CILEx CHARTERED INSTITUTE OF LEGAL EXECUTIVES

**LEVEL 6 - 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 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

Intention is the highest form of Mens Rea (MR) and is reserved for the most serious crimes such as murder, where there must be proof of an intention to cause a particular result. For example the MR for murder is the intention to kill or cause GBH.

Although intention is now recognised as a subjective concept, it was given an objective meaning in DPP v Smith (1960). This case held that intention could be established where a reasonable person would have contemplated the result. This test was criticised as the court was not able to consider the defendant's (D's) actual state of mind, it was presumed that D intended or foresaw the probable consequences of his conduct.

The degree of what D had to foresee at the time of the *Actus Reus* (AR) and how much foresight he must be shown to have had, goes to the core of the debate relating to subjective MR. It is due to an overlap in this area that we now have two types of intention. Direct intention has been defined by Mohan (1976) as where D acts deliberately and his aim, purpose or desire is to bring about the consequences of his actions, this has been approved by Gillick (1986).

The Criminal Justice Act 1967 (CJA) has played a part in the debate and overruled the decision in Smith. S8 abolished the objective test for intention and makes it clear that foresight is a subjective concept, based on what a person actually foresaw not what he ought to have foreseen or, indeed, what the reasonable person would have foreseen in his position. Common sense dictates that the more probable a consequence, the more probable it is that it was expected or 'foreseen' and the more likely, therefore, it was intended by the person doing the act. This approach has been developed through case law and has become known as indirect/oblique intention.

In Hyam (1975) it was held that a person intends a result which he foresees as a (highly) probable result of his actions; whilst Moloney (1985) held that foresight that a consequence was a natural consequence of D's actions was evidence from which the jury may 'infer' intention. In Hancock and Shankland (1986) the Court of Appeal guidelines set out that the greater the probability of a consequence the more likely it is that the consequence was foreseen and therefore intended. Nedrick (1986) clarified the decision in Hancock and Shankland by deciding that the degree of foresight necessary to 'infer' intention is virtual certainty, this decision also supported the decision in Moloney.

The test set down in Nedrick was much narrower than that in Hyam and it makes the distinction between intention and recklessness more clear.

This led to the current leading authority in respect of indirect/oblique intention. In the original trial of Woollin (1998) the trial judge directed the jury on intention using the phrase 'substantial risk' as opposed to the phrase 'virtual certainty'. This was upheld by the Court of Appeal (C of A). The House of Lords (H of L) in this case held that substantial risk had a much wider meaning than virtual certainty and by using the phrase 'substantial risk', the judge had blurred the line between intention and recklessness and hence between murder and manslaughter. The H of L overruled the C of A and the phrase 'virtual certainty' was restored.

In the main, Woollin (1998) approved Nedrick, subject to modification. The most crucial was the substitution of the word 'find' for 'infer'. This defined indirect/oblique intention as: D intends a result if he knows that, barring all unforeseen circumstances, the result is a virtually certain consequence of his conduct. In this case, the H of L also laid down a rule of evidence which was that foresight of a virtually certain result was only evidence from which intention might be found.

In Matthews and Alleyne (2003) the trial judge directed that if foresight of a virtually certain result could be established, then intention would be proven. On appeal it was held that this was a misdirection and that Woollin did not lay down a rule of substantive law, but merely a rule of evidence as set out above.

Critics have argued that intention should be limited to direct intention as this would avoid the confusion caused by indirect/oblique intention. They also argue that the boundaries between indirect/oblique intention and recklessness are becoming less and less clear. An example of this is the dividing line between murder and manslaughter. The MR for murder is the intention to kill or cause GBH. This requires a consequence which is foreseen by D as 'virtually certain'. The MR for subjectively reckless manslaughter is recklessness, which requires a consequence foreseen as 'highly probable'.

It is fair to say that the courts have not been very successful to date in their definition of intention, particularly indirect/oblique intention and a statutory definition would assist things greatly and hopefully remove the inconsistencies in this area of law.

