Examiners’ report 2011

265 0010 Criminal law – Zone A

Introduction

The following introductory points apply equally to the Zone A and Zone B papers.

Studying Criminal law

Many of you reading this report will be studying Criminal law for the first time this year and I would advise you to read the following very carefully.

First of all, ensure that you are familiar with the syllabus. You will find this on the Criminal law page of the virtual learning environment (VLE).

The Criminal law subject guide and study pack is based on the syllabus and is the guide for the course on which you will be examined. It is vitally important that you work your way through the subject guide, ensuring that you do the recommended reading and attempt all of the activities. Before you begin a topic, listen to the appropriate audio presentation (which you will find on the VLE). You will also find these presentations useful to return to later for consolidation and revision purposes. Make sure you understand the topic(s) covered in a chapter before you go on to the next one. There is a reflection and review section at the end of each chapter. Go through it and be honest with yourself when deciding on your responses. Revise any areas with which you are still experiencing problems.

Don’t forget to read the Criminal law newsletters, which are published monthly on the VLE, and the Recent developments, which are published in the spring of each year on the VLE.

Ensure that you do the computer-marked assessments which are available through the VLE. Although the tests are in a different format to the examination, they are an excellent way for you to test your knowledge and understanding of a subject and your ability to apply that knowledge.

General remarks

As in previous years, the questions were selected from a range of topics so as to provide candidates with the opportunity to demonstrate their understanding and knowledge of this subject.

The questions were very straightforward this year and this should have immediately made it clear what topics needed to be discussed when answering a particular question. Overall, however, the standard of candidates’ performance in 2011 was about the same as that of 2010 and the Examiners were concerned that there were
a number of candidates who made elementary mistakes or who failed to support their arguments and discussion by reference to relevant case law and statutory provisions. In addition, basic examination technique remains a problem for many and we would urge you to ensure that you read the questions carefully and manage your time properly in order to ensure that you attempt all four questions.

Common errors and omissions
All of the questions were answered well by some candidates but, as stated above, there were a number of common errors which appear in answers year after year. Please read these points carefully to ensure that you do not make them.

- **It is crucial that you ensure you are up to date.**
- **When using a case as an authority for a legal principle in your answer to a problem question it is only very rarely appropriate to refer to the facts of that case.** You should state the principle upon which you are basing your analysis, the name of the authority (case), the court in which the decision was made and, if possible, the year of the decision. Where, however, there is more than one case on the point at issue and an issue could fall into multiple categories, that is, your answer might differ depending upon which authority you choose, you might wish to distinguish one of the authorities on the facts. Here you can state why. In addition, if you forget the name of a case you wish to use as an authority it is permissible to state, **as briefly as you can**, the identifying facts of the case.

- **It is not necessary to repeat verbatim the facts of the question.** Of course you must make it clear to the Examiners which part you are answering but it is enough to say, for example, 'when Nick kicked him in the stomach causing him to fall over...' (Question 3) and then go on to consider the possible offence(s) committed. You do not need to write out the whole paragraph.

- **You do not need to write an introduction to a problem question** – and certainly not a long-winded one. Just deal with the issues one by one beginning each time with something along the lines of: 'In relation to... [here refer to the issue outlined in the question] X is likely to be charged with...' or 'When X... [here refer to the issue outlined in the question] he may have committed the offence of... ' and then go on to consider the possible offence(s) X may have committed, considering the elements of these offences in relation to the facts of the question. You should then consider whether the facts of the question give rise to the possibility of a defence or defences and, if they do, discuss that or those defence(s). When you have done this, you should then discuss the next issue raised in the question, beginning your discussion in the manner outlined above.

If you really do feel that you need to write a short introduction in order to get your thought processes working, then keep it brief. Below is an example written by a candidate in the May 2011 examination at the beginning of their answer to Question 1. Although there was no real need for this it is brief - and concise and would not have taken up too much examination time:

‘In order to establish criminal liability it is essential to consider... rape, assault by penetration, common assault, assault occasioning actual bodily harm contrary to s 47 Offences Against the Person Act† and battery. Then, it is to be established whether the relevant defences had a defence to the defendant.’

† It would have been better if the candidate had added the date of the statute.
This last sentence is not well expressed although its meaning is fairly clear. How would you express what the candidate was trying to say?

