped there. Others added the Ivey reference but the highest scorers acknowledged that Ivey is now good criminal law as provided by Barton & Booth.

Question 3

This was the most popular question on the paper this session with 56 candidates attempting it. Most candidates correctly identified the first offence was a common assault against Daisy by Wil – however, some people identified it as a battery or ABH; this was incorrect as Wil did not touch Daisy.

The next offence was Wil striking Orla instead of Daisy. Transferred malice was successfully applied by a number of candidates, but some only mentioned it briefly and some didn't mention it at all.

At this point the candidate should have pointed out that Orla had died and work back from that. Some did this successfully identifying murder and discarding it and then correctly identifying UDAM based on a battery. Those who did not approach it in this way went off on a tangent discussing ABH and GBH which were incorrect.

Those who approached Orla's death correctly then went on to explore causation and intervening acts.

Most candidates explored whether the actions of Dr Jacques was an intervening act or not. Some correctly said that it wasn't as the reaction to the drug was unexpected, so Dr Jacques couldn't have known and was, therefore, not at fault.

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 and also the second most popular question this session. 51 candidates attempted it.

Part (a) - the main problem here was that candidates didn't identify all offences – burglary, theft, basic criminal damage and arson. This question offered a good opportunity to gain high marks. Some candidates identified and applied all offences really well. Others either missed offences or didn't apply well.

Part b) No obvious problems with this question.

**SUGGESTED POINTS FOR RESPONSES
LEVEL 6 – UNIT 3 - CRIMINAL 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	<p>An answer which consists of reasoned evaluation, offering opinion/verdict which is supported with evidence.</p> <p>Responses should include:</p> <ul style="list-style-type: none"> • An understanding of inchoate offences and their role in criminal law • Definition of inchoate offences • Attempt - Discussion of the common law tests • Discussion of current test • Conspiracy – discussion of offence • An informed evaluation of the statement <p>Responses could include:</p> <ul style="list-style-type: none"> • Additional relevant case law illustrating principles outlined above 	25
Total		25 marks

Question Number	Suggested points for responses	Max Marks
Q2(a)	<p>An answer which consists of reasoned analysis, breaking down the issue into sections and using supportive evidence for and against.</p> <p>Responses should include:</p> <ul style="list-style-type: none"> • Identification that there are 3 different types of mistake • Mistakes that negative to MR • Mistakes relating to a defence • Mistake in law • Discussion of when each type of mistake can occur • Discussion of how the cause of the mistake will have a bearing on the effect of its liability <p>Responses could include:</p> <ul style="list-style-type: none"> • Additional relevant caselaw to support the discussions above 	15
Q2(b)	<p>An answer which consists of reasoned evaluation, offering opinion/verdict which is supported with evidence.</p> <p>Responses should include:</p> <ul style="list-style-type: none"> • Discussion of self-defence at common law • Discussion of s76 Criminal Justice and Immigration Act to include its background and enactment <p>Responses could include:</p> <ul style="list-style-type: none"> • Additional caselaw to discuss the points discussed • A detailed academic critique of s76 	10
Total		25 marks

Question Number	Suggested points for responses	Max Marks
Q3	<p>An answer which consists of reasoned evaluation, offering opinion/verdict which is supported with evidence.</p> <p>Responses should include:</p> <ul style="list-style-type: none"> • Description of the ingredients of result crimes • Discussion of causation – factual and legal • The importance of a causal link • Intervening acts – acts of the victim, acts of third parties, medical negligence • Identification of when an intervening can break the chain of causation and when it doesn't • Opinion/verdict based on the evidence supplied <p>Responses could include:</p> <ul style="list-style-type: none"> • Additional relevant case law illustrating principles outlined above 	25
Total		25 marks