On a positive note, this area is subject to reform and in 2006 the Law Commission published a report which recommended that the Woollin direction on indirect/oblique intention should be codified and intention should be defined as a person intends a result if he acts in order to bring it about and a jury direction that an intention may be found if it can be shown that D thought that the result was a virtually certain consequence of his actions. The other option offered by the report was to limit intention to direct intention. The Government's response

to the report in July 2008, gives no indication that it intends to do anything about this recommendation, so we are no nearer to a statutory definition of intention in criminal law.

On the other hand, whilst the proposition of consistency in defining the concept remains unresolved, it could be said that there is no need for a further statutory definition.

## Question 2

The Fraud Act 2006 (FA) came into force on 15 January 2007 and created a general offence of fraud which can be committed in four ways (s1): by false representation (s2); by failing to disclose information (s3); by abuse of position (s4); or by obtaining services dishonestly (s11). This single offence replaced the old deception offences which had been problematic for a number of reasons. The introduction of the FA eliminated many of the problems with the old law of deception but has been subject to criticism.

Prior to the introduction of the FA, the reformed Theft Act 1968 (TA) abolished all earlier offences involving deception or fraud. S15 TA created an offence of obtaining property by deception and s16 created an offence of obtaining a pecuniary advantage by deception. The problem with these offences was that they were fragmented, narrowly defined and difficult to apply.

Due to problems with the execution of s16, part of it was repealed by the Theft Act 1978 (TA 1978) which created the offences of obtaining services by deception and securing evasion of liability.

The AR required proof that deception had been caused and that either property, services, a pecuniary advantage or a money transfer had been obtained. This over-particularised the law and meant that a defendant could face the wrong charge or too many charges and end up being acquitted.

The case of Preddy (1996) highlighted a problem with the law in that money transfers obtained by deception were not covered by the law as it stood. A new offence of obtaining a money transfer by deception was created under s15A of TA. Pre FA offences also required proof of causation, as if a causative link between the obtaining and the deception could not be proved, no conviction could result.

The law was also unclear on some points. The case of Firth (1989) highlighted a problem with whether an omission would suffice or whether the conviction was dependent upon an act. This is now clear under s3 FA. The case of DPP v Ray (1973) raised the question of whether silence could be a deception. This area has also been clarified, by s11 FA. The old law did not allow for a deception to be against a machine e.g. a cashpoint; it was only possible to deceive a person: Lambie (1981), Davies and Flackett (1974). This has also been clarified by s2(5) FA which allows a representation to be made to a machine.

There were also problems highlighted by jurors as they struggled to understand the elements of the offences, this ran the risk of unfair trials and potentially compromised the integrity of the criminal justice system.

It has been said that the AR of s1 FA is too wide and that liability is too heavily dependent upon proof of dishonesty.

Under the S1 of the FA, although there are four distinct methods of committing fraud, dishonesty is a MR element that is applicable to all methods and the Ghosh (1982) test should be applied, together with a requirement that the D either intended to make a gain for himself or another, or to cause loss to another.

The Ghosh test itself has been subject to much criticism in that the test assumes a fictional standard of honesty and leaves too much in the hands of the jury leading to inconsistent decisions.

The current offences under the FA have moved away from the old requirements of proof of the AR elements of the offence and concentrate instead on proof of conduct e.g. making a false representation as opposed to having to prove that someone had been deceived or that property had been obtained.

Under s2 FA a false representation can be express or implied by conduct: Barnard (1837) is an old example of an implied representation. Past cases such as Lambie (1981) and DPP v Ray (1973) would now be seen as implied representations to pay. S3 FA states that an offence is committed when D is under a legal duty to disclose certain information: The pre-FA case of Rai (2000) is an example of this situation. There has been criticism that this section is not clear in respect of a definition in relation to a legal duty to disclose. S11 requires a positive act to obtain services with no intention of paying at all or no intention of paying in full. The services have to have been obtained on the basis that payment will be made and that D knew this at the time of obtaining them.

To conclude, whilst the objective of the FA was to expand the scope of fraud, it may have gone too far. It could be said that the offence of fraud is so widely drafted that it overlaps with theft and some offences could be caught within it which are not truly fraud offences. It could also create criminal liability where the matter could or would have been dealt with by civil law. It has also been argued that the wide scope of the FA has created a lack of clarity in the law relating to deception as opposed to clarifying it.

