Examiners’ report 2012

LA1010 Criminal law – Zone A

Introduction

As with all undergraduate cohorts, the quality of answers ranged from first class to weak fails. Too many candidates were content to skate over the question in front of them and to give a descriptive account of the relevant area of criminal law, gleaned from textbook or subject guide. This is neither correct legal method nor does it show sufficient scholarship for those desirous of an excellent mark.

By contrast, the best scripts were able to identify the issues, state them clearly, and produce a balanced argument or discussion centred on the key issues. They also showed good scholarship in terms of the Further reading recommended in the subject guide and available in the VLE.

Please note that for student extracts, spelling errors and other linguistic problems have been left as they were on the examination scripts.

Specific comments on questions

Question 1

Betts and Ridley, while in the process of stealing from Veronica's house, are disturbed by her. Betts produces a pocket knife which Ridley had known he was carrying. Ridley shouts at Betts, “What do you think you are doing? Put it away.” He then runs out of the house. Betts fatally stabs Veronica.

Consider the extent of Ridley's complicity.

Would it make any difference if Betts killed Veronica in the course of a frenzied attack, punching and kicking her?

General remarks

The question is directed towards the law of criminal complicity in cases of joint enterprise. It asks you to consider the liability of Ridley for an unauthorised crime (murder) committed by Betts in the course of their joint enterprise, that is burglary. The answer must deal first with the primary liability of Betts for murder and then with the prospect of Ridley being complicit in that murder on the basis of his possible contemplation that Ridley might intentionally kill.

Law cases, reports and other references the Examiners would expect you to use

Your discussion and argument will require consideration of cases such as Powell, Mendez, Carpenter, Beccera and Rook.

Common errors

This question was badly done by most candidates. The overwhelming tendency was for candidates to talk at length about aggravated burglary when this was only peripheral to the question. Think about how the police would view the matter. They
would be concentrating on the killing rather than the burglary, which simply forms the context within which the killing takes place.

**A good answer to this question would include the following points...**

- The joint enterprise is burglary. B and R are principal offenders.
- B is principal offender for a homicide offence, but which one? There is evidence that B had the *mens rea* for murder, at least R seemed to think he had! However, it was only a pocket knife which is not the kind of instrument one would use if one wanted to cause serious injury.
- If it is murder, is R complicit? This requires proof that R contemplated at the outset of the joint enterprise that B might stab V with the *mens rea* for murder. There is some evidence here, namely that he knew the weapon was being carried. However, he would argue plausibly that it was only contemplated that it would be used for burglary purposes since:
  - it was a pocket knife
  - his reaction (both words and deeds) were indicative of someone who was unprepared for what transpired.
- Assuming this argument fails is the running away sufficient to withdraw?
- There may be room for some discussion of possible liability for manslaughter, although B is convicted of murder (*Carpenter*) but since there is little evidence of contemplation of *any harm*, this seems to scotch this argument.

**Poor answers to this question would...**
Concentrate on the offences committed by the two parties, without identifying the issue at the heart of the problem which is the scope of liability for joint enterprise.

**Question 2**

(a) **To what extent is liability for theft negated by the owner consenting to the appropriation of property?**

(b) **John wants to buy a bar of chocolate from a chocolate vending machine. He discovers he has no change. He inserts, instead, a foreign coin into the slot and the machine delivers a bar of chocolate into the receptacle. Regretting his action, John leaves the chocolate in the receptacle and walks away. Sophie walks past, sees the chocolate in the receptacle and walks away. Sophie begins to eat it. Greta, the machine owner, sees her do this and demands payment. Sophie tells her she has no money, which is untrue, and walks away.**

What criminal offence(s), if any, have been committed by John and Sophie?

**General remarks**

**Part A** is largely to do with the *Hinks* principle. The consent of the owner does not negate the *actus reus* of theft but may well negate dishonesty.

