Examiners’ report 2014

LA1010 Criminal law – Zone B

Specific comments on questions

Question 1

(a) Ahmed and Bashir are engaged in a bank robbery. Unknown to them Solly, a customer in the bank, is an off-duty policeman. Solly runs over to them intending to make an arrest. Zafar, another customer, believing Solly to be another robber, intentionally trips him up, thus making it easier for Ahmed and Bashir to escape.

Discuss whether Zafar is an accomplice to the robbery.

(b) Jack and Jill decide to burgle Humpty’s house. Jill takes with her a baseball bat as is usual when the two burgle houses together. She has sometimes had occasion to use it on householders who have returned home unexpectedly. On this occasion Humpty surprises Jack and Jill in the course of the burglary. Jill finds she has left the baseball bat in another room and so she takes out a knife. Jack tells her to put it away and runs off. Jill murders Humpty with the knife.

Discuss whether Jack is complicit in the murder.

General remarks

There is quite a lot in this two part question on complicity and so we did not expect candidates to cover all of the above points to get a good mark.

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

(a) indicative cases include Johnson v Youden and Carter v Richardson.

(b) see below.

Common errors

In (a) there was insufficient discussion of the principles governing liability as an accessory, in particular the intention to assist the principal with knowledge of the facts which make their action a crime. Indeed a minority of candidates went so far as to say that Zafar was an accessory to robbery. Others avoided the complicity element entirely and based discussion around mistake/prevention of crime relying on Williams (Gladstone). Clearly there is no need to rely on this defence unless Zafar is complicit in the first place, which he is not.

A good answer to this question would...

include a descriptive element and identification and discussion of the major issues arising on the facts as follows.

(a) See Wilson, pp.576–79, 593. A good answer should first outline the basic elements of accessoryship including the actus reus of assisting or
encouraging the principal in his commission of an offence and an intention
to assist or encourage that commission. It should then move on to consider
the requirement of knowledge. Zafar does not intend to assist A and B's
commission of robbery by hampering the efforts of Solly to arrest them
unless he knows or believes Solly to be trying to prevent the robbery or
arrest them.

(b) See Wilson, pp.579–88, 593–99. A good answer should first outline of the
principles governing joint enterprise liability. The joint enterprise is burglary.
The secondary offence, committed by Jill, is murder. Jack and Jill are joint
principals to burglary. Jill is guilty of murder as principal. The issue
concerns joint enterprise liability and withdrawal, specifically:

- Whether Jack contemplated Jill's use of the knife with mens rea for murder
  in which case he is complicit (Powell) unless his order to put it away and
  running off counts as a withdrawal (Becerra and Cooper).

  Note that there is no evidence that he knew of the knife and so no basis
  upon which the jury could conclude that he contemplated its use.

- Whether Jack's contemplation that the baseball bat might be used with the
  mens rea for murder by Jill in such a circumstance renders him complicit if,
  with the mens rea for murder, Jill uses a different weapon (English,
  Carpenter, Mendez, Chan Wing Siu are indicative cases). These authorities
  suggest that since a knife is fundamentally different from a baseball bat
  (English, Rahman) or more lethal than a baseball bat (Mendez) he will not
  be complicit in murder.

- Whether Jack is nevertheless liable for manslaughter (Carpenter) or
  nothing (except burglary) (Mendez).

Poor answers to this question...
See common errors above. A large minority of candidates answered both parts of
the question without reference to complicity, restricting their analysis in (a) to the
issue of prevention of crime and in (b) to the issue of Jill's liability for murder.

Question 2

Alina accidentally collides with Casper who is supervising his child at the
side of a swimming pool. Alina bangs her head and falls into the water. Henry,
an off-duty lifeguard at the pool, sees this but does nothing to help. Neither
does Casper although he sees that Alina is struggling in the water. Another
swimmer, Mona, begins to effect a rescue by dragging Alina towards the side.
Ellie, the official lifeguard, seeing that things are apparently in hand, returns
to reading her newspaper. Meanwhile Mona, on realising she is late for an
appointment, desists from any further efforts and leaves Alina still struggling
in the middle of the pool, reasoning that someone else can effect the rescue.
It is left to Bruce, another swimmer, to save Alina but by the time Alina is
removed from the pool she is unconscious. She remains unconscious for
three days but makes a full recovery.

Discuss the possible criminal liability of Casper, Henry, Mona and Ellie.

