Examiners’ report 2013

LA1010 Criminal law – Zone A

Introduction

As with all undergraduate examinations 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 the 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 on the VLE.

Please note that in the sample extracts provided below spelling errors and other linguistic problems have been left as they were on the examination scripts.

Specific comments on questions

Question 1

Compare and contrast murder, constructive manslaughter and gross negligence manslaughter.

General remarks

Unfortunately it seems that candidates took little notice of advice in the April 2012 and February 2013 newsletters about how to answer essay questions. Do look at these newsletters to see what the correct technique is. The April 2012 newsletter, in fact, deals specifically with ‘compare and contrast’ questions.

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

Your discussion and argument will require consideration of cases such as Moloney, Hancock, Woollin, Lamb, Newbury and Jones, Church, Dawson, Adomako, Evans, Wacker, Willoughby.

Common errors

This question was badly done by most candidates. The overwhelming tendency was for candidates to concentrate on murder, and do little more than mention one or two points of contrast and comparison, for example, the similar actus reus; the differing mens rea requirements; the requirement of an act for constructive manslaughter but not for murder or gross negligence manslaughter.

A good answer to this question would...

Include the following points.
1. Definitions and brief outlines of the elements of each offence.

2. Points of comparison that could be included.
   - All involve the unlawful killing of a human being.
   - Both murder and gross negligence manslaughter can be committed by act or omission.
   - Both forms of manslaughter have life sentence as the maximum punishment.
   - Both forms of manslaughter are alternative verdicts to murder.
   - Neither form of manslaughter requires foresight of any harm.
   - Voluntary intoxication is discounted in establishing proof of guilt for both forms of manslaughter.
   - None require a correspondence between actus reus and mens rea.

3. Points of contrast that could be included.
   - Constructive manslaughter cannot be committed by omission.
   - Only murder carries a mandatory sentence of life imprisonment.
   - Only murder carries special defences.
   - Only murder requires a mental attitude with regard to resulting harm.
   - Only murder is a crime of specific intent for the purpose of raising evidence of voluntary intoxication.
   - Only gross negligence manslaughter can be committed in the absence of either inherent criminality or a mental attitude towards resulting harm.

These points of contrast and comparison are not definitive. There are clearly others, for which credit will have been given. You were not expected to cover all of them.

**Poor answers to this question...**
Concentrated on murder to the exclusion of the compare and contrast aspects and gave an unbalanced discussion of the three offences.

**Question 2**

‘The law relating to accessories is in general need of reform and the most urgent reform necessary is that of joint enterprise liability, which is unprincipled, illogical and incoherent.’

Discuss.

**General remarks**
This essay required you to discuss the areas of accessoryship which have posed problems for the courts with particular, though not exclusive, reference to joint enterprise liability, which is at present in somewhat of a muddle. Again, the overwhelming impression given is that candidates took little notice of advice to be found in the April 2012 and February 2013 newsletters about how to answer essay questions. Please go to these newsletters to see what the correct technique is.

**A good answer to this question would...**
1. Outline the law relating to accessorrial liability, including a mention of its derivative nature.
2. Outline areas, outside joint enterprise liability, where reforms have been recommended. These include:
   - a substantiality of assistance/encouragement requirement
   - a purpose to assist requirement, qualified by separate (inchoate) offences for mechanical assisters
   - replacement of accessorial liability with a general inchoate offence
   - distinguishing between different forms of participation with a structure of liability to match
   - clarification of the circumstances under which accessorial liability may be engaged for inaction
   - clarification of what a secondary party needs to know to be complicit (i.e. the *Johnson v Youden, Bainbridge, Maxwell* interface)
   - settling the innocent agency and *Cogan and Leek*-type problems
   - settling and clarifying the withdrawal rules.

Credit would be given for mentioning the Law Commission proposals but this was not expected as, although the textbook deals with these, the current subject guide does not.

   a. Outline the law relating to joint enterprise liability.
   b. State the general principle (e.g. *Anderson and Morris*).
   c. Explain the problems which have surfaced and how they have been addressed. These include:
      - the fairness or otherwise of holding someone liable for another’s crime which he has not authorized or agreed to
      - the problems of application posed by the fundamental difference principle as illustrated by *English, Mendez and Rahman*
      - the continuing authority, or otherwise of *Gamble* in the light of *Rahman and Mendez*
      - in murder, the problems of application posed by cases such as *Mendez and Carpenter* concerning the availability of manslaughter as a default verdict
      - the fairness and cogency of convicting an accessory to murder of murder on the basis of mere foresight
      - the desirability, in cases of joint enterprise, of ignoring the usual requirement of identifying which of two or more persons actually performed the wrongful act.