**Part B** requires consideration of John’s possible liability for theft of the chocolate, and fraud by dishonest representation. It also requires consideration of Sophie’s possible liability for theft of the chocolate and fraud by misrepresentation.
Law cases, reports and other references the Examiners would expect you to use

Gomez, Lawrence, Hinks, Morris and Ghosh are indicative cases.

Common errors

On **Part A** there was a tendency to talk about s.2(1)(b) to the exclusion of the real nub of the question which is s.3 and *Hinks*.

On **Part B**, with respect to John, there was a tendency to talk only about Fraud (most commonly) or theft (less commonly). Relatively few dealt with both offences. With respect to Sophie there was a tendency to talk about theft (most commonly) and fraud (less commonly). Relatively few dealt with both offences.

**A good answer to this question – Part A – would**...

Consider the notion of an appropriation under s.3 Theft Act 1968. If the owner consents to the passing of ownership, possession or control of property to D does this mean that D does not appropriate the property? The House of Lords answered in the negative in *Hinks*. Even the donee of an absolute gift appropriates the property. This does not mean that D will be guilty of theft, however, because the prosecution must still prove dishonesty and this may well be negatived by the fact of the owner’s consent.

A very good answer would examine the possible conflict between section 2 (1) (a) and (b) and *Ghosh* on this question.

**A good answer to this question – Part B – would**...

Consider in relation to John:

**Theft.** Guilt depends upon whether he formed the dishonest intention at the time of the appropriation. This in turn depends upon when the appropriation takes place. Does one appropriate, in the sense of assuming a right of ownership over, chocolate in a machine simply by putting the money in? If so, his later change of mind is irrelevant.

**Fraud.** Guilt depends upon whether putting the foreign coin in a slot machine counts as a representation. Consideration must be given to section 2, particularly s.2(5).

Consider in relation to Sophie:

**Theft.** The issues are:

a. whether the chocolate belongs to someone else at the time of appropriation or whether it is abandoned property? (see *Woodman*)

b. Is she dishonest in taking the chocolate? The interplay of section 2 and *Ghosh* are relevant here.

**Fraud.** Good candidates will identify the false representation and what benefit she intends to gain from the representation.

A good answer will examine the possible conflict between section 2 (1) (a) and (b) and *Ghosh* on this question.

**Poor answers to this question...**

Did not address the *Hinks* point in Part A and will talk about fraud in the first part of Part B, without addressing theft; and talk about theft in the second part without addressing fraud.
Question 3

Jim and Margaret are friends. They both work in the field of public relations. Dan, an associate of Jim, envies Jim’s friendship with Margaret and malevolently spreads rumours alleging unethical professional behaviour on Margaret’s part. As anticipated by Dan, a violent quarrel ensues when Jim calls on Margaret. During the quarrel Margaret hurls a large tin of beans at Jim. In attempting to avoid being struck by the tin, Jim strikes his head on an open door, suffering a fractured skull. Margaret immediately telephones for an ambulance. When Jim reaches hospital, his condition has deteriorated so much that he dies expires before any treatment can be administered.

Discuss the criminal liability, if any, arising from this incident.

General remarks

This was a question designed to test understanding of the relationship between murder and constructive manslaughter and common issues arising in such cases. Here these issues include the way *mens rea* separates cases of murder from constructive manslaughter, the availability of the defence of loss of self control, and causation.

Law cases, reports and other references the Examiners would expect you to use

Sample cases include Moloney, Cunningham, Vickers, Duffy, Roberts, Mackie, also Coroners and Justice Act 2009 s.52–55.

Common errors

As usual, there was a tendency to talk generally about criminal homicide rather than engage in the specifics of the question. In this context, there was too much descriptive stuff about the *actus reus* of homicide. This is not at issue and therefore does not need to be discussed. There was also a tendency to talk about murder to the exclusion of constructive manslaughter. Given the fragile *mens rea* evidence this was a serious error.

A good answer to this question would...

1. Identify whether there was sufficient evidence of *mens rea* which is the intention to kill or the intention to cause GBH to establish murder. **The Argument for** is that she:
   a. was ‘angry’; b. ‘hurled’ + ‘large tin’ (presumably a half kilogram tin).
   
