
A-LEVEL LAW

7162/1 Paper 1 (Criminal Law)
Report on the Examination

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Introduction

Due to the revised procedure in response to the pandemic, for most schools and colleges this was the second sitting of this paper, the first being in 2019.

From this exam season it was evident that, though there were some impressive answers across all the range of questions, there were some obvious areas for attention and improvement:

- Students should be careful to focus directly on the specific requirements of the question as conveyed by the instruction. For example, question 8 directed students to deal with the offence of murder however many attempted to raise a defence.
- Students should be mindful of the mark allocation within question 9. Many students spent too long addressing the second, substantive part of the question which was worth a maximum of 5 marks.
- In Questions 10 and 11, students were required to deal with the identification, explanation and application of substantive law arising out of the facts in a scenario. A large number of students failed to identify and explain the full range of issues presented in the scenario. In addition, Question 11 required application of some aspect of the English Legal System, a very large number of students failed to address this part of the question.

Question 1

The correct answer was statement A: Intention or recklessness as to causing fear of force or applying force.

The majority of students selected the correct answer showing confidence in this area. The incorrect option chosen most frequently was option C 'Intention to use force' Although this may be seen as one way of establishing the mens rea of battery occasioning actual bodily harm, the question asked for the 'best' description of the mens rea for assault (battery) occasioning actual bodily harm and so option A was the 'best' description from those offered.

Options B and D were rarely selected, probably because they are easily related to more serious offences under s18/s20 OAPA 1861.

Question 2

The correct answer was statement A: The defendant acted due to fear of serious violence.

The majority of students selected this answer showing confidence in this area and an understanding of the fear trigger within the defence of loss of control.

The incorrect option chosen most frequently was option B 'the defendant acted in a considered desire for revenge'. Although revenge is an issue that has been considered within the defence of loss of control it is not one that will 'support' the defence as stated within s54(4) Coroners and Justice Act 2009.

Question 3

The correct answer was statement B: Literal Rule.

The majority of students selected this answer. Statutory interpretation, specifically the rules of interpretation, is an area that students usually perform well in.

Relatively few students selected an incorrect answer but from those who did choices were distributed evenly between the other options.

Question 4

The correct answer was statement C: A judgment made in a previous case which must be followed by judges in later cases.

The majority of students selected this answer.

The incorrect option chosen most frequently was option B 'A judgment made in a previous case that the judge may decide to follow'. This option referred to persuasive not binding precedent.

Question 5

The correct answer was statement B: The financial status of the defendant.

Students found this question challenging. Just over one-third of students selected the correct answer indicating a lack of understanding of the difference between means and merits testing within public funding for criminal cases.

The interest of justice test determines whether the defendant is entitled to legal aid based on merits of the case and so financial status is not considered.

Incorrect choices were roughly evenly distributed between Options A, C and D which are all factors that can be considered within the interest of justice test and so are incorrect in the context of this question.

Means testing considers the financial status of the defendant as they must be financially eligible to qualify for public funding.

Question 6

Question 6 required students to give a brief explanation of any two features that are essential to the operation of judicial precedent. Students could have included any two from the following:

- the principle of stare decisis.
- the ratio decidendi of the case.
- the hierarchy of the courts.
- law reporting.

Although many answers could identify one feature however, few offered two features with accurate explanation.

There were many answers in which the choice of feature was wrong, or in which explanations were confused, incomplete or inaccurate, some common examples of which were those that:

- included methods of avoiding judicial precedent
- attempted to evaluate one or more aspect of judicial precedent
- confused judicial precedent with statutory interpretation

Question 7

In question 7 the facts of the scenario were that Alice, a member of a violent criminal gang, committed theft after she was compelled to do so after being threatened by Brianna, the leader of the gang.

The question directed students to use the rules of duress and suggest why, in law, the defence of duress is likely to fail if raised by Alice at her trial.

A good answer included:

- Explanation of how the defence of duress will not be available where the defendant puts themselves in a position where they foresaw (or should have foreseen) the risk of being subjected to any compulsion by threats of violence. Although not essential it was pleasing to see the use of case law such as *R v Sharp* to support this.
- Application to suggest that by joining a violent gang and continuing her membership for several years, Alice had put herself in a position where she should have foreseen the risk of being pressured into committing an offence by threats of violence.
- Conclusion to suggest that the defence will fail

The majority of students identified that membership of the gang could affect the availability of the defence however few could confidently explain the law covering this area.

Weaker answers included no legal explanation and simply offered a conclusion asserting that the defence would fail simply because Alice was a member of a gang.

Some students discussed other relevant elements of the defence for example:

- the requirement that there be a threat of death or serious injury. This was applied to the scenario and satisfied as the threat made by Brianna to 'put her [Alice] in hospital' would indicate the threat of at least serious injury
- the opportunity to take evasive action by leaving the gang or gaining police protection.

Such arguments were credited but without recognition of the voluntary association answers could not achieve full marks

Question 8

In question 8 the facts of the scenario were that Carla fired three shots towards a doorway where Denton was standing. The bullets missed Denton but one hit and killed Emma. Students were asked to advise Carla of her criminal liability for the murder of Emma.

