LEVEL 6 - 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 set out a response that a good (merit/distinction) candidate would have provided. 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

Question 1

In some situations, a defendant (D) may not have completed the *Actus Reus* (AR) of a substantive offence, but can still be liable for an inchoate offence.

Inchoate offences have been described as incomplete offences when really they are offences in their own right which anticipate a complete offence. Inchoate offences refer to those offences where D has not actually committed the substantive crime but has either made an attempt to do so, or has entered into a conspiracy with someone else to do so.

Inchoate offences have a role in crime prevention or deterrence and are designed to allow for liability to be imposed on those who are in the preparatory stages of committing an offence, without waiting for the substantive offence to be committed. They have an important role in public policy and make a contribution to public safety.

The offence of attempt is contained in s1 of the Criminal Attempts Act 1981 (CAA) which states that 'where a person does an act which is more than merely preparatory to the commission of the offence, he is guilty of attempting to commit the offence.'

The AR requires D to commit an act which is more than merely preparatory to the commission of the offence. This is usually a question of fact for the jury and the test is to look forward and decide whether D's act has gone further than the preparatory acts.

Prior to the CAA there were a number of common law tests which looked backwards from the complete substantive offence to determine whether D's actions were immediately connected to the AR of the substantive offence which would then justify the imposition of liability for an attempt.

The 'proximity' test looked backwards from the substantive offence and asked whether D's acts were so immediately connected to the AR of attempt that liability should be imposed for an attempt: Eagleton (1855).

The 'Rubicon' test was formulated in the case of R v Stonehouse (1978), which indicated that proximity could be gauged by whether D's acts constituted 'a fixed irrevocable intention to go on to commit the complete offence unless involuntarily prevented from doing so.' D had 'crossed the Rubicon and burnt his boats'. This test was followed after the introduction of the CAA by Widdowson (1986).

The 'series of acts' test defined an attempt to commit a crime as 'an act done with intent to commit that crime, and forming part of a series of acts which would constitute its actual commission if it were not interrupted.' This approach was followed in Hope v Brown (1954), Davey v Lee (1968) and Boyle and Boyle (1987).

The test was modified in Gullefer (1990) which determined that the elements of proximity, rubicon and the series of acts test should be used together. According to this test, D has committed an attempt when he has 'embarked upon the crime proper.' This approach was agreed in Jones (1990).

The most recent test, and the one generally followed, is that set down in Geddes (1996) where it was decided that an act would be more than merely preparatory if there was acceptable evidence to show that D was actually trying to commit the substantive offence. This approach has been applied in Tosti and White (1997) and in Nash (1998).

D will also be guilty of an attempt to commit a crime if he does an act which is more than merely preparatory towards that crime, even if the commission of the offence would be either factually impossible e.g. attempting to steal from an empty handbag or legally impossible e.g. attempting to supply talcum powder believing it to be a class A drug: Shivpuri (1986), Jones (2007).

The offence of conspiracy is contained in s1 of the Criminal Law Act 1977 (CLA) which states that a person will be guilty of conspiracy if he 'agrees with any other person or persons that a course of conduct will be pursued which, if the agreement is carried out in accordance with their intentions…will necessarily amount to or involve the commission of any offence or offences by one or more parties to the agreement.'

A conspiracy is identified at the moment of agreement with the intention to carry out the crime as the defining point. Therefore, there must be at least two parties to an agreement: Chrastny (1992). All parties must be aware that they are entering into an agreement: Griffiths (1966), Davenport (2009), Jackson (1985). The parties must agree by going beyond the stage of negotiation: Walker (1962).

The course of conduct referred to may be mistakenly thought of as the AR, whereas it is the act of agreement which is the AR. What makes the act of agreement into a crime is the presence of the relevant *Mens Rea* (MR). The relevant MR requires an intention to reach an agreement and recklessness will not be sufficient. There must also be an intention that the course of conduct will result in an offence being committed by one of more of the parties to the agreement: Anderson (1985), McPhillips (1990), Yip Chiu Cheung (1994).

The offence of conspiracy is complete as soon as an agreement has been reached to commit a crime: Saik (2006). The offence of conspiracy exists to allow for the prosecution and conviction of those who agree to commit a crime, even if they do not actually succeed in committing it.

Inchoate offences have a very important role in criminal law, as they identify criminal conduct prior to an offence being committed, thus enabling the police to intervene and stop that offence from occurring e.g. group criminal activity.

They also specify and penalise the crossing of the line between criminal intent and conduct which is sufficient to justify criminalisation.

Question 2

Public policy considerations play a significant role in the law on consent. There are two conflicting principles: the protection of the public from harmful conduct and respect for individual autonomy.

The law dictates that we impliedly consent to physical contact in everyday life: Collins v Wilcock (1984), where touching someone to get their attention was held to be 'everyday' contact.