**Question 3(a)**

The defence of duress reflects the law's (or rather society's) understanding that faced with certain types of threat, individuals should not be regarded as culpable for committing a crime, when in fact, they would argue that they had no choice but to act in the way that they did.

The defence of duress is a defence within limits, for example, the threat must be of immediate, significant physical harm or death and the defence is not available for certain offences in particular murder and attempted murder.

There are two kinds of duress; duress by threats and duress of circumstances.

Duress by threats occurs when the D will have admitted committing the AR and MR of a crime, but he would be claiming that he did so because he was faced with threats of immediate serious injury or death, either to himself or to others close to him: Howe (1987). For duress of circumstances the threat does not come from a person but from the circumstances in which D finds himself: Conway (1989), Martin (1989), Pommell (1995).

Both forms of defence operate in the same way and are available as defences to the same crimes as each other.

To successfully plead a defence of duress of threats the defence must be able to evidence that the threat was of serious personal injury or death: Hudson and Taylor (1971) DPP v Rogers (1998), the threat must be towards D or a member of his immediate family or some other person for whose safety D would regard himself responsible: Wright (2000), the threat must be immediate: Hasan (2005) not imminent, D must take advantage of any reasonable opportunity to escape or to raise the alarm: Gill (1963), D should seek police protection if possible: Hudson (1971). Whilst the defence can provide an excuse for criminal behaviour, it is narrow in its application, this is so that only those who are morally innocent are able to use the defence successfully. D has the burden of introducing the defence and then the burden lies with the prosecution to prove that D was not acting under duress

The defence will be denied to D if he is a voluntary member of a criminal gang: Sharp (1987), Harmer (2001), this is the case regardless of whether D foresaw the risk of being pressured to commit a crime or not. The defence is also not available if D just reacted to the threats and the threat must be one that the ordinary man could not have resisted: Graham (1982). D's belief in the threat must be reasonable: Nethercott (2001), Safi and others (2003), and that belief must have given him 'good cause' to fear the consequences threatened.

An objective test will also be applied which is, if the ordinary person sharing the same characteristics as D would have resisted the threats, the defence is unavailable: Hegarty (1994), Horne (1994), Bowen (1996). The objective test seeks to limit the availability of the defence by establishing a standard of fortitude expected of the ordinary person. In Hasan, it was held that the reasonable person is of the same age and background as D.

To successfully plead a defence of duress of circumstances the defence must be able to show that D felt threatened by the circumstances that he found himself in. This could be driving in extreme ways to escape a situation: Conway (1988), Bell (1992), Davis; Pittaway (1994). It was thought that the defence would only apply to driving offences, but in Pommell (1995) it was decided that the defence was of general application. It has been argued that the use of the defence in general circumstances has blurred the boundaries between duress of circumstances and necessity and the two have now become interchangeable.

Duress reflects an urgent act by D to avoid a perceived threat of immediate death or serious injury to himself or someone he is responsible for. The limitation on the defence seeks to impose a rough and ready balance between the seriousness of the threat and the offence excused.

The defence exists to excuse an individual for his actions due to the fact that his actions were involuntary, not in the literal and/or physical sense of the word but on the basis that he had no other choice.

**(b)**

The law in respect of self-defence has been codified by the enactment of s76 of the Criminal Justice and Immigration Act 2008 (CJIA 2008). However, s76 has been criticised by academics as being 'pointless' and 'patchy' which raises the question of whether the provision was necessary to clarify the common law provision.

Under common law, self-defence could be pleaded by a D who used reasonable force to protect himself from an attack which he honestly believed he would be subjected to: Palmer (1971) set down that self-defence requires proof of

subjective and objective tests i.e. that D honestly believed that the use of force was necessary (subjective) and that the force used by D was reasonable in the circumstances (objective).

Under common law, if a D makes a mistake, but his belief that force was necessary was honestly held, he would be able to rely upon self-defence: Williams (Gladstone) (1987). The D is judged according to the circumstances as he honestly believed them to be. This has been confirmed and was given statutory effect by s76(3). However, a mistake due to intoxication will preclude the defence as will the use of excessive or disproportionate force. The case of Martin (Anthony) (2002), raised the question of the use of self-defence by householders who attack intruders. This case led to pressure by the media on Parliament to clarify the law on self-defence and resulted in s76.

