LEVEL 6 - UNIT 3 – CRIMINAL LAW
SUGGESTED ANSWERS – JANUARY 2018

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 2018 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(a)

Strict liability refers to offences where the offence does not require proof of the *Mens Rea* (MR) for at least part of the *Actus Reus* (AR) but the AR must be proven and the defendant's (D's) conduct must be voluntary in performing the AR.

Strict liability offences can be common law offences or they can be statutory offences. Under common law strict liability is very rare and only applies to a small number of offences namely, public nuisance, some forms of criminal libel and outraging public decency: Gibson and Sylveire (1991).

In contrast there are hundreds of strict liability statutory offences and most of them are regulatory in nature. There is a presumption that an offence requires MR: Sweet v Parsley (1969), B (a minor) v DPP (2000), but the judiciary are prepared to interpret the offence as one of strict liability if there are no words indicating the MR in the statute.

The Gammon Criteria as set down in the case of Gammon (Hong Kong) Ltd v Attorney-General of Hong Kong (1984) illustrate the judicial reasoning employed by judges when deciding whether an offence is one of strict liability or not. The starting point is that there should be a presumption of MR before a person can be convicted of a criminal offence.

The presumption can be displaced by clear words in the statute or by necessary implication: R v K (2001). It can also be displaced where the issue is one of social concern: Blake (1997), and when it can be shown that strict liability will be effective to promote the objects of the statute: Muhamad (2003).

The presumption is particularly strong where the offence is 'truly criminal' ie serious crimes, crimes with long sentences and crimes carrying a stigma on conviction: Howells (1977).

The imposition of strict liability can be justified as strict liability offences help to protect society in general by the regulation of activities involving potential danger to public health, safety or morals. It encourages higher standards in respect of hygiene when processing and selling food and it ensures that businesses are run properly.

Enforcement of the law should be more straightforward as there is no need to prove the MR and this in turn could lead to more early guilty pleas thus saving court time. In some statutes there is the inclusion of a due diligence defence although this area is very haphazard as in the case of Harrow LBC v Shah (1999) where there was a section in the statute to allow a due diligence defence for promoters of the lottery but not for those managing businesses where the lottery is sold.

The alternative of this argument is that the imposition of strict liability cannot be justified as it imposes guilt on people who are not blameworthy in any way. Even those who have taken all possible care can be punished as in Harrow LBC v Shah and Callow v Tillstone (1900). There is no evidence to support the argument that strict liability improves standards in respect of hygiene when processing and selling food or that it ensures that businesses are run properly. Strict liability offences that are punishable by imprisonment would be contrary to the principles of human rights as absence of proof of fault contravenes the presumption of innocence.

The Law Commission in its report (Law Com No 89)(1978) proposed that all strict liability offences should be treated as crimes of negligence. A move in this direction would be for Parliament to include due diligence defences more often when enacting criminal offences. Another way of avoiding the problems of strict liability offences would be to take the minor regulatory offences, such as sale of food and lottery tickets, out of the criminal justice system and deal with them as civil offences instead.

So overall, whilst it may be true that the imposition of strict liability offences violates the traditional principles of criminal responsibility, there are convincing arguments in favour of the use of strict liability offences in respect of some regulatory offences and for the protection of the public. This area is in need of reform but there is a place for strict liability offences in English law.

(b)

Criminal liability generally requires proof of both AR and MR elements. The AR refers to the guilty act and the MR refers to the guilty mind. Criminal law requires proof of both elements to coincide before D can be convicted of a criminal offence.

This is referred to as the principle of coincidence of the AR and MR and it requires D to form the requisite MR for the offence at some time during the AR. If these two elements do not coincide, then no offence will have been committed.

The courts have sought to circumvent the principle of coincidence by introducing the 'continuing act theory', this is when the AR takes the form of a continuing act, and D forms the MR at some point during the duration of the act. This theory

was developed in the case of Fagan v Metropolitan Police Commissioner (1969) in which D's act was deemed to be continuing until he later formed the MR when he realised he had failed to drive off the officer's foot. This theory was also applied in the case of Kaitamaki (1985). This illustrates the point that the courts are willing to stretch the concept of an act in order to ensure that cases fall within the principle of coincidence.

