Here is a selection of typical responses for you to consider. Using past papers, scenarios are set out and followed by the individual questions, mark scheme and typical answers. Commentaries on each answer are grouped together at the end of each topic. These can be used to give examples of answers with strengths and weaknesses identified, so that your students can look for improvements and refine their techniques. In some instances, two answers to the same question have been provided, along with commentary. These can be used for purposes of comparison and contrast. In some instances, part answers only have been provided.

Note that answers are reproduced exactly as written, including grammar and spelling.
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Criminal Law (Offences against the Person)

Scenario 1

Just after the ball had gone out of play during a football match, Anna tackled Beth very forcefully. The tackle bruised Beth’s leg and also caused her to fall onto Charlie, a 4-year-old boy, who was riding a bicycle by the side of the pitch. Charlie’s head struck his handlebars and he suffered a long, deep cut to his face. This led to an argument between Anna and Ellie, Charlie’s mother. When Ellie later returned to her car, she found a note on the windscreen which read, “Watch out! I’ll get you.” She was so upset that, when she drove off, she crashed into a lamppost and suffered a mild neck injury. It was later discovered that Anna had written the note.

Discuss the possible criminal liability of Anna for the injuries to Beth and to Charlie. Discuss Anna’s possible criminal liability arising out of the note left on the windscreen of Ellie’s car, and including Ellie’s subsequent crash.

[25 marks + AO3 5 marks]

Potential Content

(A) In relation to Anna’s liability for the injury to Beth: analysis of actus reus and mens rea of s47 assault (battery) occasioning abh; consent issues in organised sport (framework explanation of general rule and exceptions; specific detail of the organised sport exception).

- sound s47 + consent
- weak sound battery + consent
- clear s47
- weak clear battery or s20 + consent
- some s20 or consent

Note: in this, and in other, parts of the mark scheme, a level (sound, clear, etc) identified should be regarded as the maximum level available for appropriate treatment of the specified content.

(B) In relation to Anna’s liability for the injury to Charlie: analysis of actus reus and mens rea of unlawful and malicious wounding and/or infliction of gbh (s20); recklessness and transferred malice issues; reference to applicability of consent (by analogy with transferred malice).

- weak sound s20 but mens rea without discussion of transferred malice
- weak clear s47 assault (battery) abh, addressing transferred malice
- some s47 but mens rea without discussion of transferred malice
Student answer for consideration

Answer 1

In relation to Anna's liability to Beth, she could be liable for battery. The AR of battery is Anna inflicts unlawful personal force on Beth. In Anna's case, her tackling Beth 'forcefully' caused her to fall and bruise Beth's leg. As in R v Thomas, a battery is more than the slightest touch, in Anna's case tackling Beth 'forcefully' is more than the slightest touch and is therefore a battery as it causes the bruising. Also Collins v Willcock states consent is implied in everyday situations. However, Anna's 'forceful' tackle indicates she used a large amount of force, therefore the AR of battery is satisfied.

The MR of battery is intention or recklessness as to inflicting unlawful personal force on Beth. In Anna's case, this is likely to be intention directly, as in R v Mohan, as by tackling her 'very forcefully' and whilst the ball is 'out of play' this suggests Anna knows that force is not required at this time indicating she intends to injure Beth. Additionally, Anna's 'forcefully' tackling Beth suggests she used a significant amount of force in order to cause the bruising. Therefore the MR is satisfied and Anna is guilty of a battery.

Additionally, Anna could be liable for gbh in relation to Charlie's injury. This would be s20, the AR of gbh is Anna causes Charlie a gbh or a wound. In Anna's case, Charlie suffers a deep cut to his face which is long. As in JCC v Eisenhower, this is a wound, a 'break in both outer layers of skin', which clearly the deep cut has broken Charlie's outer layers of skin. Similarly in Anna's case the infliction of gbh/wounding is indirect as in R v Martin, which states that force does not have to be directly applied to V. This is the case here as Anna in fact applies force to Beth by tackling her, who then subsequently falls into Charlie, causing him to suffer the deep cut to his face. Therefore gbh can be indirectly caused and Anna has satisfied the AR.