However, it can be argued that s76 fails to answer the questions posed by the media and merely restates the common law principles on self-defence and therefore, the section does not clarify the law. S76 was never intended to change the law on self-defence; its purpose was to improve the understanding of practical application of the defence.

In conclusion s76 appears to have added very little to the law. It could be argued that the codification of the law has failed to incorporate the key principles of criminal law that have been developed over the years. Therefore it could be said that not only does s76 not improve the law, it actually complicates the law.

**Question 4**

Result crimes are those requiring a proof of consequence, e.g. murder and manslaughter. The prosecution must be able to prove that D's act or omission (conduct) caused the resulting consequence. The jury must decide whether there is a causal link between D's conduct and the resulting consequence.

As result crimes are concerned with consequences, the nature of the act that brought about the consequence is unimportant, provided that it caused the consequence.

This is why establishing causation plays such an important role when dealing with result crimes.

There are two main legal principles that the jury have to consider when deciding whether causation is proven. They are:-

They must be satisfied that D's conduct was a factual cause of the victim's (V) death or injuries; and they must be satisfied that D's conduct was a legal cause of V's death or injuries.

Both must be established before D can be found liable for the offence/s for which he has been charged.

Factual causation is very straightforward and is determined by the application of the 'but for' test which was established in the case of White (1910) and is still good law. The 'but for' test sets out that the resulting consequences would not have occurred but for D's conduct. If the resulting consequence would have happened anyway then D will not be liable.

Legal causation requires an unbroken chain of causation leading to the resulting consequence. This means that, whilst the D need not be the sole, or even the

main cause of death, legal causation can be shown provided he makes a significant contribution to the result: Pagett (1984). Prior to Pagett, the case of Smith (1959) defined legal causation as the operating and substantial cause of the consequence.

In some cases, even where factual and legal causation can be proven, a novus actus interveniens (a new intervening act) can break the chain of causation and absolve the D of liability for the resulting consequence.

Intervening acts fall into three categories:

i) acts of the victim;
ii) ii) acts of third parties; and
iii) iii) medical negligence

Acts of the victim will break the chain of causation where they are 'daft' or 'unexpected' or 'unreasonable': Marjoram (2000), where V jumped out of a window as D was kicking open the door to his room; Corbett (1996), where V, whilst trying to get away from D, tripped and fell into the path of a passing car; Roberts (1972), where V jumped out of a moving car to escape what she perceived to be a threat from D and Williams and Davis (1992), where V again jumped out of a moving car to avoid being robbed. In all the above cases the V was attempting to escape harm or injury and it was held that the Vs' reactions were not so 'daft' or unreasonable as to break the chain of causation. This would appear to be a reasonable requirement and would mean that a reasonable attempt to escape by V would not break the chain of causation and absolve D of his original liability.

The thin skull rule provides that a pre-existing condition of the V which renders the V particularly vulnerable to the injury inflicted or death will not serve to absolve D of liability. The leading case in this area is Blaue (1975) in which V, having been stabbed by D, died after refusing a blood transfusion due to religious beliefs. The principle that D must take his V as he finds him is not confined to pre-existing physical or physiological conditions but includes religious beliefs. This would appear to be a little harsh on D but, if V had died before medical assistance had reached him/her, D would be liable so it is arguable that it should not be any different because V declined medical assistance.

A deliberate act by V will also break the chain of causation. In the case of Cato (1976) D injected V with heroin and V died. Causation was proven; D had caused V's death. However, in the cases of Dalby (1982), Dias (2002) and Kennedy (2007), D handed the syringe to V who self-injected the heroin and died. The chain of causation had been broken by V's deliberate and voluntary act.

V's neglect or mistreatment of any injuries caused by D will not break the chain of causation: Wall (1802), Holland (1841). In the more recent case of Dear (1996) D slashed V several times with a Stanley knife. V did not seek medical treatment and died two days later. It was held that D's conduct was the operating and substantial cause of V's death. This also could appear to be harsh on D but D has committed a criminal act against V and must accept that V could be afraid of hospitals or just irrational, so should still be liable for his initial unlawful act against V.