The courts have also avoided the principle of coincidence by the creation of the 'duty' principle. When D inadvertently creates a dangerous situation, the law imposes a duty on him to act to avert the danger. D will be liable when he fails to act to fulfil that duty, having realised that he has caused that danger, it is at this stage the MR is formed. This principle was first applied in Miller (1983). This decision has been followed more recently in DPP v Santana-Bermudez (2003).

The courts have also introduced the 'single transaction' principle as a way of avoiding the principle of coincidence. This relates to a situation where the AR is itself part of some larger sequence of events. D must form the MR at some point during that sequence. This principle was first applied in the case of Thabo Meli v R (1954). The D's in the above case tried to kill the victim and then, believing him to be dead, rolled him off the edge of a cliff. The D's had the requisite MR when they first tried to kill him but it was rolling him off the cliff that actually caused his death and the MR would not have been present.

The court held that the series of consecutive acts constituted a single transaction and the D's were guilty of murder as they had formed the MR at some stage during the transaction. This principle has also been applied in Church (1965), Le Brun (1991) and Attorney General's Reference (No 4 of 1980)(1981), even though there are significant difference between the cases.

The doctrine of transferred malice could also be seen as the courts' way of avoiding the principle of coincidence. The case of Latimer (1886) introduced the doctrine which stated that D's intention in respect of one crime may be transferred to his performance of the AR in respect of another crime. In this case D had the MR to kill A, but did not actually kill A; he actually severely wounded B. B later died from his wounds. His MR in respect of A will transfer to the killing of B as the offences are of the same type. This allows coincidence of the AR and MR.

In conclusion, whilst the principle of coincidence clearly has an important role to play in criminal law, the courts have used various inventive methods to circumvent the fundamental principle of coincidence, in order to ensure that D can be held liable for a criminal offence.

Question 2

Secondary liability for a criminal offence requires a principal (P) who is the person who commits a crime, and a secondary participant (SP) who encourages or assists P in the commission of the crime. If the encouragement or assistance was intentional then the SP will be guilty of the same offence as the P. In this situation the encouragement or assistance forms the AR and the intention to encourage and/or assist forms the MR. This is also known as joint enterprise (JE) or parasitic accessorial liability (PAL).

The basis for liability in cases of JE was set down in case of Chan Wing-Siu (1985). Until recently, joint enterprise (JE) involved a prior agreement between the P and the SP to commit an offence. In agreeing to the participation in the

offence the SP automatically satisfied the AR of secondary participation. There was no need to prove aiding, abetting, counselling or procuring for joint enterprise: Petters and Parfitt (1995). The SP was also liable if he helped to plan the offence even if he was not present when it was committed: Rook (1993), A,B,C and D (2010).

The relevant MR required knowledge that one of several offences may be committed: Maxwell (1978), that P intended to commit any type of offence even though details were not specified Bryce (2004) and there was the potential for a conviction where P deliberately committed a different offence to that agreed ie GBH agreed but murder committed: Rahman (2008).

The SP would not be guilty if P's conduct was outside the scope of the agreement and the agreed result occurred by different means than those discussed: Powell and Daniels; English (1997), or where P committed an offence which was different from the one agreed: Gilmour (2000) Rafferty (2007) Campbell (2009), or a weapon was used in a different way to that agreed or a different weapon was used: Gamble (1989) English; Yemoh (2008).

It was unclear whether the SP should be convicted of a lesser offence when P committed murder but the SP was not aware that death or serious harm may result. In Uddin (1998) and Mitchell and King (1999) it was held that an alternative conviction for manslaughter would not be possible in respect of the SP. However, the later cases of Gilmour (2000) and Roberts, Day and Day (2001) decided that it was possible to convict the SP of manslaughter when P had been convicted of murder. The most recent decision in this area Rahman (2008) decided that the SP should be acquitted.

The decisions above raise the question of whether the SP must intend the P to commit the crime, or whether he must simply be aware of the possibility that a crime might be committed. Until recently, the common law position was that foresight or knowledge was sufficient to convict the SP of murder, when P was convicted of murder.