The MR of gbh s20 is intention or recklessness as to 'some harm'. In Anna's case, this is likely to be recklessness, as Anna's tackling of Beth 'forcefully' whilst people are around is fairly likely to cause her to fall into someone and cause at least 'some harm' (R v Mowatt). Also, Charlie is said to be riding the bicycle near the pitch, which further suggests that Anna is aware he is stood there, and by knocking Beth over she is likely to fall into him and cause at least 'some harm', which needs only be a battery, as in R v
Cunningham. Anna foresees the risk of causing harm yet takes this risk anyway. Additionally, the MR on Beth as to causing ‘some harm’, a battery, transfers person to person to Charlie as it’s the same type of offence, a battery, therefore the mens rea for gbh s20 is satisfied.

Anna could argue the defence of consent in relation to the injuries caused to Beth, where she argues Beth gave either express or implied consent to what would otherwise be a fatal or non-fatal offence.

In Anna’s case she inflicted a battery on Beth, which as in Cole v Turner, states that consent is implied in various situations, such as the greeting of friends. However, when the consent goes beyond this everyday expectation this will be unlawful force. In Anna’s case her ‘forcefully tackling’ Beth could go beyond the normal everyday expectation as its more than would be normally expected during a game of football as the ball had gone out of play.

However, if Anna was liable for abh, the consent would fall into one of the various exceptions. This would be normal sporting activities as the girls are playing a football match. However, as in Barnes, where the game does not follow the recognised rules and regulations of the game this cannot be consented to. In Anna’s case, she tackled Beth when the ball had gone out of play and therefore injured Beth whilst not following the rules of the game. Therefore, this cannot be consented to as in Billinghurst.

Anna’s liability for abh means the defence of consent will not be allowed, as in AG’s Ref No 6 of 1980, where it was held that where the injuries go beyond abh the violence is not in the public interest and therefore cannot be consented to. Therefore the defence of consent is not allowed.

Additionally, Anna could be liable for abh in relation to Ellie’s crash, the AR of abh is Anna causes an assault or battery which occasions extra harm. In Anna’s case, this would be an assault. Anna makes Ellie apprehend immediate unlawful personal violence. According to R v Ireland this violence does not have to be immediately as long as its in the near future, in Anna’s case her threat to ‘get Ellie’ is a threat in the near future as it causes Ellie to become ‘upset’ and drive off immediately. Also in Anna’s case an
assault can occur through words written in letters, as in Constanza, therefore Anna’s writing of the note constituted the AR of assault.
Scenario 2

Gill and her boyfriend, Harry, were visiting Gill’s brother, Izaak, and his wife, Jo. Harry made a sarcastic remark about the fact that Izaak was very drunk. Gill responded by slapping Harry, and then she pulled him off balance, causing them both to fall. Gill fell on top of Harry, and a glass she was holding broke under him and went deeply into his thigh. Gill ran out of the house. Izaak tried to stop the flow of blood from Harry’s thigh but, when Jo began to phone for an ambulance, Izaak angrily knocked the phone out of her hand. However, after about 30 minutes, he gave up trying to stop the bleeding and allowed Jo to make the call. Even so, Harry died shortly after arriving at the hospital. The medical evidence was that earlier treatment would almost certainly have saved Harry’s life.

Discuss the possible liability of Gill for the involuntary manslaughter of Harry. Discuss the possible criminal liability of Izaak for the death of Harry.  

[25 marks]

Potential Content

(A) In relation to Gill’s liability for the involuntary manslaughter of Harry: analysis of the offence of unlawful act manslaughter; the unlawful act as any offence such as battery, abh or wounding, with mens rea issues of recklessness; dangerousness according to the objective test, including the relevance of Gill’s possession of the glass; causation (including possible effect of subsequent conduct of Izaak). Reference to self-defence may enhance the general quality of analysis.

(B) In relation to Izaak’s liability for the murder of Harry or for the gross negligence manslaughter of Harry: the description of the relevant conduct as either an act (preventing access to treatment) or an omission (failure to summon treatment); if an omission, the associated duty issue (attempt to assist, incident in his own house); breach; causation – in fact and in law; malice aforethought – direct and indirect intention; the grossness of the negligence; the relevance of intoxication.