   **The argument against** is that there is no evidence the tin was hurled at head else it would have said so. Without this, there is no evidence of intent to commit GBH. Also compelling is the immediacy of the ambulance call, suggesting there was a desire to throw the tin at Jim but not to (seriously) hurt him. There is also an issue of causation. This will be dealt with in 2 below.

2. Good answers would also have a fall back offence, if *mens rea* cannot be established – namely, constructive manslaughter; whose *actus reus* elements, unlawful and dangerous act, and *mens rea* element, are clearly present. The major issue is causation; specifically, whether the fact that Jim hit his own head breaks the chain of causation. (See, for example, Roberts, Mackie.)
3. Good answers would also make the point that it is unlikely that the jury would find the *mens rea* for murder. However, if they do, there is the prospect of raising the defence of loss of self control? Is it triggered by a justifiable sense of being seriously wronged? Reference would be made to Margaret’s job in this context.

Really good answers would discuss the possible liability of Dan as accessory or under the Serious Crimes Act, although this was not expected.

**Poor answers to this question...**

Would typically assume that the offence is murder without examining the *mens rea* evidence and, if they talk of loss of self control, would not explain what in the facts makes this a possible option.

**Student extract**

‘If the *actus rea* and *mens rea* can be proved then he will be charged for murder.

Nevertheless he can raise the defence the loss of control.

Loss of control is defined in section 59 of the Coroners and Justice Act 2009, section 59(i) of the Coroners and Justice Act provides three elements which has to be proved to get this defence. The three elements are:

1) She had a loss control
2) Which arose from a qualifying trigger
3) A reasonable person in her place would have done the same thing.

The first requirement will easily satisfied as he cannot restrain herself from doing what she did. R v Richens. The case of R v Duffy suggests that the loss of control needs to be sudden and temporary. From the fact it appears that Marion’s loss of control was sudden and temporary she the first requirement is satisfied.’

**Comment on extract**

A common mistake on the defence of loss of self control is reflected in this extract. The main difference between this defence and provocation is the confirmation that the requirement for the loss of control does not have to be sudden. So Duffy is not in point. The answer too easily moves from the undeniable fact that M lost her temper to the conclusion that she was provoked to lose her self control. The two things are not the same. See Acott. More discussion was needed here therefore on this point.

**Question 4**

Bill, a drug addict, asks Lena, his wife, to inject him with heroin. She protests but, knowing he will do it himself if she refuses, complies with his request. A few minutes later Bill falls unconscious. Lena feels his pulse, which is faint. She panics and runs out of the house. Although she knows Bill is very ill, she fails to call the emergency services, fearful that she will be held responsible for his condition. After two hours, she calls an ambulance. It takes a further hour for it to arrive because the ambulance workers decided to finish a game of cards. When they eventually arrive, they find Bill dead. If Bill had received medical attention within an hour of his collapse, his death would have been prevented.

Discuss.
**General remarks**
This question is designed to explore your understanding of the *actus reus* component in criminal offences, here, manslaughter. You were expected to point out that there are two possible routes for the prosecution to establish the *actus reus*. First, the affirmative act of injecting the drug which might form the *actus reus* of constructive manslaughter. Second, the omission to call the ambulance which might form the *actus reus* of gross negligence manslaughter. Both routes involve (weak) issues of defence; namely, necessity or duress of circumstances and causation.

**Law cases, reports and other references the Examiners would expect you to use**
Indicative cases include *Cato*, *Miller*, *Dalby*, *Evans*, *Smith*, *Jordan*, *Bonnyman*.

**Common errors**
The most widespread error was to deal with one form of manslaughter to the exclusion of the other. Here the majority of candidates talked about *Evans* and gross negligence manslaughter, but not *Cato* and unlawful act manslaughter.