General remarks
This is a question which tests not only your knowledge and understanding of the
law but also your willingness to read and answer the question since, unusually for
these kinds of problems, no death has occurred. Your job was to identify what
crime, if any, may have been committed, and whether it could be committed by
omission. See Wilson, pp.81–97.
Common errors
Very few candidates talked meaningfully about what crime, if any, the various parties had committed, spending most of their time talking about duty situations and whether they apply. As a result, relatively few achieved the highest marks.

A good answer to this question
identified the potential crimes committed and considered the issues arising in relation to each, as follows.

There are two possible crimes, s.47 and s.20.

Criminal liability for a result crime generally requires an act. An omission will count as the [actus reus] only if:

1. the crime charged is capable of commission by omission. Assault is not ([Fagan]). Section 20 may be, given that it does not require anything by way of assault or direct application of force ([Burstow]).

2. the respective parties owe a duty of intervention and will only support a conviction if the breach of such duty causes the result.

Liability:

Henry – no duty of intervention as his contractual duty as a lifeguard only operates when he is on duty.

Casper – Alina's fall into the water is not the result of any voluntary act of Casper and so Casper's liability depends upon him having a duty of rescue. This in turn depends upon whether the [Miller] principle (has he caused the dangerous situation) or its [Evans] variant (has he contributed to it) applies or whether simple involvement is/should be enough. We did not expect candidates to consider this last point but credit was given if they did.

Mona – her liability depends upon the application of the assumption of duty category ([Instan]) and also depends upon whether, assuming she is under such a duty, her desisting has caused the result ([Morby]). We didn't expect it, but some discussion of substantial (i.e. not the sole) cause would be useful. Some candidates, quite reasonably, treated this as a variation on the [Miller] principle. Credit would have been given for this.

Ellie – she is under a contractual duty but there are issues of breach. Is it reasonable not to intervene where others are doing your job? And causation as above regarding Mona.

Poor answers to this question…
simply talked about the various duty situations and did not identify the offences which were chargeable or, not having read the question properly, talked about the parties' liability for manslaughter.

Question 3
In English law what is meant by:

(a) intention; and

(b) recklessness.

What do these two states of mind have in common, what differentiates them, and why has there been uncertainty surrounding their definition?

General remarks
Most candidates know what intention means and what recklessness means. They also know the different forms of intention and recklessness. This question tests your
understanding of these fault elements. Only if you know what they have in common and what differentiates them can you manifest such understanding. See Wilson, pp.128–50.

Common errors
Many candidates simply regurgitated lecture notes on intention and recklessness, making little or no attempt to compare and contrast. It was not expected that you should identify all or even most of the points of contrast and comparison so long as you mentioned some key points. That would be enough to get a decent mark if well written and discussed.

A good answer to this question would...
contain the following indicative elements:

- how intention and recklessness figure in criminal liability.
- definitions and brief outlines of the elements of each offence
- indirect intention has been successfully separated from recklessness by Woollin. It would be useful to explain why it is important that the courts should be able to distinguish intention from recklessness and how, following Hyam, they were once conflated.

The following are the some of the more obvious points of comparison and contrast.

Comparing

- Both are forms of subjective fault. Caldwell recklessness (no foresight required) involved objective fault which was another point of contrast with intention rather than a point of comparison.
- Both involve degrees of choice/commitment to the outcome which render punishment deserved. A very good answer would explain how the fault terms reflect the retributive theory of punishment.
- Indirect intention and recklessness have fault based on foresight of the consequences in common.
- Objective and subjective recklessness. Indicative cases are Cunningham, Stephenson, Parker, Caldwell, Elliot, R v G.

Contrasting

- Recklessness reflects a lesser degree of commitment to the outcome than intention (desire versus willingness to run risk) and so may represent a lesser degree of fault justifying lesser label and penalty.
- Directly intended consequences are desired. Recklessly caused consequences are not. We have indifference at most.
- Indirect intention requires knowledge of the certainty that a consequence will ensue. Recklessness requires simply awareness of the risk that it may ensue. The two still are difficult to separate at the top end where the accused foresees the very high probability of the consequence.
- Recklessness, as a fault term, requires the risk taken to be unjustified (i.e. good motives stop risk-taking from being blameworthy and punishable). This is not the case with (oblique) intention. One can obliquely intend a consequence (and so be punished for it) even if one has a good motive. A very good answer will make the caveat that the Woolin special direction makes this difference more theoretical than real.
The source of uncertainty

- The influence on intention's uncertain meaning of motive. Adams, Gillick, Re A etc. The Woollin direction allows the jury to take account of motive due to the ambiguity of the judicial direction.
- The influence on intention's uncertain meaning by 'wicked' killings (e.g. Hyam).
- The influence on recklessness's uncertain meaning by indifferent mindlessness, particularly in criminal damage (e.g. Parker, Caldwell).
- The influence on recklessness's uncertain meaning by the errors of the young and inexperienced, particularly in criminal damage (e.g. Stephenson, Elliot, R v G).

