

**LEVEL 3 - UNIT 11 – CRIMINAL LITIGATION
SUGGESTED ANSWERS – JANUARY 2018**

Note to Candidates and Tutors:

The purpose of the suggested answers is to provide candidates and tutors with guidance as to the key points candidates should have included in their answers to the January 2018 examinations. The suggested answers 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 by the suggested answers.

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

Question 1(a)

Under s.24 Police and Criminal Evidence Act (PACE) 1984, grounds for arrest must be reasonable. In Lena's case, the arrest was necessary to enable the police to ascertain the offender's name and address, as Lena refused to give details of either her name or address. Another ground was to prevent the offender causing loss to property and to allow the prompt and effective investigation of the offence, in case Lena decides to get rid of the tools in the van (thereby causing loss to property and hindering the investigation by destroying evidence). Another ground could be to prevent any prosecution for the offence being hindered by the disappearance of the person in question, as the police cannot ascertain where Lena lives.

Question 1(b)

Under s.28 PACE 1984, Lena must be told of the fact of her arrest and the grounds for it. Under Code C, she must also be cautioned.

Question 1(c)

A custody officer oversees the detention and must be of at least sergeant rank.

Question 1(d)

Under s.56 PACE 1984, Lena has the right to have someone informed of her detention. Under s.58 PACE 1984, she has the right to legal advice. Under Code C, Lena has the right to food, rest, exercise and medical care.

Question 1(e)(i)

Under s.40 PACE 1984, the first review should be within 6 hours and 9 hourly thereafter.

Question 1(e)(ii)

In Lena's case, the first review was carried out at 09.00 am and she had been arrested at 04.15 am. It was, therefore, carried out within 6 hours as required. However, she has not been seen since then and, therefore, no 9 hourly reviews have taken place.

Question 1(f)(i)

Under s.41 PACE 1984, a detainee must be charged or released after 24 hours.

Question 1(f)(ii)

In Lena's case, she was arrested at 04.15am on 1 January 2018 and she was still in custody at the time of the attendance note at 7.30am on 2 January 2018. She should, therefore, have been released or charged by now, as it has been over 24 hours.

Question 2(a)(i)

Under s.62 PACE 1984, blood is an intimate sample.

Question 2(a)(ii)

Under s.63 PACE 1984, a mouth swab/saliva is a non-intimate sample.

Question 2(b)

As Lena's case involves an intimate sample, it cannot be taken without consent but adverse references can be drawn if she refuses. In Jonathan's case, as it involves a non-intimate sample, the police can take it without consent.

Question 2(c)(i)

One ground for the interests of justice test is loss of liberty, which is unlikely to apply in Lena's case as this is fairly low level theft and is her first offence. Another ground is loss of livelihood, which doesn't apply to Lena as she is unemployed.

Question 2(c)(ii)

As Jonathan has been charged with an indictable only offence, the interests of justice test are automatically satisfied.

Question 2(d)

The statute that covers funding is the Legal Aid, Sentencing and Punishment of Offenders Act (LASPOA) 2012.

Question 3(a)

Prima facie bail means that there is a presumption in favour of bail. The right to bail does not apply where a person is charged with murder, attempted murder, manslaughter, rape or attempted rape and has a previous conviction for one or more of these offences. *Prima facie* bail applies to Jonathan as he has been charged with attempted murder but does not have a previous conviction for any of the listed offences.

Question 3(b)

Under the Bail Act 1976, grounds to refuse bail must be substantial. In Jonathan's case, the grounds used may be that he may fail to surrender to custody (as he may disappear to Australia), commit an offence whilst on bail (given his criminal history) or interfere with witnesses (such as approaching his wife or her friend).

Question 4(a)

The purpose of an allocation hearing is to determine the trial venue and applies in Lena's case, as she has been charged with an either way offence.

Question 4(b)

Under the Magistrates' Courts Act (MCA) 1980, the prosecution makes representations, then the defence and then the magistrates make their decision.

Question 4(c)

Lena has the choice whether to have her case tried in the Magistrates' Court or whether to opt for the Crown Court.

Question 4(d)

The role of the jury is to make a decision of guilty or not guilty. A majority verdict means that 10 out of 12 jurors must reach an agreement.

Question 5(a)

If Jonathan refuses to file a defence statement, adverse inferences may be drawn.

Question 5(b)

Under s.7/s.7A Criminal Procedure and Investigations Act (CPIA) 1996, the prosecution must serve any further unused material in light of the defence. It also has an ongoing obligation to keep disclosure under review.

Question 5(c)

After conviction, offences to be taken into consideration may be put forward by the prosecution, a pre-sentence report may be obtained, a plea in mitigation might be put forward and lastly, sentencing will occur.