• sound murder or gross negligence manslaughter or murder + gross negligence manslaughter (but excluding intoxication)
• clear murder (excluding intoxication) or gross negligence manslaughter (excluding intoxication)

Note: discussion of intoxication is regarded as part of the discussion of either murder or gross negligence manslaughter except as indicated above.
Student answers for consideration

Answer 2

Gill would be liable for unlawful act manslaughter in relation to Harry’s death, where Gill must prove she had committed an act which was unlawful, dangerous, and the one which causes death.

In Gill’s case, the unlawful act here would be a battery, by slapping him and pulling him off balance. The unlawful act must be a criminal offence and can be a battery, as in R v Dawson. The AR of battery is D inflicts unlawful personal force on V. In Gill’s case, this is more than the merest touch as in R v Cole and Turner and R v Thomas and therefore her slapping Harry and pushing him off balance satisfies the AR of battery. The MR of battery is intention or recklessness as to inflicting unlawful personal force. In Gill’s case this is likely to be direct intention as in R v Mohan, as she is angry at Harry for making a sarcastic remark and is said to respond by slapping him, suggesting this was her main aim to inflict unlawful personal force, the merest touch. Therefore, the unlawful act element is satisfied.

The unlawful act must also be dangerous, as in R v Church, which defines the objective test for dangerous as being where the ‘reasonable and sober person’ would foresee it as causing some harm, albeit not serious harm. In Gill’s case, her slapping Harry causing him to fall off balance is foreseeable by the reasonable man to cause at least ‘some harm’, in particular as she is holding a glass, which could have fallen into him. As in R v Watson, as long as the reasonable bystander would recognise the act as causing ‘some harm’, this is satisfied. Also Gill does not have to have foreseen harm, only the reasonable man, as in DPP v Newbury & Jones. In Gill’s case, ‘some harm’ is foreseen by slapping Harry.

The unlawful act must also be the one which causes death, as in Corin-Auguste. This does not have to be the main cause of death, merely a more than minimal cause. In Gill's case, her slapping of Harry causing him to fall over and cut his leg on the glass is at least a minimal cause. Gill’s original act of slapping him is a more than minimal cause of death as it results in him falling over and sustaining the injury he later dies from, as in R v Shohid. Therefore she is a more than substantial cause and Gill is guilty of UAM. However, there would be a potential break in the chain of causation due to
Isaac’s involvement in the death, in not calling an ambulance straight away and stopping Jo from phoning. As in R v Roberts, this is an unforeseeable act. However, this is not enough to break the chain.

In relation to Isaac, he could be liable for gross negligence manslaughter. Adomako established he must prove he has a duty of care. In Isaac’s case, this duty of care in relation to Harry would be assumed responsibility, as in R v Stone & Dobinson. As he takes control of the situation by trying to stop the flow of blood from Harry’s thigh, indicating he had a responsibility to attempt to save Harry and later stops Jo ringing an ambulance. Also, his attempt to stop the flow of blood for 50 minutes, a fairly long time, further indicates his duty of care.

There must also be a breach of this duty of care, as in R v Holloway, which looks at what the reasonable man in the same circumstances would have been capable of. In Isaac’s case, the reasonable man in this situation with reasonable life saving skills would have phoned an ambulance to prevent Harry’s death immediately. In Isaac’s case, his trying to stop the flow of blood for 50 minutes before calling an ambulance is an extremely long time, similar to Adomako, and therefore there has been a breach. Also Isaac stops Jo from phoning the ambulance as soon as the injury is sustained, again indicating a breach.

This breach must be so as to be regarded as criminal. In Isaac’s case, his failure to call an ambulance immediately did risk the life and safety of Harry as he suffered an extremely deep wound and was suffering from blood loss as in R v Andrews. Also, causes Harry’s death which is more than can be compensated for with money, as in R v Bateman. Therefore, the gross negligence is criminal and Isaac is guilty of gnm.