Credit was given for mentioning the Law Commission proposals but this is not expected as the current subject guide does not mention this.

Poor answers to this question...
Tended to avoid answering the question and ended up simply regurgitating general points about accessorialship.
Question 3
Clause 17 of the Draft Criminal Code Bill (1989) reads as follows:

17(1) A person causes a result when he/she
   a. does an act which makes a more than merely negligible
      contribution to its occurrence or,
   b. omits to do an act which might have prevented its occurrence
      and which she/he is under a duty to do according to the law
      relating to the offence.

A person does not cause a result where, after he does such an act or
makes such an omission, an act or event occurs which
   a. is the immediate and sufficient cause of the result;
   b. he did not foresee, and
   c. could not in the circumstances reasonably have been
      foreseen.

How far does this restatement accord with the present law of causation?

General remarks
This was a question designed to test understanding of the law of causation and in
particular the absence of a clear and consistent test governing legal causation. In
other words, what dictates whether the factual cause of a consequence is or is not
also the legal cause?

Law cases, reports and other references the Examiners would expect you to
use
Sample cases include White, Dalloway, Smith, Jordan, Cheshire, Roberts, Williams
and Davis, Dawson, Watson, Blaue, Kennedy, Empress Cars.

Common errors
There was a tendency to talk about causation generally rather than whether and to
what extent the Draft Criminal Code (DCC) provision is an accurate description of
the present law. Another error was to talk about certain key cases (e.g. Blaue,
White, Jordan, Cheshire) without pinpointing or discussing their relevance to the
question. Again, the overwhelming impression given is that candidates took little
notice of advice to be found in the April 2012 and February 2013 newsletters about
how to answer essay questions. Please go to these newsletters to see what the
correct technique is.

A good answer to this question would…
Include the following:

1. an outline of the principles governing causation
2. an explanation and discussion of the source of the DCC rules (e.g. Roberts
   (reasonable foreseeability), Smith (substantial contribution)).
3. an explanation and discussion of the fit, or lack of it, between the DCC rules
   and the thin skull principle
4. an explanation and discussion of the fit, or lack of it, between the DCC rules
   and decisions such as Watson and Ball
5. a consideration and discussion of the lack of fit regarding omissions
   between the ‘might have’ approach of the DCC and the common law ‘would
   have’ approach (Morby)
6. a consideration and discussion of the lack of fit between the DCC approach and the wider causation perspective which includes the potential for foreseen and foreseeable voluntary actions of V or T to break the chain of causation (e.g. *Kennedy*).

**Poor answers to this question**
While candidates were not expected to cover all of the above points, which are indications only of the kind of issues which candidates should be raising, too many candidates simply repeated lecture notes without trying to work out what the question was about – namely, is the DCC provision an accurate statement of the present law of causation, and if it is not, where it differs.

**Student extract**
The current restatement states in 17(1)(a) that causation is an act by a person whose act makes a more than negligible contribution to its occurrence. It suggests that there may be a variation of the degree of contribution to the said act. This places quite a burden on the prosecution as well as the jury to determine the magnitude of one’s act to a particular result.

In the current rule of causation in the case of *Fagan v Metropolitan Police Commissioner*, it was determined that the defendant’s act was a continuous act. He claimed that upon turning off the ignition he did not have the mens rea but it was held that his refusal to move his vehicle from the officer’s foot was a continuous act.

The second section 17(1)(b) states that a person causes a result when he omits to do an act that might have prevented the act from occurring and which he/she had a duty.

The current causation rule does not ascribe liability for an omission. However, if one has a duty of care and has failed in performance then the law sanctions such omissions. Section 17(1)(b) is in accord with the current causation rule.

For example, in *R v Pittwood*, the defendant was liable for the death of a person after he failed to be at his post at the railway crossing. He was under a contractual obligation but his absence (ostensibly went to lunch) was an omission that caused death. In the case of *R v Gibbins and Proctor*, failure to feed a child led to death and the defendants were liable for murder. In terms of 17(1)(b), this could have been prevented if applied to the current rule of causation.