In the case of Benge (1865) it was held that the actions of third parties could break the chain of causation. The case of Pagett (1983) held that, where a third party's act is a reasonable response to D's initial act, the chain will not be broken. In the case of Watson (1989) V suffered a heart attack 90 minutes after

being burgled by D. D’s conviction was quashed on the basis that the chain of causation could have been broken by a third party intervention – the police boarding up a broken window.

The starting point in respect of cases where medical negligence could break the chain of causation is Smith (1959), where it was held that the chain of causation would only be broken if the medical negligence was so overwhelming that the original wound would merely be part of history and death did not result from the original wound.

A new test was proposed in the case of Cheshire (1991) where it was held that medical negligence would not break the chain of causation unless the medical treatment was so independent of D’s acts and so potent in causing death that it would render D’s acts insignificant. This approach has been followed in Mellor (1996), Gowans and Hillman (2003) and Warburton and Hubberstey (2006). It was also suggested in Cheshire that it was only in the most extraordinary and unusual cases that medical treatment would break the chain of causation and as long as D’s conduct was a significant contribution to death then a jury could convict on that basis.

Medical intervention will not break the chain of causation, unless it can be proven that the medical treatment was the operating and substantial cause of death not D’s original act. This appears to be a sensible solution as it would be wrong for medical professionals to found liable for V’s death when D was the original cause of the injury that subsequently led to V’s death.

This is why it is so important to establish a chain of causation as without an unbroken chain, a D would potentially be acquitted, where as a clear unbroken chain would provide that the causal link between D’s act and the prohibited consequence has been established, thus assisting the jury on decisions of guilt

## SECTION B

### Question 1

Caitlin’s liability in respect of Saeed

When Caitlin stabbed Saeed she caused a wound to his stomach that needed external and internal stitches. The relevant offences to consider are Grievous Bodily Harm (GBH) contrary to s18 and s20 of the Offences Against the Person Act 1861 (OAPA).

S20 OAPA is the unlawful and malicious wounding or inflicting of GBH upon any other person, either with or without any weapon or instrument. A wound consists of a break to both layers of skin: Eisenhower (1984). GBH means ‘serious harm’: Smith (1961), Wood (1830), Saunders (1985) and Bollom (2004). There must be foresight (or intention) of causing some harm: Mowatt (1968).

S18 OAPA says that D unlawfully and maliciously by any means whatsoever wounds or causes any GBH to any person with intent to do GBH. The offence is virtually the same as that for s20 OAPA except that there must be an intention to cause GBH for a s18 OAPA offence whereas a s20 OAPA offence can be caused recklessly.

The injury caused to Saeed, by Caitlin stabbing him, was a wound which required internal and external stitching.

The injury described would satisfy the criteria for both a wound and/or GBH contrary to s18 or s20 OAPA. The facts would indicate that there was an intention by Caitlin to cause serious harm to Saeed when she stabbed him it was a deliberate act. The relevant offence here would be s18 GBH.

Caitlin's liability in respect of Berta

When Caitlin threatened Berta 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, Caitlin threatened to stab Berta if she saw her with Saeed again. The prosecution will have to prove that Caitlin caused Berta to apprehend immediate physical violence as a result of the words used and Caitlin's demeanour at the time of making the threat. Given that Berta had already witnessed Caitlin stab Saeed it would be highly likely that she would be fearful that Caitlin would carry put her threat.

Whether Caitlin intended the comment she made to be a threat or not does not matter. It also does not matter that the assault was conditional upon Berta not seeing Saeed again, as this will still constitute an assault: Read v Coker (1853). The positive communication that she made to Berta means that she was reckless as to whether she caused Berta to fear immediate personal violence or not.

Defence

Caitlin may try to rely on the defence of intoxication. 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. Caitlin took a dangerous intoxicant in the form of alcohol.

Intoxication can be 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.

Caitlin was voluntarily intoxicated by choosing to drink alcohol to excess. Whether she can use the defence will depend on whether the crime was one of specific or basic intent. As common assault is a crime of basic intent the defence would not apply as Caitlin's act of getting drunk was reckless in itself.

There is no suggestion that Caitlin got drunk to give her Dutch courage to commit the offence as we are told that she was already drunk before she realised that Saeed and Berta were in the restaurant.