The general rule is that consent can be a defence to assault or battery: Donovan (1934), A-G's Reference (No 6 of 1980) (1981). These are both offences which require no proof of any harm being caused to the victim (V). However, the courts are stricter when a degree of harm is caused, therefore consent is only available in specific situations to charges of assault occasioning actual bodily harm (ABH), inflicting grievous bodily harm or causing grievous bodily harm with intent (GBH): Brown (1993).

There are some socially acceptable situations where the law allows consent to the deliberate infliction of harm when it is in the public interest: A-G's Reference (No 6 of 1980) and is justifiable on grounds of public policy. Medical intervention and cosmetic surgery allows consent for the procedure to be carried out: Corbett v Corbett (1971), Bravery v Bravery (1954). The same applies to tattooing and piercing. They are also permissible to protect individual autonomy: DPP v Smith (2006), Wilson (1996). Injuries caused during properly regulated contact sports are not subject to criminal sanction because sport *per se* is a socially acceptable hobby which is in the greater public interest: Barnes (2004). Similarly, unintentional injuries sustained by willing participants to rough horseplay are deemed to be consented to: Jones (1986), Aitken (1992).

A problematic area for the courts is when injuries are inflicted during sexual activity. In Wilson and Slingsby (1995) consent was deemed valid as the injuries in Slingsby were accidental and in Wilson they constituted body adornment and were not caused for the sexual gratification of either party.

Contrast this with Brown and Emmett (1999) where the injuries were inflicted for sexual gratification and the defence of consent was not available.

In the case of Brown the House of Lords were split in their views of when consent would be a defence. The majority agreed that the public should be protected from harmful conduct and that it would not be in the public interest to allow consent to sadomasochistic behaviour. The minority's view was that the law should have respect for individual bodily autonomy.

The minority view was that the purpose of the activities was sexual with a by-product of harm, that all of the participants were adults who consented to the activities and they should have the right to conduct their sex lives without interference from the criminal law. The activities did not result in any permanent or serious injury nor was anyone infected.

The courts will not accept that it would be in the public interest for individuals to inflict harm on each other for sexual gratification: Emmett, where it was held that the severity of injuries inflicted for sexual gratification was not in the public interest.

There is a grey area between unlawful sado-masochistic practices and lawful branding/vigorous sexual activity. It would appear that the only delineation between areas is whether the injuries were inflicted for sexual gratification. It is seen to be not in the public interest to inflict harm on another for sexual gratification even if the harm is consented to and it is for the sexual gratification of the person being harmed.

Sporting activities conducted outside the scope of the rules for that sport, in particular wrestling and boxing, negate consent to the deliberate infliction of harm: Coney (1882). Consent is also negated when the defendant has practised deception in order to obtain consent if the deception deceived the innocent party either to the identity of the person or to the nature and quality of the act: Clarence (1888), Richardson (1998). In the case of Tabassum (2000) D misrepresented to patients that he was a doctor. In Burrell v Harmer ((1967) it was held that 12 and 13 year old boys could not consent to being tattooed as they did not understand the nature of the act.

An issue is whether the law should be able to restrict the behaviour of consenting adults, thus overriding individual autonomy and the freedom to be able to consent to injury or the risk thereof.

The law distinguishes between situations where a person consents to deliberate harm and where he/she consents to the risk of harm. The distinction was made clear in the case of Dica (2004) where it was held that a person could provide informed consent to the risk of harm, this means that he/she was fully aware of the risks involved in the activity undertaken, here contracting a sexually transmitted disease, and gave his/her consent to the risk voluntarily.

This is a much more general defence than consent to inevitable harm and raises issues as to the extent to which the person's consent has to be fully informed. For the defence to be successful the person has to be fully informed of the risk that he is taking Konzani (2005), B (2006).

It is clear that public policy considerations do influence the use of consent as a defence. The courts are left with the difficult task of finding a consistent balance between the conflicting principles of protection of the public and respect for individual autonomy.

Question 3

The general position in English Law is that a criminal act requires a positive action. The imposition of liability for an omission is the exception to the general rule. The D's conduct must be voluntary and there are two further requirements that have to be fulfilled before anyone can be punished for omitting an act, they are:-

a) that the crime must be capable of being committed by omission; and

b) that D must be under a legal duty to act either at common law or under statute.

Statutory liability for an omission is not unusual and there are hundreds of crimes which can either be committed by an act or an omission or can only be committed by omission. Criminal damage is an example of an offence that can be committed by either: Miller (1983). Examples of crimes that can be omitted by omission only are the 'failing to act' crimes, e.g. failing to submit an annual tax return, failing to provide a specimen of breath to a police officer when requested, failing to disclose knowledge of participation in terrorist offences and the list goes on.

The most important factor in respect of the common law is that D must be under a legal duty to act. The leading case in this area is Pittwood (1902) where a duty was imposed on D (a signalman) for failing to shut a level crossing gate when a train was due. In Adomako (1995) & Misra (2004) duty was imposed on a hospital anaesthetist and surgeon respectively, and in Singh (1999) a duty was imposed on a landlord. Where a failure to fulfil a contract is likely to endanger lives, the law will impose a duty to act. This duty is relevant not only for the benefit of the parties to the contract, but also to those who may be injured by a failure to perform the contract

There is also a duty based on office, which means that when a person works in a position of public office e.g. the police, they are under a duty to act: Dytham (1979). This duty is vital to general public safety.