In the second portion of clause 17 draft, states that a person does not cause a result, after such an act omission that can act or event occurs which

(a) is immediate and sufficient cause of the result.

Under the current rule 4 causation, in the case of *R v White* the defendant laced his mother’s beverage with poison and after consuming it, she died. It was revealed that the defendant was not liable for her death as she died from a heart attack. So her death, as a result of a heart attack was sufficient cause.

In the next section (b) he did not foresee and (c) could not have reasonably foreseen in the circumstances is in liue with the current causation rule. In *R v Moloney* it was held that foreseeability is evidence of intention. So he was held liable for the death of his stepfather. One could also conclude that in *R v Miller* that smoking while in bed suggests a risk of fire especially as the defendant was under the influence of substances. He should be foreseen the possibility of fire.
In many respects the draft version of clause 17 is aligned with the current rule of causation. It does incorporate the ‘Factual causation’ or ‘but for’ test and the legal causation.

Comment on extract
This extract demonstrates what can happen when a candidate mixes up different parts of the criminal law.

The first paragraph does not convey any meaningful information beyond that which is already in the quotation given in the question. It does not, for example, explain what is meant by ‘making a more than negligible contribution’. In particular, it does not explain how this aspect of the restatement is talking about factual causation, that is, the requirement that the prosecution prove that the harmful result would not have occurred but for the defendant’s act. Neither does it explain what ‘negligible means in this context’. Further, there are no cases illustrating how factual causation works. Indeed the only relevant case for this paragraph in the whole extract is R v White, which unfortunately was used in the context of discussion of the second portion of the restatement (i.e. legal causation). The discussion attempted by the candidate is weak. The second sentence talks about ‘a variation of the degree of retribution to the said act’, which is meaningless. A rule of thumb is to consider whether, if you said the relevant thing to a friend, they would understand what you were saying. At the end of the paragraph the candidate says something which almost makes sense but needs clarification. If the candidate means that the prosecution bears the burden of proving that the defendant’s act made a more than negligible contribution and this might not be easy, then this is true, but not having explained what making ‘a more than negligible contribution’ means, the point is unclear.

The second paragraph has no relevance to the question. Fagan concerns the nature of actus reus, and has little or nothing to do with the connection between a harmful event and a preceding act or omission.

The third, fourth and fifth paragraphs are also confusing. The candidate confuses the concept of causation and the concept of actus reus. As a result the discussion is all about omissions and duty situations. Harm can be caused by act or an omission in breach of duty. That much is true, but this is not what the question is asking. The issue is whether it is enough that the omission ‘might’ have prevented the consequence or whether it (definitely) ‘would’ have done. Case law suggests the latter (Morby).

The sixth and seventh paragraphs are better because they talk about causation. However, there is a flaw here. White is authority for the proposition that A’s act does not cause V’s harm if it does not contribute to the occurrence of that (i.e. s.17(1)(a)). It is not authority for the s.17(1)(b) proposition that A’s act does not cause V’s harm if, although it contributes to that harm’s occurrence, a later act or event severs that causal connection.

Although accurate, the final paragraph does not reflect the substance of the answer as a whole.

Question 4
‘The defence of duress is essential but, in its present form, unsatisfactory.’
Discuss.
General remarks
This question was not very well done. Even those who simply wrote out their revision notes on duress did not tend to show a good grasp of the elements of duress. There is quite a lot in this question and candidates were not unduly penalised for dealing primarily, or solely, with the satisfactoriness aspect of the question.

Law cases, reports and other references the Examiners would expect you to use
Indicative cases include Graham, Howe, Hasan, Valderrama Vega, Shayler, Willer, Conway, Martin, Pommell, Dao.

Common errors
Not giving clear and accurate doctrine, and failing to consider key cases. There was generally little evidence of an attempt to explain why the defence is ‘essential’ and why it may be thought unsatisfactory in its present form.

A good answer to this question would…
Identify the following key issues.

1. Define and outline the law relating to duress, including duress of circumstances.

2. Distinguish duress and duress of circumstances.

3. Consider and discuss the arguments for and against both forms being ‘essential’. These include:
   - the moral case for – concession to human frailty and the partial reasonableness of not sacrificing oneself for the sake of conformity to law
   - the practical case for – the inevitability that those faced with a life or death choice will choose the former
   - the moral case against – those who choose to victimise others as a means of protecting their own interests have no better moral excuse than other comparable excuses which are not accepted by the criminal law
   - the practical/political case against – why should the demands of the gunman be permitted to carry greater clout than the demands of the State?

