



## CHIEF EXAMINER REPORT

**June 2024**

**LEVEL 6 UNIT 3 – CRIMINAL LAW**

The purpose of the suggested points for responses is to provide candidates and Training Providers with guidance as to the key points candidates should have included in their answers to the June 2024 examinations.

The suggested points for responses sets out points that a good (merit/distinction) candidate would have made.

Candidates will have received credit, where applicable, for other points not addressed.

## Chief Examiner Overview

Overall, this paper was done to a great standard, with some very high marks awarded. The questions involving murder and voluntary manslaughter were done very well, with candidates able to describe, explain and apply the law to the scenarios to a good standard. The question on burglary was also done well, with many candidates able to discuss the difference between s9(1)(a) and s9(1)(b) and correctly apply it to the scenario. One key area of strength with Section B was the structure of answers and use of case law, which is the best it has been in the last few years. Section A question 2, regarding consent, was done to a very good standard by many candidates, with answers showing sound knowledge of the applicable law, case law and advancements in the area with the case of R v BM. The structure of Section A answers was consistent and done well throughout most answers, with an introduction, description and explanation of the applicable law, and then arguments/reform with a conclusion. This is a great approach for higher grades in the future.

The approach to 10-15 mark questions should be the same as the higher mark questions (structure, depth, analysis) however there are less discussion points in these questions. Secondly, Section A answers will always require a level of analysis of different topics; the best answers to these questions provided a description and explanation of the applicable law/case law, and then advantages/disadvantages/reasons for/reasons against the topic being discussed, along with any areas of reform. Candidates should keep this in mind when revising for their exam.

## Candidate Performance and Suggested Points for Responses

It is noted that the low numbers of candidates taking the Level 6 exams limits the scope for constructive feedback to be given and for firm conclusions to be reached. Therefore, feedback on candidate performance may be limited.

### Section A

Question 1	25 marks
Most candidates were able to describe and explain novus actus interveniens and discuss the main part of the question which required a focus on cases such as Roberts for the victims own act. A number of candidates missed out on the recent case decision of Berlinah and the outcome of that case, which the question was asking for.	
<b>Suggested Points for Response:</b>	
<ul style="list-style-type: none"><li>• Description and explanation of the law on novus actus interveniens including relevant case law throughout – important to note the recent case of Wallace (Berlinah) and the impact of the victims own act.</li><li>• Discussion of the advantages and disadvantages of the law.</li><li>• Description and explanation of causation, specifically legal causation, and the break in the chain of causation due to an intervening act.</li><li>• Discussion of applicable case law including Roberts, Wallace (Berlinah), Williams and Davis, Pagett, Jordan</li><li>• It is important that Candidates can describe and explain the concept of intervening acts with specific focus on the victims own act, but also can provide an overview of intervening acts as a whole.</li><li>• An explanation of possible reforms:<ul style="list-style-type: none"><li>• any academic/Law Commission reform proposals</li><li>• A reasoned conclusion</li></ul></li></ul>	

Question 2	25 marks
Candidates were able to describe and explain the defence of consent, the exceptions and applicable case law such as Barnes, Brown and Wilson.	
<b>Suggested Points for Response:</b>	
<ul style="list-style-type: none"><li>• Discussion of the law relating to consent - General rule Brown and others (1993), consent can be a defence to assault and battery, but cannot be a defence when any harm is caused. Implied consent relates to everyday touching</li><li>• Situations where consent can be a defence – A-G’s Reference (No6 of 1980) (1981) test for consent is “whether there is a good reason for the Actual Bodily Harm” (ABH). Good reasons include:-<ul style="list-style-type: none"><li>i) Religious and/or medical reasons</li><li>ii) Tattooing and branding</li><li>iii) Some forms of sexual activity</li></ul></li><li>• Situations where consent cannot be a defence<ul style="list-style-type: none"><li>i) Sadomasochistic behaviour</li><li>ii) Street fighting</li><li>iii) Deceit as to the identity of the defendant or the nature and quality of the act</li></ul></li><li>• The House of Lords in the leading case of Brown (1993) attempted to clarify the law in relation to consent and the deliberate infliction of physical harm.</li></ul>	

- Lord Templeman in the above case concluded that sadomasochistic behaviour was not in the public interest and there should be sufficient safeguards against exploitation and corruption of others.
- Decisions since Brown (1993) have sought to develop the common law position in this area. A discussion of R v BM is crucial to show advancements in this area.
- There are still difficulties in this area drawing a line between violent acts which can be said to be in the public interest (ie contact sports) and those which are not.
- An explanation of possible reforms:
- any academic/Law Commission reform proposa