The main duties under common law are relationship duties and the assumption of care duties. It goes without saying that parents owe a duty of care to their children. Couples owe a duty of care to their spouses. In Gibbins & Proctor (1918) parents failed in their duty of care when they deliberately starved their seven year old daughter to death. In the more recent case of Hood (2003), D left his wife untreated at home for three weeks after a fall and only called an ambulance when she had died. It is perfectly reasonable and acceptable to expect people in relationship situations to be legally and morally bound to take of their children and/or each other.

A duty will be owed by anyone who voluntarily undertakes to care for another person for whatever reason. In Stone & Dobinson (1977), D failed in his duty of care to his 61 year old sister who lived with him and who died due to his inability to care for her. The case of Instan (1893) held very similar circumstances to Stone. In the case of Ruffell (2003), D and the victim were friends. When the victim overdosed D tried to revive him. When D could not revive the victim he left him on the victim's mother's doorstep. He did owe a duty of care as he had assumed responsibility for him when he tried to revive him.

In these situations there is a disparity in relation to the situations that have been accepted as voluntary or assumed duties of care. The decision in Ruffell seems harsh as the D was only trying to help his friend. Parameters should be drawn to establish the actions that amount to a failure of a voluntary assumption of care.

In Miller, when D realised he had set a mattress alight causing criminal damage, he did not try to put it out or call for help. The principles of Miller were upheld in Santana-Bermudez (2003). The most recent case in respect of the above area is Evans (2009) where a heroin addict who had self-injected heroin became ill and her sister and mother were convicted of gross negligence manslaughter as they did not contact the emergency services as they thought she would recover. It

must be correct that when a person becomes part of a dangerous situation albeit unintentionally, he/she must be under a duty to prevent or minimise the harm that could be caused to him/herself and/or others.

There are also situations where a person, who has been under a duty to act, can be released from that duty or the duty to act could cease. In Smith (1979) it was held that as long as the person subject to the duty is rational at the time, he/she can release D from his duty to act. This was confirmed in Re. B (Consent to Treatment: Capacity) (2002). When a competent patient gives notice that he/she wishes life preserving treatment to be discontinued, anyone responsible for providing such treatment would be absolved of that duty.

The decision taken in Bland (1993) provided guidance on when a duty to act ceases. The hospital authority applied for judicial authority to cease feeding and hydrating a patient as there was no prospect of the patient getting any better. The House of Lords held it was permissible to withdraw treatment and the duty of the hospital towards the patient ceased.

The existing grounds upon which liability is imposed for a failure to act are clear as to be liable for a failure to act, one must first be under a legal duty to act, either at common law or under statute and then must fail in that duty before liability for a failure to act can be imposed.

Question 4(a)

It could be argued that the AR elements of theft have been widely interpreted by the courts. This renders the MR of theft particularly important as liability for theft is generally determined by the MR elements.

Theft is defined in s1(1) of the Theft Act 1968 (TA) as the dishonest appropriation of property belonging to another with the intention to permanently deprive the other of it.

The AR of theft is the appropriation of property belonging to another. Appropriation is partially defined under s 3(1) and is, essentially, an assumption of any of the rights of the owner over the property: Morris (1983).

To determine whether appropriation has been widely interpreted, its relationship with consent must be considered. There are a number of cases which explore the question of whether an authorised assumption of the owner's rights could amount to appropriation.

In Lawrence (1971) the House of Lords (H of L) held that even though a student had consented to D taking money from his wallet, it was still an appropriation of the student's property. The H of L also held that the absence of any words in s3(1) requiring appropriation to take place without consent meant that consent was unequivocally deemed to be irrelevant to appropriation.

A different conclusion was reached by the H of L in Morris. In this case, it was held that an authorised act could not amount to appropriation. This would mean that the act in Lawrence would not have been an appropriation. This provided a clear conflict on the issue of consent in appropriation between H of L decisions. However, the decision in Lawrence was a binding *ratio decidendi,* whereas the comments in Morris were only a persuasive *obiter dictum*.

The conflict between these authorities was resolved by the H of L in Gomez (1993). The H of L in this case followed Lawrence and held that consent was

irrelevant to appropriation. Consequently, the element of appropriation has been widely construed.

There then followed a number of cases which related to D's who had received a gift/gifts from a vulnerable donor and whether receipt of such gifts was dishonest.

In Mazo (1997) it was held that property given D with the consent of the owner could be appropriated if the consent was obtained by fraud. The position in relation to gifts was finally considered by the H of L in Hinks (2001) where it was decided that, following Gomez, a valid gift could be appropriated even where the owner truly consented to it. Following Hinks it is clear that appropriation is a neutral concept and so the only thing that distinguishes a thief from an honest recipient of a gift is the presence of dishonesty.