**A good answer to this question would identify the following key issues.**
1. Is the injection an unlawful act? The unlawful act should be identified.
2. Relevance of consent (*Cato*). A very good answer will distinguish *Cato* from the case where injection may be thought the lesser of two evils.
3. **Causation.** The main issue is whether the chain of causation is broken where bad medical treatment has occurred? (*Cheshire*). The key feature here is the voluntary decision by medical staff not to intervene rather than mere negligence. If so, ambulance crew may themselves be vulnerable to conviction, (although this eventuality is not excluded by Lena's guilt (due to her act still being a potent cause (*R v Smith*)).
4. Although an omission does not usually form the *actus reus* of criminal homicide it may do for gross negligence manslaughter if the failure to act was a breach of duty. Here therefore the issue is whether Lena was under such a duty. Students should identify the source of the duty to intervene: a. special relationship, *Bonnyman*; b. creation of danger, *Evans*.

**Poor answers to this question...**
Typically ignored the possibility of constructive manslaughter on the basis of the omission and simply talked about liability in gross negligence manslaughter for the omission to intervene on time.

**Student extract**
'Lena may have breached her duty of care. There is a general presumption in law that a special duty of care is owed by a husband to his wife as well as by a wife to her husband. When Bill became unconscious, Lena should have immediately called an ambulance or seek other medical attention. The duty of care principle may be traced back to the case of *Hyman* (1975) and *R v Evans* (2009).

Therefore, it can be said that ‘but for’ Lena failing to seek medical attention at an earlier notice, Bill may not have died. Lena may however, in her defence use that of duress in that she was under some sort of pressure when she committed the offence. This is so as she knew that if she refused to inject Bill with the heroin he would have done it himself. She may also plead fear that some sort of action may be used against her if she was held responsible for the condition. The burden of proof however remains on her to prove that she did in fact suffer duress of
circumstances, in that she was influenced by some sort of physical or mental pressure arising out of the circumstance.’

Comment on extract
This is a just reasonable attempt at dealing with the issue relating to the duty of care. One basis for the duty (relationship) has been identified. The other (the creation of a dangerous situation) is implied by use of Evans, but should have been identified explicitly.

The use of duress would be improved by explaining that this would be duress of circumstances and outlining what needs to be established, and authority (for example, Conway, Willer, Martin). A serious error in this respect was the statement with respect to the burden of proof.

Question 5

Alison, Bertha, Charles and Desmond meet in a pub for a reunion. Alison does not drink alcohol but Bertha puts vodka in her lemonade as a joke. Later, Bertha suggests to Alison that Alison should drop her glass on the floor to see if it will bounce. Alison does so and the glass breaks. Later, Bertha, who has been drinking beer all evening, rides off on the landlord’s bicycle. When stopped by John, a police officer, Bertha says that she thought the bicycle had been abandoned. When John tries to arrest her, she aims a punch at him which misses and hits Phoebe, a bystander. Charles, who has also been drinking beer, thinks that Desmond, who is aiming a dart at a dartboard, is about to throw it at him. He therefore seizes a chair and hits Desmond with it, injuring him.

Advise Alison, Bertha and Charles.

General remarks
This was a question designed to test your understanding of how voluntary and involuntary intoxication may affect criminal liability. It was important to show that you understood that intoxication can only ever affect liability if it acts to negate any mens rea that the prosecution have to prove. You should therefore in each part of the question identify the offence to be charged, the mens rea for that offence and whether, by virtue of intoxication, the defendant had failed to form that mens rea.

Common errors
A surprising proportion of candidates failed to deal satisfactorily with the issue posed by intoxication. Some ignored it altogether. Others did not distinguish involuntary from voluntary intoxication, and basic intent from specific intent crimes and why these distinctions might affect the parties’ liability. Few candidates, in any event, identified the O’Grady point. And very few indeed dealt with every part of the question.

Law cases, reports and other references the Examiners would expect you to use
Indicative cases include Majewski, Caldwell, Kingston, Pembilton, Latimer, O’Grady, O’Connor.