4. Consider and discuss whether its present form is unsatisfactory. This includes consideration of:
   - the fairness of the threat of death/serious injury requirement: should the threat of imprisonment be enough, for example?
   - the fairness of the reasonable reaction and reasonable assessment of the facts requirement
   - the fairness of the objective standards of courage requirement
   - the fairness of the loss of flexibility (Hudson and Taylor) over the requirement that there must have been no evasive action D could reasonably take following Hasan
   - the fairness and cogency of its unavailability for murder/attempted murder.
We did not expect candidates to cover all, or even most, of the above points. These are indications only of the kind of issues which candidates should be raising in their answers.

**Poor answers to this question...**
Typically only talked about a few areas of duress that had interested the candidate (e.g. lack of availability for murder, prior fault). Too many candidates could not accurately define duress including the threat of death or serious injury and reasonable reaction requirements.

**Question 5**

Rav suffers from diabetes. He takes insulin three times per day. On the rare occasion he has not taken it, the failure resulted in hyperglycaemia which has caused him to black out. One morning he is attacked and robbed in the street outside his home. So upset is he that he forgets to take his insulin for a whole day. During the evening while driving, he drives his car to a petrol station where he fills up with petrol, and drives the car away without paying. Back in the car he drives through a red traffic light without noticing, nearly causing an accident. He is stopped by a police officer, Amir, who asks him to step outside the car for a breathalyser test. Rav punches Amir. He then gets back in his car and drives off at speed, not noticing Jimmi, who is crossing the road. Jimmi is killed in the resulting crash. Rav is arrested. He can remember nothing of what has happened.

Discuss Rav’s potential liability.

Would it make any difference to your answer if the reason for Rav’s mental condition was that he was voluntarily intoxicated?

**General remarks**

This was a question designed to test understanding of how externally and internally triggered involuntary behaviour affects criminal liability. It was important to show that you understood the difference between automatism and insanity and that this case was in the grey area between them. As for the alternative scenario you were required to state 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 have identified 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. Then consider each offence in turn with a view to assessing whether it is a specific or basic intent crime.

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

Your discussion and argument should have included consideration of cases such as Andrews v DPP, Allen, Majewski, Clarke, Hennessy, Rabey, R v T.

**Common errors**

A surprising number of candidates considered murder as a possible offence. This was a very disappointing error given that it was explained in the April newsletter that you should not even consider murder if there is no evidence of mens rea which, given the words ‘not noticing’ means exactly that. It also cannot be constructive manslaughter. To understand why, read Wilson, p.386 and Andrews v DPP. The only possible offences in relation to the death are causing death by dangerous driving or gross negligence manslaughter.

A surprising proportion of candidates failed to deal satisfactorily with the issue posed by intoxication. Some ignored it altogether. Others did not distinguish basic
intent from specific intent crimes and why these distinctions might affect the parties’ liability. And very few indeed dealt with every part of the question.

The majority of candidates approached the making off crime in a rather strange way, namely by asserting that all the elements are present including dishonesty (citing Ghosh). They then considered whether the defence of insanity or automatism might be raised to excuse the commission of the offence. This is not how automatism/insanity is used. For crimes of mens rea it is used to negate the mens rea. So, in this case candidates should have said that the actus reus of making off is present but the mens rea is not. Rav will claim that his mental state was such that he did not know what he was doing which would negate both dishonesty and the knowledge that payment on the spot is required (Clarke). Given the undisputed evidence of hyperglycaemia no reasonable jury could convict.

A good answer to this question would…

1. Outline these offences (or a relevant substitute offence) and, in relation to each one, identify the relevance of Rav’s diabetes to the charge.

2. Consider the evidential basis for a claim of automatism/insanity to negate the voluntariness/mens rea necessary for all offences, including, in this case, gross negligence manslaughter which does not require proof of subjective fault.