The recent decision of the Supreme Court in R v Jogee (2016) reversed the common law position and legal position is now that, in order to be convicted of murder, the SP must intend to assist or encourage the commission of the offence This decision weakens the doctrine of JE. In Jogee it was held that the law had taken a wrong turn in the cases of Chan Wing-Siu and Powell and Daniels: English. In the case of Jogee it was decided that in respect of murder, if foresight is not sufficient to convict a single D, it should also not be sufficient to convict an SP.

The decision in Jogee did not take account of other important cases on JE, and it concluded that the SP's liability will only be guilty of the crime if he intended that the crime be committed or if he intended to encourage and assist in its commission.

Their Lordships said that the cases of Chan Wing-Siu and Powells and Daniels: English were merely part of the history of this area and should not be relied upon. Foresight and authorisation are not the same and the SP should have the same MR as the P in relation to the commission of the offence. The law should, therefore, be returned to the position it was in before the aforementioned cases.

The impact of the decision in Jogee is huge as it completely overturns the previous law in relation to secondary liability. It could be argued that the law relating to secondary participation was unfair and that in overturning it, the

Supreme Court made the correct decision. To allow an SP to be convicted of murder when he only foresaw the possibility of death or injury but did not intend it, undermines the principles of MR. It could also be argued that the decision in Chan Wing-Siu created an incorrect principle which became embedded in law.

As a result, the impact of Jogee is that in order for an SP to be found guilty of murder, that he must intentionally assist and/or encourage the P to act.

Question 3

Under s1(1) of the Theft Act 1968 (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.

The AR is the appropriation of goods belonging to another, and the MR is dishonesty and the intention to permanently deprive. This question relates to both the AR and the MR of theft.

Under s3(1) appropriation is any assumption of the rights of an owner. This can include taking, selling, giving away or destroying the property: McPherson (1973). 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.

A problem area in relation appropriation occurs when an alleged victim has supposedly given consent to D in respect of appropriation of property. According to the leading case of Hinks (2000) it is possible to dishonestly appropriate a valid gift. Prior to Hinks it had been decided in the cases of Lawrence (1971) and Gomez (1993) that consent obtained by deception was not true consent. Hinks further clarified the law in this area by stating that D is guilty if he dishonestly accepts the gift.

The decision in Hinks means that an appropriation can be established even though D obtains title in civil law through the valid sale or gift of property. The consent of the owner does not stop there being an appropriation and if the person receiving the property is dishonest when he buys or receives the property, he will be guilty of theft.

A further controversial aspect of appropriation is the issue of when appropriation takes place. In the case of R v Atakpu and Abrahams (1994) it was held that theft can occur as a single transaction but it can also involve several appropriations before the transaction is complete. The point at which the MR is formed is when the theft is complete.

The issue of dishonesty has caused the courts numerous problems over the years. For the purposes of the offence of theft, s2(1) TA 1968 specifies three instances of states of mind which, as a matter of law, are to be regarded as honest. Therefore, D is not dishonest if:

i) he honestly believes that he had a right in law to the property;
ii) he honestly believed that he had or would have had the owner's consent had the owner known about the circumstances; or
iii) he honestly believed that the owner could not be found even if all reasonable steps had been taken to try and find him.

Where s2(1) does not apply, the issue of dishonesty is left to the jury to determine as a question of fact. In Feely (1973), the Court of Appeal held that

dishonesty was an 'ordinary' word and that the jury would be expected to decide the issue by reference to the 'current standards of ordinary decent people'. This approach was widely criticised.

A number of other cases followed: Gilks (1972), McIvor (1982) and Landy (1981), all of which were criticised in the way that the issue of dishonesty was resolved.

The case of Ghosh (1982) provided a positive aspect to the determination of dishonesty. The Ghosh test has two limbs. The first, objective limb requires the jury to consider whether the honest and reasonable person would regard what D did as dishonest. Only if the answer is 'yes' to this question can the second limb be considered. This preserves the principle that the issue of dishonesty is a matter of fact for the jury and not the judge. The main danger of this approach is the variation in standards from one jury to another.