It would appear that Caitlin intended to hurt Saeed and she was voluntarily intoxicated. S18 GBH is a crime of specific intent and the defence may be available provided that Caitlin was too drunk to form the necessary intent. However, as Caitlin intentionally stabbed Saeed, it would be no defence to argue

that she would not have done so had she been sober. She could be guilty of GBH even though the intoxicant may have impaired her ability to judge between right and wrong: a drunken intent is still an intent: DPP v Beard (1920).

**Question 2**

Appointment with the bank manager

In respect of the false statement made about his employment status in his application for a loan, Jacob could be charged with fraud by false representation contrary to s2 of the Fraud Act 2006 (FA).

The AR for s2 FA requires that Jacob made a false representation: Barnard (1837). He did this when he said in his loan application that he was a self-employed builder when really he was unemployed. The MR requires that Jacob knew that the representation was or might be untrue or misleading under s2(2)(a) and (b): Cornelius (2012). As Jacob is unemployed, 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 Jacob's conduct as dishonest and Jacob should realise this.

Finally consideration would have to be given as to whether Jacob 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 in the loan application, Jacob was hoping to gain financially and use the money to pay his gambling debt.

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

Damage to the bank

In respect of posting a burning rag through the letterbox of the bank, Jacob could be liable contrary to s1(1) and (3) of Criminal Damage Act 1971 (CDA) of causing simple criminal damage by arson.

S1(2) aggravated criminal damage is unlikely to be relevant here as it was night time, the bank is a commercial property and the bank was shut, there should not have been anyone in the bank. Therefore it is unlikely that Jacob intended or was reckless as to endangering life by his actions.

The AR of s1(1) CDA is that without lawful excuse D's conduct destroys or damages property belonging to another. The MR is where D intends or is reckless as to destroying or damaging the property.

To prove arson under s1(3) CDA, the AR and MR are the same as for s1(1), the difference is that for this offence the damage has to be caused by fire.

Causing damage to the carpet will constitute the damage of property by fire. The carpet is the property of the bank s10(2) CDA. It is highly unlikely that Jacob would be able to argue that he honestly believed that the bank would consent to the damage s5(2)(a) CDA 1971.

The MR would also be satisfied as Jacob was obviously either intending to cause damage to the bank or at least was reckless that damage would be caused to the bank.

Assault on Annalise

When Jacob pushed Annalise he could be guilty of a battery contrary to s39 Criminal Justice Act 1988 (CJA). Jacob intentionally: Venna (1975), Savage; Parmenter (1989) inflicted personal violence on Annalise: Rolfe (1952). Annalise did not give Jacob permission to assault her, therefore the contact was both physical: Ireland; Burstow (1998) and unlawful.

Jacob carried out an unprovoked assault on Annalise. He pushed her, which means that he intended to cause some injury to her but was reckless what the result would be. If the injury had been minor and non-permanent, Jacob would have been liable for battery contrary to S39 CJA in respect of the unprovoked assault on Annalise.

However, we are told that Annalise suffered a sprained wrist and severe bruising to her arm which means that we should consider assault occasioning Actual Bodily Harm (ABH) contrary to s47 of the Offences Against the Person Act 1861 (OAPA).

ABH contrary to s47 OAPA is the intentional or reckless infliction of unlawful violence upon someone: 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). Whilst it may include psychiatric harm: Ireland (1998), it does not include mere emotions such as fear or panic, or states of mind which are less than an identifiable clinical condition.

When Jacob shoved Annalise it was an unprovoked assault. The injury sustained by Annalise was a sprained wrist and severe bruising to her arm. This would constitute an injury which was more than transient or trifling and would interfere with her comfort. Jacob should have been aware that there was a risk that his actions towards Annalise could cause her injury.

Therefore, Jacob could be liable for ABH contrary to s47 of OAPA.

Damage to the phone

Finally, when Jacob stamped on Annalise's phone he committed an offence of simple criminal damage contrary to s1(1) of CDA as without lawful excuse his conduct destroyed Annalise's phone and his intention was to destroy or damage the phone.

