

**LEVEL 3 - UNIT 11 – CRIMINAL LITIGATION
SUGGESTED ANSWERS – JUNE 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 June 2017 examinations. The suggested answers do not for all questions set out all the points which students may have included in their responses to the questions. Students will have received credit, where applicable, for other points not addressed by the suggested answers.

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

Question 1 (a) (i)

Kelly has been arrested for an indictable only offence.

Question 1 (a) (ii)

Desmond has been arrested for an either way offence.

Question 1 (b)

One other classification of offence is a summary only offence such as common assault, speeding.

Question 1 (c)

Under s.24 PACE 1984 there must be an actual, attempted or suspected involvement in the commission of an offence. There must also be reasonable grounds why the arrest was necessary. In Kelly's case, there was suspected involvement in wounding with intent to cause GBH, as Kelly matched the description of the suspect and confirmed her identity.

Under s.28 PACE 1984 a suspect must be told of the fact of, and grounds for, arrest and must be cautioned. In Kelly's case, she was not told the grounds for arrest, nor was she cautioned.

Under s.117 PACE 1984 reasonable force may be used. The force used in Kelly's case appears unreasonable as the officer pushed her to the ground, thumped her in the back and threw her into the back of the police car.

Under s.30 PACE 1984 a suspect must be taken immediately to a designated police station. This was not followed in Kelly's case, as the police went to the garage first to get snacks.

Question 1 (d)

One article identified could be Article 3: the prohibition of torture and inhuman or degrading treatment, or Article 5: the right to liberty and security of the person and not to be arrested/detained by the police without lawful authority.

Question 1 (e)

Under s.41 PACE 1984 (or s.7 CJA 2003) initial detention is up to 24 hours. Under s.42 PACE 1984, beyond this time authorisation is required for detention of a further 12 hours, with authorisation from at least a superintendent rank. Authorisation is then required from the Magistrates' Court for a further 36 hours, and a further 24 hours thereafter, making a total of 96 hours from arrest to charge or release.

Question 1 (f)

Under s.78 PACE 1984, the admissibility of the evidence obtained could be challenged.

Question 1 (g)

If Desmond had been allowed to attend the police station voluntarily then, under s.29 PACE 1984, he would be entitled to leave police custody at any time. Further, if the police want to question a suspect for the purposes of obtaining evidence, the suspect must be cautioned, told they are not under arrest, that they are free to leave at any time and that they may obtain legal advice.

Question 2 (a)

Functions of the Magistrates' Court include bail hearings, summary proceedings, allocation hearings, sending/committal procedures and issuing warrants for arrest/search.

Question 2 (b)

At an allocation hearing, the guidelines the Magistrates' Court must take into consideration are as follows (effective from 1 March 2016):

A case should be tried summarily unless:

- the outcome would clearly be a sentence in excess of the courts' powers for the offence concerned;
- after taking into account personal mitigation;
- and any potential reduction for a guilty plea; or
- for reasons of unusual legal, procedural or factual complexity, the case should be tried in the Crown Court.

An exception is likely to be rare and case specific. The court should bear in mind its power to commit for sentence after trial and may retain jurisdiction notwithstanding that the likely sentence might exceed its powers. All parties should be asked by the court to make representations as to whether the case is suitable for summary trial.

The court should refer to definitive guidelines (if any) to assess the likely sentence for the offence in the light of the facts alleged by the prosecution,

taking into account all aspects of the case including those advanced by the defence, including personal mitigation.

The defendant should be warned that he/she could be sent to the Crown Court for sentencing, even if there has been a summary trial.

Credit was given for any reasonable application and conclusion, i.e. whether 6 months would be sufficient in his case.

Candidates were also credited for an answer based on the old guidelines.

Question 2(c)

Reasons in favour of a Crown Court trial include higher acquittal rates, a judge is better equipped to deal with complex evidence/legally qualified and disputed evidence can be excluded from a jury.

Reasons against include the speed (cases are dealt with quicker in the Magistrates' Court), it is more expensive, a higher range of sentences is available, it is more formal/stressful and attracts greater publicity.

Question 3(a)

Under schedule 1 paragraph 2 Bail Act (BA) 1976, there must be substantial grounds for believing that the defendant will fail to surrender (no reason to believe that Kelly will do this), commit an offence whilst on bail (she has no previous history but did state she wanted to kill her friend) and/or interfere with witnesses (possibly her friend but unlikely). The defence may suggest the court considers a bail condition that she is not to contact the victim.

Question 3(b)

Under Access to Justice Act (AJA) 1999 / Legal Aid, Sentencing and Punishment of Offenders Act (LASPOA) 2012 / Crime and Disorder Act (CDA) 1998, full criminal legal aid / representation order may be available if a defendant passes the interests of justice test and the means test. In Kelly's case, the offence being indictable only, the interests of justice test is automatically justified but the means test will be based on a contributory scheme, assessing income and capital.

Question 3(c)

Section 6A Criminal Procedure and Investigations Act 1996 contains the requirements of a defence statement. It should include the nature of the defendant's defence, any matters of fact with which the defendant takes issue and reasons for the same, any matters of fact the defendant intends to rely on, the disclosure of relevant points of law and any alibi or defence that the defendant intends to rely on.

Question 3(d)

A plea in mitigation in Kelly's case may include matters relating to the offence (the crime was committed on impulse, i.e. not planned by Kelly, and she was provoked), matters relating to the offender (it was Kelly's first offence and she has a responsible job as an accountant), matters relating to the investigation (she co-operated), matters relating to future reform (she is very remorseful and

pleaded guilty) and matters relating to type of sentence (taking into account the effect of a custodial sentence on Kelly's children and her employment).

Question 3(e)

Kelly would need to appeal to the Court of Appeal within 28 days from conviction or sentencing.