The second, subjective limb requires the jury to question whether D himself realised that the honest and reasonable man would regard what he did as dishonest. Whilst this is referred to as the subjective limb, it contains an objective element and calls for D's recognition of his objective dishonesty. Only if the answer is 'yes', to both the objective and subjective questions, can D be found to be dishonest.

The dishonesty element in theft has become increasingly important in the assessment of a D's liability, especially since appropriation has been very widely interpreted by the courts.

Delivering judgment in Ghosh Lord Lane CJ suggested that, if dishonesty was meant to categorise a state of mind, then a purely objective test of dishonesty would not be suitable because the knowledge and belief of the D are at the root of the problem. The suitability of a subjective test was also considered and criticised as a 'Robin Hood defence'. Under a test that was only subjective, a D could argue that he did not believe his conduct to be dishonest and thus he was not dishonest; this could not be right. Lord Lane CJ contends that the Ghosh test does provide a compromise between the unsatisfactory alternatives of a purely subjective or a purely objective approach.

The Ghosh test has been applauded for adding clarity to the law. It has also been severely criticised by academics, most notably by Professor Griew who argues that leaving the question of dishonesty to the jury leads to inconsistent verdicts and uncertainty in the law. He suggests that dishonesty is a question of law which should not be left to the jury.

Spencer argued that the test is too complicated for juries and that it provides a defence of mistake where a D could argue that he did not realise that honest and reasonable people would regard his conduct as dishonest. The danger is that the jury may apply extremely low standards but the reverse of that is that they could just as easily apply excessively high standards. Campbell argues that the second limb of the test is not necessary where the jury are directed to consider all the circumstances under the first limb.

Both appropriation and dishonesty are controversial areas in relation to the offence of theft and can lead to inconsistent decision making as they are both left to the jury to decide. It could be argued that they are fit for purpose as they have evolved through caselaw. On the other hand it could be argued that, due to the inconsistent decisions in these areas, they are not fit for purpose as they

stand, but a better statutory definition of each element may avoid these problems.

Question 4

The law in relation to the partial defences under the Homicide Act 1957 (HA) has been changed by the Coroners and Justice Act 2009 (C&JA).

The common law defence of provocation, which was modified by statute under s3 HA, has been replaced by the defence of loss of control which was derived from S54 and 55 C&JA.

Under S3 HA where a person was charged with murder and was provoked to lose his self-control, the jury determined whether the provocation was enough to make the reasonable man do as he did. This establishes subjective and objective elements to the defence of provocation.

The subjective element stated that 'there must be some provocation together with a sudden loss of control', Duffy (1949). This was criticised for failing to protect women in abusive relationships. In situations where there was a delay between the provoking conduct and the killing, there was no guarantee that women in abusive relationships would be able to rely upon the defence. Quite often women in this situation would have to plead diminished responsibility. This was later addressed by Ahluwalia (1992) where it was accepted that a 'loss of self-control' could also be a slow burn reaction as in cases of long term partner abuse.

The objective element posed two questions: first would the reasonable man have been provoked? (gravity of provocation) and then would the reasonable man have lost control and acted as the defendant did? This meant that if the provocative conduct was directed at a characteristic of the defendant, that would be a characteristic which affected the gravity of the provocation and, therefore, that characteristic would be relevant to the reasonable man.

The objective limb of the defence has caused the courts difficulties, particularly the reasonable man element of the defence. The different approaches taken by the courts are evident in the conflicting decisions in Smith (Morgan James) (2001) and Holley (2005).

In the case of Smith (Morgan James) the House of Lords held that D's clinical depression was a characteristic that could be attributed to the reasonable person. This approach was criticised for being more subjective than objective. In Camplin (1978) D's age and sex were also relevant to the gravity of provocation.

In the later case of Holley, The Privy Council declined to follow the decision in Smith (Morgan James) and held that the only characteristics to be taken into account were D's age and sex. The decision in Holley has also been preferred in the cases of James (2006) and Karimi (2006).