- **The first time you refer to an offence, briefly mention its maximum penalty** – if only because this demonstrates that you are aware of the seriousness or otherwise of the offence you are dealing with. All of the offences on the syllabus carry a maximum penalty – except for murder which has a mandatory penalty of life imprisonment.

- **Avoid unnecessary repetition.** The problem with this is not that you will necessarily lose marks (although you will not be awarded them either) but that the time which you have used up in making these unnecessary repetitions could have been far better spent in a more careful formulation of your answers and in considering what you might have missed out – thus gaining you extra marks.

- **When writing an essay, it is important that you come to a conclusion.** You should explain why you have come to your conclusion and, in order to do so, you must refer to the arguments both for and against which you have already made in relation to the proposition in the question.

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**Specific comments on questions**

The comments below indicate the issues that a satisfactory answer to each question might consider, and also highlight some common problems. We will illustrate some of these problems with quotations from actual exam answers.

**Question 1**

At a party, Pam was drinking a lot of alcohol and, during the course of the evening, she eventually became too drunk to stand unaided and fell over. Bob, who had always liked her, helped her to go upstairs and then, as she just giggled sleepily and did not protest, had sexual intercourse with her. Bob later said that, as she did not resist his advances, he thought that she was consenting. Pam claims to have been in a drunken stupor at the time.

Pam’s boyfriend, Gus, was angry when he found out what had happened. He telephoned Bob and said, ‘I am going to come and get you soon – just watch out!’ Bob became very nervous and did not leave his house for over a week. When he did so, the first person he met was Pam, who happened to be passing. On seeing him she became very angry and hit him in the face with her handbag. Bob suffered a black eye.

Discuss the criminal liability, if any, of the parties.

**General remarks**

This very straightforward question required a discussion of non-fatal offences against the person and sexual offences. Most candidates who answered this question recognised that the offence of rape was relevant but too frequently it was not dealt with appropriately. For example, one candidate asserted:

‘Bob is guilty of rape (section 1 Sexual Offences Act) as he was not reasonable.’

Can you see what is wrong with that sentence? First of all, the candidate has begun by stating that Bob was guilty of rape – before even beginning to discuss the offence in relation to the facts of the question. It is not clear from the facts stated in the question whether or not he would be found guilty – even after a discussion of
the elements of the offence, which this candidate has not done. All they say is that Bob was not ‘reasonable’. What does this mean? You must look at the elements of the offence and discuss them with reference to the facts and also the provisions in the statute. ‘Reasonableness’ relates to the belief of the defendant as to the victim’s consent for this offence. This should have been discussed. The question, therefore, is not whether Bob was a reasonable person but whether he reasonably believed that Pam was consenting. **You must be precise.**

Bob is likely to face a charge of rape contrary to s.1 of the Sexual Offences Act 2003. He believed Pam was consenting but whether or not that belief was reasonable will depend on the circumstances including any steps he took to ascertain whether she did in fact consent (s.1(2)). Lack of resistance is not, of itself, likely to be sufficient. The issue is whether she agreed by choice and had the freedom and capacity to make that choice. What is the relevant section here? Was her ‘drunken stupor’ relevant?

As to Pam’s ‘drunken stupor’, a number of candidates pointed out that:

> ‘Intoxication is no defence to a basic intent crime.’

In itself that is quite right – but it is of no relevance here. It was Pam who was drunk and not Bob. At this point Pam had not done anything which could be construed as a possible criminal offence.

Now consider the rest of the points below.

There is an overlap between rape and assault by penetration contrary to s.2 which also carries a maximum life sentence. It could have been pointed out that this offence, however, is only likely to be relevant – in the case of a possible rape – where the victim was not sure with what they were vaginally or anally penetrated.

You should also have considered the issue of pure assault in respect of Gus’s behaviour, recognising that words can amount to assault (*Ireland and Burstow* (1998)), and there is the issue here of whether Bob apprehended ‘immediate’ violence. Remember that any psychological harm, in order to amount to bodily harm, must be an identifiable clinical condition (*Chan-Fook* (1994)).

So far as Pam’s possible liability is concerned, common assault should be considered, as should the possibility of an offence under s.47 of the Offences Against the Person Act 1861 – does a black eye amount to actual bodily harm?

**Question 2**

**How would you distinguish between the defences of diminished responsibility and insanity?**

**General remarks**

Candidates often confuse these two defences, as evidenced in the following typical error taken from an exam answer:

> ‘For diminished responsibility it is ascertained that there is a disease of the mind...’