3. Explain and discuss automatism and insanity and identify the test(s) which separate them. In particular, you should make reference to the Kemp/Sullivan internal/external distinguishing feature. A very good answer would indicate the fragility of the distinction in cases where an internal condition is provoked, as here, by an external trauma. A good answer would cite Hennessy, Rabey and R v T, indicating that the grounds for preferring automatism to insanity are stronger here than in those cases due to the spontaneous nature of the trigger.

4. In the alternative scenario, explain how intoxication can be adduced only to negate mens rea and even then, where the intoxication is voluntary, as here, it will available for specific intent crimes but not basic intent crimes. Accordingly, it will not avail Rav on the manslaughter charge as neither intention nor foresight is necessary. Nor on the assault charge (basic intent crime Majewski). It may avail Rav on the making off without payment charge which, requiring an intention not to pay, is presumably a specific intent crime.

You may well have advanced charges other than those dealt with here (e.g. theft, fraud, causing death by dangerous driving). So long as your analysis hangs together that is fine.

We did not expect you to cover all of the above points. These are indications only of the kind of issues which you should be raising.

Poor answers to this question…

Talked about murder or constructive manslaughter rather than gross negligence manslaughter, did not link the hyperglycaemia to the fault element for the offences of making off, assault and manslaughter but treated it as an add on defence. On the
alternative part of the question the basic intent/specific intent dichotomy in particular was ignored.

**Student extract**

We will first discuss the possible liabilities of Rav before looking into the possible defenses he could rely on.

Rav drove off the petrol station without payment

Rav is likely to be liable of the offence of theft under S.1(1) Theft Act 1968, if we can prove that Rav as been dishonest in appropriating the property of another, which is the petrol belongs to the gas station on our facts, and intended to permanently deprive it. Rav is unlikely to be the first time to the gas station, he should know clearly the petrol has to be paid for. None of the provisions in S.2(1) Theft Act 1968 can apply. Applying the Ghosh Test it is also unreasonable for a driver to run without paying (objective test by reasonable man) and it can hardly continue that Rav was honestly believing any reasonable man will do the same thus there is no issue on his dishonesty.

Rav has filled the petrol in to his car, which can be deemed as inappropriate assumption of an owner’s right. Morris, in Gomez it has held that it does not matter whether the owner has consented to Rav’s appropriation or not. Therefore, even though it can be argued that Rav would have the implied consent from the petrol station at the point he filled his tank, he was still appropriately dishonestly (as discussed above).

When driving away, Rav has no intent to pay, and thus he can be assumed to intend to permanently deprive the ownership of the petrol. All elements of theft under S1(1) Theft Act 1968 are therefore established.

**Comment on extract**

This extract deals solely with the part of the question concerned with driving away from the petrol station without paying. The candidate correctly identifies the offence of theft (you could also have considered s.3 Theft Act 1978) and is correct in stating that the appropriation element is satisfied irrespective of the garage’s consent. However, there is little engagement with the facts of the question on the issue of dishonesty.

They say that if dishonesty can be proven then theft is made out. This is, in fact, slightly inaccurate because it must also be shown that the intention to permanently deprive the garage of the petrol must be formed before the petrol is put in. This bad impression is confirmed when later the candidate writes ‘When driving away, Rav has no intent to pay, and thus he can be assumed to intend to permanently deprive the “ownership” of the property.’ This statement shows that the candidate is not clear in their own mind as to what is stolen. Only one thing can be stolen and that is the petrol (not the ownership of the petrol) and this is only stolen if the dishonest intent precedes the appropriation (*Edwards v Ddin*).

The candidate asserts that Rav is dishonest according to the standards of a ‘reasonable man’ and asserts that Rav would know this. This is the very issue which is in doubt. If Rav was hyperglycaemic in the sense that he can remember nothing of the day’s events following failure to take his insulin then he cannot be proved to be dishonest either on the objective standard or by reference to his own subjective awareness. This does not mean that he receives an outright acquittal since *Hennessy* seems to conclude that hyperglycaemia due not taking insulin is an internal factor requiring a special (insanity) verdict. However, as the reason for the failure to take insulin was the trauma of the robbery it may well be (*R v T*) treated as an external factor resulting in an outright acquittal.
Question 6

Sue left home in 2012, aged 16, fleeing from abusive parents. She is now living with Bill, aged 25, who has introduced her to drugs and prostitution. Bill regularly forces Sue to give him her earnings. He is jealous and possessive and has beaten her on a number of occasions. Sue, a vulnerable girl, has often harmed herself as a means of coping. One night, fearing that Bill will beat her up as she has spent her daily earnings, Sue cuts her wrists. When Bill comes into the bedroom and sees what she has done, he taunts her saying she has made a pathetic job of slashing her wrists. Sue goes to the kitchen, gets a carving knife and returns to the bedroom, where she throws it at Bill. It strikes him in the eye and penetrates the brain, killing him instantly.

