Questions matter

A-level

Law

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Report on the Examination

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Introduction

From this exam season it was evident that there were some impressive answers across the range of questions.

Strong answers included accurate explanation of legal principles supported by legal authority. Within scenario questions, answers also included application that was clear, concise, and selected appropriate facts from the scenario to build and support the arguments presented. Use of legal terminology was consistently good with few errors.

It was pleasing to see that there were fewer instances of questions 10 and 11 not being attempted. Answers to Questions 10 and 11 also showed an improved ability to identify the range legal issues based on the facts of the problem however these were developed to varying standards.

Students should again be reminded to focus directly on the specific requirements of the question as conveyed by the instruction. For example, question 08 directed students to the defence of diminished responsibility however a number of students discussed the offence of murder or alternative defences. Such discussions were outside the scope of the question and in addition to wasting valuable time they received no credit.

Despite some excellent answers, there were a high number of students who did not attempt Question 09. Centres should be reminded that theory within criminal law can be examined within Question 09. Theory was assessed in Paper 1 in 2021 and an example was previously supplied in Specimen Paper 2 (SAMs (2)) for Paper 1.

Question 1

The correct answer was D 'The defendant must have intended death or serious injury.'
This answer was selected by about 80% of students, showing good understanding of the mens rea of murder.

The most common wrong answer selected was B which was incorrect as it failed to recognise that the actus reus of murder can be committed via an omission.

Question 2

The correct answer was B 'The defence of duress is available if the defendant acted due to serious threat to their reputation.'

This answer was selected by about 70% of students. This is a false statement as the defence of duress is only available if the defendant acted due to a threat of death or serious injury.

Question 3

The correct answer was B, 'The defendant will be asked to plead guilty or not guilty.' This answer was selected by about 60% of students.

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The most common wrong answer selected was A. 'Any defence raised by the defendant must be proved beyond all reasonable doubt.' This was incorrect as when a criminal defence e.g. insanity is raised, it is for the defence to establish the defence on 'the balance of probabilities.'

Question 4

The correct answer was A, 'The BSB can disbar a barrister who has breached the code of conduct.'

This answer was selected by about 25% of students. This is the correct answer (false statement) as the decision to disbar a barrister will be made by a tribunal and not the BSB. For more information see The Bar Tribunals and Adjudication Service.

Question 5

The correct answer was D, 'The courts may choose to modify the meaning of a word in a statute to avoid an absurd outcome.'

This answer was selected by about 80% of students indicating good understanding of the rules of statutory interpretation.

Question 6

The question asked students to explain three of the roles of a magistrate in a criminal case.

It was pleasing to see that many students were able to accurately write about the role of magistrates in a criminal case. There were some detailed responses that identified and explained three of the following roles:

- deal to conclusion with all summary offences and many triable -way offences
- deal with preliminary work. For example: Early Administrative Hearings and bail applications
- where the defendant pleads guilty or is found guilty decide a sentence, or for triable either-way offences, can commit for sentence to the Crown Court
- deal with the initial hearing of an indictable only offence and transfer the case to Crown Court for trial
- may sit in the Youth Court and hear charges against young offenders
- sitting on appeals in the Crown Court.

Some answers showed confusion regarding the role of magistrates as they incorrectly identified that their role involved advising the jury or helping them to reach a verdict.

Other weaker answers strayed into selection and appointment of magistrates which could not be credited.

Students should be reminded to follow the instruction within the question as those who only identified one/two roles or gave no explanation could not gain full marks.

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Question 7

This question asked students to suggest why, in the circumstances of the scenario, Alicia probably did not commit the actus reus of an attempted robbery.

A good answer required students to:

- identify and explain the actus reus of an attempted robbery
- apply their explanation to the facts of the scenario to establish that the elements were not satisfied
- conclude that Alicia therefore did not commit the actus reus of an attempted robbery.

