Examiners’ reports 2015

LA1010 Criminal law – Zone B

Introduction

The examiners attempt to make the examination as straightforward to pass as possible for those who are prepared to put in the hours of study and revision. Your subject guide joins together with your textbook, consolidated by the activities appearing in each chapter. These activities direct you to sections of the textbook. If you now go through the examination paper below with your subject guide open you will see that everything you need to answer the questions is there. For example, look at Question 8 and turn to your subject guide Section 15.2.2, the associated activities and summary, and the references made to the textbook, to help you solve the activities. If you do this you will have all the information, knowledge and understanding to get a very good mark indeed! Make life and study easy for yourself: follow the advice and structure your study around the subject guide and the textbook.

Comments on specific questions

Question 1

(a) The night after returning home after a long air flight, Andrew’s sleep is disturbed by the sound of a couple having enthusiastic intercourse next door. Although still sleeping, Andrew, who has no history of sleepwalking, gets out of bed and enters his flatmate Bella’s bedroom. Bella screams upon seeing him and tries to push him out of the door. Andrew pushes Bella on to the bed and has intercourse with her. Minutes later he awakes with no recollection of the intercourse.

Discuss any criminal offences which may have been committed by Andrew and any defences which may be available thereto.

(b) Jaz, as a prank, hides Vijay’s insulin. Vijay, who is diabetic, suffers hyperglycaemia as a result, rendering him confused and listless. When Jaz tells Vijay what he has done Vijay punches Jaz and then he (Vijay) lapses into unconsciousness. Vijay’s partner, Sarah, sees him lying on the floor and, guessing what has happened, locates some insulin and injects Vijay with it. This results in Vijay’s complete recovery.

Discuss any criminal offences which may have been committed and any defences which may be available thereto. DO NOT consider Sarah’s potential liability under section 23 Offences Against the Person Act 1861.
General remarks
This question is designed to test your understanding of how defences such as insanity and automatism operate to deflect liability for criminal offences. The main thrust of the question was towards the distinction between the two defences rather than the offences (rape/assault) themselves which involve no issues other than whether a defence is available.

Law cases, reports and other references the examiners would expect you to use
Kemp (1957); Bratty (1961); Sullivan (1984); Burgess (1987); Quick (1965).

Common errors
Part (a)
Too much time and effort were spent talking about rape and assault generally at the expense of the real issue: whether Andrew’s sleepwalking negates either the voluntariness part of the \textit{actus reus} or the \textit{mens rea} for these crimes.

Part (b)
Not realising that the taking of the insulin could not result in s.47 liability for Jaz since, although there is harm, the harm is not caused by Jaz attacking Vijay.

Not identifying the point of Sarah’s intervention, which is whether necessity or implied consent prevents her action from being an assault.

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

Part (a)
Outline of possible offences (i.e. common assault and rape). There was no point talking at length about the elements, as all are clearly present bar the voluntariness aspect of Andrew’s conduct. The focus of the question, therefore, is whether Andrew can deflect liability on the ground that he was unconscious at the time of acting and therefore lacked the fault element/voluntariness necessary for liability. On the face of it, he can, but the real issue is whether his defence amounts to simple automatism or insanity. Burgess tells us that the defence is insanity since sleepwalking is an internal condition. However, there are two external triggers here which, given Andrew has no history of sleepwalking, might permit Burgess to be distinguished; namely the long aircraft flight and the sound of sexual congress which, given Andrew’s ‘jet-lag’, might be expected to cause him to do strange things.

Part (b)

- Vijay
  Briefly analyse Vijay’s possible liability for the punch (s.47 or s.20).
  1. Loss of consciousness is ABH (Miller) and GBH, depending on the view of the jury (Bollom).
  2. Is the taking of the insulin an assault or a battery? It is clearly not a battery. Neither is it an assault which requires a threatening act of some sort. So Jaz cannot be guilty under s.47. Has Vijay inflicted ABH/GBH on Jaz? Burstow says ‘inflict’ means ‘cause’ and so it seems he has.
• Jaz

It is not clear whether Jaz lacks mens rea for the assault on Vijay, although he is confused and may therefore be acting involuntarily. If so, is this due to sane or insane automatism. Hennessy (internal cause) suggests sane. The condition was induced by an external trigger (the playing of a prank) rendering it sane (e.g. R v T).