Isaac could argue the defence of intoxication in relation to Harry’s death, where he argues that he could not form the MR of the offence due to being intoxicated.

In Isaac’s case, this is voluntary intoxication, as it’s indicated he was ‘very drunk’ and there are no suggestions that this intoxication was involuntary in any way. In Isaac’s case, the manslaughter of Harry is a basic intent crime. According to Majewski, ‘D cannot rely on intoxication as a defence as getting drunk is a reckless course of conduct’, and recklessness is enough to satisfy the MR of the offence. This therefore
means that Isaac would not be allowed to use the defence due to him becoming intoxicated voluntary. He knew there was a risk of behaving badly when becoming intoxicated and yet took this risk, therefore the defence of intoxication is not available.

Answer 3 (part)

Gill could be charged with unlawful act manslaughter ... The AR requires an act, which is unlawful, and is considered to be objectively dangerous ... The idea that the offence was “objectively dangerous” is when the reasonable and sober person would foresee that it would be dangerous (Church). The slap I would not foresee to be objectively dangerous but the fact she “pulled him off balance” would suggest otherwise when she was holding a glass in her hand.
Scenario 3

Niccy believed that a secret Government Department was sending special coded messages to her through radio programmes. The messages identified Owen as an alien life-form which must be eliminated. Niccy stabbed Owen through the heart, killing him instantly. Niccy's brother, Paul, was informed by a friend that Ruth, Paul's wife, was being sexually harassed by a workmate, Steve. Paul decided to put an end to the harassment. He bought a hammer and waited for Steve to leave work, intending to break his arm. However, he saw Steve and Ruth leave work holding hands. They were laughing and making nasty comments about Niccy. Paul ran at Steve, and tried to strike his shoulder with the hammer. However, Steve stumbled, took the full force of the blow on his head, and died shortly afterwards.

Discuss the possible criminal liability of Niccy for the murder of Owen, and the possible criminal liability of Paul for the murder of Steve. [25 marks]

Potential Content

(A) In relation to Niccy and Paul, analysis of the elements of the offence of murder: recognition that application to Niccy is minimal (actus reus and mens rea - prima facie - clearly evident); in relation to Paul, concentration, in particular, on the mens rea of murder; intention to cause gbh; direct and oblique intention.

(B) In relation to Niccy and Owen, analysis of the defence of diminished responsibility: abnormality of mental functioning (substantial impairment of ability to form a rational judgment?); recognised medical condition (delusional – probably schizophrenia, though precise identification unnecessary); provides explanation. Discussion of insanity as an additional or alternative defence: defect of reason; disease of the mind; (probably) does not know that what she is doing is wrong.
Student answers for consideration

Answer 4 (part)

Niccy could be liable for the murder of Owen, the actus reus of murder is the unlawful killing of another human being under the Queen’s peace and within the jurisdiction of the Crown Court. She is the factual cause of Owen’s death because but for her actions he wouldn’t have died (White). She is also the legal cause because she was more than a minimal cause (Pagett). The mens rea of murder is malice aforethought, this can include express malice (intention to kill) or implied malice (intention to cause serious gbh). Niccy had the mens rea because she intended to kill Owen “must be eliminated” and the actus reus because she was the sole cause of his death. Therefore she could be liable for murder.

Paul could also be liable for the murder of Steve, he has the actus reus as he hit Steve on the head with a hammer causing his death. The jury would have to decide whether Paul had the intention because murder is a specific intent crime and the scenario states that Paul only intended to break Steve’s arm. The jury would be able to find the necessary intention if the consequences of Paul’s actions were virtually certain and that Paul knew this (Nedrick + Woolin). It is clear that if you attack someone with a hammer there could be fatal results and Paul would have known this so it is likely that the jury would find the necessary intention. Therefore Paul has implied malice because he intended to cause gbh by wanting to break Steve’s arm. Therefore, Paul could be liable for the murder of Steve.
Answer 5 (part)

