

**LEVEL 3 - UNIT 11 – CRIMINAL LITIGATION
SUGGESTED ANSWERS – JANUARY 2017**

Note to Candidates and Tutors:

The purpose of the suggested answers is to provide students and tutors with guidance as to the key points students should have included in their answers to the January 2017 examinations. The suggested answers do not for all questions set out all the points which students may have included in their responses to the questions. Students will have received credit, where applicable, for other points not addressed by the suggested answers.

Students and tutors should review the suggested answers in conjunction with the question papers and the Chief Examiners' reports which provide feedback on student performance in the examination.

Question 1(a)

Under s.24 The Police and Criminal Evidence Act (PACE) 1984, the police can arrest someone who has actual, attempted or suspected involvement in the commission of an offence. In Arley's case, the police suspected involvement in the theft at the jewellery shop as he matched the description given by Yolanda. The police must also have reasonable grounds that the arrest was necessary. In Arley's case, this could include to allow the investigation of the offence (i.e. the investigation of the theft at the jewellery shop), the suspect might steal or destroy the evidence (Arley may destroy the hammer, the hero mask, rings, etc) and to prevent the prosecution being hindered by the suspect's disappearance (Arley may disappear).

Under s.28 PACE 1984, a suspect must be told of the fact of and grounds for the arrest. This appears to have been the case with Arley as he was told that he was being arrested and was told it was for theft. A suspect must also be cautioned, which occurred in Arley's case.

Question 1(b)

Under s.32 PACE 1984, the police must have reasonable grounds to search a suspect, which may include: if he presents a danger to himself, conceals something which might be used to escape from custody or conceals something which might be evidence. In Arley's case, evidence which he may conceal could be the hammer or the rings.

The police can only ask to remove outer coat, jacket or gloves. The police asking Arley to take off his jacket was lawful but asking him to take off his trainers and socks was unlawful.

Question 1(c)

Articles of the European Convention on Human Rights (ECHR) that might apply in Arley's case include Article 5 (right not to be arrested/detained by police without lawful authority) and Article 6 (right to a fair trial).

Question 2(a)

Under s.40 PACE 1984, an officer reviewing a suspect must be of inspector rank and must be independent of the investigation. The first review must be made no longer than 6 hours after the detention. In Arley's case, he arrived at the police station at 1.00pm so should have been reviewed no later than 7.00pm. Thereafter, he should have been reviewed at 9 hourly intervals. It doesn't appear that Arley was reviewed in accordance with this, as he stated that he hadn't seen anyone for a long time.

Question 2(b)

Code D regulates video identification procedures. The requirements include that the video identification 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.

Question 2(c)

Under s.76 PACE 1984, a confession can be excluded if obtained by oppression or if it is unreliable because of things said or done. In Arley's case, it could be argued that his confession was obtained by oppression given the details of the transcribed interviews such as the constant shouting at Arley, repeating accusations, banging fists on the table, deliberately lying about security cameras being available and the length and time of the interview.

Confession evidence in breach of PACE is not automatically excluded, but under s.78 PACE 1984 it may be excluded if the inclusion of it would have an adverse effect on the fairness of the proceedings. Under s.82 PACE 1984, a court can exclude evidence where the prejudicial effect outweighs its value.

Question 2(d)

Izabella's attendance at the police station could be funded via the police station advice and assistance scheme under the Legal Aid, Sentencing and Punishment of Offenders Act 2012. The funding is free as Izabella would be attending as a duty solicitor.

Question 3(a)(i)

The role of lay magistrates includes trying summary and some either way offences, dealing with sentencing, deciding whether an either way case should be tried in the Magistrates' Court or the Crown Court, deciding on bail applications and issuing warrants for arrest or search.

Question 3(a)(ii)

The role of the legal adviser in the Magistrates' Court includes being responsible for court administration, advising the bench on matters of law, evidence and procedure.

Question 3(b)

The term 'rights of audience' means the right to present a case before a court.

Question 3(c)

The procedure at a bail hearing at a Magistrates' Court is as follows. The defence asks the court to grant bail and the prosecution is asked if there are any objections. If there are no objections, bail is granted. If there are objections, the prosecution makes submissions. The defence counters these submissions. The magistrates make a decision, stating the reasons. There is a possibility of appeal.

Question 3(d)

Conditions which the court could attach to Arley's bail could include reporting to a police station (to prevent Arley from disappearing), not to approach named witnesses (for example Yolanda so he doesn't interfere with the witness) and not to approach a particular place (the jewellery shop).

Question 3(e)

The purpose of an allocation hearing is to determine the trial venue, i.e. Magistrates' or Crown Court. This applies to Arley's case as he is being tried for theft, which is an either way offence.

Question 3(f)

Factors in favour of Arley's having his case tried in the Magistrates' Court include speed (it would be dealt with quicker in the Magistrates' Court than in the Crown Court), cost (it would be cheaper), powers of sentencing (the Magistrates' Court has limited sentencing powers) and stress/formality (it would be less stressful/formal).

Factors against having the case tried in the Magistrates' Court include lower acquittal rates (Magistrates are seen to be 'case hardened'), complex evidence (a judge is thought to be better equipped to deal with complex evidence as he/she is legally qualified), disputed evidence (can be excluded from a jury but magistrates will have to try and ignore knowledge of these).

Question 4(a)

The term 'unused material' means material which has been generated as part of the investigation but which will not be used by the prosecution as evidence.

Question 4(b)

Under s.3 Criminal Procedure and Investigations Act (CPIA) 1996, the prosecution must disclose any material not previously disclosed which might reasonably be considered capable of undermining its case. This must be as soon as practicable after the defendant pleads not guilty. If no such material exists,

the prosecution must inform defendant. Under s.4 CPIA the prosecution must give the defendant a schedule of all non-sensitive prosecution material. Under s.7 CPIA, the prosecution has a continuing duty to disclose.

Question 4(c)

Applying the first part of the guidelines, in Arley's case it could be argued that there was low level intimidation or threats as he threatened he would kill Yolanda if she called the police. There was some related damage as he smashed the glass counter. There appeared to be some planning as he told his son 'like we said' which suggests it was planned. Therefore range is Band B – fine to medium level community order.

There needs to be a consideration of the second part of the guidelines relating to the effect of aggravating and mitigating factors. For example, a child accompanying the offender was involved, as Arley took his son along, who was involved. The victim was particularly vulnerable as Yolanda is 81 years of age. The offender targeted high value goods as the rings were worth £20,000.

A reasonable conclusion based on the above would be that due to aggravating factors Arley's sentence is likely to be at least a medium level community order.