What is wrong with this statement (apart from the phrase ‘it is ascertained that there is...’ which makes no sense in this context)? Does the defendant need to be suffering from a ‘disease of the mind’ in order to successfully plead the defence of diminished responsibility? Of course not – that term relates to the defence of insanity. You must be very careful with your terminology. Now read the points to note below which will aid you in answering a question like this.

You should first of all demonstrate that you are familiar with the elements which form the basis of these two defences. You should point out that those in respect of
the defence of diminished responsibility are set out in s.2 of the Homicide Act 1957 as substituted by s.52 of the Coroners and Justice Act 2009, (i.e. the defendant must be suffering from an abnormality of mental functioning which arose from a recognised medical condition which substantially impaired their ability to understand the nature of their own conduct and/or to form a rational judgment and/or to exercise self-control and which also provides an explanation for the defendant’s acts and omissions in doing or being a party to the killing of another).

The defence of diminished responsibility must be distinguished from that of insanity. The elements of the common law defence of insanity are set out in the M’Naghten Rules. What is the distinction between ‘an abnormality of mental functioning’ and a ‘disease of the mind’? It should be pointed out that insanity is a defence to all crimes, i.e. it is a ‘general defence’, a successful plea of which results in the special verdict of ‘not guilty by reason of insanity’. By contrast, diminished responsibility is a statutory defence and is only available where the defendant has been charged with murder, i.e. it is a ‘special defence’, a successful plea of which will reduce the offence from murder to (voluntary) manslaughter.

Both defences are exceptions to the rule that the burden of proof lies with the prosecution in that, if a defendant pleads diminished responsibility to a charge of murder or insanity to any charge, the burden of proof will be on the defendant. The standard of proof is the civil standard, that is ‘balance of probabilities’, and in respect of diminished responsibility this has not been changed by the 2009 Act.

Question 3

Amanda and Michael were giving Nick a lift home from the pub in their car. Amanda, who had not been drinking alcohol, drove into a petrol station. While she was filling the tank and paying for the petrol, Michael lit a cigar and would not put it out when Nick told him to. Nick got angry and shouted at Michael and so Michael got out of the car to finish his cigar in peace. Nick followed him and started pushing and shoving him and calling him names. Michael punched Nick and, as he went to punch Nick again, Nick kicked him in the stomach causing him to fall over. As he fell, he knocked his head against a petrol pump, fracturing his skull. Amanda, who saw what was happening and was frightened that Nick would kick Michael again, ran over and hit Nick on the side of his head with an umbrella she had bought when she paid for the petrol. This caused Nick to suffer from temporary deafness.

Discuss the possible criminal liability of Amanda and Nick.

General remarks

The facts of this problem are based on the facts of Keane (Keane and McGrath (2010)) which was the subject of a newsletter. The newsletter also contained a very broad exam hint! Please always read the materials we provide.

For Nick, you need to consider possible liability under ss.18 or 20 of the Offences Against the Person Act 1861 (OAPA). You should discuss what grievous bodily harm (GBH) is – would a fractured skull amount to GBH? So far as the mens rea for s.18 is concerned, Nick’s possible intoxication might be relevant evidence of lack of actual intent to cause GBH as it is a specific intent crime. But intoxication would not be relevant to any lack of foresight on his part of some harm for the purposes of the s.20 offence. This should be explained.

So far as Nick’s possible defence of self-defence was concerned some candidates put forward arguments along the lines that:

‘Even if Nick mistakenly believed he needed to use force he might still be able to defend himself if he honestly believed it.’
There was no question of a mistaken belief here so it should not have been mentioned. The issues, **given the facts of the question**, are: was the force necessary and, if so, was it reasonable? Mention that the law is derived from the common law, but now codified in s.76 of the Criminal Justice and Immigration Act 2008. Does it matter that he could be said to have incited the violence? Have the tables turned or was it just a fight, the type for which the defence would not be available?

For Amanda, you need to consider s.47 OAPA. You should explain what assault occasioning actual bodily harm (ABH) is – could temporary deafness (how temporary?) amount to ABH? And was there an assault/battery?

For a possible defence of self-defence, an additional issue in relation to Amanda (but not Nick – see above) is whether she honestly believed there was a need to use force. Is there a possible element of pre-emptive force? She has not been drinking so it is straightforward—was the force she used reasonable under the circumstances/under the circumstances as she believed them to be?