Discuss Sue’s potential liability for the death of Bill together with any defences she may raise.

General remarks

This question was attempted by a lot of candidates. It was designed for discussion around murder (together with its defences) and constructive manslaughter as a default crime. You were expected to identify the factual elements which indicated the mens rea for murder may have been present (use of knife, motive) as well as the factual elements which would be relied upon to raise the defence of loss of self control (cumulative abuse plus the ‘last straw’ derision) and which would be relied upon for the defence of diminished responsibility (cumulative abuse/ battered women’s syndrome).

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

Your discussion and argument should have included consideration of cases such as Moloney, Ahluwalia, Ibrams (or Dawes), Duffy, Clinton.

Common errors

The most common error was not discussing what the exact nature of the qualifying trigger was and whether there is anything in the facts to negate a loss of self control.

A good answer to this question would...

Identify the following points for discussion.

1. Consider if this is either murder or constructive manslaughter depending upon mens rea. Outline of the offences
2. Explain that on the murder issue the evidence of mens rea is equivocal and centres on both context (abuse, fear of violence) and reaction (carving knife thrown at Bill).
3. If murder, outline and consider the defences of loss of self control and/or diminished responsibility.
4. On loss of self control the issues will be whether a loss of self control is present (leaving room and returning may indicate deliberation, see Ibrams or Dawes) and whether a qualifying trigger exists.
5. Section 54(2) (loss of self control does not have to be sudden but the killing must still be prompted by the loss).
6. A very good answer may include reference to s.54(1)(c) and question whether the court is entitled to take into account Sue’s fragile mental condition in considering whether ‘a person of D’s sex and age, with a
normal degree of tolerance and self-restraint and in the circumstances of D, might have reacted in the same or in a similar way to D’.

7. On diminished responsibility outline of the defence and the issues examined. In particular:
   - Is her condition (e.g. battered women’s syndrome) a recognised mental condition?
   - Did it deprive her understanding of what she was doing, and/or forming a rational judgment, and/or exercising self control.
   - Did the one cause the other?

8. Default offence constructive manslaughter. Identify elements and apply to facts.

We did not expect you to cover all of the above points. These are indications only of the kind of issues which you should be raising.

Poor answers to this question...
Tended to copy out from the statute book the provisions on loss of self control and diminished responsibility. This is a waste of time. They also tended not to engage in factual analysis (e.g. explaining what the actual trigger was, and questioning whether this may have been a revenge killing).

Question 7
Sunita and Barbara share a flat. One night Sunita finds Barbara kissing her boyfriend, Yuri. Sunita picks up a paperweight, raises it in the air and shouts at Barbara, "I'm going to kill you, you whore!" She then throws the paperweight at Barbara who ducks to avoid being hit. Barbara hits her head on a cupboard door, cutting her forehead.

Yuri is so angry that he pushes Sunita who falls backwards over a stool onto the floor and is knocked unconscious for a few seconds. When Sunita recovers consciousness, she is still dizzy and stumbles towards Barbara, knocking her onto the floor. Barbara suffers a fractured arm.

Later that evening, when Sunita is sleeping, Barbara takes a pair of scissors and cuts off Sunita’s hair.

Discuss the potential criminal liability of Sunita, Yuri and Barbara for the above incidents.

General remarks
This is a straightforward question designed to test your knowledge of the different offences against the person

Law cases, reports and other references the Examiners would expect you to use
Your discussion and argument should have included consideration of cases such as Mohan, Fallon, Burstow, Roberts, Latimer, Ireland, Quick, Savage, Parmenter, Mowatt, DPP v Smith.

Common errors
The most common error was to devote disproportionate time to different parts of the question.

A good answer to this question would...
Separate the analysis into different defendants as follows:
Sunita
You should have identified three, possibly four, possible offences – attempted murder, s.47, s.20, s.18.