• Sarah

On a charge of common assault, Sarah may claim implied consent. The issue arising is whether a person can legally consent to an injection of insulin (Pike). Presumably yes in cases of emergency. If this is wrong, then it is a claim of necessity. See Re F, Pipe.

Poor answers to this question…

ignored Sarah’s potential liability altogether and concentrated simply on the offence (punch – s.47 or s.20) rather than the defence.

Question 2

Lazim, a malicious joker, blows up a paper bag and explodes it behind Mary’s back. The shock causes Mary to jump sideways and bang her head on a cupboard door, causing bruising. Lazim then laces Zoe’s face cream with roughly ground glass. The resulting abrasions turn septic necessitating head bandages, cortisone injections and a course of antibiotics. Zoe is left with slight scarring to the cheeks. Later Lazim gives Eve, a blind person, a false set of directions across town, hoping that she gets lost. Instead she suffers serious injury when she gets knocked over by a car on a road she mistook for a pavement. When Moeen, a police officer, hears what Lazim has done he runs after Lazim to arrest him. Lazim hides in a doorway intending, when Moeen runs past, to stick out his foot and trip him. By mistake, he trips up Noor, a young girl running home after school, causing her to cut her leg.

Discuss.

General remarks

This question tests your understanding of non-fatal offences against the person, where they overlap and where they differ.

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


Common errors

Assuming without discussion that the paper bag involved an assault and the face cream involved a battery for the purpose of s.47. In both cases this is questionable and so the question should have been put and addressed.

A good answer to this question would…

include the following elements.

• Paper bag

Section 47. Define and outline the elements. There are two main issues.

1. Has there been an assault? Discussion would be valuable as to whether simply causing someone a shock, as in saying ‘boo’, is the same as leading someone to expect physical contact.

2. Is bruising ABH?
• **Face cream**  
Section 47. Define and outline the elements if not done so already.

Harm has been caused but has it been caused by an assault? Discussion would be valuable as to whether some form of unconsented to physical contact is necessary (battery) or threatening gesture or words (assault). Even *DPP v Santana Bermudez* involve such a conduct element.

Section 20. Define and outline the elements if not done so already.

1. Does inflict mean simply cause as per *Burstow*? The straightforward answer is yes. Credit would be given for any attempt to argue against this (e.g. is there room for requiring, in the case of physical injury as opposed to mental injury or disease, the harm to result from the application of force? (Wilson)) but this is not expected.

2. Does the combined injury to health/body amount to GBH? This is a jury question (*Bollom*). Does D have to foresee the full extent of the injury, assuming it does? (*Mowatt, Savage*.)

• **False directions**  
Section 20. Define and outline the elements if not done so already.

1. Does inflict mean simply cause, as per *Burstow, Dica*? The straightforward answer is yes.

2. Is Vijay’s act the legal cause of Eve’s injury? Discussion of tests (e.g. reasonably foreseeable/voluntary action) would be valuable.

3. Is there evidence of foresight of harm and, if so, does D have to foresee the full extent of the injury? (*Mowatt, Savage*.)

• **The trip**  
Section 18. There is a wound. The intent is to resist arrest. The main issue is whether transferred malice applies in a case like this (e.g. *Pembilton*).

**Poor answers to this question...**  
described the elements of the offences without identifying the main issues. Ignored one or more of the scenarios.

**Question 3**

Mary and Peter are twin brother and sister. They have endured years of physical abuse at the hands of their father. After leaving home, they remain very angry about their father’s treatment of them and decide to kill him. They order some poison from the internet and decide to leave it in his favourite whisky, knowing that he likes a daily ‘night cap’. Their father drinks the whisky. However, they have actually ordered a harmless fruit juice and their father suffers no ill effects from the drink.

Peter is relieved to learn that they have not killed their father. Mary, on the other hand, is very angry that their father survives and decides that she will find another way to kill her father. One evening, her father tells her that her
birth was a mistake and that neither he nor her mother has ever loved her. This sends her into a fury. Once her father’s back is turned, Mary takes a saucepan and repeatedly hits him over the head with it. He later dies from his injuries. Peter is surprised but secretly pleased that Mary has killed their father.

Advise Mary and Peter on any criminal liability arising.