Question 3	25 marks
candidates seemed to be able to recite basic knowledge in the area with applicable case law but stumbled on the critical assessment. Some candidates provided advantages and disadvantages.	
Suggested Points for Response:	
<ul style="list-style-type: none"> <li>• Identification and description of strict liability offences</li> <li>• Reference to Gammon guidelines</li> <li>• Discussion of the statutory defence</li> <li>• Explanation of offences with case law to support – Sweet v Parsley, Gammon, Blake, B v DPP, R v K and developing case law.</li> <li>• Analysis of arguments for and against strict liability <ul style="list-style-type: none"> <li>▪ For – public interest, health and safety and any other arguments for</li> <li>▪ Against – unfair and unjust, lack of mens rea and any other arguments again</li> <li>▪ A coherent conclusion that sums up the arguments made</li> </ul> </li> <li>• An explanation of possible reforms: any academic/Law Commission reform proposals</li> <li>• A reasoned conclusion which is supported with evidence</li> </ul>	

Question 4a	10 marks
QA4(a) was done well. candidates were able to discuss mens rea as a whole but struggled to argue whether negligence should be the bases of the MR.	
Suggested Points for Response:	
<ul style="list-style-type: none"> <li>• Identification and description of negligence forming the mens rea in criminal offences</li> <li>• Explanation of circumstances in which negligence gives rise to criminal liability</li> <li>• Evaluation of negligence as a basis of criminal liability with reference to gross negligence manslaughter.</li> <li>• Relevant case law – Elliot v C, Adomako, Robinson v CCWYP and developing case law.</li> <li>• An explanation of possible reforms:</li> <li>• any academic/Law Commission reform proposals</li> </ul>	

Question 4b	15 marks
QA4(b) was done well overall, with candidates showing sound knowledge and understanding of transferred malice and applicable case law. The analytical element of the question was attempted but more is needed for higher grades.	
Suggested Points for Response:	
<ul style="list-style-type: none"> <li>• Identification and description of the concept of transferred malice</li> <li>• Explanation of circumstances in which transferred malice can form the mens rea of a crime</li> <li>• Differentiation between transferred malice between people and property.</li> <li>• Evaluation of transferred malice and whether it should form the mens rea of a crime</li> <li>• Relevant case law – Latimer, Pembliton, Gnango and developing case law.</li> <li>• An explanation of possible reforms:</li> <li>• any academic/Law Commission reform proposals</li> </ul>	

## Section B

Question 1	25 marks
Candidates were able to describe and explain the law on murder with applicable case law, along with the defences of diminished responsibility and intoxication, both of which were done well. An area of improvement in this question is delving deeper into the AR/MR of murder, as a lot of Candidates brushed past this.	
Suggested Points for Response:	
<ul style="list-style-type: none"> <li>• Identification and discussion of murder</li> <li>• Explanation of the actus reus of murder</li> <li>• Explanation of the mens rea of murder</li> <li>• Application of scenario - actus reus is satisfied - possible intervening act by Heather but Candidates should argue that her action is not the 'more than minimal' cause of death.</li> <li>• Candidates may discuss self-defence with regards to the 'unlawful' element, but this should be discounted - mens rea is satisfied - 'intending to kill him'.</li> <li>• Identification and discussion of partial defence of diminished responsibility</li> <li>• Explanation of the test - abnormality of mental functioning, recognised medical condition, substantial impairment and provides an excuse for the conduct.</li> <li>• Application to scenario - discussion of the recognised medical condition (BPD) should be made and the correlation between the RMC and voluntary intoxication.</li> <li>• Key discussion of voluntary intoxication needed in relation to specific intent.</li> <li>• Possible discussion of defence of insanity should be credited alongside a discussion of diminished responsibility.</li> </ul>	

**Question 2**

25 marks

Burglary was done to a very good standard by most, however, candidates often missed out the discussion of theft. A lot of candidates identified s47 ABH rather than s18/20 GBH, and some candidates missed out Lauren's depression. Self-defence was done well.