**Question 4**

Donald went into Florrie’s supermarket, intending to steal anything that attracted him.

While in the supermarket, Donald picked up some cheese which he put straight into his pocket. He was spotted by a store detective who approached Donald and asked him to explain what he was doing. Donald pushed the store detective to one side and ran off.

Feeling very pleased with himself, Donald went to a local department store to buy some clothes. After he had chosen a number of items he realised that he had no cash with him. He used his credit card to pay for the clothes, despite having received a letter from the bank that morning telling him that he had gone beyond his credit limit and that he must not use the card again.

Donald then used some foreign coins in a vending machine to obtain a bar of chocolate. He was unsuccessful.

Discuss the criminal liability, if any, of Donald.

**General remarks**

Burglary should be considered contrary to s.9(1)(a) of the Theft Act 1968 when Donald went into the supermarket. Although there is an implied permission to enter a supermarket, this is restricted to lawful purposes. As Donald entered the supermarket intending to steal, he entered in excess of the implied permission (*Jones and Smith* (1976)) and, as he knew of the facts that made his entry trespassory, he entered with the appropriate *mens rea* (*Collins* (1973)).

Donald did not intend to steal specific items when he entered Florrie’s supermarket. Candidates would have gained marks for pointing out that this does not preclude liability for burglary. A person may be convicted of burglary contrary to s.9(1)(a) if they intended to steal something in the building, even though, at the time of entry, they had no specific item in mind (*Attorney General’s References (Nos 1 and 2 of 1979)* (1979)).

In addition to further offences of theft and burglary in respect of the cheese, Donald may be guilty of robbery contrary to s.8(1) of the Theft Act 1968.

Clearly Donald stole the cheese when, with a dishonest intent, he removed it from the shelf, and the push (of the store detective) is clearly capable of amounting to force (*Dawson* (1976)). There is no need for ‘substantial’ force. In *Hale* (1978)
Court of Appeal held that whether force used was at the time of the theft is a question of fact and that a jury is entitled to conclude that force used to effect an escape with stolen goods is force used at the time of the theft and in order to steal.

Fraud by false representation in relation to Donald’s use of the credit card to pay for the clothes should be discussed. It should be pointed out that a fraudulent representation is an assertion which is untrue or misleading and which the person making it knows is or might be untrue or misleading (s.2(2)). Do not merely limit yourself to saying:

‘When he used the credit card he was guilty of fraud.’

Remember that fraud can be implied by conduct and there is no need to prove that anyone was actually deceived by the representation. You should also consider the offence of theft contrary to s.1 of the Theft Act 1968.

So far as the vending machine is concerned, under the old (and now repealed) law relating to offences of deception, it was not legally possible to deceive a machine as the deception had to be ‘operative’, i.e. it had to ‘operate’ on the mind of the victim, causing the victim to part with the property. You should point out that this is not the case under the Fraud Act 2006. Although it would need to be proved that Donald intended to make a gain for himself or cause loss to another, this is the mens rea element of the offence. So far as the actus reus is concerned, it is not necessary that a defendant actually causes any loss to anyone or makes any gain for himself.

**Question 5**

Susie was bored with her husband, Pete, and frequently told him so. She often said to him that she wished he would go and live somewhere else. One evening, just after they had eaten, she taunted him continuously about his lack of sexual prowess until he became very angry and came towards her with his fists raised. Susie, who thought he was going to punch her, lost control. She grabbed a knife which had been left on the table and, intending to cause Pete serious harm, stabbed him, killing him instantly. Susie has been charged with murder and wishes to plead the defence of loss of control.

Advise Susie. Do NOT consider the defence of self-defence.

**Would your answer differ in the following circumstances?**

Susie’s attack was not immediately fatal. Pete was treated, but, while in hospital, the wound became infected and did not respond to medication. Pete died of septicaemia.

**General remarks**

This is another very straightforward problem question which was covered in the computer-marked assessments.

What is wrong with the following statement? (Similar statements to this were made in a number of examination answers):

‘This offence fits under section 3 of the Homicide Act 1957... and from the details of the circumstances we can see that there has been a loss of self control due to provocation by Pete.’