Niccy can plead the defence of diminished responsibility under s52 of the Coroners and Justice Act 2009. For the defence to succeed Niccy must prove that she was suffering from an abnormality of mental functioning, which arose from a recognised medical condition, and substantially impaired the D’s ability to understand the nature and conduct of their crime, exercise self-control or form a rational judgment. Thirdly the D’s conduct must provide an explanation for his/her acts in doing the killing. The case of Byrne terms an abnormality of mental functioning as “A state of mind so different from that of an ordinary human being, that a reasonable man would term it abnormal.” In this case it is clear that Niccy suffered from an abnormality of mental functioning as she believed that a secret government department was sending her special coded messages, and a reasonable man would term this as abnormal. Niccy is also suffering from a recognised medical condition, which from the question is presumably, schizophrenia (hearing voices) or having illusions and being paranoid, as she believed that Owen was an alien life form. Secondly, this clearly substantially impaired Niccy's ability to form a rational judgment, exercise self-control, or understand the nature of her conduct as she believed that Owen was to be eliminated and ‘instantly’ stabbed Owen in the heart without being aware of what she was doing. Substantial does not mean total nor trivial, it is something in between and it is for the jury to decide. Thirdly, this clearly provides an explanation for Niccy’s act in killing Owen, as she genuinely thought he was an alien life form which had to be eliminated, and her abnormal state caused her to kill Owen, therefore the defence of DR would be successful. The burden of proving her abnormal state would be on Niccy, who would have to provide evidence in court.
Evaluative question

Critically evaluate the current law on non-fatal offences, and suggest any reforms that you consider may improve the law. [25 marks]

Potential Content

(A) Structural, language and antiquity issues: maximum sentences and the hierarchy of offences; antiquated and ambiguous language (for example ‘malicious’, ‘grievous’, ‘actual’, and the problems with the use of the term, ‘assault’).

(B) Specific actus reus and mens rea issues, including issues with a defence of consent: assault/battery as a requirement of liability for non-serious injury; definition of actus reus of assault; mens rea and the principle of correspondence; the consent framework and the nature of the exceptions.

sound actus reus and mens rea issues or consent issues

(C) Appropriate suggestions for reform in relation to (A) and/or (B). These should be related to the evaluation (and especially to any criticisms advanced) and should, where possible, draw on substantial proposals (such as those made by Law Reform bodies and/or expert commentators).
Student answer for consideration

Answer 6

There have been various criticisms made of the non-fatal offences whether these be specific actus reus and mens rea issues or general problems.

One criticism is the act’s use of complicated language which is often out of date and archaic, for example the OAPA uses words such as ‘malicious’ and ‘grievous’. These words lead to confusion when trying to find their meaning through case law as in R v Smith which defines ‘grievous’ as really serious harm. Difficulties have also arose regarding applying this old law to new modern circumstances such as stalking, leading to confusion as to whether it was an offence, this often causes injustice and led to the introduction of the Protection from Harassment Act. Also in R v Constanza where courts had to make very wide interpretation of words to fit modern issues such as whether words/gestures constituted an assault. Also in Byrne Lord Steyne held psychological illness hadn’t even been thought of by Victorian legislators leading to ‘injury’ being defined as only physical.

One reform of this is the law Commission’s Report on the OAPA which suggested completely realtering the language to suit modern society, for example the word ‘injury’ would be defined in the proposed bill making it clear it includes physical and mental injury. Also the introduction of the Protection from Harassment Act means stalking is now a criminal offence, making the law more relevant to modern criminal behaviour, reducing injustice.

Another criticism is the act’s misuse of the general term ‘assault’ to include both assault and battery leading to confusion on both D and V’s behalf. As in R v Ireland and s47 abh where its meaning caused confusion whilst applying the ‘extra harm’. The common law offence of common assault requires a complex system of NFO’s, needing reference to 100 year old case law with little similarities to what would happen today, as in Tuberville v Savage, a 300 year old case which included the drawing of a sword something extremely different to what we would class as an assault or battery today.

One reform of this is the Law Commissions OAPA reform 1993 which suggested combing the offences into one bill where the phrase ‘assault’ would still be used as a
phrase for the least serious offence but the use of ‘battery’ along with the general use of ‘assault’ in any other NFO definition would be abolished. This would resolve issues surrounding its misunderstanding in society and the act. The new offence of ‘assault’ would be clearly defined as applying force to body or making V believe force was ‘imminent’, this makes the law clearer and prevents mistakes through reference to archaic case law.