Poor answers to this question...

typically did not define the terms properly nor compared or contrasted, nor explained the source of uncertainty.

Question 4

David is a member of an ethnic and religious group that generally considers an emotional attachment to someone from outside that group as an affront to the family honour deserving of death. He discovers that his young daughter, Vicky, is planning to run away with Jerry, who is from outside the group. David and his son Peter confront Vicky and challenge her to deny the charge. She admits it and David and Peter in fury kill Vicky. They then find Jerry and attack him with an iron bar fracturing his skull. Jerry manages to escape and presents himself at hospital almost unconscious. The nurse on duty, thinking Jerry is drunk, has him removed from the premises. He is left on a bench outside the hospital. An hour later he dies. If he had been treated immediately, he would have survived.

Discuss.

General remarks

This is a question on murder with issues relating to causation and the partial defence of loss of self control. See Wilson, Chapter 5 and pp.373–86.

A good answer to this question would...

include the following indicative elements.

- Identify offence – murder.
- Definitions.

Jerry

- The major issue is causation. Is the action of the nurse a novus actus interveniens (e.g. Cheshire, Smith, Jordan).
- Assuming it is not, can loss of self control be relied upon?

Vicky and Jerry

The issues relating to both Vicky and Jerry are similar.

- Was the killing the result of a loss of self control (s.54(1)(a))? Note that more of a cooling off period exists regarding Jerry.
• Is affront to family honour sufficiently grave to cross the first hurdle in relation to the ‘qualifying trigger’? Assuming it is, they have a justifiable sense of being seriously wronged (i.e. s.55(1)).

• A good answer will make particular reference to the cultural context and consider whether this is to be taken into account in deciding whether the context is grave and their sense of being seriously wronged justifiable.

• This ethnic/religious context is also relevant to the objective element in the defence. Would ordinary people with a normal degree of tolerance and self-restraint and in the circumstances of D have reacted in this way? Is the ethnic and religious grouping to be taken into account on either or both of these matters?

**Poor answers to this question…**
tended to simply state the statutory provision without grappling with the specific issue of the ethnic/religious context, or ignored the defence altogether and concentrated simply on talking about murder and causation. A significant minority of candidates even proposed insanity or diminished responsibility as the appropriate defence. This was disappointing. Although legal doctrine dictates case outcomes this does not mean a lawyer is entitled to leave their common sense at home!

**Student extract**

The legal issue to consider whether David and his son Peter are liable for Vicky’s and Jerry’s death, and if they can rely on any defences. In relation to Vicky’s death one can clearly construe it be murder.

Murder is the unlawful killing of a human being with intention to kill or cause grievous bodily harm. Moloney Here Vicky is a human being and they kill her unlawfully. It is ambiguous if they had specific intent to kill because the question merely says “in fury kills Vicky”. Therefore they may be able to rely on the defence of loss of self-control and reduce the charge of murder to voluntary manslaughter.

This is given in the coroners and Justice Act 2009, section 54 (1) where a person kills or is a party to the killing of another, D.D not to be convicted of murder if, a) there was a loss of self-control, b) had a qualifying trigger and is in line with c) the evaluative test.

Here both Peter and David were parties to the killing of Vicky and they did have a loss of self-control since they “in fury kill Vicky”. Therefore S.54(1)(a) is satisfied.

Secondly we must see that they can rely on any qualifying triggers given in section 55. Here the most appropriate provision would be S. 55 (4). This done or said both which a) constituted circumstances of an extremely grave character and b) cased to have a justifiable sense of being seriously wronged. Here David and Peter felt that they were seriously wronged by what Vicky had done, by going against their extreme religious beliefs by having an emotional attachment of (Jerry) someone outside their group. However the issue is that it is already a known fact that anyone who commits the above felony will reserve a “deserving death”. If the prosecution brings this fact and claims that there was no loss of control resulted by a qualifying trigger since death was a sure result plan, David and Peter will not be charged with murder. However if the jury believes otherwise the provision of S.54(1)(b) will be satisfied through S.55 (4).