First of all, the word ‘offence’. The candidate is considering a defence and confusing these two words indicates a lack of understanding. Please be careful with what you write. Secondly, s.3 of the Homicide Act 1957 has been repealed. The defence of provocation no longer exists. See the subject guide and your textbook, and note that *Smith & Hogan* is updated on the OUP website – details of this are on the VLE. This, and many other candidates, have obviously heard of the defence of
loss of control (see the Coroners and Justice Act 2009) but have not done the necessary work and conflate the defence of loss of control with that of the (now repealed) defence of provocation.

Here is a statement from an answer which obtained a first-class mark:

‘Susie wishes to plead the partial defence of loss of control which, if successful, will lower the verdict from murder to manslaughter. Note that the burden remains on the prosecution to disprove the defence beyond reasonable doubt.’

The candidate then went on to discuss the issues relating to this defence in a clear and concise manner, referring to the relevant provisions in the statute.

Now consider this statement – again, many candidates made this error:

‘As James came towards Susie with his fists raised – Susie could plead the defence of self-defence.’

Read the instructions at the end of the question. They say very clearly: ‘Advise Susie. Do NOT consider the defence of self-defence’.

Now consider the points to note in relation to this question below.

You should, first of all, consider whether Susie could be guilty of murder, dealing with the actus reus (which is straightforward in this part of the question) and then the mens rea. Did she intend to kill or cause GBH? The question tells you that she did so there is no need to refer to Woollin (1998).

So far as her possible defence of loss of self-control is concerned, it could be pointed out that this defence replaces that of provocation by virtue of s.54(1) of the Coroners and Justice Act 2009. You should note that the defendant bears an evidential burden in respect of the defence – s.54(6) – and that it is only where, in the opinion of the judge, a jury properly directed could reasonably conclude the defence might apply that it should be left for their consideration. Provided this threshold requirement is met, the probative burden is on the prosecution (s.54(5)) who must prove beyond reasonable doubt that Susie’s fatal act did not result from a loss of self-control (s.54(1)(a)) and/or that the loss of self-control was not a result of a ‘qualifying trigger’ as defined in s.55 and/or that a person of Susie’s sex and age, with a normal degree of tolerance and self-restraint and in the circumstances of Susie, would not have reacted in the same or in a similar way (s.54(1)(c)).

Although the question makes it quite clear that, by taunting Pete, Susie incited him to threaten violence towards her, it is ambiguous on the issue of whether or not Susie did this for the purpose of providing her with an excuse to use violence. For the purpose of this defence, by virtue of s.54(1)(b) any loss of self-control must be as the result of a ‘qualifying trigger’, and s.55(3) provides that fear of serious violence against D or another may amount to a qualifying trigger.

So far as Susie is concerned, if she did what she did in order to provide her with an excuse to use violence (and the question does say that she wanted rid of him) then she would not succeed with the defence – see s.55(6). If, however, she did not taunt him to provide herself with an excuse to use violence, she genuinely feared serious violence from Pete and, by virtue of s.54(1)(c), a person of her age and sex, with a normal degree of tolerance and self-restraint and in the circumstances of Susie might have reacted in the same or in a similar way to Susie, then she would be likely to succeed with the defence.

The ‘alternative’ part of the question required a consideration of causation, i.e. whether Susie’s conduct was the operative and substantial cause of Pete’s death. Note that the issue of causation relates to the actus reus of an offence. If there is no
causation (where it is relevant) then there is no actus reus and, therefore, no offence. Consider the different approaches below and think about what marks you would give if you were the Examiner:

1. ‘The above conclusion will remain the same even if Pete died of septicaemia in hospital. The scenario is that of R v Gowans where the defendant was convicted of murder despite the victim dying of septicaemia. The standard for poor medical treatment acting as an actus novus interveniens and breaking the chain of causation is high. In the case of Jordan, the victim’s wound was almost healed before the doctors mistakenly gave the drug to which the patient was allergic and which caused death. This treatment was said to be ‘palpably wrong’ and it broke the chain of causation. In the case of Cheshire... the wound merely provided the setting and unless the treatment was independent from the act and was potent in causing death there would be no break in the chain of causation. See also Smith.

   In Pete’s case, his wound remained the operating and substantial case of his death.’

2. ‘There will be no difference of the result of death of Pete. And the responsibility of Susie although Susie attack was not immediate cause Pete died. It is the factual and legal cause of Pete’s death by inflicting the wound on him by Susie’s stab. But for Susie’s stab wounded Pete, Pete would not have his wound be infected with and subsequently died. It is the fact suggested that the wound had never healed and did not respond to medication. According to Cheshire even the wound at V in Cheshire was not life threatening it was still operative and substantial cause of death, same as Pete’s wound.’