Another criticism is the general structure of NFO’s are not designed to work as a coherent hierarchical structure, for example s47 and s20 have the same maximum sentence of 5 years despite s20 being a more serious offence requiring a higher standard of proof, leading to injustice. Lord Bingham said that “justice is not served if D who commits a lesser offence is charged with a greater offence, exposing him to greater punishment than he deserves.” Also s47 includes the phrase ‘more than slight or trifling’ setting the injury level extremely low and similar to assault/battery despite the sentence increasing by 4.5 years. The general structure has also been criticised as the most serious offence, s18 has the lowest section number, which doesn't appear logical. However this is likely to be due to the act being a consolidation act.

One reform of this is the Law Commission Report 1993 which proposes a bill that would encompass all NFO’s and have a logical sentencing structure in terms of seriousness, sticking to Lord Bingham’s ladder principle and would be reflected in sentencing. For example s18 would not differ between the police and public as there are other offences to deal with police related assaults if necessary. Also s20 would require intentional/recklessness as to serious harm, not just ‘some harm’. This would more fairly link to D’s level of awareness.

One specific AR criticism is the including of ‘bodily harm’ in s18, s47 and s20 without any statutory definition, leading to confusion. The courts have been said to interpret the phrase too widely to reflect modern issues, which are beyond the Victorian legislators contemplation such as in R v Burstow. This case found that sever psychological injury should be included within gbh, this was to ensure that stalking by electronic means could be criminalised. Also in Dica, which widened the scope for biological harm to include the intentional transmission of HIV. The courts have been criticised for applying the same meaning to a phrase across a range of offences, when they should include different things.
One reform of this is the Home Office Draft Bill’s proposal 1998 which defined ‘injury’ closer to the medical meaning and make it clear it includes both physical and mental injury and had clear boundaries. However the reform suggested that only intentional serious injury could be committed through transmitting a disease and did not make it clear what diseases this would include. This shows that even the reforms lack clarity in places.

Another specific criticism is the including of ‘wound’ in s18 and s20 despite no statutory definition. This requires case law such as JCC v Eisenhower to find it means a break in both outer layers of skin. This therefore seems unjust that a person who causes a small pin prick could be liable for the most serious offence of gbh instead of abh. The charging standard says that small cuts and lacerations should be charged under s47 abh however this is not legally binding on courts and could lead to serious offences of potentially minor wounds.

However, there have also been criticisms of the MR such as s47 being a triable either way offence with a maximum sentence of 5 years but the MR is set lower than an assault or battery, summary only with 6 month sentences. ABH has constructive intent which means D is not required to have intended or even been aware of the risk of harm. P only need to prove a lower blameworthiness and this is construed to mean a higher MR. This is clearly unfair on D’s who may not have been aware of the risk of further harm and goes against the key principle that D should only be guilty of an offence they are aware of causing.

Another MR criticism is the including of ‘maliciously’ in s20 and s18 despite no definition. R v Cunningham interpreted it to cover recklessness but that its ordinary meaning would imply bad motive or wickedness. This provides only the clues as to the MR of s20, however its purpose in s18 led to confusion where the MR was made clear by the words ‘with intent’. R v Mowatt finally interpreted this to be where D was resisting arrest, lowering the MR for police officers who fight to prevent injury and death. However this may not have been Parliament’s intention and took a long time to be established.
To conclude there are various criticisms of NFO’s, which overall come down to the act’s use of archaic language.
Commentaries

Comment on Answer 1

(A) The answer approaches the issue of liability via the offence of battery, though there is a later, unexplained, reference to assault (battery) occasioning actual bodily harm. The explanation and application of battery are both good, despite a little confusion over ‘mere’ touching, with clear reference to the relevant facts. Though the discussion of the defence of consent deals with many of the important elements and is perceptive in some aspects of application, it displays a little confusion about the status of the exceptions to the general rule in concluding that the defence would not be available to an abh charge.