A broad approach has also been taken in respect of property s4(1) TA and belonging to another s5(1) TA. Property is partially defined and includes money, real and personal property as well as things in action and other property. Belonging to another extends to someone in possession or control of the property as well as the owner of the property. It was held in Turner (No.2)(1971) that the owner of a vehicle stole it from a garage as the garage owner had possession of it to carry out repairs and the owner took it without the garage owner's permission.

It is clear that the AR of theft has been widely interpreted, this means that liability for theft often hinges on the ability to prove MR which is that D was dishonest and had the intention to permanently deprive.

4(b)

Under s9 of the TA, a person will be guilty of burglary if he enters any building or part of a building as a trespasser with intent to steal, inflict grievous bodily harm (GBH) on any person therein or to cause criminal damage to the building or anything therein or, after having entered any building or part of a building as a trespasser, he steals or attempts to steal or inflicts or attempts to inflict GBH on any person therein.

In order for D to be a trespasser, he must enter the building or part of the building without the knowledge or permission of the owner or person entitled to grant permission: Collins (1972).

In Collins, the D saw a naked girl asleep through an open window. He decided to have sexual intercourse with her so he took off all of his clothes and when he was at the window sill, the girl called him in thinking he was her boyfriend. He was convicted of burglary and appealed on the basis that he was not a trespasser and had been invited in.

His conviction was quashed on the basis that to be guilty of entering as a trespasser, the D must know or must be aware of the risk to the facts and circumstances which make him a trespasser.

This case highlights the dual aspect of trespass in burglary:

- Entry into a building or part of a building without permission: AR; and
- Knowledge that there was no permission or an awareness that there was no permission to enter: MR.

Permission to enter may be express or implied and may be limited to particular parts of the building or to entry for a specific purpose. A person who exceeds the extent of his permission may still be a trespasser: Smith and Jones (1976). In this case the D entered his father's house with a friend with the intention of stealing two televisions. He had the general permission of his father to enter the house and he argued that for that reason he would not be a trespasser for the purposes of burglary.

It was held by the Court of Appeal that a person is a trespasser for the purposes of the TA if he enters the premises of another knowing that he is entering in excess of the permission given to him to enter, or being reckless whether he is entering in excess of that permission.

It was also held that if a person enters for a purpose outside the scope of his authority then he stands on no better position than a person who enters with no authority at all.

This would mean that a person who enters a shop with the intention of stealing would be guilty of burglary as he only has permission to enter for the purpose of shopping. However, it would be almost impossible in most cases to prove that the intention to shoplift was present at the point of entry into the shop: Walkington (1979). There is also the problem of proving that the D had knowledge of or was reckless to the trespassory nature of his entry.

The law is not particularly clear in relation to the definition of what is and is not a trespasser and it appears to hinge on whether D has permission to enter and whether he has exceeded his permission to enter.

SECTION B

Question 1

This question requires consideration of the liability of Ben and Tom.

Liability of Ben

Battery

The first offence to consider in respect of Ben is Battery contrary to s39 Criminal Justice Act 1988 (CJA). Ben intentionally or recklessly: Venna (1975), Savage; Parmenter (1989) inflicted personal violence on Tom by punching him to the face: Rolfe (1952). Tom did not give Ben permission to assault him, therefore the contact was both physical: Ireland; Burstow (1998) and unlawful.

Ben carried out an unprovoked assault on Tom. He punched Tom to the face, which means that he intended, or was at least reckless, as to causing unlawful violence. There is no suggestion of any resulting injury, therefore Ben is likely to be found guilty of battery contrary to s39 CJA in respect of the unprovoked assault on Tom.

Obtaining services dishonestly

Ben continued with his journey in the taxi even though he realised immediately upon leaving the taxi rank that he had lost his wallet, he could be guilty of obtaining services dishonestly contrary to s11 of the Fraud Act 2006 (FA).

The AR for s11 requires that Ben obtains services which are not paid for or not paid for in full. When he continued with his journey in the taxi, even after realising that he has no money, he obtained the services of the taxi to get home; he did not pay for the journey so the AR is satisfied.

The MR requires that in obtaining the services he acted dishonestly, knowing that the services are, or might be, made available on the basis that payment has been, or will be, made for them and he did not intend to pay for the services. When he continued with his journey in the taxi he knew that the service had been made available on the basis that payment would be made for the journey and he had no intention of paying as he did not have any money.

Applying the Ghosh (1982) test, the honest and reasonable person would regard Ben's conduct as dishonest. Ben should also realise that his conduct is dishonest as he had no money to pay for his journey home. Ben is likely to be guilty of obtaining services dishonestly in relation to his taxi ride home.

Liability of Tom

Theft

When Tom picked up Ben's wallet and put it in his pocket he may have committed Theft contrary to s1 Theft Act 1968 (TA).

Under s1 TA a person is guilty of theft if he/she dishonestly appropriates property belonging to another with the intention of permanently depriving the other of it.