In answering Question 8 it was important for students to follow the instruction carefully. Some students did not discuss murder but instead discussed a defence. This was not asked for and so could not receive credit.

A good answer required students to:

- explain and apply the actus reus (including causation) and mens rea of murder.
- explain and apply the principle of transferred malice.

Most students followed a logical approach by establishing that Carla committed the actus reus for murder through a voluntary act (firing the gun) and outlined the rules of causation before considering mens rea.

Some students spent too long addressing the actus reus of murder. For example, discussions about what amounts to a human being or when people are under the Queen's peace. Such issues were not relevant to the facts of the question and so need only be mentioned briefly.

Common weaknesses included:

- weak explanation of mens rea. Failure to explain the meaning of malice aforethought (expressed and implied) and/ or a failure to explain how to establish direct and oblique (indirect) intention
- inaccurate use of case law. For example, when considering intention to cause serious harm some students confused Cunningham (1982) with Cunningham (1957) and so included discussion about recklessness which was incorrect.

Strong answers developed legal argument concerning intention and included:

- application to suggest Carla had direct intention to kill or cause serious harm as she was armed with a gun and fired three times into the doorway of a crowded restaurant and towards where Denton was standing.
- an alternative, although less likely, application was credited where students suggested that Carla's aim could have been to scare rather than cause death or serious injury. Many students attempted to develop this by raising that oblique (indirect) intention would be satisfied if in firing three shots towards people Carla may have foreseen death or serious injury as a virtual certainty.

In order to achieve maximum marks students were required to explain and apply the principle of transferred malice. There were many strong answers that accurately explained the principle using relevant case law such as Latimer and concluded that the mens rea formed in relation to Denton would be transferred to Emma.

Question 9

Question 9 required students to address two aspects:

- the meaning and significance of fault within criminal law (10 marks)
- the extent to which the rules of causation are evidence of a requirement for fault in criminal liability (5 marks)

Within good responses to the first part of this question students generally adopted the correct approach and a typical answer included the following:

- a definition of fault, for example, blameworthiness, responsibility for wrongdoing etc
- analysis of specific areas of criminal law for example actus reus issues, in particular, the requirement of voluntariness (*Hill v Baxter*) or consideration of levels of mens rea and sentencing
- absence of fault within the context of strict liability offences

Most answers addressed the second part of the question concerning fault within causation well. Students used a range of examples from factual and legal causation such as the 'but for' test and the thin skull rule. Stronger answers also included circumstances where the defendant can be argued not to be at fault, for example, where there is a novus actus interveniens.

Weaker answers simply described the rules of causation without linking back to fault.

Many answers focused their time on the second aspect of the question. This meant that students often wrote nothing/little about the first aspect that was worth 10 marks. Those that did address both parts of the question performed well.

Question 10

Question 10 required students to discuss:

- Flynn's liability for assault in relation to the crowd
- Flynn's liability for the unlawful act manslaughter of Ginny
- insanity as a defence to the above
- the doctor's liability for the gross negligence manslaughter of Ginny

These four aspects were given equal weighting in terms of marks.

Many answers failed to recognise the assault committed against the crowd.

Students who did address the assault produced successful answers that explained the actus reus and mens rea of assault, accurately applying the elements to the facts of the scenario. Application correctly concluded that the actus reus for assault was complete as Flynn's action of flying a model aeroplane towards the crowd caused them to panic (apprehend, immediate force/violence). Further analysis was developed regarding the mens rea of assault. Many students suggested that Flynn showed direct intention whilst others explained and applied the test for subjective recklessness. Both approaches received equal credit.

In relation to the death of Ginny, some students were able to accurately explain and apply the elements of unlawful act manslaughter.

A good answer included:

- identification of the unlawful act as a battery which occurred when the aeroplane hit Ginny.
- explanation and application of the dangerousness test set out in the case of Church
- discussion of the relevant causation issues relating to the victim's own act (failing to seek medical help) and the doctor's intervention (failing to diagnose a serious infection)
- Mens rea identified as intention/subjective recklessness as to the unlawful act.

A high number of students failed to follow the instruction in the question which was to consider 'involuntary manslaughter'. Answers instead discussed murder and diminished responsibility and could achieve only limited credit via broad application points that could be applicable to the correct ICG's.

Some weaker answers failed to recognise that Flynn may be liable for the death of Ginny. Instead arguing his guilt in relation to the non-fatal offences.

Many students offered detailed discussion of s20/s18 offences due to the cut made by the propeller. Such discussion was not required but was credited where was used to establish the unlawful act within unlawful act manslaughter.

When addressed, the defence of insanity was covered well by the majority who were able to outline the elements of the defence accurately.

Stronger answers were able to apply the elements from M'Naghten. Establishing the defect of reasoning and disease of the mind through application to the facts by drawing on Flynn's feelings that people were intending to harm him and his paranoid personality disorder. Stronger answers offered further analysis by making the connection between the case of Oye and the possibility that Flynn may not have understood the nature of the act committed or that it was legally wrong, if he believed that he was acting in self-defence.

Although not required a small number of answers raised the defence of self-defence in isolation, credit was given where this was done accurately.