**General remarks**

This question tests your understanding of criminal attempts, including the impossibility rule, also murder, loss of self-control and complicity and the rules governing withdrawal.

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

Indicative cases include *Eagleton* (1855); *Shivpuri* (1987); *Moloney* (1985); *Clinton, Parker & Evans* (2012); *Dawes and Hatter* (2013); *Rook* (1993); *Mitchell* (1999); *Howe* (1987).

**Common errors**

Not covering, or covering in insufficient detail, the attempt part of the question and/or Peter’s potential liability as an accomplice to the killing.

**A good answer to this question…**

would include the following elements. (Conspiracy is not covered in the syllabus so no discussion was expected.)

1. **Attempted murder.**
   
   Define, outline the elements and then identify the following issues.
   
   a. Was the act more than merely preparatory to the commission of murder by s.1 CAA? Discussion of proximity by last act would be valuable (e.g. *Eagleton, Stonehouse*).
   
   b. Impossibility – reference to s.1(2) and (3) and *Shivpuri* (1987).
   
   c. For attempted murder an intention to kill is necessary (e.g. *Whybrow*).

2. **Murder by Mary.**
   
   Define, outline the elements and then identify the following issues.
   
   a. Is there evidence of an intention to kill or cause GBH?
   
   b. Is the partial defence of loss of self-control available? This would require discussion of two things in particular. First, which qualifying trigger is to be relied upon? Or is it both? Second, does the evidence (waiting till back turned) suggest that there was no loss of self-control (e.g. *Dawes and Hatter, Bowyer*) but rather a revenge killing?

3. **Complicity of Peter in Mary’s killing.**
   
   Define, outline the elements and then identify the following issues.
   
   a. Does his complicity (AR + MR) in the first attempt continue to render him complicit in the murder? Or has he withdrawn effectively? Discuss what a party to a joint enterprise must do to withdraw (e.g. *Mitchell, Rafferty, Rook*) (subject guide, Section 15.5; Wilson).
b. If he is complicit, what is he liable for? Assuming Mary is able to rely on loss of self-control, does Peter also thereby benefit or is he liable for the full offence? (Subject guide, Section 15.4.2 and Activity 15.15; Wilson.)

**Question 4**

“If a death has been caused but the defendant does not intend to kill or cause grievous bodily harm, then providing the action or omission was not accidental any ensuing prosecution will be for manslaughter.”

**Explain and evaluate the law of involuntary manslaughter in the light of this statement.**

**General remarks**

This question tests not only your knowledge and understanding of the involuntary manslaughter but also your ability to evaluate the current law. In your subject guide, Activity 7.14 addresses this by referring you to Wilson, Chapter 13 and the Law Commission’s proposals for reform.

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

Indicative cases include *Adomako* (1995); *Wacker* (2002); *Willoughby* (2004); *Evans* (2009); *Newbury and Jones* (1977); *Church* (1966); *Slingsby* (1995); *Dawson* (1985); *Watson* (1989).

**Common errors**

Not taking issue with the quotation which is, in fact, an inadequate and misleading statement of the law.

A good answer to this question would...

analyse the quotation to see if it is accurate and identify any weaknesses in it. The most blatant weakness is that a non-accidental killing is not necessarily manslaughter at all. For example, if a driver kills a pedestrian while speeding this will not be constructive manslaughter (see Wilson, Section 13.7.B.1; subject guide, Section 7.4.5). Neither will it be gross negligence manslaughter, unless the speeding was a truly awful example (i.e. was not just negligent but grossly so).

Reference should be made to the meaning of gross negligence provided in *Adomako*. In short, manslaughter has its own (different) fault elements.

Define and explain gross negligence and constructive manslaughter.

In evaluating manslaughter you should include such matters as:

1. the fairness or otherwise of objective fault in gross negligence manslaughter (subject guide, Section 7.4.12; Wilson, Section 13.7.C.1(b))
2. the problem of legality associated with the fact that it is for the jury to decide whether the negligence is gross (subject guide, Section 7.4.12; Wilson, Section 13.7.C.1(b))
3. the fact that risk must be of death in gross negligence manslaughter (subject guide, Section 7.4.12; Wilson, Section 13.7.C.1(b))
4. the lack of a requirement that the defendant intends or foresees any harm in constructive manslaughter (subject guide, Sections 7.4.12, 7.4.8 and Activity 7.12; Wilson, Section 13.7.B.1(b)).
5. the confused notion of dangerous acts (subject guide, Section 7.4.6; Wilson, Sections 13.7.B.1(b))
6. the fact that constructive manslaughter cannot be committed by omission (Wilson, Section 13.7.B.1(b)).