Under s3 appropriation is any assumption of the rights of an owner. An assumption of one of these rights is sufficient for appropriation; in Morris (1983) it was changing the labels on goods, which only the owner could do.

As far as s1 TA is concerned, Tom appropriated property, the wallet, which he knew belonged to Ben and he assumed the rights of the owner by putting it in his pocket. The problem at this point would be whether he intended to permanently deprive Ben of the wallet and whether he was dishonest in his actions.

Under s6 TA it is sufficient that D has the intention to permanently deprive: Morris (1983) Wheatley and another (2006). Intention can be inferred if D intended to treat the property as his own by disposing of it regardless of V's rights: Cahill (1993) Lloyd (1985).

Under s2 dishonesty is defined by what is NOT dishonest; which includes if D believes he would have the owner's consent to the appropriation, if D believes he has a right in law to deprive the other of it or if D believes that the owner of the property cannot be traced by taking reasonable steps.

If none of these defences apply then consideration must be given as to whether the appropriation was dishonest according to the common law test established in Ghosh. In Ghosh a two limbed test was established and both limbs must be satisfied to prove dishonesty. Firstly was D's appropriation dishonest according to the ordinary standards of reasonable and honest people? This is the objective element and only if the answer to this question is 'yes' would you proceed to the next limb; Was D aware that reasonable and honest people would regard this appropriation as dishonest? This is a subjective test and if the answer is 'yes' then D is dishonest.

In his defence, Tom could say that he intended to trace Ben and give him his wallet back as it is unclear from the scenario whether Tom was acting dishonestly and had the intention to permanently deprive at this point.

However, at the point when Tom used money from Ben's wallet to pay for his taxi home his intention to permanently deprive Ben of the wallet and his dishonest action in using Ben's money without Ben's permission would make him guilty of theft of the wallet and its contents.

Fraud

Under s1 Fraud Act 2006 (FA), fraud can be committed in a number of ways. s2 provides for fraud by false representation and states that a person is guilty of fraud if he/she dishonestly makes a false representation and intends, by making it, to make a gain for himself or another or to cause loss to another.

By using Ben's cashpoint card to withdraw money from a cashpoint machine Tom may be guilty of fraud by false representation under s2 FA. He made a false representation of fact to the cashpoint machine that he had the authority to use the card in question: Doukas (1978), Stonehouse (1978) and Darwin and Darwin (2008).

Under s2(5) a representation is made if it is 'submitted in any form to any system or device designed to receive, convey or respond to communications (with or without human intervention)'. Thus, using Ben's cashpoint card in the cashpoint machine and inputting his PIN number will be sufficient for a false representation.

As far as the MR is concerned, Tom knows that the representation that he is making to the cashpoint machine is false and dishonest and he obviously intended to make a financial gain for himself. Tom will probably be found guilty of fraud in relation to the use of Ben's cashpoint card.

Question 2

There are a number of offences for which Rochelle may be liable.

Burglary and aggravated burglary

Under s9 of TA a person will be guilty of burglary if he enters any building or part of a building as a trespasser with intent to steal, inflict GBH on any person therein or to cause criminal damage to the building or anything therein or, after having entered any building or part of a building as a trespasser he steals or attempts to steal or inflicts or attempts to inflict GBH on any person therein.

S9(1)(a) requires that there was an intent either to steal or to inflict GBH or to cause criminal damage when D entered the premises. We are told that Rochelle entered the warehouse with an intention to steal; that being the case, she would be liable for burglary under s9(1)(a) TA.

In this case Rochelle knew that she was trespassing as she did not have the permission of the owner to be inside the warehouse: Collins (1973). Having entered as a trespasser, she did inflict GBH on Hans. There is no requirement of prior intent to commit an offence for an offence under s9(1)(b), however to prove a s9(1)(b) offence, theft or GBH has to be committed or attempted. Rochelle would be guilty of burglary contrary to s9(1)(a) and s9(1)(b).

We are also told that Rochelle used Hans's torch to hit him a number of times. As we can prove that she has committed burglary contrary to s9(1)(b), this could be increased to aggravated burglary contrary to s10(1)(b) TA as, even though she did not enter the building in possession of a weapon, once inside, she used Hans's torch as a weapon to assault him: O'Leary 1986.

S10 TA provides that a person is guilty of aggravated burglary if he commits any burglary and at the time has with him any firearm or imitation firearm, any weapon of offence, or any explosive; and for this purpose –

S10(1)(b) – 'weapon of offence' means any article made or adapted for use for causing injury to or incapacitating a person, or intended by the person having it with him for such use.

Rochelle would be guilty of aggravated burglary contrary to s10(1)(b) TA.

Murder

Rochelle has caused the death of Hans in both fact and law. 'But for' Rochelle's actions, Hans would not have died: White (1910) and Rochelle's actions were the operating and substantial cause of Hans's death: Smith (1959).