Question Number	Suggested points for responses	Max Marks
Q4	<p>An answer which consists of reasoned evaluation, offering opinion/verdict which is supported with evidence.</p> <p>Responses should include:</p> <ul style="list-style-type: none"> • Discussion of duress of circumstances • Discussion of necessity • Discussion of overlap/interchangeability between the defences • The differences between the defences • Academic support for the argument that they should remain as separate defences • Proposals for reform • An informed evaluation of the statement <p>Responses could include:</p> <ul style="list-style-type: none"> • A detailed discussion of the proposals for reform • An in-depth exploration of both defences identifying the relevant arguments to support reasoning 	25
Total		25 marks

Section B

Question Number	Suggested points for responses	Max Marks
Q1	<p>An answer which offers advice based on evidence. It should supply possible alternatives and pro's and con's but highlight the best option with sound justifications.</p> <p>Responses should include:</p> <ul style="list-style-type: none"> • Discussion of statutory conspiracy – s1(1) Criminal Law Act 1977 • Discussion of aiding, abetting, counselling or procuring - s8 Accessories and Abettors Act 1861 • Discussion of the doctrine of joint enterprise • Discussion and definition of common assault s39 Criminal Justice Act 1988 • Discussion and definition of Assault occasioning actual bodily harm s47 Offences Against the Person Act 1861 (OAPA) and Grievous bodily harm with intent s18 OAPA • Application of above areas to the facts <p>Responses could include:</p> <ul style="list-style-type: none"> • Demonstration of a detailed understanding of a difficult area • Additional relevant case law illustrating principles outlined above • A considered response which clearly addresses the purpose of the question 	25
Total		25 marks
Question Number	Suggested points for responses	Max Marks
Q2	<p>An answer which offers advice based on evidence. It should supply possible alternatives and pro's and con's but highlight the best option with sound justifications.</p> <p>Responses should include:</p> <ul style="list-style-type: none"> • A detailed discussion of s's 1 to 6 of the Theft Act 1968 • A detailed discussion of s2 and s11 of the Fraud Act 2006 • Application of above areas to the facts <p>Responses could include:</p> <ul style="list-style-type: none"> • Additional relevant case law illustrating principles outlined above • Making off without payment s3 Theft Act 1978 	25
Total		25 marks

Question Number	Suggested points for responses	Max Marks
Q3	<p>An answer which offers advice based on evidence. It should supply possible alternatives and pro's and con's but highlight the best option with sound justifications.</p> <p>Responses should include:</p> <ul style="list-style-type: none"> • Discussion and definition of common assault AND battery s39 Criminal Justice Act 1988 • Discussion of involuntary manslaughter, to include a discussion about causation. Base act for involuntary manslaughter is battery. • Discussion of the doctrine of transferred malice • Discussion of gross negligence manslaughter • Application of above areas to the facts <p>Responses could include:</p> <ul style="list-style-type: none"> • Additional relevant case law illustrating principles outlined above • A considered response which clearly addresses the purpose of the question 	25
Total		25 marks
Question Number	Suggested points for responses	Max Marks
Q4(a)	<p>An answer which offers advice based on evidence. It should supply possible alternatives and pro's and con's but highlight the best option with sound justifications.</p> <p>Responses should include:</p> <ul style="list-style-type: none"> • Discussion and definition of simple criminal damage and arson – s1(1) and s1(3) Criminal Damage Act 1971 • Discussion and definition of s9(1)(a) and 9(1)(b) Theft Act 1968 • Application of above areas to the facts <p>Responses could include:</p> <ul style="list-style-type: none"> • Additional relevant case law illustrating principles outlined above • A considered response which clearly addresses the purpose of the question 	13

Q4(b)	<p>An answer which offers advice based on evidence. It should supply possible alternatives and pro's and con's but highlight the best option with sound justifications.</p> <p>Responses should include:</p> <ul style="list-style-type: none"> • Discussion and definition of the defence of automatism • Discussion and definition of the defence of insanity • Application of above areas to the facts <p>Responses could include:</p> <ul style="list-style-type: none"> • Additional relevant case law illustrating principles outlined above <p>A discussion the defendant's ability to use either or both of the defences above, in the circumstances</p>	12
Total		25 marks