LEVEL 6 - UNIT 18 – 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 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.

Question 1(a)

The crucial factor is that you cannot be sure that the conversation is confidential. This will not prevent you obtaining confirmation that Joe Bassett wishes you to act for him and dealing with any questions he may have about procedures, any complaints he may make about his health or the conditions of detention, and generally providing reassurance.

You should however not ask any questions concerning the facts of the case, and should dissuade him from raising any such issues. You should of course explain to the best of your ability what the next steps are that you will be taking on his behalf.

1(b)

Joe Bassett has the usual options, to answer questions or to give a no comment interview which may be accompanied by a written statement. The police appear to have given substantial disclosure and there is therefore no reason to advise him not to answer questions for this reason. As Joe Bassett admits that he was part of the group involved in the incident, the issue in the case is whether he was the assailant. At present he is denying this.

If he does not give an account, and then seeks to put forward a positive case there is a potential risk of adverse inferences under s 34 Criminal Justice and Public Order Act 1994 (CJPOA), but here it is more a question of whether or not the prosecution can prove that he was the assailant. It is extremely likely that the police will ask him to account for the injury to his knuckles, and if he fails to do this further inferences can be drawn under s 36 CJPOA.

The safest course of action would appear to be to give a no comment interview, thus avoiding giving away information concerning the person Joe Bassett wishes

to protect and to accompany this with a written statement accounting for the injury to his hand, admitting being present at the scene of the offence but denying being the offender. It is ultimately a matter for Joe Bassett whether or not he accepts this advice.

1(c)

The position now is that there is an available suspect, there are witnesses who say they can make a positive identification, and the suspect denies involvement in the offence. It is likely that the police will wish to conduct a VIPER identification procedure.

The witness descriptions will need to be checked to see whether they contain any reference to the squint. If so all the images should be electronically modified to give them a squint. If there is no such reference Joe Bassett's image should be modified to eliminate the squint. Joe has the right to refuse to participate, but inferences can be drawn from this, and the police can proceed to other, generally less objective forms of identification such as group identification or covert video recording.

Although, given the circumstances, the identification evidence might be regarded as relatively weak under the Turnbull guidelines, if there are two positive identifications they can support each other, and there is other evidence in the shape of the injured hand. You should advise Joe Bassett that your role is to ensure that the procedure is undertaken fairly and in accordance with the PACE Code and to protect his interests.

1(d)

This is an indictable only offence. Joe Bassett will initially appear in the magistrates court. This court will send the case to the Crown Court. The magistrates court may also deal with any issues relating to legal aid, bail or reporting restrictions. Following the sending there will be a plea and trial preparation hearing.

Question 2(a)

Christine Sheffield must apply for a representation order. This will enable her solicitors to conduct all the preliminary stages and provides representation by a solicitor or counsel at trial. As Christine Sheffield is in receipt of Universal Credit which is a passporting benefit, she automatically satisfies the means test. If her case is allocated to the Crown Court by the magistrates court, she will automatically satisfy the merits test.

However, as she is making an application before allocation has taken place, she will need to demonstrate that she is at risk of loss of liberty or reputation or that there are legal or other complexities which make it necessary for her to be represented. As Christine Sheffield is of good character, it can be argued that her reputation is at stake. The case is however not otherwise complex, although it does raise the legal issue of self-defence.

2(b)

Assault Occasioning Actual Bodily Harm is an either way offence. Criminal Damage to a value of less than £5000 is a summary only offence, but as the two offences arise out of the same circumstances, this offence can also be allocated

to the Crown Court and included in the indictment: s 40 Criminal Justice Act 1988. This will depend on the outcome of the plea before venue and mode of trial proceedings in relation to the assault charge.

On her first appearance before the magistrates court Christine Sheffield will be asked to indicate what plea she would enter to the assault charge. If she indicates plea of not guilty the court will proceed to consider whether it has jurisdiction over the matter or whether it should be allocated to the Crown Court. The decision is for the magistrates court, which will hear representations from the prosecution outlining the circumstances of the case and any indication as to where the prosecution considers the case should be tried. The defence may also make representations, but the court must accept the prosecution version of the seriousness of the offence.