Poor answers to this question… ignored the quotation and simply described, without evaluating, the law of manslaughter.

Student extract
In involuntary manslaughter, the prosecution have to prove three different things- reckless manslaughter, constructive manslaughter and gross negligence manslaughter. In reckless manslaughter the prosecution have to prove that the defendant (D) had foreseen the causing of harm or death. According to R v Smith D was reckless as to the death of the police officer who chased him. He foresaw the he might cause GBH or death. To constitute reckless manslaughter D has to foresee the dangerousness that could have caused GBH or death to V. On the other hand constructive manslaughter does not require foresight of the harm; it is simply necessary to have the core element – the unlawful act such as assault and the causal connection between the assault and the death (Hyam).

Comment on extract
This is a fairly typical example of a script which ignores the point of the question. The extract is from the beginning of the question and you will notice that there is no attempt to address the quotation. The candidate has ignored this entirely and has simply identified the words ‘the law of involuntary manslaughter’ and ‘explain’ and has answered the question as if that was all that was wanted. As the essay progresses there is a complete absence of ‘evaluation’. The extract itself shows that the candidate has little knowledge of the area. The cases used are off point – both Smith and Hyam were cases on murder, not reckless or constructive manslaughter. The explanation of constructive manslaughter is confusing. What does it mean?

When revising a topic you must identify precisely the definition and elements.

Question 5
Joey is sexually attracted to his neighbour, Phoebe, whom he (incorrectly) believes shares his feelings. One evening he invites Phoebe over to his house for a drink. After Phoebe has entered the house, Joey locks the front door and puts the key in his pocket. There have been several burglaries in the area and Joey always does this for security.

Joey pours Phoebe a drink and secretly slips into it a drug, which normally has the effect of loosening inhibitions. However, the drug has a different effect on Phoebe making her paranoid and terrified of Joey. Joey starts making sexual advances to Phoebe. In her state of confused paranoia Phoebe thinks that Joey will attack her if she does not submit. She also thinks she cannot escape because she saw Joey lock the door. A result she submits to intercourse with Joey. Joey, believes, during intercourse, that Phoebe is consenting and that the drug has merely loosened Phoebe’s inhibitions a little. After the intercourse Phoebe goes home.

The next morning Phoebe decides to report the matter to the police. She is furious with Joey and phones him to tell him of her intentions. Joey is scared and decides that he must kill Phoebe before she goes to the police. He decides to burn down Phoebe’s house which he hopes will cause her death. He is climbing over the back garden wall, armed with a can of petrol and matches, when another neighbour sees him and shouts out. Joey runs away.

Discuss the criminal liability of Joey.
General remarks
There are two main points of discussion in this question. The first is rape, with particular reference to the evidential presumptions and effect they have on the prosecution's burden of proving the elements of the crime.

The second is the law of criminal attempts, specifically attempted murder, although credit was given to candidates who relied on (attempted) aggravated arson as the substantive offence.

Law cases, reports and other references the examiners would expect you to use include Cicarelli (2011); Boyle (2010); Kamki (2013); Assange (2011).

Campbell (1991); Jones (1990); Gullefer (1987); Tosti (1997); Geddes (1996); Whybrow (1951); Collins (1973); Brown (1985).

Common errors
Answering one part of the question at the expense of the other. Not dealing with a major issue on the rape part, namely the effect of the evidential presumption on the 'reasonable belief' element in rape. There was no need to talk about s.76.