The first offence to consider would be murder. The definition of murder is the unlawful killing of a human being with malice aforethought. There is no problem here with the AR being satisfied as Rochelle caused the death of Hans. The problem for the prosecution would be proving that she did it with malice aforethought which means an intention to cause death or GBH: Vickers (1957).

As we are told that Rochelle hit Hans a number of times, violently, with his torch, it could be argued that she intended to cause GBH, this would be sufficient MR for murder. Rochelle would not be charged with involuntary manslaughter as her actions satisfy the AR and MR of murder.

Potential defences

It is likely that Rochelle will be charged with murder. However, due to her schizophrenia, she may be able to plead the partial defence of diminished responsibility or the defence of insanity.

Diminished Responsibility under s2 HA, as amended by s52 C&JA, occurs when, at the time a person kills another, he was suffering from an abnormality of mental functioning arising from a medical condition which substantially impaired his ability to understand the nature of his conduct or form a rational judgement and/or exercise self-control.

The abnormality of mental functioning must have arisen from 'a recognised medical condition'. This includes psychiatric, psychological and physical conditions.

In the original defence it was D's general responsibility that had to be substantially impaired. In the amended defence the substantial impairment has to be of D's ability to understand the nature of his conduct or form a rational judgement and/or exercise self-control. S52(1)(1)(c) adds that the abnormality for mental functioning provides an explanation for acts and omissions.

Rochelle suffers from schizophrenia, which is likely to constitute an abnormality of mental functioning arising from a medical condition: Seers (1984). The defence should be able to prove that this substantially impaired Rochelle's judgement or ability to exercise self-control. This will provide an explanation for Rochelle's actions if it causes, or is a significant contributory factor, in her carrying out the actions.

It would be for the jury to decide whether the schizophrenia caused, or was a significant contributory factor in causing, her to kill Hans. The burden of proof would lie with Rochelle on the balance of probabilities.

Rochelle may want to consider self-defence, but this would not be relevant in this case. The court in the case of Oye (2013) held that where D assaulted someone as a result of a psychotic episode, he/she could not argue reasonable force as an insane person could not set standards of reasonableness as to the force used so the relevant defence is insanity.

Rochelle could also consider a defence of insanity. The definition for insanity is founded on the M'Naghten Rules (1843) and their subsequent interpretation by the courts. To satisfy the defence of insanity Rochelle would have to be able to prove that, on the balance of probabilities she was suffering from a defect of reason caused by a disease of the mind and that she did not know the nature and quality of her act or that it was wrong, and that she was insane at the time of the commission of the offence.

The disease of the mind must be internal to D: Sullivan (1984). The case of Hennessey (1989) found that hyperglycaemia due to diabetes was a disease of the mind together with epilepsy: Sullivan (1984), sleepwalking: Burgess (1991) to name but a few.

A defect of reason means an impairment of D's powers of reasoning as opposed to a failure to use such powers: Clarke (1972). Nature and quality of an act relates to an awareness of its physical nature and quality not its moral quality: Codere (1916). Johnson (2007) confirmed the position that D can only rely on the defence of insanity if he did not know the act was legally wrong, even if he knew it was morally wrong.

Rochelle can supply medical evidence to support her claim that she suffers from schizophrenia. This is deemed to be a disease of the mind and an internal factor: Sullivan (1984). For a plea of insanity to be successful she must also be able to show that either she did not know the physical nature of the act she was doing, or that she did not know that the act was legally wrong.

If she successfully pleaded diminished responsibility she would be convicted of voluntary manslaughter instead of murder. If she successfully pleaded insanity, as the charge is murder, she would be subject to a qualified acquittal which would result in indefinite hospitalisation.

Question 3(a)

This question requires consideration of the liability of Lily and Penny.

Liability of Lily

In respect of slashing Penny's dress, Lily would be liable for an offence of simple criminal damage contrary to s1(1) of the Criminal Damage Act 1971 (CDA). This offence requires proof that D intentionally or recklessly destroyed or damaged

property belonging to another without lawful excuse. The damage need not be permanent*:* Gayford v Choulder (1898) but must be more than trivial: Fiak (2005), A (a juvenile) v R (1978) and the victim must be put to some expense in rectifying/repairing it: Roe v Kingerlee (1986).

It was held in Hardman v Chief Constable of Avon and Somerset (1986) that painting on a pavement in soluble paint was sufficient to constitute damage. Therefore, slashing Penny's dress would constitute damage. The dress was the personal property of Penny s10(2) CDA and Lily would have no lawful excuse to destroy it. Thus the AR for the offence is satisfied. The MR for a s1(1) offence requires proof that D intended or was reckless in causing the damage. It is quite obvious that that Lily intended to cause the damage in this case.

When Lily returned to Penny's, she could be liable contrary to s9(1(a) TA for burglary, as she entered Penny's flat as a trespasser with the intention to commit criminal damage by burning Penny's photographs.

In respect of burning Penny's photographs, Lily would be liable contrary to s1(1) and (3) of CDA 1971 of causing simple criminal damage by arson. The AR and MR are the same as for s1(1), the difference is that for this offence the damage has to be caused by fire.