The court will then consider the statutory criteria in s 19 Magistrates Courts Act 1980, the mode of trial guidelines, the sentencing guidelines and any other relevant considerations. There is a presumption that they should retain jurisdiction unless the circumstances are such that they cannot deal with the case adequately. Normally this means that the charge would attract a sentence greater than the six months custody which they are entitled to impose where there is one either way offence before them.

This would appear to be a Category 2 offence. There is greater harm, because of the permanent nature of the injury and its cosmetic effect. There is however lower culpability as none of the listed aggravating factors are present, the offence is not premeditated, and Christine Sheffield is of good character. The starting point for such an offence is 26 weeks custody which is within the powers of the magistrates court, and while the range is up to 51 weeks custody, in all the circumstances the court is likely to conclude that it has appropriate sentencing powers, and is unlikely to see any other feature of the case as warranting allocation to the Crown Court.

On the assumption that the magistrates accept jurisdiction, Christine Sheffield will be put to her election. She should consider that trial at the Crown Court is more formal, probably more stressful, and will probably take longer to resolve. It may also receive greater publicity.

It is generally believed that the chances of acquittal are greater at the Crown Court, but this is particularly the case where cases turn on police evidence, as it is believed that juries are less casehardened than magistrates and approach such evidence with an open mind. The Crown Court also has better procedures for dealing with evidential issues, but this is not a case where this is likely to be a factor.

2(c)

This will be a plea and trial preparation hearing. It should normally take place 28 days after the allocation hearing. Christine Sheffield will be arraigned and a plea taken. The Crown Court will review the plea and trial preparation form which the parties should have completed online and ensure that any preliminary issues identified can be effectively dealt with. This will include any outstanding issues relating to disclosure. The objective is to ensure that pre-trial preparation has been completed before the trial takes place. The form, and all case documentation, is primarily held in electronic format.

Question 3(a)

This statement will contain details of the parties and the case reference number. It will also confirm the not guilty plea. It must contain the details required by s 6A Criminal Procedure and Investigations 1996. It should deal with any issues of further disclosure.

In relation to the assault, the nature of the defence is that the defendant struck the complainant in self-defence. The facts with which the defence takes issue are that the defendant was the aggressor. The matters of fact on which the defence relies are that the complainant instigated the incident and was behaving aggressively such that the defendant was entitled to use the force which she did in self-defence. There are no points of law. There is no alibi.

In relation to the criminal damage the nature of the defence is that the defendant did not cause this. The facts with which the defence takes issue are that the defendant caused the damage and was the author of the note on the windscreen. The defendant will rely on expert evidence in relation to the handwriting of the notice. There are no points of law. There is no alibi.

3(b)

The information you now have clearly indicates that Roger Jones is not a witness of truth. You are under a professional duty not to mislead the court, and you would be misleading the court if you allow this evidence to be put forward (SRA Code of Conduct O(5.1); IB(5.5)).

You must inform your client of the position and explain that you cannot be party to this evidence being led. If your client agrees not to rely on this evidence, you can continue to act. If she insists on it being used, you are professionally embarrassed and must withdraw from the case. Client confidentiality however prevents you from disclosing your reason for doing so.

3(c)

The complainant will no doubt give evidence concerning the background of animosity over parking. There appears to be no direct evidence as to who caused the criminal damage. The prosecution will invite the jury to rely on the circumstantial evidence, and the note, to establish motive. Defence counsel will no doubt rely on the fact that it is for the prosecution to satisfy the jury to the criminal standard so that they are satisfied so as to be sure that it was the defendant who caused the damage.

Evidence as to the authorship of a handwritten document is in principle admissible expert evidence. The court will need to be satisfied as to the qualifications and/or experience of the expert. As the note is a very brief one, the expert will no doubt be cross-examined as to the extent to which he can be satisfied that it is not written by the defendant.

In relation to the assault, it is essentially one word against another. The defendant does not dispute that she inflicted the injury. The defendant has the evidential burden of raising self-defence but once raised, it must be negated by the prosecution to the criminal standard.

As the defendant provided a written statement when she was interviewed, and does not appear to be departing from that, or from the terms of the defence

statement, there appears to be no scope for adverse inferences to be drawn. As the defendant is of good character, she is entitled to a full Vye (1993) direction as to both credibility and propensity.