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

1. Rape – definition and its elements, the issues:
   a. Consent. A good answer would have made reference to s.75(1) and (2) specifying the two cases to be relied upon – unlawful detention and involuntary intoxication. The discussion on this point should have concentrated upon whether the facts of the question disclose any evidence capable of rebutting the presumption that Phoebe did not consent. In that case the prosecution would need to prove absence of consent by reference to s.74 (Wilson, Section 12.7.A.1; subject guide, Sections 8.4.2, 8.5).
   b. Lack of reasonable belief. Again, a good answer would have made reference to s.75(1) and (2) specifying the two cases to be relied upon – unlawful detention and involuntary intoxication (Wilson, Sections 12.7.A.1, 12.7.C; subject guide, Section 8.6).
      This is a case where Joey will try and rebut the presumption by reference to his motives and his understandable lack of awareness of the effect the drug has on Phoebe. If the presumption of lack of reasonable belief is rebutted the jury must consider reasonableness by reference to the evidence presented remembering always the evidence (not presented here) as to whether Joey made any efforts to assure himself that Phoebe was consenting (subject guide, Section 8.5).

2. The intended arson.

Possible offences – the obvious offence to emphasise is attempted murder but you could still get a good mark if you deal properly instead with one of the other possible inchoate offences (i.e. attempted arson/aggravated arson or burglary).

1. Attempted murder.
   a. Reference should be made to the mens rea component (i.e. intention to kill). An intention to do GBH is not enough (Whybrow) (subject guide, Section 14.3).
b. Section 1 of the CAA. Is Joey’s action more than merely preparatory to the commission of the offence of murder? Is he on the job or simply in an advanced stage of preparing for it? (Wilson, Section 18.5.A.1; subject guide, Section 14.2.1).

2. Burglary/aggravated burglary. Is there sufficient entry into a building? Collins (1973), Brown (1985). The answer must be no, and so the question again is whether there may be a conviction for an attempt (Wilson, Section 16.4.B; subject guide, Section 12.2.1).

3. Attempted burglary/aggravated burglary. Is Joey’s action more than merely preparatory to the commission of the offence of burglary? Is he on the job or simply in an advanced stage of preparing for it?

4. Attempted aggravated arson. Elements of the attempt as above.

Poor answers to this question…
ignored s.75, or simply copied it out of a statute book without referring to the facts of the question.

Student extract
Joey decides to kill Phoebe by burning her house. Joey will be charged with attempted murder s.1 CAA 1981. To be charged under this offence the person must do an act which is more than merely preparatory to the commission of the offence even though the facts are such that the commission of the offence is impossible on the facts. Joey went to ‘phoebe’s house ‘armed with a can of petrol and matches’. When he was caught with the can of petrol and matches he was climbing over the back garden wall.

Comment on extract
This extract deal with the second part of the question, namely the intended arson/killing. It begins satisfactorily by identifying the appropriate charge and the actus reus. The words ‘even though the facts are such that the commission of the offence is impossible on the facts’ are superfluous here and should have been omitted. This is not a question dealing with impossibility. Less satisfactory is the candidate’s problem answering technique. The candidate has asserted a conclusion before discussing the issue. The job of the lawyer, primarily, is to look for problems (issues) rather than simply asserting answers. A better answer would have been:

In order to be guilty of attempted murder the prosecution must show that Joey has performed an act which is more than merely preparatory to the commission of the offence (i.e. murder). Can it do so? The facts tell us that Joey approached Phoebe’s house ‘armed with a can of petrol and matches’ and was caught with the can of petrol and matches as he was climbing over the back garden wall. Are these acts more than merely preparatory to the commission of the offence (i.e. murder)? This requires consideration of how the courts have interpreted the meaning of ‘more than merely preparatory’. The current test is that the defendant must be ‘on the job’ rather than merely preparing for it, even if the preparations have reached an advanced stage (Geddes). On the face of it, it appears that these acts may fall short of the necessary degree of proximity. Climbing over a wall armed with petrol and matches is hardly proximate to an act of killing. We need more than this. For example, in Campbell…(you could have used any number of cases here to
support such a conclusion, e.g. Geddes, Gullefer, and a good answer would have argued against such a conclusion by reference to cases such as Jones or Tosti. See subject guide, Section 14.2; Williams, Section 18.5.A.1).

**Question 6**

(a) Jaycee, a law student, lends Amir his book, ‘Smith on Theft’. Finding it a touch dull, Amir puts it on a shelf and forgets about it, as does Jaycee. A few months later Amir discovers the book again and decides that it is not worth giving it back to Jaycee as the law course has ended. He determines to sell it at the first available opportunity but meanwhile leaves it on his shelf. A day later Jaycee telephones and asks Amir for the book. 'Yes, I've got it', he says. 'I thought you'd forgotten about it. I was going to sell it.'