Moreover there are no limitations mentioned in S.55 (6) since Vicky did not incite her own death.
Finally we must see whether according to S.54(1)(c) a person of D’s sex and age with a normal degree of tolerance will act in the same way as D. This is a controversial issue. Since it is unlikely for a reasonable person would “kill his own daughter/sister just because she got emotionally attached to someone they disprove of. Therefore it is unlikely this defence will be satisfied. However as S.54(5) says the jury must assume the defence is satisfied unless the prosecution proves beyond reasonable doubt that it is not.

Comment on extract
This extract contains what is needed for a very good answer. There is a problem with the analysis of ‘specific intent’ in that fury would not negate such intent but this is a minor quibble given the overall quality of analysis.

It deals with the issues methodically and reasons its way through to a conclusion. Thus it states that the fact that Peter and David ‘killed in a fury’ is evidence that they lost their self control. It also reasons that the prosecution might counter the claim that the loss of self control resulted from a qualifying trigger by reasoning that this was effectively an execution in the manner of an honour killing (‘deserving death’/’sure result plan’). This could have been expressed better but the point was nevertheless made. Few other candidates went so deeply. Finally it makes the point that it is unlikely the court will accept the idea that s.54(1)(c) is satisfied since the reaction to the breach of honour is very extreme.

Question 5
Compare and contrast the defences of insanity and automatism.

General remarks
Most candidates know the McNaghten rules and know what automatism means. This question tests your understanding of these defences. Only if you know what they have in common and what differentiates them do you manifest such understanding. See Wilson, pp.203–27.

Common errors
Failing to compare and contrast the two defences.

A good answer to this question would…
include the following indicative elements.

• Description and exposition of the defences, including definitions

Comparison
• Both are mental condition defences.
• Both affect capacity.
• Both operate as excuses.
• Both require support of medical evidence.
• Automatism (always) and insanity (usually) both require the defendant’s mental condition to affect D’s understanding of the nature and quality of his act.
• Both negate mens rea and actus reus.

Contrast
• Insanity, unlike automatism, requires a disease of the mind. Reference should be made to the external/internal dichotomy created by Kemp.
• Automatism is an absolute defence. Insanity is a qualified defence.
- Prior fault operates for automatism. Not for insanity.
- Burden of proof differences.

**Poor answers to this question…**
Tended to be light on case law, did not define one or other of the defences accurately and did not attempt to show their similarities and points of difference.

**Student extract**

The defences of Insanity and automatism are both failure of proof defences used to negate or prove that a particular element of a crime is missing to negate/content liability. The defences themselves while seemingly at the opposite ends of a spectrum from one another do in fact have similarities. This essay will discuss scenarios courts have considered the scope of each defence and the rules that govern them.

Let us first look at the defence of Automatism. Automatism is defined in Dawson. It is involuntary conduct where the defendant is effectively unconscious when doing the act the Act is not being done by them however the act is happening to them. This basically means one who is in a state of automatism is unaware that they are doing such actions. In Hill v Baxter it was equated to a swarm of bees or a blow from a stone.

The defence of automatism is very useful in the sense that it can in fact be used to negate the Actus Reus of a crime, they can use it to say they did not commit the act as explained before it “happened to them”. By being able to negate the Actus reus of a crime automatism unlike insanity is open to be a defence even for strict liability offences there are offences where by the proof of Mens Rea which is what insanity negates is not required on the Actus Reus or action itself is what is legally wrong eg. Dangerous driving (there is no need to prove that they intended to drive dangerous or hurt someone, the act of driving dangerously exposes them to criminal liability in itself).

**Comment on extract**

This extract shows a method and understanding. It begins, as it should do, with a brief introduction which sets the scene for the future discussion. It gives a good definition of automatism and explains and illustrates how it can be used to negate the actus reus of a crime and thus can be used as a defence even to strict liability crimes. The rest of the answer follows this orderly and well reasoned path and ended up with a very good mark.