Burning the photographs would amount to the destruction of property by fire. The photographs were the personal property of Penny s10(2) CDA and Lily would have no lawful excuse for destroying them. The MR would be satisfied as Lily obviously intended to damage/destroy the photographs, so she would be liable for criminal damage contrary to s1(1) and (3) of the CDA.

Liability of Penny

When Penny threw the stone at Lily's car she was guilty of simple criminal damage contrary to S1(1) as the windscreen was permanently damaged, it is the property of Lily and Penny would have no lawful authority for causing the damage.

However, in this case, she could be liable for an offence contrary to s1(2) CDA which is aggravated criminal damage. This offence contains an extra MR element. In order to convict Penny of a s1(2) offence the prosecution must be able to prove that Penny thereby intended to or was reckless as to endangering the life of another. The inclusion of the word 'thereby' is crucial to the uplifted MR.

When considering whether Penny was reckless the subjective test as set out in G and Another (2003) must be applied. This requires Penny to have considered the risk that Lily's life might be endangered by her conduct, but to have taken that risk anyway.

In this case it would be difficult to prove that Penny intended to endanger Lily's life, but she should have considered that by throwing a stone at the windscreen that Lily's life might be endangered. If her actions are found to be reckless she will be liable for aggravated criminal damage.

3(b)

As Yusuf has died Matthew could be potentially liable for murder/ involuntary manslaughter. Matthew could only be found liable for the murder of Yusuf if he had the requisite intent to kill or cause GBH: Woollin (1999). This would require

an awareness that serious injury: Cunningham (1957) was virtually certain Woollin (1999) to result from him tripping Yusuf up, and that there was no break in the chain of causation. It is therefore unlikely that Matthew would be liable for murder.

The relevant offence here in respect of Matthew would be involuntary manslaughter, in particular, unlawful/ dangerous act/ constructive manslaughter. It is clear from the facts that when Matthew tripped Yusuf up he committed a battery contrary to s39 CJA which resulted in the death of Yusuf.

Matthew intentionally or recklessly: Venna (1975), Savage; Parmenter (1989) inflicted personal violence on Yusuf by tripping him up: Rolfe (1952). Yusuf did not give Matthew permission to assault him, therefore the contact was both physical: Ireland; Burstow (1998) and unlawful.

The battery was an unlawful and dangerous act: Church (1965), Watson (1989) and Newbury and Jones (1976). When he tripped Yusuf up, Matthew did not intend to harm Yusuf but his action in tripping him up was reckless.

The chain of causation seeks to provide practically applicable rules that balance legal and moral culpability so that there isn't endless liability for linked consequences. Consideration must be given as to whether there was a break in the chain of causation. Involuntary manslaughter is an offence for which there must be a result. It must also be proven that Matthew's conduct caused Yusuf's death when he tripped him up. It must also be proven that Matthew's conduct was both a cause in fact and in law.

Factual causation is the 'but for' principle: Pagett (1983), White (1910). 'But for' Matthew's actions Yusuf would not have died, this is true. Legal causation is only considered if factual causation has been proved. Factors to be considered are, that there must be a culpable act, the conduct must be significant and have more than a minimal effect in bringing about the result: Cheshire (1991) and the sequence of events does not affect legal causation from being established.

There can be more than one cause and the conduct does not have to be the sole cause of death. However, in this case there do not appear to be any other causes that may need consideration.

Applying the above to the facts in this case, causation both in fact and in law is present here. It is highly unlikely, on the facts of this case that a break in the chain of causation has occurred.

Whilst he did not intend to hurt Yusuf, Matthew was reckless when he tripped him up and could have reasonably foreseen that some injury would occur Cunningham (1957). Matthew would therefore be liable for involuntary unlawful/dangerous act/ constructive manslaughter in respect of Yusuf.

Question 4

This question requires consideration of the offences for which Jonny may be liable excluding murder and any defences that may be available to him.

Assault

When Jonny threatened Sam he may have committed an assault contrary to s39 of the Criminal Justice Act 1988 (CJA). Common assault is an act by which a person intentionally or recklessly causes another to apprehend immediate,

unlawful personal violence. There does not have to be any contact, the offence can be committed using words alone: Constanza (1997). Silence can also amount to an assault: Ireland (1998).

The MR for an assault is either an intention to cause another to fear immediate unlawful personal violence, or recklessness as to whether such fear is caused. Applying this to the facts, Jonny threatened Sam who then decided to leave as he did not like Jonny's tone. The prosecution will have to prove that Jonny caused Sam to apprehend immediate physical violence as a result of the words used and Jonny's demeanour at the time of making the threat.

Whether Jonny intended the comment he made to be a threat or not does not matter. It also does not matter that the assault was conditional upon Sam leaving Tabitha alone as this will still constitute an assault Read v Coker (1853). The positive communication that he made to Sam means that he was reckless as to whether he caused Sam to fear immediate personal violence or not.