Discuss.

(b) Akande drives into a car park. He gets out of his car to purchase a car park ticket from the machine. Chichima, who is leaving the car park, spots him and calls out ‘Hi! Do you want my ticket? It still has two hours left. I don't want any payment.’ ‘Akande thanks Chichima and takes the ticket. An hour later Akande arrives back at the car park. Emengo, a friend of Akande’s, asks Akande if he can have his ticket. Akande replies “Yes, but I want £1 for it. Emengo pays him and takes the ticket.

Discuss.

**General remarks**

Part (a) is designed to test your understanding of two aspects of the law of theft. First, how is property appropriated? Second, what test of dishonesty is to be applied? Part (b) is slightly more challenging since, in addition to those aspects, it requires discussion and analysis of the ‘belonging to another requirement’ and the meaning to be attributed to the ‘intention to permanently deprive’.

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


**Common errors**

Not identifying the relevant part of s.3 which is central to the resolution of the question. Not identifying the specific problem the prosecution might have in proving dishonesty.

Not identifying the main issues in part (b), namely, whether theft can be committed where the owner of the ticket or owner of the £1 in the final scenario consents to you having it.

A general error was not breaking the question into its different parts. There are a number of potential thieves here:

1. Akande by receiving the ticket from Chichima
2. Chichima by giving the ticket to Akande
3. Akande by selling Emengo the ticket
4. Emengo, by purchasing the ticket.
A good answer to this question would…
include the following elements.

Part (a)

1. Brief statement of the elements of theft.
2. Identify the issues.
3. Discuss the issues.
   a. Given that Amir did not steal the book when first borrowing it (no intention to keep, no dishonesty) did he steal it later when deciding to sell it? This requires consideration of s.3. In particular the part which says that a person can appropriate property after having first received it innocently without stealing it (subject guide, Section 12.1.3; Wilson, Section 14.2.A.1). The issue then is does Amir appropriate the book by deciding to keep it or dispose of it or does he need to do something inconsistent with the rights of the owner? (Subject guide, Section 12.1.3.)
   b. Belonging to another. When Jaycee forgets about the book, does it cease to belong to him through abandonment? (Subject guide, Activities 12.7 and 12.8 and accompanying text; Wilson, Section 14.2.A.3(a).)
   c. Dishonesty. Assuming s.2 does not apply, does Amir’s statement to Jaycee indicate that he does not realise his decision to keep/sell the book to be objectively dishonest? If so, Ghosh dishonesty cannot be established (subject guide, Section 12.1.4; Wilson, Section 14.2.B.2).

Part (b)

1. A good answer would refer to the possibility that Chichima (also Akande by receiving it) is guilty of theft if giving/receiving the ticket is an appropriation of property belonging to another, referring to Hinks (receiving a gift is an appropriation) irrespective of consent, Gomez (transferring property is an appropriation) (subject guide, Section 12.1.3; Wilson, Section 14.2.A.1(c), (d), (e), (f)) and Marshall (a car park ticket, once purchased, still belongs to the original transferor for the purpose of the Theft Act 1968) and the transfer demonstrates an intention permanently to deprive the owner of the ticket for the purpose of s.6. (Marshall) (subject guide, Section 12.1.4).
2. Emengo may also be guilty of theft of the ticket under the Hinks principle as above. Akande may also be guilty of theft of £1 under the Hinks principle, assuming dishonesty (Wilson, Section 14.2.A.1(f)).
3. In each case, liability depends upon dishonesty. If s.2 applies it is conclusive on the question of dishonesty. This is not obvious. For example, if Akande thinks the ticket is Chichima’s to deal with as he wishes and does not appreciate the status of the car park owner, does this mean that s.2(1)(a) and/or (b) are applicable? If it does not apply, the Ghosh test must be applied and in each case the main question which must be asked is whether these kinds of arrangements are treated by ordinary people as dishonest and whether the individuals concerned knew this.

Poor answers to this question…
In part (a), simply stating the elements of theft without any attempt to analyse the facts. In part (b), dealing with the question on the basis of the Fraud Act or ‘making off without payment’, which is entirely off point.
Question 7

“All criminal defences amount to the same thing. It is a defence to criminal liability if the defendant acts reasonably in the face of immediate crisis.”