There were many good answers which followed the structure above. It was pleasing to see that many students could accurately define the actus reus and give a brief expansion of an approach or approaches to defining 'more than merely preparatory.' Although not required, many students were able to make good use of cases such as Geddes and/or Gullefer. Their definitions were then applied to the facts to conclude that Alicia had not done something more than merely preparatory eg because she did not enter the bank.

Many low scoring answers did not follow the question's direction and included detailed discussion of the offence of robbery with no reference to the law of attempts. Although these answers often showed correct legal explanation of robbery, discussion of the law of attempts was the essence of what was required by the question set. Consequently, discussion of robbery in itself could not receive credit.

Question 8

This question asked students to advise Bert on whether, in the circumstances of the scenario, he could successfully plead the defence of diminished responsibility.

A good answer might have included:

- identification and outline explanation of the elements needed to prove the defence of diminished responsibility
- application of each of the elements of the defence to the facts of the scenario to explore whether they were satisfied
- a conclusion clearly advising whether the defence would be successful based on the arguments presented.

Students appeared well prepared for this question and followed a logical approach by explaining and applying each element of the defence before reaching a conclusion.

Many answers successfully outlined the framework of the defence from section 2 of the Homicide Act 1957. Strong answers provided a concise, legal definition of each element supported by case law eg Byrne, Golds etc

Strong answers then applied each element with careful consideration given to the facts of the scenario in order to construct their legal argument.

Application commonly included the following:

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- the assertion that the jury are likely to find that Bert's state of mind at the time of the killing was 'abnormal' due to his belief that he could see wild animals
- evidence of Bert's hallucinations is likely to indicate a (specified or unspecified) recognised medical condition that he would need to prove with medical evidence
- Bert's ability to understand the nature of his conduct was substantially impaired as he believed, due to hallucinations, that his wife was an animal and so he was unaware that he was attacking a human being
- finally answers explored the causal connection between the abnormality and the killing before reaching a conclusion. Many students concluded that the defence was likely to succeed, and Bert would be convicted of voluntary manslaughter.

Weaker answers failed to explain and/or apply each element, most frequently the causal connection between the abnormality and the killing was not included.

Common errors were seen in answers where students confused elements of diminished responsibility with those of insanity and/ or the defence of loss of control. These discussions could not be credited.

Although uncommon, some responses are using old law and referring to an 'abnormality of mind' rather than an 'abnormality of mental functioning.' This language was updated by the Coroners and Justice Act 2009 and should be used by students.

Question 9

This question required students to address two aspects:

- the principles of correspondence and maximum certainty
- the extent to which the offence of murder complies with the principle of correspondence.

It was pleasing to see some excellent answers to this question that showed understanding of the principles and the ability to illustrate them with a range of examples. However, many students did not attempt to answer the question indicating a lack of preparation.

When addressing the principle of maximum certainty strong answers included the following:

- a definition of the principle including some/ all of the following: the need for the law to be clear/ unambiguous to prevent unjust outcomes and protect the public from arbitrary use of state power, the need for the law's legal implications to be foreseeable and answers related this point to the ability for a person to receive accurate legal advice
- an example to illustrate the principle; many answers used the case of Misra and the uncertainty as to the meaning of 'gross' in the offence of gross negligence manslaughter.

Weak answers showed a misunderstanding of the meaning of maximum certainty, often incorrectly relating the principle to standard of proof.

When addressing the principle of correspondence strong answers included the following:

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- a definition of the principle including: the required actus reus and mens rea of an offence should match and although not required, some answers connected this to the principle of fair labelling
- an example to illustrate the principle. Many answers correctly identified the presence of correspondence within offences such as assault and battery and then went on to ~~onto~~ discuss constructive liability within offences such as s47 OAPA 1861 and unlawful act manslaughter.

Weak answers confused correspondence with the principle of contemporaneity (the actus reus and mens rea should occur at the same time).