Jonny went on to cause injury to Sam when he threw his glass at him. The relevant offences to consider are Grievous Bodily Harm (GBH) contrary to s18 and s20 of the Offences Against the Person Act 1861 (OAPA).

S20 OAPA is the unlawful and malicious wounding or inflicting of GBH upon any other person, either with or without any weapon or instrument. A wound consists of a break to both layers of skin: Eisenhower (1984). GBH means 'serious harm': Smith (1961), Wood (1830), Saunders (1985) and Bollom (2004). There must be foresight (or intention) of causing some harm: Mowatt (1968).

S18 OAPA says that D unlawfully and maliciously by any means whatsoever wounds or causes any GBH to any person with intent to do GBH. The offence is virtually the same as that for s20 OAPA except that there must be an intention to cause GBH for a s18 OAPA offence whereas a s20 OAPA offence can be caused recklessly.

The injury caused to Simon, by Jonny throwing his glass at him, was a wound which required stitching.

The injury described would satisfy the criteria for both a wound and/or GBH under s18 or s20 OAPA. The facts would indicate that there was no intention by Jonny to cause harm to Sam but he was reckless when he threw his glass at Sam. The relevant offence here would be s20 GBH.

Defences

The defences available to Jonny in this scenario are intoxication and self-defence which requires the consideration of the concept of reasonable force used due to a mistaken belief.

Jonny may try to rely on the defence of intoxication. There are two types of intoxicants, dangerous and non-dangerous: Bailey; Hardie (1984). Dangerous intoxicants such as alcohol, heroin and amphetamines, are those that are known to cause the taker to become aggressive or unpredictable. Jonny took a dangerous intoxicant in the form of alcohol.

Intoxication can be involuntary or voluntary. Involuntary intoxication occurs when a drink is spiked, prescribed drugs are taken in excess or non-prescribed but non dangerous drugs are taken: Bailey; Watkin Davies (1984). This is not

the case here. Voluntary intoxication occurs when there has been voluntary taking of dangerous drugs or drinking alcohol to excess.

Jonny was voluntarily intoxicated by choosing to drink alcohol to excess.

Whether he can use the defence will depend on whether the crime was one of specific or basic intent. As common assault and s20 GBH are both crimes of basic intent the defence would not apply as Jonny's act of getting drunk was reckless in itself.

Jonny would have to convince the jury that he had not drunk to give himself 'Dutch courage' as to commit the crime as a result of 'Dutch courage' is no defence in law: Attorney General for Northern Ireland v Gallagher (1963). On the facts Jonny clearly had formed the intention to confront Sam and a drunken intent is still an intent as far as the initial assault is concerned: Sheehan (1975).

There is no evidence that Jonny intended to hurt Sam. However, Jonny was voluntarily intoxicated. S18 GBH is a crime of specific intent and the defence could be available provided that Jonny was too drunk to form the necessary intent. However, if he is charged with a s20 GBH, this is a basic intent offence to which intoxication would not be a defence.

Jonny could also potentially rely on the private defence of self-defence and/or possibly a public defence under s3(1) of the Criminal Law Act 1967 (CLA 1967). Both of these defences are now governed by the guidelines established under s76 of the Criminal Justice and Immigration Act 2008 (CJIA 2008).

The public defence created by s3(1) CLA 1967 permits the use of reasonable force to prevent the commission of an offence. CJIA 2008 confirms that the same principles apply to both the private and public defences in relation to the concept of reasonable force and mistaken belief.

Self-defence is a common law defence which permits a person to use reasonable force in protection of himself or others if he honestly believes the use of force is necessary: Rose (1884), Duffy (1967), Palmer (1971). The issue with this defence is usually whether the force was 'reasonable' in the circumstances. The evidence indicates that Jonny feared that Sam was going to assault him and was motivated in his actions by a desire to defend himself from a physical assault; he was not looking for a fight and the facts do not support the notion that he was motivated by any desire for revenge even though he was very upset that Tabitha had ended their relationship.

Mistake of fact occurs in situations where, if the facts had been as D believed them to be, he would have had a defence.

Even if Jonny was mistaken in his belief that he was going to be assaulted, he is entitled to be judged on the circumstances that he genuinely believed to exist: Williams (1987), Owino (1995). A jury should be objective in deciding whether Jonny's actions were 'reasonable'. It would have to consider whether Jonny honestly believed that it was necessary to defend himself and, if so, on the basis of the facts and the danger perceived by Jonny was the force used 'reasonable'? If the jury answers 'yes' to both points then it must acquit Jonny.

However, in this case, there is the issue that Jonny's mistake about the need for self-defence may have been due to the fact that he was intoxicated. If the jury accepted that this was the case, following O'Grady (1987), this would mean that he would not be able to rely on mistaken self-defence, even if all of the other

requirements of the defence are satisfied. If the jury do not accept that his mistake was due to his intoxication, but it accepts that, whilst his actions were to protect himself, he went beyond the use of reasonable force, Jonny would have no defence under common law: Clegg (1995) anyway.