**Question 3(a)**

In relation to Ed's criminal liability for the death of Gaynor, he has committed the AR for murder. Gaynor was a human being and her death occurred within the Queen's Peace and was unlawful. Ed caused Gaynor's death both in fact and law. Factual causation is established because, but for Ed's actions Gaynor would not have died at that time. In respect of legal causation, Ed's actions are the sole cause of death therefore his actions did contribute significantly towards her death: Pagett (1983).

The potential problem in this scenario lies with the MR. We must consider whether Ed intended to kill Gaynor or to cause her GBH. Two types of intention exist in criminal law, direct intention and indirect/oblique intention.

Direct intention has been defined by Mohan (1976) as a person desiring to bring about the consequences of his actions, this has been approved by Gillick (1986).In this case it could be argued that Ed's aim or purpose was not to kill Gaynor or to cause her GBH, but it was to end her suffering. If this is accepted then killing her was not Ed's direct intention.

Indirect or oblique intention has been developed over a number of years and though many cases. The current leading authority in respect of indirect/oblique intention is the case of Woollin (1998). This defines indirect/oblique intention as D intends a result if he knows that, barring all unforeseen circumstances, the result is a virtually certain consequence of his conduct.

Applying Woollin to this scenario, the question would have to be asked whether death or GBH was virtually certain to occur and did Ed appreciate that this was the case. It is clear that Ed would have foreseen Gaynor's death as virtually certain to occur as a result of his actions, therefore oblique intention can be established.

There would be no defence available to him as in the recent cases of Inglis (2011) and Nicklinson v Ministry of Justice (2012) it was decided that there was no special defence for those who kill out of compassion, therefore, mercy killings and euthanasia are murder. Consequently, in this case the AR and MR for murder are present and Ed will be guilty of the same.

**(b)**

In relation to Hannah's liability for the death of Richard, she has unlawfully caused Richard's death within the Queen's peace with the intention to kill or cause GBH: Vickers (1957). She is the factual: White (1910) and the legal: Cheshire (1991) cause of Richard's death. Therefore, the AR for murder is made out.

The MR for murder may also be made out as it could be said that even if she did not have the direct intention to kill Richard, she obviously intended to cause GBH, and death or GBH was almost certain to occur as a result of her actions. Hannah would be liable for the murder of Richard.

Hannah may be able to rely on one of the partial defences to murder. If this is the case her liability could be reduced to voluntary manslaughter. The partial defences to murder are diminished responsibility and loss of control.

She would not be able to rely on diminished responsibility as there is no evidence of an abnormality of mental function or a recognised medical condition that may have provided an explanation for her actions.

Hannah may be able to rely on the defence of loss of control under s54(1) of the Coroners and Justice Act 2009 (CJA 2009). There are three main elements to the defence: a) at the time of the killing, Hannah must have suffered a loss of self-control; b) There must have been a qualifying trigger under s55 CJA 2009; and c) someone of the same age and sex as Hannah, with a normal degree of tolerance and self-restraint and in the same circumstances of Hannah, might have reacted in the same or similar way.

Whether Hannah lost control or not is subjectively assessed. Under s54(2), it does not matter whether the loss of control was sudden or not Ahluwalia (1992). On the facts, there appears to be sufficient evidence to suggest that Hannah

might have suffered a loss of control. Next we have to consider whether there was a qualifying trigger under s55.

The qualifying triggers are:-
S55(3) that D's loss of control was attributable to D's fear of serious violence from V against D or another identified person;
S55(4) that D's loss of control was attributable to a thing said or done (or both) which either a) constituted circumstances of an extremely grave character, and b) caused D to have a justifiable sense of being seriously wronged.

Hannah will not be able to claim that there was a qualifying trigger under s55(4), because Keith's confession that he was having an affair with Richard constitutes an exclusion under s55(6)(c) which sets out that the defence is not available to a defendant who lost control and killed another, when the thing said or done that caused D to lose control was sexual infidelity.

In the case of Clinton (2012) it was found that where a D's loss of control was based solely on sexual infidelity, then the defence could not be used. If, however, sexual infidelity is considered alongside other evidence which is admissible in support of a qualifying trigger, it would be unjust to exclude it when it was integral to the facts as a whole.