When addressing the second aspect of the question, strong answers used their explanation of the correspondence principle to show that murder did satisfy the principle through express intention (the intention to kill) but not implied intention (intention to cause serious harm). Those that did this scored highly.

There were a number of responses that achieved no credit for this question as they wrote, at length, about other topics such as justice or fault.

Question 10

Question 10 required students to consider:

- the liability of Dean for the unlawful act manslaughter of Ezra
- the liability of Dean for theft and robbery in relation to the stolen bracelet
- the defence of intoxication.

When considering unlawful act manslaughter, many answers provided the framework of the offence developed with accurate legal definitions. This was applied with considered analysis of the facts before reaching a conclusion.

In addition, a good answer in respect of unlawful act manslaughter might include:

- identification that the unlawful act was an assault that took place when Dean ran towards Ezra shouting that he would 'hurt him' if he did not return the money that he owed to Dean. This caused Ezra to apprehend (Lamb) immediate force/ violence as he immediately 'panicked' and turned to get away
- explanation of the objective test (Church) including the requirement for sober and reasonable people to foresee that the unlawful act would expose the victim to at least the risk of some harm resulting from it. Stronger answers developed their explanation to include that the specific harm need not be foreseen (JM and SM)
- explanation of causation in fact (Pagett) and application of the 'but for' test by asserting that Ezra would not have died but for Dean running towards him and threatening him. Explanation of causation in law (operating and substantial cause) with consideration of the two issues raised by the facts of the scenario. The first issue related to the victim's own act as Ezra had 'hastily' turned to get away resulting in him tripping and losing consciousness. Strong answers explored whether Ezra's response would be considered reasonable (Roberts) or unreasonable (Williams) with most students concluding that Ezra's own act was ~~is~~ unlikely to break the chain of causation as his actions were likely to be considered reasonable and foreseeable based on his fear of harm. The

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second causation issue related to Ezra suffering a 'rare' allergic reaction requiring explanation and application of the thin skull rule (Blaue)
- the mens rea element was dealt with well and many students explored the facts of the scenario and suggested that Dean satisfied the mens rea of assault via intention or subjective recklessness. Either argument was creditworthy.

Weaker responses gave only partial discussion of the offence or incorrectly identified the unlawful act. Some responses failed to address the causation issues, incorrectly asserting that there were no causation issues within the scenario.

With respect to Dean's liability for the theft of the bracelet many students accurately explained and applied the actus reus elements (appropriation, property, belonging to another) Often showing good understanding of legal principles supported by legal authority. Weaker answers made assertions regarding the actus reus of theft by simply stating that the elements were present without explaining the law.

In relation to mens rea, most students gave a brief explanation of the elements (dishonesty, intention to permanently deprive). However, more development was needed based on the facts of the problem and may have included:

- consideration of provisions under s2(1) regarding situations when a person will not be considered dishonest. Offering arguments to suggest that as Dean was owed £100 by Ezra, he may believe he was entitled to take the bracelet in order to cover the debt s2(1)(a). Concluding, based on the facts, whether such argument is likely to be successful
- consideration of dishonesty through the objective test confirmed in Barton and Booth, concluding that it is likely that ordinary, reasonable people would see Dean's conduct as dishonest because he took the property without permission
- the final element of the mens rea (intention to permanently deprive) was omitted from a high number of answers. Answers which addressed it stated the law and applied to suggest that there were no facts to indicate that Dean intended to give the property back and so he had intention to permanently deprive Ezra of it. This was sufficient for this element within the answer.

Although seen less frequently some students are still relying on old law when explaining dishonesty within theft. It is important to note that the objective test from Ivey v Genting Casino Ltd, confirmed in Barton and Booth, should now be used in place of the Ghosh test.

With respect to Dean's liability for robbery, the arguments presented varied depending on the conclusions made in relation to the theft. Strong answers considered the elements of robbery with supported analysis and evaluation based on the facts of the scenario. Many argued that there was a completed theft and that Dean's threat to 'hurt' Ezra if the money was not returned 'immediately' may satisfy the requirement that there was a threat of force. This was developed further to consider whether the threat of force was used in order to steal.