3(d)

As the defendant has been convicted after a trial, there is no question of credit for a guilty plea. The judge can be asked to indicate whether he will be sentencing on the basis of excessive self-defence (which is a mitigating factor). As indicated in relation to allocation, the sentencing guidelines indicate that a community sentence may be appropriate.

The mitigation should refer to Christine Sheffield's family circumstances. She is the sole carer for a disabled child, and custody would undoubtedly have serious implications in this respect. In sentencing, the court should have regard to the impact on the family life of the child (Art 8 ECHR) in all the circumstances the court is likely to be minded to impose a community sentence and mitigation should focus on the precise nature of the requirements, ensuring that they are compatible with Christine Sheffield's caring commitments.

If the judge indicates that he is minded to impose a custodial sentence, the mitigation should include submissions as to why this should be suspended in the interests of the child.

Question 4(a)

As Jena Mallory is a juvenile, and currently is not co-accused with anyone else, her initial appearance will be in the Youth Court. There is a strong presumption that juveniles should be dealt with in the Youth Court where possible, as this court is specially constituted to have regard to their particular needs, in particular the welfare principle set out in s 44 Children and Young Persons Act 1933: R (H, A and O) v Southampton Youth Court (2004).

There are two relevant exceptions. If the co-accused are traced and charged, and prove to be adults, Jena Mallory could appear with them in the adult magistrates court, and that court has power to send Jena Mallory for trial in the Crown Court if the adults are so sent: s 24A Magistrates Courts Act 1980. If there is likely to be a trial, the interests of justice may dictate that this take place in the Crown Court.

The offence of arson carries life imprisonment in the case of an adult, and is therefore a grave crime for the purposes of s 91 Powers of Criminal Courts (Sentencing) Act 2000 (PCC). The Youth Court (or the magistrates court if considering matters relating to co-accused adults at the same time) may decide to send the case for trial in the Crown Court, but only if satisfied that the likely sentence will be significantly greater than the maximum 24 month detention and training order which the Youth Court could impose. The theft charges are not grave crimes for this purpose. Arson is also a serious specified offence for the purposes of s 224 Criminal Justice Act 2003.

If the court were to consider Jena Mallory to be dangerous, she could be sent for trial, but the guidance is that a finding of dangerousness can usually only be made when a presentence report has been obtained, and that it will normally be appropriate to commit for sentence under s 3C PCC if a sentence available only to the Crown Court by reason of dangerousness proves necessary at that stage.

4(b)

The custody officer has declined to grant bail, so Jena Mallory will appear before the next available Youth Court. Jena Mallory has a prima facie right to bail: s 4 Bail Act 1976. She has however allegedly committed an indictable offence while on bail, and bail could be withheld on this ground, for her own welfare, or on the usual grounds that she would fail to surrender to custody, commit offences whilst on bail or interfere with witnesses: Sched 1 Bail Act 1976.

The primary concern of the court will be that she cannot return to her foster home. It is possible that the local authority will be able to make alternative arrangements such that Jena Mallory can be released on bail with appropriate conditions, but if not she must be remanded to local authority accommodation: s 91 and 92 Legal Aid Sentencing and Punishment of Offenders Act 2012 (LASPO). Conditions can be attached to such a remand equivalent to bail conditions as appropriate. Technically, Jena Mallory may satisfy the first set of conditions for remand to youth detention accommodation, as she is over 12, charged with a violent offence (arson) which carries life imprisonment for an adult and is legally represented.

However, the court would have to be satisfied that it was necessary for the protection of the public from serious injury or for the prevention of further imprisonable offences that she be remanded to such accommodation: s 98 LASPO. She cannot satisfy the second set of conditions as there is no indication of a recent history of absconding. It is highly unlikely that the court would conclude that a remand to youth detention accommodation was necessary.

4(c)

The Youth Court is a division of the magistrates court, and the normal mode of appeal against sentence is to the Crown Court: s 108 Magistrates Courts Act 1980. Notice of appeal must be given within 21 days. The Crown Court will consider prosecution and defence submissions and the presentence report and impose an appropriate sentence having regard to the sentencing guidelines.

It may impose any sentence which the Youth Court could have imposed, so there is a risk of the sentence being increased: s 9 Courts Act 1971. The facts suggest that the sentence is regarded as excessive but not unlawful, so it would not be appropriate to ask the Youth Court to state a case for the opinion of the High Court: s 111 Magistrates Courts Act 1980.