A good answer to this question would…
Separate the discussion according to the defendant as follows and identify the following issues for discussion.
Alison

1. Offence chargeable is criminal damage. The mens rea for this offence is intention or recklessness. The normal inference to be drawn from deliberately dropping a glass is that the dropper intended to break it or at least was reckless. The issue then is whether these states of mind are negated by involuntary intoxication? Was she oblivious or simply reckless?

Bertha

Offence chargeable is theft. The mens rea for theft is dishonesty and intention to permanently deprive. Since theft is a specific intent crime she can use evidence of self induced intoxication to negate either dishonesty or intention to permanently deprive. The question then is; does it? What is she saying about her mens rea?

Offence chargeable is assault. The first issue concerns B’s mens rea. Mens rea for assault is intention or recklessness. This means that assault is a basic intent crime. Intoxication cannot be used to negate the mens rea of basic intention crimes. (Majewski). The second issue concerns the doctrine of transferred malice which prevents B successfully claiming that she did not intend to punch Phoebe.

Very good answers will also mention encouraging criminal damage under s.45 SCA 2007. You would be given credit for mentioning this as a possibility but was not expected.

Charles

1. Offence chargeable under s.47 OAPA 1861. The first issue concerns Charles’s mens rea. The mens rea for s.47 is intending or foreseeing the application of force to the body of the victim (Venna). This means that his intoxication cannot be used to negate his mens rea. (Majewski). The second issue concerns the possible use of the defence of self defence which can be used even where the defendant is mistaken that he is subject to an attack (Beckford). However, it cannot be used when the mistake was made because of voluntary intoxication (O’Grady).

Poor answers to this question…

Talked about the offences but not the defences, ignoring the basic intent-specific intent dichotomy, in particular.

Question 6

Consider the case for reforming the law of homicide.

General remarks
This is a wide ranging question, which should have been rooted in recent Law Commission, and other, proposals for reforming murder and manslaughter.

Common errors
Very few candidates tackled this question and sadly most who did so did not earn admiration for their answers. This is not the kind of question to do if you have not read widely and thought long and hard about our rather archaic and unwieldy law of homicide and the defences available thereto. The majority of candidates knew this was required and avoided the question.
Law cases, reports and other references the Examiners would expect you to use
Recent Law Commission reports, for example, those on Murder, Manslaughter and Infanticide, Involuntary Manslaughter, and Partial Defences, Hyam, Moloney, Woollin, Nedrick, Re A (conjoined twins), Nicklin, Purdey, Pretty, Sullivan, Vickers, Powell.

A good answer to this question would...
Include discussion of the mandatory sentence (and explain how it is responsible for many of the difficulties facing the law of murder). Also the Law Commission, the Royal Commission and other proposals for changing the fault element in murder, including the most recent proposal for a two-tiered crime of murder. It would also consider and evaluate the current law of manslaughter together with the Law Commission's eventually watered down reform proposals to address the concerns surrounding constructive liability and the indeterminacy of gross negligence manslaughter. Very good answers would have referred to unlegislated reform proposals in the area of defences, particularly mercy killing, and duress and necessity.

Poor answers to this question...
Tended to ignore the various reform proposals issuing from the Law Commission and gave a descriptive account of homicide generally together with the odd ad hoc criticism.

Question 7

(a) Graham suffers from delusions. Often they take the form of hearing voices which tell him to do things. One day the voices tell him to set fire to a van parked outside a block of flats. He does so. The fire spreads quickly to the block of flats. Karen, who lives in an upstairs flat, escapes uninjured at the last moment.

(b) Ian, while walking along the street, is attacked by a dog. While flailing his arms around to protect himself, he hits Dawn in the face, breaking her nose. Harry, a passer-by, bends over Dawn and asks if she needs help. Marian, another passer-by, assumes that Harry is attacking Dawn and strikes Harry on the head with a brick lying nearby, killing him instantly.

Discuss any criminal liability arising.

General remarks
Part a. concerns the possible use of the defence of insanity to the crime of criminal damage and aggravated criminal damage.

