

**LEVEL 3 - UNIT 3 – CRIMINAL LAW
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.

SECTION A

1. The main elements for criminal liability are the *actus reus*, *mens rea* and there being no lawful defence.
2. The main types of *mens rea* are intention, recklessness and negligence.
3. In both the basic and aggravated offence the defendant will not be guilty if he had a lawful excuse. This can be where he genuinely believes the victim consented or would have consented to the destruction or damage or where the property was in immediate need of protection.
4. The *mens rea* of murder is either the intention to kill or to cause GBH (Grievous Bodily Harm).
5. The first qualifying trigger is fear of violence from the victim against the defendant or another identified person (Coroners and Justice Act 2009 s.55(3)). The fear of violence must be serious, unlike with the old law. The other trigger is a thing or things done or said (or both), which constitute circumstances of an extremely grave character and caused the defendant to have a justifiable sense of being seriously wronged (Coroners and Justice Act 2009 s.55(4)). The defendant's sense of being seriously wronged must be justified in the eyes of the jury; an objective test.
6. The *actus reus* of theft is the appropriation of property belonging to another.
7. Section 2 of the Theft Act 1968 identifies three beliefs, which if held by the defendant will show he is not dishonest. The beliefs are that the defendant believed in law he had the right to deprive the victim of the property. The belief that the defendant would have had the victim's consent if he knew of the appropriation and the circumstances. Finally, the belief that the person

to whom the property belongs, cannot be discovered by taking reasonable steps.

8. The offence of attempt existed at common law but is now regulated by statute and is defined by s.1(1) of the Criminal Attempts Act 1981.
9. The defence of self-defence needs the use of some force, but the actual force must be proportionate. Excessive force will negate the defence. There is no duty to seek to avoid the confrontation, whether by retreat or other means, *Martin* (2000). It will be judged on the facts as the defendant honestly believed them.
10. Strict liability offences may be justified for a number of reasons, the main ones being that: people comply with regulatory requirements; there is little stigma attached; proving fault will sometimes be almost impossible; and they save court time and public money.

SECTION B

Scenario 1 Questions

1.
 - (a) The offence is theft, s.1 Theft Act 1968. There must be appropriation of property belonging to another. The defendant needs to be dishonest and have the intention to permanently deprive the owner of his property.
 - (b) The money belongs to the supermarket and Martin has been dishonest by keeping the money when he knows he has an obligation to return the money to the supermarket, s.5(4) Theft Act 1968. The Ghosh test may be applied.
2.
 - (a) The offence is aggravated criminal damage, s.1(2) Criminal Damage Act 1971. The defendant must intentionally or recklessly damage or destroy property. The property can belong to the defendant or another. The damage or destruction may endanger life and the defendant must intend or be reckless as to the endangering of life. Life does not have to be endangered. Relevant case law may include *Webster* (1995).
 - (b) Martin has been reckless by smashing the bottle into the road, the bottle has been destroyed and the fragments of glass could endanger life by causing an accident. Life does not actually have to be endangered.
3.
 - (a) The offence is attempt to supply drugs, s.1(1) Criminal Attempts Act 1981. The attempt must be to commit an indictable or triable either way offence. The act must be more than merely preparatory and there must be an intention to commit the full crime. It is possible to attempt the impossible, *Shivpuri* (1986).
 - (b) Martin, when collecting and delivering the package, is acting in a more than merely preparatory way. Martin intends to commit the crime. The fact that the goods are not drugs does not prevent him committing the crime. It is possible to attempt the impossible. The offence is not a summary one.

4. The rules in DPP v Majewski (1976) deal with intoxication. Firstly, it is necessary to see if the offence is one of basic or specific intent. The defence of voluntary intoxication only applies to specific intent offences. There is a need to negate the *mens rea*. The offence of criminal damage is a basic intent offence and does not apply to voluntary intoxication, only involuntary. The other offences committed by Martin are specific intent offences and would apply to voluntary intoxication. However, Martin forms the intent before getting intoxicated, Dutch courage cannot be used for the defence of intoxication. The defence will not be available to Martin.

Scenario 2 Questions

1.
 - (a) The offence is one of involuntary manslaughter, namely unlawful act manslaughter, also known as constructive manslaughter. There is a need for an unlawful act, not an omission, which needs to be of a dangerous kind. The defendant's actions must cause the death of the victim. There must be no intervening act, e.g. Franklin (1883), Lamb (1967).
 - (b) Alan has committed an illegal act by putting lighted paper through the letterbox. Alan's actions are dangerous, and despite the intervening act of the fireman, Rachel has died.
 - (c) There is causation in fact, known as the 'but for' test, White (1910). There is also causation in law, Smith (1959). The defendant's conduct must reach a certain level. The defendant's action need not be the sole cause, but must make a significant contribution to, the act. There must be no break in the chain of causation. The fireman's intervention potentially could be an intervening act, but Alan started the fire and has made a significant contribution to Rachel's death.
2.
 - (a) The offence is murder, which is defined at common law as the unlawful killing of a human being within the Queen's peace. The *mens rea* of the offence is the intention to kill or the intention to cause GBH.
 - (b) Tamzin has been unlawfully killed. She is a human being. It has happened during the Queen's peace and Bob intended to kill her.
3. The defence that Bob may put forward is that of diminished responsibility, s.52 Coroners and Justice Act 2009. It is a partial defence. For the defence to succeed there needs to be a recognised medical condition which substantially impaired Bob's ability to understand his conduct. Bob must have been incapable of forming a rational judgement or have been incapable of exercising self-control. It needs to provide an explanation for Bob's actions. The burden of proof will lie with Bob and he will need to show an abnormality of mental functioning, Byrne (1960). If successful, Bob will be acquitted of murder but convicted of voluntary manslaughter.

Scenario 3 Questions

1.
 - (a) The offence is arson, s.1(3) Criminal Damage Act 1971. The offence requires damage or destruction of property belonging to another by fire. There will need to be intention or recklessness as to the destruction or damage, Miller (1983). The damage, as in all aspects of criminal damage, will be assessed on the time and cost of repairing the property.

- (b) The factory has been damaged by fire and will take time and money to repair, Hardman v Chief Constable of Avon and Somerset (1986). Deshi intended to set fire to the factory. The factory belongs to Zed Tyres Ltd.
2. (a) The offence is basic criminal damage, s.1(1) Criminal Damage Act 1971. There needs to be the destruction or damage of property belonging to another. Damage will be determined by the time and cost of repairing. The *mens rea* of the offence is intention or recklessness.
- (b) Deshi has damaged the glass window which belongs to another. Deshi intended to damage the window. The window is repairable, but this will take time and money, Hardman v Chief Constable of Avon and Somerset (1986).
3. (a) Deshi's defence in relation to the factory would be that he had the owner's consent, Denton (1982). The defence is that of lawful excuse, s.5 Criminal Damage Act 1971, and in this situation may succeed.
- (b) In relation to the plate glass window, Deshi might try and use the defence of duress. The test is a subjective one and one would need to ask whether Deshi was overborne by the threat. However, the threat must involve physical harm. Threats of psychological injury or other unpleasant consequences are insufficient, Valderrama-Vega (1985). The defence of consent as to the factory may succeed, but the defence of duress will fail.
4. (a) The offence is theft, s.1 Theft Act 1968. There needs to be appropriation of property, belonging to another. The defendant must be dishonest and have the intention to permanently deprive the owner.
- (b) Deshi has taken property belonging to another. He has been dishonest as he could have found the owner by way of the driving licence. He has the intention to permanently deprive.