(B) The answer provides an excellent and comprehensive explanation and application of the offence of unlawful and malicious wounding under s20 of the Offences Against the Person Act 1861. The answer is particularly strong on attention to the relevant facts in making the argument that Anna was reckless in relation to injury to Charlie (or to any spectator), whilst also briefly examining transferred malice. The slight confusion over the mens rea of battery in both approaches does not significantly detract from the quality of the analysis.

(C) The answer establishes the offence of assault very carefully. Though progressing to s47 abh, the elements of which are well explained, the answer merely touches on the crucial causation aspect, which it does not develop in explanation or application.

(A) Clear  (B) Sound  (C) Clear  23 + AO3 4 = 27 marks

Comment on Answer 2

(A) The answer presents a comprehensive analysis of the offence of unlawful act manslaughter and a particularly careful application to the facts. There is some inaccuracy (for example, the reference to Dawson), and some failure to develop discussion fully (for example, in relation to causation), but neither diminishes the answer in any significant way.

(B) The answer presents a strong, but not fully comprehensive, analysis of Izaak’s possible liability for gross negligence manslaughter, including the possible effect of intoxication, and a perceptive application to the facts. There is no reference to the requirement for the breach of duty to create a risk of death, nor any discussion of the causation issue (whether the facts are treated as an act or an omission). Though there are some weaknesses in the treatment of the nature of the duty and of the notion of ‘gross’ negligence, they are insufficient to prevent the answer from being regarded as a ‘clear’ treatment.

(A) Weak  (B) Clear  23 marks

Comment on Answer 3

This is a brief discussion of the requirement in unlawful act manslaughter for the unlawful act to be ‘dangerous’. The treatment is very representative of an approach adopted by many students. Though it has the merit of emphasising that the case of Church introduced an objective test of ‘dangerous’, it nevertheless fails entirely to explain what the test of ‘dangerous’ is. The definition is not self-evident and must be explained in the terms adopted by the Court in Church, as subsequently amended.
Comment on Answer 4

(A) The answer briefly and accurately establishes the elements of the offence of murder, both actus reus and mens rea in relation to the possible liability of Niccy. The application to Niccy is very brief but is perfectly satisfactory since the facts make it very clear that Niccy believed herself under instruction to kill and that she responded by doing so (the significant issue in relation to Niccy was whether she was suffering from diminished responsibility, not whether she was prima facie guilty of murder). A comprehensive analysis of the possible prima facie liability of Paul for the murder of Steve required both a more careful explanation of malice aforethought and a more careful consideration of, and application to, the facts. Though the answer does extend the discussion into oblique intention, the application confuses foresight of death with that of serious injury and makes no use of the suggestion that Paul aimed to strike Steve’s shoulder (though it does refer to the earlier suggestion that he wanted to break Steve’s arm). Closer reference to, and speculation on, the facts was required to raise the level of the answer in relation to Paul.

(A) Clear

Comment on Answer 5

(B) The answer identifies all the elements of the defence of diminished responsibility and goes on to present simple but generally accurate explanation of each element, supported by one case. The answer carefully applies the explanations to the facts, and is particularly perceptive on the issue of ‘recognised medical condition’.

(B) Sound

Comment on Answer 6

(A) The answer presents a significant number of criticisms about structure, language, and sentencing anomalies etc. Though they are often presented in a slightly confused manner and contain some errors, the criticisms are sufficiently broad-ranging and detailed to merit the ‘sound’ classification.

(B) The answer introduces a little more briefly (than in (A)) four criticisms – the meaning of ‘bodily harm’, the meaning of ‘wound’, the lack of correspondence, and the meaning of ‘malicious’. Once again, the treatment suffers from a little confusion and error but the range of criticisms addressed is of some merit.

(C) The answer is impressively determined to address suggestions for reform, usually located with corresponding criticisms. There is some degree of repetition and the answer sometimes fails to achieve full coherence. Even so, there are sufficient relevant suggestions to take the answer into the category of ‘clear’.

(A) Sound  (B) Clear  (C) Clear

23 marks