Part b. concerns the availability of the defence of automatism to the crime of assault and, in relation to Marian, the availability of the defence of self defence in relation to either murder or manslaughter.
Common errors
The most common error was to devote disproportionate time to different parts of the question. The defence of insanity was not very well tethered to the need to negate *mens rea* and many candidates mistook Ian’s defence as self defence rather than automatism.

Law cases, reports and other references the Examiners would expect you to use

A good answer to this question…
Would separate the analysis into different defendants as follows.

**Graham** – The offence chargeable is aggravated criminal damage. The *mens rea* for this fault element is intending or being reckless both as to the damage and as to the risk of death. Reference should be made to this fault element and the relevance of the *McNaghten rules* in establishing this fault element. On the face of it, they do not apply since there is no evidence that Graham did not know what he was doing or that it was (legally) wrong (*Windle*).

**Ian** – The offence chargeable is s. 47 OAPA 1861. A broken nose is ABH. The issue is whether *mens rea* is negated by the involuntary nature of his conduct (*Hill v Baxter*).

**Marian** – The offences chargeable are murder or constructive manslaughter depending upon *mens rea*. The evidence is equivocal on this since it appears there was only one blow. The main issues relate to mistake (which is not fatal to the defence of self defence (*Williams*)) and disproportionality (which is fatal), unless, for murder, Marian can be brought within the defence of loss of self control which on the facts is doubtful.

Poor answers to this question…
Tended not to examine closely the *McNaghten rules* and left Marian’s liability underanalysed in a number of ways, particularly in failing to discuss both the offence chargeable and the defence thereto.

**Question 8**

Romeo and Juliet are lovers. Romeo discovers he has AIDS (a potentially fatal disease capable of being transmitted by sexual intercourse). He decides to break off the relationship with Juliet out of love for her, not wishing to communicate the disease or admit to his condition. When he tells Juliet, first she becomes angry and then she despair. She begs that they have sexual intercourse telling him that it will be a sign that he still loves her. Reluctantly he agrees, convincing himself that this will be the last time and that no harm will come of it. Six months later Juliet is found to have contracted the disease.

Discuss Romeo’s possible liability under each of the following sections of the Offences Against the Person Act 1861.

(a) s.47
(b) s.20

(c) s.18

General remarks
There is an ambiguity in this question, namely whether Juliet is made aware of Romeo’s condition before the request for sex. Candidates’ papers were marked according to whichever of these two interpretations they adopted. I am assuming she does not know.

Law cases, reports and other references the Examiners would expect you to use
Indicative cases include Clarence, Wilson, Salisbury, Dica, Konzani, Burstow, Ireland, Belfon.

Common errors
Few candidates made the point that irrespective of whether consent is operative s.47 requires an assault and s.20 does not. Quite a few other candidates did not seem to understand that whereas consent needs to be informed to negate liability (Dica), if it is informed it is a defence despite the risk of serious harm (Konzani). Brown is irrelevant. There is also an argument that the recklessness required by both s.20 and s.47 might be negated by the reason for having intercourse.

A good answer to this question would separate out the different offences as follows:

s. 47 Dica and Konzani held that a person’s consent to intercourse must be informed if it is to act as a defence to assault. By ‘informed consent’ in this context we mean that the victim was aware that her partner was suffering from venereal disease. The effect of these decisions is to place agents under a duty of disclosure in cases where there is a risk of transferring a disease. Clearly, if she knew of R’s condition there is no assault as these cases confirm that one can consent to the risk of sexually transmitted disease. Brown is not applicable.

s. 20 As above, except a very good answer might suggest that no infliction without the serious harm being delivered by the application of force (Salisbury) except in the case of psychiatric injury (Burstow). It will state that serious harm includes AIDS (Dica). It may also argue that recklessness requires the running of an unjustified risk which, given the context, might conceivably be countered.

Section 18 – Section 18 requires proof of an intention to cause GBH. There is no evidence of this specific intent here, whether of direct or indirect intent.

Poor answers to this question…
Tended not to distinguish between the answers to s.20 and s.47 and miss the point that informed consent is a valid defence to each offence.