Weaker answers confused the elements of insanity with diminished responsibility or incorrectly asserted that the defence of diminished responsibility could be raised as a defence to unlawful act manslaughter.

In relation to the doctor and his liability for the gross negligence manslaughter of Ginny there were some excellent answers which explained and applied the elements of the offence.

A good answer included:

- discussion of the duty of care owed by doctor to patient (Adomako). Some answers spent time considering a civil duty of care using Caparo which was not required.
- consideration of the breach of duty that caused the death.
- discussion concerning the doctors conduct and whether or not it could be considered gross as to justify a criminal conviction (Misra and Srivastava)

Many answers offered strong explanation and analysis when considering whether the actions of the doctor were 'gross'. A range of case law was offered to illustrate this point including definitions from Adomako, Misra and Srivastava and the more recent case of Bawa-Garba. Most students concluded that the doctor would be liable as his failure to diagnose a serious infection created a risk of death and so would likely be considered gross. Credit was given to well-reasoned alternatives.

A small proportion of students dealt with the full range of issues outlined above and commonly, answers adopted a rather weak structure, often missing one or more of the key elements in the analysis.

Question 11

Question 11 required students to discuss:

- liability of Harry and Ian for theft in relation to the photographs taken of the list of customers (Harry) and of the mobile phone (Ian)
- liability of Ian for robbery in relation to the push connected to the stolen mobile phone
- intoxication as a possible defence raised by Ian
- aims of sentencing

These four aspects were given equal weighting in terms of marks.

Students were required to deal with the application of substantive law and then to make an assessment of the aspect of non-substantive law; aims of sentencing.

Within this question many students showed excellent use of case law and statute law, especially regarding property offences

It was pleasing to see many students were well prepared to discuss the offence of theft in relation to both Harry and Ian.

In relation to Harry, good answers included:

- Accurate explanation of the actus reus and mens rea elements of theft
- developed legal argument concerning the photographs of the list of customers and its status as property citing *Oxford v Moss*.

In relation to Ian and the mobile phone, there were some strong answers in which students were able to correctly identify the framework for the offence of robbery including the requirement of a completed theft.

When discussing the theft requirement, stronger answers included:

- developed discussion surrounding appropriation and when this took place by addressing the series of events within the scenario. First considering when the phone was initially picked up by Ian and later, when he realised it was not his but decided to sell it.
- issues concerning dishonesty and conduct that would not be seen as dishonest. For example, many students recognised the possible argument that Ian was not dishonest as he believed that he had a right in law to take the phone to cover the cost of the missing goods, S2(1)(a). Stronger answers offered further analysis to suggest that this

argument was unlikely to succeed as it was based on an inaccurate belief that Harry had been stealing from Ian's shop.

It was surprising to see that when explaining dishonesty within theft many students relied on old law. It is important to note that the objective test from *Ivey v Genting Casino Ltd*, confirmed in *R v Barton and Booth* should now be used in place of the Ghosh test.

When considering the offence of robbery, few students fully analysed the requirement that force be used in order to steal and weaker answers failed to explain or apply the additional mens rea elements of robbery. (Intention to use force in order to steal)

A good answer may have included:

- Application to the facts to suggest that there was use of force when Ian pushed Harry to the ground. This could be seen as force used in order to steal as this caused Ian's phone to fall from his pocket.
- In contrast, students may suggest that the push was separate and not done in order to steal. This is evidenced by Ian believing that the phone was his at the time of the appropriation.

Credit was given to either discussion and stronger answers included both lines of legal reasoning.

In relation to the defence of intoxication, most students recognised the defence but many did not accurately explain or apply it.

The logical approach would have been to identify and discuss the voluntary nature of the intoxication before explaining the law in relation to the type of offence committed.

A good answer may have included:

- discussion of voluntary and involuntary intoxication. In this instance Ian was voluntarily intoxicated.
- The difference between crimes of specific and basic intent. Both theft and robbery are specific intent offences which require mens rea
- discussion that the defence will only succeed if the intoxication removed Ian's ability to form the mens rea. Developed with analysis in relation to the facts of the scenario and relevant authority such as *Attorney – General for Northern Ireland v Gallagher* to suggest that Ian consumed alcohol for 'courage' and so the defence is likely to fail.

Many students inaccurately concluded that the defence would fail due to the Majewski rule showing a lack of understanding of the rule or that it applies to basic intent offences.

The final part of the question required students to assess the main aims of sentencing that a judge is likely to consider.

Many students failed to address the non-substantive element and a large number of those who did address it discussed issues that were not relevant such as aggravating and mitigating factors and types of sentences.

Stronger answers identified the range of aims found within section 142 Criminal Justice Act 2003. Examples included:

- punishment of offenders
- reduction of crime by deterrence

- rehabilitation of offenders
- protection of the public

It was pleasing to see that some answers made links between the aims of sentencing and the scenario with some suggesting that a judge, when considering a suitable sentence, would want to deter Harry from committing any future offence.

Mark Ranges and Award of Grades

Grade boundaries and cumulative percentage grades are available on the [Results Statistics](#) page of the AQA Website.