Weaker answers failed to consider robbery or argued that the offence of theft was incomplete, due to the failure to prove dishonesty using s2(1)(a) and therefore simply asserted that there could be no robbery without outlining the law.

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The final aspect required students to discuss the defence of intoxication. Strong answers started by outlining voluntary intoxication as seen by Dean choosing to become intoxicated before explaining the distinction between specific and basic intent offences. Many students raised the defence in relation to unlawful act manslaughter and correctly explained that Dean's intoxication amounted to recklessness which is sufficient for the mens rea of a basic intent offence (Majewski) and concluded that the defence would fail. Responses then suggested that the defence could be raised to specific intent offences, in this case theft and/or robbery but would only be successful if Dean's intoxication was such as to remove mens rea.

Weak answers failed to address the defence of intoxication and those that did were often brief and did not explain and apply the law in relation to the specific and basic intent offences.

Question 11

Question 11 required students to consider:

- the liability of Frankie in relation to the attack on Gary. As there were no resulting injuries students were required to discuss the offence of battery and the circumstances of the scenario raised the issue of self-defence
- the liability of Gary in relation to the injuries to Indira. This required discussion of s18 and/s20 OAPA 1861
- the non-substantive element directed students to assess the ways in which Gary may obtain legal advice about his case before trial.

A good answer in respect of the battery may have included accurate explanation and application of the actus reus and mens rea of battery with supporting case law. Answers included developed application and suggested that Frankie directly applied force (Collins v Wilcock) and had direct intention to do so (Mohan).

A large number of responses speculated as to the possible injuries resulting from the 'punch' and so discussed a range of alternative offences. Although some of the arguments presented could receive credit (e.g. s47 OAPA1861) students often used valuable time discussing alternative offences without focusing on the facts of the scenario as they were presented.

When addressing self-defence, strong answers explained the framework of the defence dealing with both necessary and reasonable force including reference to mistaken belief and pre-emptive strikes. Responses then applied to the scenario with discussion of Frankie's honest mistake in the need to use force (Williams (Gladstone) / s76 CJIA 2008) and how this would not prevent the defence from succeeding.

Many answers scored well in relation to battery but failed to address self-defence or incorrectly considered other necessity defences that could not be raised based on the facts of the scenario.

A common approach when dealing with s18 and s20 OAPA 1861 was to explain the actus reus of s18 and s20 offences, then address the differences in the mens rea before concluding with possible criminal liability. When addressing s18 and s20 offences many students were able to outline and apply the law correctly, often suggesting that the 'deep gash' would amount to serious harm/ wounding. When considering causation, many answers gave a brief overview but failed to discuss whether there was a

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break in the chain of causation due to the fact that Indira did not go and seek medical attention straight away (victims own act).

When addressing the mens rea, maximum marks could be achieved by those who considered only the s18 offence if the arguments adopting that approach showed sufficient depth of understanding. In that context, the stronger answers cited Taylor and argued that although an intention to merely wound is not sufficient for a s18 offence it is likely that the use of the spade indicated an intention to cause serious harm (s18). These answers developed the analysis and application to argue that this was strong evidence that Gary either directly intended serious harm or at the least that he was aware that serious harm was a virtual certainty (Woollin). This direct or oblique intention could then be transferred from the intended victim, Frankie, to the actual victim, Indira. Whether the mens rea argument about s18 was developed in this way or not, it was pleasing to see that many responses on mens rea did recognise the issue of transferred malice and accurately applied it (Latimer) to indicate that the 'malice' (mens rea) could be transferred from Frankie to Indira.

When considering the non-substantive element, strong answers explained a range of sources of advice with some basic assessment as to which might be the most appropriate. Weaker answers misinterpreted the question and discussed legal funding which was beyond the scope of the question and not credited.

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Mark Ranges and Award of Grades

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