The reforms created by the C&JA were intended to redress the gender imbalance and to clarify the law, putting an end to the criticism and confusion created by the defence of provocation.

Loss of control under s54(1) C&JA still requires a loss of self-control caused by a qualifying trigger; and that a person of his age and sex with the normal degree of tolerance and self-restraint circumstances of him, and of the same age and sex of him might have reacted in the same or similar way to him.

The first element again is subjective and requires consideration of whether D actually lost self-control. Under s54(2) C&JA the loss of self-control need not have been sudden as in Ahluwalia. The removal of the requirement of suddenness was intended to protect those who had suffered years of cumulative abuse and may have 'snapped' over a minor incident.

S54(4) also provides that the defence will not apply if D killed the victim (V) in a considered desire for revenge: Ibrams and Gregory (1982). This means that loss of self-control cannot be apportioned to pre-planned killings even though D may have been provoked previously by V.

The two qualifying triggers are set out s55 C&JA and are fear of violence or anger by things done or said (or both) in circumstances of an extremely grave character and caused D to have a justifiable sense of being seriously wronged. The first trigger is the fear trigger s55(3). This applies in situations where the loss of control was attributable to D's fear of serious violence from V against D or another: Pearson (1992).

The second trigger is the anger trigger s55(4) which is attributable to things done or said (or both) in circumstances of an extremely grave character and caused D to have a justifiable sense of being seriously wronged: Camplin. This is similar to the previous defence of provocation but for the exception that the language used here is far more severe.

Either of the qualifying triggers will be sufficient, or a combination of both of them: Humphreys (1995). Neither of them are clearly defined and will be left open to interpretation by the courts.

S55(6)(c) states that sexual infidelity must be disregarded as a qualifying trigger. This was introduced to stop husbands who had killed unfaithful wives from relying upon the defence, as had happened under the old law: Davies (1975).

If you were to compare the cases of Ahluwalia and Davies you will note that under the old defence of provocation, the defence could be used in cases where D killed an unfaithful spouse: Davies but a slow burn reaction as in Ahluwalia failed.

Under the new defence of loss of control, due to the removal of the requirement of suddenness, the defence can now be used in slow burn reaction cases but under s55(6)(c) sexual infidelity cannot be used as a qualifying trigger to invoke the defence of loss of control.

The objective test set down in Holley remains good law with the reasonable person being replaced with the ordinary person. The confusing thing about the new law is that 'characteristics' has been replaced by 'circumstances'. This makes it unclear whether facts such as those in Smith (Morgan James) would be covered under the new defence. It has also been argued that 'may have reacted in the same or similar way' is quite vague and arguably more nebulous than the old law.

Although it could be argued that the reforms introduced by the C&JA may have clarified the law in some respects, the defence of loss of control is itself open to criticism. Some might argue that in trying to redress the gender imbalance, the gender balance has been shifted too far by the new defence.

SECTION B

Question 1

Boris could be criminally liable for two offences.

Injury to Michael

In respect of the injury caused to Michael's cheekbone by Boris elbowing him, Boris could be charged with assault occasioning actual bodily harm (ABH) contrary to s47 of the Offences Against the Person Act 1861 (OAPA).

S47 OAPA is the intentional or reckless infliction of unlawful violence upon someone without consent: Savage; Parmenter (1991). ABH refers to an assault which interferes with the comfort of the victim and is more than transient or trifling: Miller (1954) and T v DPP (2003), and there has to be an injury: Chan-Fook (1994).

When Boris elbowed Michael to the face it was an assault. The injury sustained by Michael was bruising and swelling of his cheekbone. This would constitute an injury which was more than transient or trifling and would interfere with his comfort. The MR for an offence under s47 is the MR for the original battery. On the facts, Boris intended to inflict unlawful violence on Michael and there is no need to prove that he intended or foresaw the resulting injury. Boris is likely to be charged with this offence.

Injury to Nigel

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

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

Potential defences
Consent

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.

However, the courts are stricter when a degree of harm is caused, therefore consent is no defence to charges of assault occasioning actual bodily harm (ABH), inflicting grievous bodily harm or causing grievous bodily harm with intent

(GBH): Brown (1993), unless it falls within a socially acceptable situation which is in the public interest.

