

**LEVEL 3 - UNIT 3 – CRIMINAL LAW
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.

SECTION A

1. The main types of *mens rea* are intention, recklessness, negligence/ gross negligence.
2. Transferred malice is a *mens rea* principle that applies to intention and recklessness. It governs circumstances in which *mens rea* can be transferred from the intended target to another; the leading case is Latimer (1886). If *mens rea* is for a different crime, then malice cannot be transferred.
3. Arson is governed by section 1(3) Criminal Damage Act 1971. It means that when property is destroyed by fire, criminal damage, simple or aggravated, will be arson. Relevant cases are Hunt (1997), R v G (2003).
4. Unlawful/constructive and dangerous act manslaughter is a common law offence, which has three elements. The elements are an unlawful act (must be an act, not an omission); the act must be dangerous; and the unlawful and dangerous act must cause death of victim.
5. The test for dishonesty in theft cases comes from the case of Ghosh (1982). It is a two-part test: firstly, would reasonable and honest people think what the defendant did was dishonest? Secondly, did the defendant realise that his actions were dishonest by those standards. This is an objective and subjective test.
6. *Actus reus* of an attempt is that the act must be more than merely preparatory. Relevant cases might include Jones (1990), Campbell (1991). *Mens rea* for an attempt is the intent/intention to commit the full/complete offence. Relevant cases might include Whybrow (1951) or Shivpuri (1986). S.1 Criminal Attempts Act 1981.

7. Strict liability is an exception to the rule that all crimes must have *actus reus* and *mens rea* element. In strict liability offences, there is no *mens rea* requirement. Appropriate examples might include certain health and safety offences, road traffic offences, food and pharmaceutical products, trade descriptions, sale of alcohol and pollution related offences.
8. There are certain categories where duty arises. These categories are:
 - statutory duty;
 - special relationship, such as parent and child;
 - contractual duty
 - assumption of responsibility
 - creating a dangerous situation;
 - public office such as police.
9. To establish causation for result crimes, it is necessary to establish factual and legal causation. Factual causation is determined by the 'but for' test; but for the actions of the defendant, would the outcome have been the same. Leading case White (1910).
10. Duress cannot be used as a defence for murder or attempted murder. It also cannot be used if the defendant has been at fault/participated in the crime or been part of the criminal association in the past. Case e.g. Howe (1987).

SECTION B

Scenario 1 Questions

1.
 - (a) The offence that Leo might be charged with is gross negligence manslaughter. There are four elements that must be established to find a defendant guilty of gross negligence manslaughter. These elements are duty of care; breach of that duty; risk of death; breach of the duty must have caused death; the breach was grossly negligent. Conduct can be an act or an omission and the defendant does not have to foresee death or bodily harm. Leading case is Adomako (1994).
 - (b) This section required application of the scenario to the facts. Firstly, Leo had duty of care towards Vlad. This would come under two categories which are voluntary assumption of duty and/or special relationship. There was a breach of that duty when Leo left Vlad home alone for the night, knowing he would be distressed and need his medication i.e., he was aware of the risk. The breach of the duty led to Vlad's death as he died after collapsing due to no medication. He also created a risk by not giving Vlad the medication. Finally, gross negligence is assessed on an objective standard. Objectively, a reasonable person would likely find that the breach of the duty was grossly negligent. Leading case Adomako (1994).
 - (c) Generally, there is no duty to act but duty arises in categories discussed previously. The categories where duty arises are statutory duty, special relationship, contractual duty, assumption of responsibility, creating a dangerous situation, public office. None of the categories apply to Tom and he therefore had no duty of care towards Vlad. This means he cannot be liable for Vlad's death.
2.
 - (a) Factual and legal causation is essential for all result crimes. Legal causation means defendant's actions had to be significant and operating cause of death. His actions do not need to be the sole cause of death but they must be more than minimal. There must be no intervening act. Leading cases are Smith (1959); Pagett (1983).
 - (b) There are certain events that may break the chain of causation. These are refusal of medical treatment/ aggravation of injuries by the victim, the thin skull rule; injuries sustained during escape; negligent or poor medical treatment, and finally natural disasters e.g. acts of God. Case e.g. Blaue (1975)
 - (c) This answer requires application of the law to the facts. Firstly, poor medical treatment does not normally break the chain of causation and medical intervention is not judged on the same rules as other intervening events. Medical treatment would have to be 'so independent of defendant's acts and in itself so potent in causing death' as was decided in Cheshire (1991). In exceptional cases, when treatment is palpably bad, it could break causation as was decided in Jordan (1956). Here, delay on the arrival of the ambulance would not break the chain of causation as it is not exceptional.
3.
 - (a) The defence that might be available for Tom is self-defence. A person is entitled to defend oneself as a response to an actual or perceived threat. One is entitled to use force to protect oneself or others, to protect property and to prevent crime. The force used must be

reasonable. Reasonableness of force is judged on the facts and circumstances as the defendants honestly believed them to be. This is governed by section 76 of the Criminal Justice and Immigration Act 2008. The right to protect oneself and others is a common law right; to protect oneself and protection of property, is a statutory right. A case that could have been considered e.g. Malnick v DPP (1989) or Martin (2000).

- (b) This answer requires application of the law to the facts. In this case Leo hit Tom first, so Tom has the right to defend himself. The test for considering whether the force used was reasonable is an objective test. In the scenario, Tom punched and kicked Leo repeatedly. This probably was excessive and therefore, not lawful.

Scenario 2 Questions

1. (a) The offence with which Nandita may be charged is basic criminal damage, a statutory offence under section 1(1) of Criminal Damage Act 1971. The offence includes the following elements:

- destruction or damage;
- of property;
- belonging to someone else;
- without lawful excuse.