Applying this to the facts, it would appear that Hannah would not be able to rely upon the defence of loss of control as her loss of control was caused solely by Keith's confession of sexual infidelity, therefore she would be liable for the murder of Richard.

**Question 4**

Dean's potential liability

The first offence is potentially committed when Dean decided to keep the book. Dean could be liable for theft contrary to S1 Theft Act 1968 (TA).

Under s1 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.

Under s3 appropriation is any assumption of the rights of an owner. 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. In Dean's case there is an appropriation as even though Mai originally loaned him the book, he later assumed a right to it by keeping it.

The book constitutes property under s4 and it belonged to Mai. Therefore, as far as the AR for s1 TA is concerned, Dean appropriated property, the book, which he knew belonged to Mai and he assumed the rights of the owner by putting it in his cupboard.

The MR for Theft is set out in s's 2 and 6 of the TA. The problem in this case is whether Dean was dishonest and had the intention to permanently deprive Mai of the book.

Under s6 TA it is sufficient that D has the intention to permanently deprive: Morris (1983) Wheatley and another (2006). Intention can be inferred if D intended to treat the property as his own by disposing of it regardless of V's rights: Cahill (1993) Lloyd (1985). S6(1) states that borrowing or lending is not

theft unless it is for a period and in circumstances making it equivalent to an outright taking or disposal.

Applying this to the facts, it would seem that Dean did have an intention to permanently deprive Mai of the book as he wanted the book, could not afford it and decided to keep Mai's copy of the book instead.

Under s2 dishonesty is defined by what is NOT dishonest; which includes if D believes he would have the owner's consent to the appropriation, if D believes he has a right in law to deprive the other of it or if D believes that the owner of the property cannot be traced by taking reasonable steps.

If none of these defences apply then consideration must be given as to whether the appropriation was dishonest according to the common law test established in the case of Ghosh (1982). In Ghosh a two limbed test was established and both limbs must be satisfied to prove dishonesty. Firstly was D's appropriation dishonest according to the ordinary standards of reasonable and honest people? This is the objective element and only if the answer to this question is 'yes' would you proceed to the next limb; was D aware that reasonable and honest people would regard this appropriation as dishonest? This is a subjective test and if the answer is 'yes' then D is dishonest.

It would seem that Dean would not be able to rely on any of the definitions in S2 TA and application of the Ghosh test would indicate that the appropriation of the book was dishonest.

Dean would potentially be liable for theft of the book.

Mai's liability

Mai could be liable for burglary contrary to s9(1)(a) and/or s9(1)(b) of the TA.

Under s9(1)(a) of 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. Under s9(1)(b) a person will be guilty of burglary if after having entered any building or part of a building as a trespasser he steals or attempts to steal or inflicts or attempts to inflict GBH on any person therein.

On the facts provided it could be said that when Mai entered Dean's house she did not have the intention to steal, she only intended to retrieve her property; that being the case, she would not be liable for burglary under s9(1)(a) TA 1968.

In this case Mai knew that she was trespassing as she did not have Dean's permission to be in the house: Collins (1973). Having entered as a trespasser, she potentially stole property belonging to the owner – Dean's computer game. There is no requirement of prior intent to commit an offence for an offence under s9(1)(b), however to prove a s9(1)(b) offence, theft or GBH has to be committed or attempted.

Whilst Mai did enter Dean's house as a trespasser, again the problem would be proving the presence of the MR for theft, as s9(1)(b) burglary requires that she stole or attempted to steal from within.

We have to consider s1 TA to decide whether the MR is made out, as the AR for theft is potentially made out. In taking the computer game, Mai appropriates property belonging to Dean. It is unlikely that Mai will be found to have the

intention to permanently deprive Dean of the computer game as she was going to give it back to him when he returned her book. Mai is unlikely to be able to rely on any of the situations identified in s2 as not being dishonest. Although she may consider that it is fair to take the computer game, this is unlikely to amount to a belief in a legal right to the property. However, the jury will also have to consider dishonesty using the Ghosh test and it is unlikely that a jury would conclude that she was dishonest in the circumstances.

In this case, Mai would not be liable for burglary or theft.

However, should Dean decide to keep the book and Mai then decides to keep the computer game she could then be liable for burglary contrary to s9(1)(b).