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). 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).

However, an off the ball incident during a football match is no different to any other assault involving the use of unlawful force. There is no suggestion that players consent, impliedly or otherwise, to the use of force in such situations: Billinghurst (1978).

In this situation, there is no suggestion that the injury caused to Michael was accidental and in the course of legal play, and he would not be able to claim that Nigel impliedly consented to be pushed.

Self Defence

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 Boris feared that Michael 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 nor was he motivated by any desire for revenge.

Mistake

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 Boris 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 Boris's actions were 'reasonable'. It would have to consider whether Boris honestly believed that it was necessary to defend himself and, if so, on the basis of the facts and the danger perceived by Boris was the force used 'reasonable'? If the jury answers 'yes' to both points then it must acquit Boris.

If the jury accepts that, whilst his actions were to protect himself from a perceived threat, Boris went beyond the use of reasonable force, he would have no defence under common law: Clegg (1995) anyway.

Question 2

The first offence to consider is respect of Sasha is common assault.

Common Assault

When Sasha threatened to stab the MP and set fire to the office she 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, in respect of standing outside the window of the MP's office, this could also be an assault if her presence there caused anyone inside to apprehend immediate, unlawful violence: Smith v Chief Superintendent of Woking Police Station (1983). In Smith it was held that although the D was outside the window, the victim (V) was frightened by his conduct as she did not know what he would do next, but that it was likely to be of a violent nature.

The staff were afraid when they saw Sasha outside and, if they feared that she was there to cause any of them harm, she could be guilty of an assault, whether she intended to cause them to fear immediate personal violence or not. When she stood outside MP's office shouting threats towards the MP and the building, she was reckless as to whether she caused anyone inside to fear immediate personal violence or not.

The next offence to consider in respect of Sasha is criminal damage.

Criminal Damage

In respect of spraying graffiti on the side wall of the MP's office, Sasha could be liable for an offence of simple criminal damage contrary to s1(1) of the 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). Sasha could not claim that she had a lawful excuse to damage the MP's office, as it was held in Hill;Hall (1989) and in Kelleher (2003) that political concerns are irrelevant as it is not property in need of protection.

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. The MP's office is property s10 (2) CDA 1971 and Sasha would have no lawful excuse to damage 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 Sasha intended to cause the damage in this case.

There are two defences that may be available to Sasha, they are intoxication and insanity.

Intoxication

The defence of intoxication may also be relevant here. 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. Sasha took a dangerous intoxicant in the form of alcohol.

Next we must consider whether Sasha's intoxication was 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. Sasha was voluntarily intoxicated by choosing to drink 4 pints of strong lager.

Whether she can use the defence will depend on whether the crime was one of specific or basic intent. As criminal damage and assault are crimes of basic intent the defence would not apply as Sasha's act of drinking alcohol to excess was reckless in itself: Majewski (1977).

Insanity

Sasha 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 Sasha 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.

Clinical paranoia is deemed to be a disease of the mind and an internal factor. Sasha must be able to provide medical evidence to support her claim that she suffers from clinical paranoia. 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 was able to successfully pleaded insanity, she could be sentenced to a hospital order or a supervision order or she may even receive an absolute discharge.

Question 3(a)

There are a number of offences for which Nikolai may be found criminally liable.

Attempted Burglary

For there to be an attempt, there must be a substantive offence that D was attempting to commit. In this case the substantive offence was burglary contrary to s9(1)(a) of the Theft Act 1968 (TA). Under s9(1)(a) 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. The AR of attempted burglary is therefore doing an act which is more than merely preparatory to entry of the building.

Under s1(1) Criminal Attempts Act 1981 (CAA) to be guilty of attempting to commit an offence a person must perform an act which is more than merely preparatory to committing the offence, intending to commit the offence and intending to bring about the result, and knowing that the surrounding circumstances would be in existence or being reckless as to this.