Explain and evaluate this statement by reference to THREE of the following criminal defences:

(a) self-defence;
(b) duress;
(c) duress of circumstances;
(d) necessity.

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

Choose around 6–7 cases to illustrate your discussion from the following list of indicative cases: Martin (1989); Conway (1986); Willer (1986); Clegg (1995); Oye (2013); Palmer (1971); Hasan, Bowen (1996); Graham (1982); Howe (1987), Pipe (2012); Re A (Conjoined Twins) (2001); Re F (1993).

Common errors

Not answering the question but just using it as a peg upon which to hang a general discussion of three defences.

A good answer to this question would...

1. State and describe three defences with their elements.
2. Discuss how these elements reduce or (as in certain necessity cases, e.g. Re F) do not reduce to:
   a. the requirement of an external trigger (crisis). For example, duress and self-defence require an external threat of harm (e.g. threat of harm). Loss of self-control requires a (qualifying) trigger. Automatism requires and external cause of the automatism.
   b. an immediacy requirement reflecting the question’s reference to crisis (e.g. duress, self-defence). No such requirement is present in automatism, insanity, necessity.
   c. a reaction to that trigger (e.g. duress and self-defence requires D to be acting because of the threat).
   d. a requirement that the reaction be a reasonable one (and be proportionate). This is so for all defences with a slight qualification in self-defence in the case of householders (subject guide, Section 12.3.5).
   e. reflecting the question’s reference to ‘reasonable reaction’ – a requirement that the reaction disclose prior fault.

Poor answers to this question...

Did not accurately describe the elements of the defences and did not relate their description of the elements of the three defences to the question.

Question 8

(a) Adam, Eve’s boyfriend, asks Eve to supply him with information about the comings and goings of Cain, who inhabits an identical apartment in the same block as Eve. Eve does so. Adam uses the information
provided to break into Cain's apartment and kill him. Eve believed Adam's plan was to commit burglary.

(b) Peter, knowing that Vicky will not consent, resolves to have intercourse with Vicky. He asks Wilma, her roommate, to be absent from the room so as to facilitate the rape. Wilma complies, assuming Vicky to be a willing partner.

(c) Igor attends Helen's party where, known to Helen and with her encouragement, he drinks some wine. Helen knows that Igor has brought his car and suspects he may drive home in it but does not know how many units he has drunk. He is later stopped by the police and found to be driving with excess alcohol.

(d) Dolly asks Mick to kill Fay at her home. Mick does not kill Fay, but instead deliberately kills Godwin, Fay's husband, when Godwin unexpectedly arrives home.

Consider the possible liability as an accomplice of Eve, Wilma, Helen, and Dolly to the crimes committed by Adam, Peter, Igor and Mick.

A good answer to this question would...

include the following elements.

(a) Refer to the requirement of mens rea as to the assistance/encouragement provided and make reference to the requirement that A should know the basic facts which constitute the offence committed and for which they are indicated as an accessory (Johnson v Youden).

(b) Refer to the requirement of mens rea as to the assistance/encouragement provided and make reference to the requirement that A should know the basic facts which constitute the offence committed and for which they are indicated as an accessory. This includes, as here, cases where the substantive offence does not require proof of mens rea on the part of principal (e.g. Carter v Richardson).

(c) Refer to the requirement of mens rea as to the assistance/encouragement provided and make reference to the requirement that A should know the basic facts which constitute the offence committed and for which they are indicated as an accessory. The first issue here is whether it must be shown that Alicia intends/knows/believes that Igor will drive home or whether suspicion is enough. The second is whether Alicia is complicit if she does not know for certain that Igor is over the limit.

(d) The main issues here are whether the choice of a different victim counts as a substantial variation for the purposes of accessoryship (e.g. Saunders and Archer) and, if it does, whether the joint enterprise rules (contemplation that Mick might kill someone in this eventuality) apply (e.g. Powell/English). A very good answer might inquire whether it is relevant for this purpose that Dolly is not present at the time of the killing.

Poor answers to this question...

ignored accessoryship altogether or dealt with the subquestions without reference to the issue of mens rea.