3. ‘No, my answer would not differ since there is no break in the chain of causation.’

**Question 6**

Under what circumstances may a person be criminally liable for a failure to act?

**General remarks**

This was an extremely straightforward essay question which was, generally, answered reasonably well. Candidates should explain that although there is no general criminal liability for omissions to act, there are circumstances where a duty to act might be imposed either by statute, for example where it specifically states that a particular offence may be committed by omission, or by the courts. You should explain that before a duty to act will be imposed by the courts, the specific offence must be capable of being committed by omission, and then discuss what factors a court might consider in its determination of whether a defendant was under a duty to act where the offence was capable of being committed by omission.

**Question 7**

Frank is a former cocaine addict and abuse of this drug over a number of years has left him unusually paranoid and, thus, very vulnerable. Frank’s next door neighbour, Grant, whose boyfriend, Robert, had just left him, came to visit Frank in a very angry and distressed state. Grant told Frank that he wanted Frank to go and give Robert a ‘seeing to’. By this, he meant that he wanted Frank to beat up Robert. Frank misunderstood and thought that Grant wanted him to have sexual intercourse with Robert. Frank did not want to do
this but as he had, for a long time, believed (without foundation) that Grant wished to kill him, and was scared not to do as Grant had asked, agreed to do so.

Frank went to Robert's house and, despite Robert's protests, forced him to submit to sexual intercourse. Unknown to Frank, Robert had always had a crush on him and, after pretending to protest, had been happy to submit to Frank's advances.

Discuss the possible criminal liability of Frank and Grant.

General remarks
The duress element in this question is based on an activity at page 189 of the subject guide. In addition, you need to consider possible liability for attempting the impossible: even though Robert is secretly happy to submit to sex with Frank, might Frank not still be liable for attempt since he believes that the sex is forced? If Frank is so liable, could Grant then be liable as an accomplice? And could a sexual offence be within the same range of offences as a non-fatal offence against the person?

Question 8
Ruby, who was aged 16 and not very bright, decided to run away from home. She wandered the streets for a while and became extremely bored. To pass the time, she carved her initials on some scaffolding and then let down the tyres of a car which was parked on the street. Fred, the owner of the car, saw what she was doing and remonstrated with her and so she shook her fist at him, spat at the briefcase he had just put down and ran away. Fred then had to wash the spittle from his briefcase.

By the time night fell, Ruby was cold, tired and hungry. She decided to go and shelter in her next door neighbour’s garden shed until her parents went to bed and then creep into her house to sleep.

Unfortunately, the shed door was locked but she managed to break it and get into the shed. She liked her next door neighbour and thought he would not mind her doing that.

She was still very cold. She lit a fire using an old newspaper and some white spirit which she found in the shed. The resulting fire quickly went out of control causing damage to the shed and its contents.

Consider Ruby's possible criminal liability.

General remarks
This very straightforward question raises a number of criminal damage issues and the possibility of theft of the white spirit and newspaper and also the (unlikely) possibility of assault when Ruby shook her fist at Fred.

The criminal damage issues are based on a number of activities and a self-assessment in the subject guide. Please ensure that you always complete the activities in the subject guide and compare your answers with the feedback at the end of the guide.

Spitting on Fred’s briefcase is unlikely to amount to criminal damage as the question indicates that he was able to wash it off (A (a juvenile) v R [1978]) – similarly for the scratch on the scaffolding, unless it amounted to something more than a ‘normal incident’, i.e. nothing more than one would expect to happen to scaffolding and would not amount to an impairment of its value or usefulness (Morphitis (1990)).
The damage to the lock would be simple criminal damage contrary to s.1(1) of the Criminal Damage Act 1971 subject to the defence of lawful excuse provided by s.5(2)(a) which should be discussed, and the damage to the shed itself requires consideration of arson (s.1(3)).

In relation to the incident concerning the shed, a number of candidates wrote:

‘When she entered the shed she was a trespasser and was guilty of burglary’.

Why at the time of entry? Even if she was a trespasser, she had no intention of committing any of the offences set out in s.9(1(a)) of the Theft Act 1968 at the time she broke into the shed. She could not, therefore, have been guilty of burglary contrary to that section. She may, however, later have been guilty of burglary contrary to s.9(1)(b). Why is that? Think about it.