**Question 6**

One day Abezola and Rahama go mountain climbing. Upon reaching the summit Abezola tells Rahama that he is going to kiss her. Rahama, who has strong moral and religious principles, says, “If you do, I shall jump.” Abezola does not believe Rahama, and kisses her. Rahama then jumps off the summit and falls 20 metres on to a ledge. Abezola, thinking Rahama has been killed and that he will be held responsible, carries her to his car, intending to drop her down a disused mine shaft at another location to avoid detection. After travelling a few hundred metres the car is involved in an accident with a drunk driver. When the police arrive Abezola has survived and Rahama is found to be dead. At the post mortem it is discovered that it was the crash and not the fall which killed Rahama.

Discuss Abezola's potential criminal liability.
General remarks
The question is designed to test your ability to structure an answer which contains a number of possible outcomes, particularly liability for homicide, where the issue is causation. On the assumption that the chain of causation is broken, you should discuss any default crime for which Abezola may be liable.

Law cases, reports and other references the Examiners would expect you to use
Church, Newbury and Jones, Dawson, Watson, Roberts, Williams, Blaue, Dhaliwal, Kennedy, Lebrun.

Common errors
Many candidates talked almost exclusively about causation in general rather than the crime (manslaughter) of which causation is but an ingredient. Many others began at the wrong end and talked about assault, rather than the right end, namely constructive manslaughter, with assault being the unlawful act to be relied upon in establishing this. Nevertheless, credit was given for the discussion in so far as it is relevant. A significant number of candidates talked about impossible attempts in relation to Abezola’s attempt to dispose of the body. This was not appropriate since to commit an attempt (e.g. attempted murder) requires the defendant to intend to kill by the act.

A good answer to this question would…
include the following indicative elements.

- The kiss.
- Constructive manslaughter:
  - The definition – unlawful and dangerous act causing death.
  - The unlawful act = common assault in the form of a kiss. Kisses are not (Church) dangerous per se (see e.g. Dawson) but may become so by virtue of context and knowledge (e.g. Watson). On that basis the kiss is dangerous.
  - Causation – Abezola’s belief is not relevant to causation. The issues are whether the jump breaks the chain of causation and, if it does not (indicative case law: Roberts, Williams, Blaue, Dhaliwal, Kennedy) whether the death by car crash is a novus actus interveniens.
  - The position is complicated by the ‘supposed corpse’ (Thabo Meli) aspect of the case. LeBrun makes clear that in the usual supposed corpse case it is simply a question of causation. Death in the course of clearing up the crime is a link and not a break in the chain. A really good answer will, however, identify Thabo Meli and LeBrun as a possible red herring as here the car crash is an independent and sufficient cause of the death.

Poor answers to this question…
tended to talk almost exclusively about Abezola’s liability for assault or sexual assault without considering manslaughter as a possibility, or simply regurgitated their lecture notes on causation without linking them to a specific crime which Abezola may have committed.

Question 7
(a) With reference to both case and statute law explain and discuss the meaning of appropriation for the purpose of the Theft Act 1968.
(b) Daniel takes his watch to a watch mender for a service. When he goes to collect the watch, he finds the shop unmanned and his watch lying on the counter. Annoyed that his watch has been so carelessly exposed to theft, he takes his watch and decides not pay for the service. In fact the watch had not yet been serviced.

Discuss.

General remarks
Two part questions receive 50 per cent of the marks for each part so it is important to spend equal time and effort on both and not do such a question unless you can do all of it! See Wilson, pp.431–38, 445–50, 472–75, 415–24.

Common errors
With regard to part (a), talking about all the elements of theft generally rather than the specific element of appropriation, with little by way of discussion and analysis.

With regard to part (b), too many candidates talked about obtaining services dishonestly and making off without payment to the detriment of the analysis of theft, specifically the issue of ‘belonging to another’, and dishonesty.

A good answer to this question would...
include the following indicative elements.

Part (a)
- Explanation and discussion of how s.3(1) defines appropriation far more broadly than a taking, including the case of coming by property innocently.
- Examples of appropriations – indicative cases are Pitham and Heyl, Morris, Chan Man Sin v AG for Kong Kong.
- Relevance of transferor's consent – indicative cases are Morris, Lawrence, Gomez, Hinks.
- Discussion of the decision in and problem posed by Hinks.