- Attempted murder – specific intent to kill needed.
- Section 47 – you should identify the following ingredients: assault (the threat), the harm (cut forehead) and the causal link. The main issue here is whether Barbara ducking breaks the chain of causation (e.g. Mackie/Roberts).
- Section 20. You should consider both forms of the actus reus: wounding (does the wound need to be directly inflicted?) and inflicting GBH (is Barbara’s fractured arm caused by the throwing of the paper weight or does the subsequent act of Yuri (and/or involuntary conduct of Sunita) break the chain of causation?).
- Section 18 – a. The wound is present. b. The ulterior intent (evidenced by Sunita’s accompanying words). This is the issue of causation again.

Yuri
Sunita as victim.

- You should identify two possible offences – s.47 and s.20 and their ingredients:
  - s.47 a. the assault (push), b. the actual bodily harm (the loss of consciousness), c. the causal link
  - s.20 – a. the infliction (push caused harm – Wilson), b. the GBH (the loss of consciousness). c. The mens rea (foresight of harm – Mowatt).

Barbara as victim.

- You should identify two possible offences – s.47 and s.20:
  - ss.47 and 20, can Yuri’s mens rea in relation to Sunita be transferred to the actus reus (fractured arm) suffered by Barbara?
  - if it can, does Sunita’s involuntary action break the chain of causation linking the push and the fractured arm?

Barbara
Two possible offences: common assault (battery) and s.47. The issue is: is cutting hair actual bodily harm? (DPP v Smith.)

Poor answers to this question...
Tended to consider only one offence in relation to Sunita and not to talk about the involuntary nature of injury to Barbara.

Question 8
Alex has been drinking heavily all evening and, on returning home, finds that he has been locked out by his wife. He cannot rouse her and so he goes to his parents’ house in the next road, for which he has a key. He mistakes his parents’ house for the house next door, whose owner is out. When the key fails to open the door Alex breaks a window and lets himself in. Only then does he realise that he is in the wrong house. Whilst trying to find the light switch Alex knocks over a cheap ornament of no value which shatters on the floor.

Alex goes to the kitchen and makes himself a cup of tea and some toast. He leaves a written note on the table saying “Sorry about the breakages. I mistook your house for mine. I’ll pay for the damage. By the way, I’ve had
some tea and toast. I hope you don’t mind”. Alex then signs the note with a false name and address, hoping that the friendly note will discourage the owner from calling the police.

Discuss Alex’s criminal liability.

General remarks
This question was designed to test your understanding of how voluntary intoxication is relevant to liability. It contains basic intent crimes (criminal damage) and specific intent crimes (theft, fraud). Your job was to discuss how far Alex could exploit his intoxication to negate mens rea and to raise a defence under s.5 of the Criminal Damage Act.

Law cases, reports and other references the Examiners would expect you to use
Indicative cases include Jaggard v Dickinson, Majewski, Hardie, Brady.

Common errors
Not understanding how the mens rea for all of the crimes listed could have been affected by Alex’s intoxication.

A good answer to this question would...
Separate out the different offences as follows.

1. Criminal damage to the house (broken window). You should consider whether by virtue of s.5 Alex has a lawful excuse notwithstanding his intoxication. Jaggard v Dickinson says yes.

2. In relation to the criminal damage to the ornament the issue is the question of whether, despite voluntary intoxication, recklessness may be negated. Clearly what happened was neither intended nor foreseen. But Majewski holds that if foresight is absent for a basic intent crime due to voluntary intoxication then the recklessness necessary for a conviction is still present. However, Majewski does not seem to cover cases of simple involuntary accident, as this was (Brady, 2006), which suggests this charge will fail. Accidents are accidents, even when prompted by intoxication.

3. Theft of tea and toast. The only real issue is mens rea. Theft is a specific intent crime and so if Alex lacks mens rea due to intoxication he is entitled to an acquittal. On the basis of his state of mind he may not even have been thinking of the rights and wrongs of what he was doing and therefore did not form either the intention or dishonesty necessary for the crime. This is a question for the jury.

4. Fraud. Issue (i): was the false representation made with the intention to gain or causing loss or exposure to risk of loss? (Directly no, since the direct intention is not to escape paying but to escape police attention, but indirectly under s.2(1)(b)(ii)?), (ii) was it made dishonestly?

Poor answers to this question...
Made little of the Criminal Damage Act s.5 point and did not identify the issues in relation to the voluntary intoxication.