The damage does not have to be irreparable or completely impair the use of property. The *mens rea* is intention or recklessness. Leading case is R v G (2003).

- (b) This answer requires application of the law to the facts. Nandita scratched (damaged) a car (property that belongs to Ramya) and the property will need repair. She had no lawful excuse. She also had the required *mens rea* as she had the intention to damage, or at the very least, is reckless as to the damage done, consider case e.g. R v G (2003) or Hardman v Chief Constable of Avon and Somerset (1986).
2. (a) Aggravated criminal damage is a statutory offence under section 1(2) of Criminal Damage Act 1971. For aggravated criminal damage it must be shown that property, which might belong to the defendant or someone else, was destroyed or damaged. The *mens rea* is intention or recklessness as to damage to property **and** intention to endanger life or the life of another through the damage, or recklessness as to whether life of another is endangered.
- (b) This answer requires application of the law to the facts. By smearing the oil on the backdoor steps, Nandita damages the steps (property) as it would require effort and cost to remove the oil. She has the intention to damage it (intentionally smears it). As she knows Ramya uses the backdoor, she also probably has the intention to endanger life. Even if she may not have intended to endanger life, she has at least been reckless as to whether life might be endangered. Relevant cases are Webster (1995), Warwick (1995).
- (c) 'Any property' is an additional element on aggravated criminal damage, so it does not matter if the defendant owns the property fully or partially. Nandita can be guilty of destroying/damaging property

under s.1(2) of Criminal Damage Act 1971. Criminal Damage Act 1971 s.10 could also have been considered.

3. (a) Nandita might be guilty of theft. Theft is governed by s.1 Theft Act 1968. Under section 1 Theft Act 1968 a 'person is guilty of theft if he dishonestly appropriates property belonging to another with the intention of permanently depriving the other of it'. The *actus reus* of theft consists of appropriation, property, belonging to another. The *mens rea* consists of dishonesty and the intention to permanently deprive. Both *mens rea* and *actus reus* need to coincide before theft can be found. Case law: Ghosh (1982), Gomez (1993), Lloyd (1985), Turner (1971), Hinks (2006).
- (b) This answer requires application of the law to the facts. Nandita has the required *actus reus* as she has all the elements. Firstly, she appropriated the items when she took the ornaments and disposed of them. The ornaments are property. The ornaments belong to someone else and Nandita knew they belonged to Ramya/Gautam. Nandita also has the required *mens rea* as she has the intention to permanently deprive. It does not matter that she did not keep them. She also has dishonesty as none of the exclusions in s.2 of Theft Act 1968 apply. Candidates should apply the test from case Ghosh (1982); applying Ghosh, Nandita is dishonest.

Scenario 3 Questions

1. (a) The offence is murder and murder is a common law offence. The definition of murder is the unlawful killing of a human being in Queen's peace with malice aforethought. This includes the intention to kill and the intention to cause grievous bodily harm. Intention can be direct or indirect.
 - (b) This answer requires application of the law to the facts. Giles stabbed Fran, who is a human being, this is an unlawful killing as it was not done in self-defence. Giles left the house and came back, so we could infer he had the intention to kill, and the killing took place during the Queen's peace.
 - (c) The relevant defence to consider is intoxication. Giles is voluntarily intoxicated, so intoxication can only be considered in relation to specific intent offences e.g. murder. Conclusion :Giles might not be able to rely on this defence as still able to form *mens rea*. Cases that could have been considered are e.g. Majewski (1976) or Gallagher (1963).
2. (a) Giles might be able to rely on loss of control. The relevant law is the Coroners and Justice Act 2009.
 - (b) The partial defence of loss of control was established in the Coroners and Justice Act 2009 s.54. It includes three parts: firstly, defendant's acts or omissions resulted from loss of control. Secondly, there was a qualifying trigger. And finally, a reasonable person, of the defendant's age and sex, with a normal degree of tolerance and self-restraint might have acted the same way, relevant case is Jersey v Holley (2005). The definition of a qualifying trigger is found in the Coroners

and Justice Act 2009 s.55. A qualifying trigger can be fear of serious violence or it can be anger/words or actions of extremely grave character that caused a justifiable sense of being wronged. Loss of control need not be sudden, but neither qualifying trigger will apply if the defendant's fear of serious violence is caused by things the defendant incited to provide an excuse to use violence. Sexual infidelity cannot be a qualifying trigger under section 55. Recent case law however, suggests that sexual infidelity could be included in the defence if there was an alternative trigger e.g. Clinton (2012). Any relevant case as to trigger being sexual infidelity could have been considered.

- (c) This answer requires application of the law to the facts. Giles clearly lost control and someone who is his age and sex might have reacted the same way. The question is whether he had a valid qualifying trigger as sexual infidelity is excluded from the scope of the law. Leading case of Clinton (2012) indicates that sexual infidelity can be brought to jury if it was not the main trigger. Other cases can be considered and applied. Fran taunted Giles over his impotency and employment, if jury accepts that taunting is the main trigger then the defence might succeed.
- 3.
- (a) If the defence is successful, Giles would not be found guilty of murder and he would be convicted of voluntary manslaughter. For voluntary manslaughter the defendant has the *mens rea* for murder, killing partly excused by loss of control. The burden is on the prosecution to disprove beyond reasonable doubt.
 - (b) If the partial defence of loss of control is not accepted, Giles would be convicted of murder.
 - (c)
 - (i) If the partial defence is accepted, this would have consequences on sentencing, as then sentencing will be at the discretion of the judge.
 - (ii) If the partial defence is not accepted, this would have consequences on sentencing, as the judge must impose a mandatory life sentence for murder.