Part (b)
- Explanation and discussion of the key importance of establishing the 'belonging to another' element and dishonesty.
- Section 5(1). Does Turner apply or does the context (no lien if the work has not been done) and the negligence involved in leaving it exposed entitle D to unilaterally terminate the bailment (Meredith) such that when the appropriation occurs it is not of property 'belonging to another'?
- Dishonesty, in particular s.2(1)(a) Theft Act 1968, and Ghosh.
- Candidates were given credit also for discussing the default crime, of making off without payment, which requires discussion of whether payment of the spot was due, and dishonesty as above.

Question 8
Discuss Wayne's potential liability under the Fraud Act 2006 in each of the following scenarios. Do NOT discuss Wayne's liability for theft.

i. Wayne, desperate for the lavatory, goes into a private members’ club of which he is not a member. He winks at the doorman who assumes
that he is a member and lets him through. Wayne uses the lavatory
and, having washed his hands with the soap provided, leaves the club.

ii. Eve goes into Rustbucket Cars and asks to see some low mileage
second hand cars. One attracts her particularly and she asks Wayne,
the salesperson, ‘How many miles does this car do to the gallon?’ ‘60’,
says Wayne although he knows that the fuel consumption is only 60
miles per gallon for motorway driving and only 35 miles per gallon
under average conditions.

iii. Paul, an art dealer, sees Wayne's painting and, hoping for a bargain,
offers Wayne $1m for it. Wayne realises that Paul thinks the painting is
by the famous painter John Constable. In fact it was painted by
Constable's sister and is worth no more than $1,000. Wayne accepts
Paul's offer.

iv. Wayne advertises his car for sale saying, 'BMW for sale. One year old.
One careful owner, £25,000.' Sally comes to view the car and checks
the mileage on the odometer which shows a recorded reading of
10,000 miles. On that basis she buys the car. In fact the car had done
110,000 miles but the odometer reading was faulty. Although Wayne
was not responsible for the faulty reading he was aware of it. The car
would be worth £25,000 if the reading was correct but in fact it is
worth only £20,000 with its true mileage.

General remarks
This question on fraud is designed to test your understanding of what counts as a
representation, what makes it false, when silence can amount to a representation
and when silence can amount to fraud even where it does not amount to a
representation. See Wilson, Chapter 15.

Common errors
Failing to identify in each case the precise representation made and analysing why,
if at all, it is false.

A good answer to this question would...
include the following indicative elements.

i. Section 2 Fraud Act issues.
   • Does he by walking in and winking impliedly by conduct represent he is a
     member?
   • Does he intend to make a gain/cause a loss? Fraud refers only to money or
     property. The only property involved is soap and water.
   • Dishonesty – Ghosh.

ii. Section 11 Fraud Act issues.
   • The services must be made available on the basis that payment has been,
     is being or will be made for or in respect of them. Does this (payment)
     include a membership subscription?
   • Dishonesty.

ii. Section 2 Fraud Act issues.
   • Falsity of the representation.
   • Candidates should identify the misrepresentation as misleading, and that
   • Adam knows that it is, or might be, untrue or misleading.
iii. Section 2 Fraud Act issues.

- Has Adam made a representation concerning the authorship of the painting? His silence will not constitute such a representation unless possibly:
  - he is a dealer or acknowledged expert, particularly if the painting is in his shop and all the other paintings therein are by 'acknowledged masters'. This may be an implied representation by conduct. The representation being that all the paintings in my shop are by acknowledged masters. Of course if the painting was priced at a low figure no such implied representation would arise.
  - it cannot be argued that Adam's knowledge relative to that of Paul places Paul in a position of reliance on him which a failure to discharge will amount to a representation. Indicative cases are Silverman/Greig.

- Section 4 (fraud by abuse of position) probably cannot apply for the above reasons.

- An issue also arises as to whether s.3 (failure to disclose) applies. Candidates should point out that this requires a legal rather than a moral duty and that, in the absence of a relationship of trust, one probably does not exist.

- Dishonesty – Ghosh.

iv.

- The advertisement may be accurate but is it misleading in the sense that it is only a half truth? It may be argued that he is representing more than meets the eye. Although silence does not amount to a representation it may make a representation misleading because of the overall context. The context includes the price. It may be argued that by pricing the car at 25k he is impliedly representing that the car's mileage is as the odometer states.

Poor answers to this question… tended to avoid grappling with the issue of whether a representation had been made and whether it was false and concentrated in each case on s.3. Section 3 is peripheral at best when a false representation has actually been made and it is not worth wasting time over unless, in cases of non disclosure, there is a clear legal obligation to disclose.