**Suggested Points for Response:****Petra**

- Identification and discussion of burglary under section 9 Theft Act 1968
- Explanation of the elements of burglary - entry, building, trespasser, intention element and difference between s9(1)(a) and s9(1)(b)
- Application to scenario - discussion of s9(1)(a) due to the intent being formed before the entry, entry ('enter the building'), building ('pub'), trespasser (pub was closed and Petra did not have prior authorisation). Discussion of 9(1)(b)
- Identification and discussion of s1 Theft s2-6 with applicable case law
- Identification and discussion of s47 ABH OAPA 1861
- Explanation and application of the elements of s47 actus reus satisfied – mens rea satisfied – Petra was reckless – discussion of psychiatric harm needed in regard to Lauren
- Applicable case law – Chan Fook (1994), Miller (1954)

**Alfie**

- Identification and discussion of s20 GBH OAPA 1861
- Explanation and application of the elements of s20 – actus reus satisfied (Eisenhower, DPP v Smith, use of a weapon) mens rea satisfied – Alfie could foresee harm (Savage)
- Possible discussion of s18 GBH due to MR.
- Identification and discussion of defence of self – defence under s76 CJIA 2008.
- Explanation and application of the elements of self-defence with a specific focus on self-defence of property
- Application to scenario – likely self – defence will be successful due to Martin (2002) and householder cases

Question 3	25 marks
Candidates who did choose this question did well when discussing s18 with Wayne but struggled with Billy. More focus on fraud/conspiracy etc might be needed in classrooms.	
Suggested Points for Response:	
<p><b><u>Billy</u></b></p> <ul style="list-style-type: none"> <li>• Identification and discussion of fraud under the Fraud Act 2006</li> <li>• Explanation of the actus reus of fraud by false representation – making a false representation, and the mens rea of fraud by false representation – dishonesty, intention to make a gain or cause a loss to somebody else and knowledge that the misrepresentation is or might be untrue or misleading.</li> <li>• Application to the scenario – a false representation has been made dishonestly with intention to make a gain/cause a loss with knowledge.</li> <li>• Likely to be found guilty of fraud.</li> <li>• No defences available</li> </ul> <p><b><u>Wayne</u></b></p> <p>Identification and discussion of s18 GBH OAPA 1861</p> <ul style="list-style-type: none"> <li>• Explanation and application of the elements of s18 – actus reus satisfied (Eisenhower, DPP v Smith) mens rea satisfied – oblique intention</li> <li>• No defences available</li> <li>• Candidates may discuss the partial defence of loss of control but there are to be no marks awarded here as there is no murder committed.</li> </ul>	

Question 4a	15 marks
This question was again done well. Candidates were able to identify criminal damage and aggravated criminal damage, with applicable case law, however, candidates missed the key discussion of recklessness and Victoria's age of 15, leading them to the wrong conclusion.	
Suggested Points for Response:	
<p><b><u>Victoria</u></b></p> <ul style="list-style-type: none"> <li>• Identification and discussion of criminal damage and aggravated criminal damage under s1/s1(2) Criminal Damage Act 1971</li> <li>• Explanation of the actus reus of criminal damage – destroy/damage, property, belonging to another</li> <li>• Explanation of the mens rea of criminal damage – intention or recklessness to the act</li> <li>• Explanation of aggravated criminal damage as the actions may have endangered life.</li> <li>• Application to the scenario – Victoria has destroyed/damaged the small tree/garden which is property that belongs to Gino's family. Victoria had the intention to do the act and was reckless with her actions.</li> <li>• Key discussion needed of her age – 15 – and a discussion of the subjective test in R v G and another (2003)</li> <li>• Application to the scenario - likely to be guilty of s1 criminal damage</li> <li>• Application to the scenario – unlikely to be found guilty of aggravated criminal damage due to her age</li> </ul>	

Question 4b	10 marks
This question was done to an adequate standard by most candidates, however, many missed out the key issue of intention and murder, with some only discussing gross negligence manslaughter.	
Suggested Points for Response:	
<b><u>Lina</u></b>	
Identification and discussion of murder	
<ul style="list-style-type: none"><li>• Explanation of the actus reus and mens rea of murder - a key discussion of omissions is needed here along with possible intent to kill/cause GBH. Voluntary assumption of duty of care is also relevant.</li><li>• Application of scenario - actus reus is satisfied – unlawful killing of a human being under Kings peace (refuses to call ambulance satisfies this – mens rea is satisfied – intent to kill or cause GBH (Saira ‘does not like Mohammed’ and the jury could assume she had intent to kill or cause GBH. A discussion of gross negligence manslaughter can also be credited.</li><li>• Likely to be found guilty of murder due to the judgment in Stone v Dobinson.</li><li>• Candidates may discuss gross negligence manslaughter, but this should be alongside a discussion of murder.</li></ul>	