At common law the act had to be sufficiently proximate to the crime: Eagleton (1835). The CAA requires an act to be more than merely preparatory to the commission of the crime: Gullefer (1990), Jones (1990), Litholetovs (2002), Tosti (1997), Moore (2010). When Nikolai started to climb into Petra's house, he did an act which was more than merely preparatory as the only part of the act left was to enter the property with the intention to steal. It appears that there is no effective entry as the scenario does not say that any part of Nikolai's body actually entered the building.

The MR for an attempt is an intention to commit the full offence and recklessness in respect of any circumstances surrounding it: Khan (1990). Therefore, it did not matter whether Nikolai knew that Petra was out or not. The fact that he intended to commit burglary was sufficient for the offence. Nikolai would be liable for attempted burglary under s1(1) CAA and would have no defence.

Burglary

When Nikolai returned to Petra's house the following day, he did enter the house with intent to steal, so would be guilty of burglary contrary to s9(1)(a) of the TA as set out above.

At the time of the burglary Nikolai was carrying a knife which he picked up on his way through Petra's kitchen: O'Leary (1986), this could increase the severity of the offence to aggravated burglary contrary to s10(1) of the TA. A key part of s10(1) is that D must have with him, at the time of committing a burglary, a weapon of offence, in this case the knife.

It does not matter that Nikolai could not find the artefact that he had intended to steal, that fact that he then stole Petra's laptop would make him guilty of burglary contrary to s9(1)(a) of the TA as he entered the property as a trespasser with the intention of stealing something.

Nikolai may also have committed an offence under s9(1)(b) TA. To prove a s9(1)(b) offence, theft or GBH has to be committed or attempted after having entered the building as a trespasser.

This would be made out in this scenario as after having entered Petra's property as a trespasser, Nikolai then stole Petra's laptop so he would be guilty of burglary contrary to s9(1)(b) TA. Nikolai also satisfied s1 TA, as he entered the property and once inside he appropriated a laptop which belonged to Petra, with the intention to permanently deprive Petra of the laptop by keeping it for his own use. By applying the Ghosh test we can also show that he was dishonest.

3(b)

In respect of the statement that Gerry made on his homepage, this is an untrue statement and Gerry could be charged with fraud by false representation contrary to s2 of the Fraud Act 2006 (FA).

The AR for s2 FA requires that Gerry made a false representation: Barnard (1837). He did this when he said he had extensive experience in the electrical trade when he did not. The MR requires that Gerry knew that the representation was or might be untrue or misleading under s2(2)(a) and (b): Cornelius (2012). As Gerry's past experience is in floristry, he knew that the representation was untrue. As proof of dishonesty is required, the Ghosh test must be applied. The honest and reasonable person would certainly regard Gerry's conduct as dishonest and Gerry should realise this.

Finally consideration would have to be given as to whether Gerry intended to make a gain for himself or another or cause loss to another s2(1)(b): Gilbert and others (2012). Under s5(2)(a) gain and loss extend only to gain and loss of money or other property. In this case, by making the false statement on his homepage, Gerry was hoping that people would buy electrical supplies from him at an inflated price, providing him with a financial gain.

Gerry is likely to be guilty of fraud by false representation contrary to s2 of the FA.

By driving off from the DIY store without paying, Gerry could be guilty of obtaining services dishonestly contrary to s11 of the Fraud Act 2006 (FA).

The AR for s11 requires that D obtains services, knowing that the service is made available on the basis that payment is required. When he purchased the supplies on credit using the trade account and knowing that he could not pay he obtained the services of the DIY store knowing that payment was required.

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 purchased the supplies using the trade account he knew that the service had been made available on the basis that payment would be made for the supplies and he had no intention of paying as he did not have any money/credit.

Applying the Ghosh (1982) test, the honest and reasonable person would regard Gerry's conduct as dishonest. Gerry should also realise that his conduct is dishonest as he had no money to pay for the supplies. Gerry is likely to be guilty of obtaining services dishonestly in relation to the supplies that he obtained from the DIY store.

Question 4

Death of Donna

As Donna has died Ariel could be potentially liable for murder/ involuntary manslaughter.

Ariel could only be found liable for the murder of Donna if she 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 her lashing out at Donna, and that there was no break in the chain of causation. It is therefore unlikely that Ariel would be liable for murder.

The relevant offence here in respect of Ariel would be involuntary manslaughter, in particular, unlawful/ dangerous act/ constructive manslaughter. It is clear from the facts that when Ariel lashed out at Donna up she committed wounding contrary to s20 OAPA which resulted in the death of Donna. The deep cut which required stitches clearly broke both layers of skin and therefore amounts to a wound: Eisenhower (1984).

Ariel intentionally or recklessly: Venna (1975), Savage; Parmenter (1989) inflicted personal violence on Donna by lashing out at her: Rolfe (1952). Donna did not give Ariel permission to assault her, therefore the contact was both physical: Ireland; Burstow (1998) and unlawful.

GBH was an unlawful and dangerous act: Church (1965), Watson (1989) and Newbury and Jones (1976). When she lashed out at Donna, Ariel did not intend to harm Donna but her action in lashing out at her was reckless.

The chain of causation seeks to provide practically applicable rules that balance legal and moral culpability so that there is not 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 Ariel's conduct caused Donna's death when she lashed out at her. It must also be proven that Ariel's conduct was both a cause in fact and in law.

Factual causation is the 'but for' principle: Pagett (1983), White (1910). 'But for' Ariel's actions Donna 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 she did not intend to hurt Donna, Ariel was reckless when she lashed out at her and could have reasonably foreseen that some injury would occur Cunningham (1957). Ariel would therefore be liable for involuntary unlawful/dangerous act/ constructive manslaughter in respect of Donna.

Assault on Ed

When Ariel lashed out towards Ed she may have committed an assault contrary to s39 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, as Ariel had already assaulted Donna, Ed could have feared that she would assault him to when she lashed out towards him. If this was the case, Ariel could be guilty of a common assault on Ed.

Potential Defences

Ariel has been charged with constructive/unlawful act manslaughter.
There are potentially two defences that may be available to Ariel in this case, they are automatism and duress of circumstances.

For Ariel to be able to rely on the defence of automatism she would have to be able to show that an external factor resulted in involuntary conduct by her, where she was not at fault.

Automatism must relate to external factors and to temporary disturbances which cannot be related to any notion of disease. In Quick (1973), Lawton LJ observed that Quick's mental condition was not caused by his diabetes but by his use of insulin prescribed by his doctor which meant that the malfunctioning of his mind was caused by an external factor and not an internal disease of the mind.

Automatism requires a fundamental and not merely partial loss of control of movement: Broome v Perkins (1987), Bratty (1963). This means that the automatism must be of such a degree that D cannot be said to have performed the AR voluntarily.

It would be for the defence to prove on the balance of probabilities and with supporting medical evidence that Arial was suffering from automatism at the time of the offence. A successful plea of automatism would lead to a complete acquittal.

In this case, Ariel could be successful with a plea of automatism due to the fact that her actions were caused by an external factor, the panic attack, which was a temporary disturbance not related to an ongoing condition.

Alternatively, she could also say that she behaved in the way that she did out of duress of circumstances.

To successfully plead a defence of duress of circumstances, like duress of threats, there must be a threat of immediate death or serious injury towards D or to someone for whom D feels responsible: Hasan. Unlike duress of threats, D's actions can arise from feeling threatened by surrounding circumstances and commits the offence because it seems to be the only way to avoid the threat that he faces: Willer (1986), Conway (1988), Shayler (2001).

D's actions must be a reasonable and proportionate response to the threat of death or serious injury: Martin (1989), the threat of death or injury must come from an external source: Rodger and Rose (1998) and D's conduct can only be excused whilst the threat exists: DPP v Jones (1990), DPP v Bell (1992).

In this case, due to a previous incident of being trapped in a dark place, it could be found that her actions in trying to get off the train were reasonable and proportionate to the threat that she perceived from being trapped in the train in the dark. She was obviously scared of getting trapped and, to Ariel, trying to get off the train was the only way of avoiding the threat she felt at being trapped on the train. A successful plea of duress of circumstances would also lead to a complete acquittal.