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General Certificate of Education

Law 6161

Unit 4 (LAW4) Criminal Law (Offences against the Person) *or* Contract

Report on the Examination

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Unit 4 (LAW4): Criminal Law (Offences against the Person) *or* Contract

Question 1

(a) This question suggested possible offences of assault on Alan by Bob, of battery of Bob by Alan, and of assault (battery) occasioning actual bodily harm on Chris by Alan (with a possibility of the more serious offence of unlawful and malicious infliction of grievous bodily harm). Bob's liability also raised the issue of the effect of intoxication on criminal liability, whilst the defence of self-defence had to be considered in relation to Alan's possible liability. Candidates generally found little difficulty in identifying the possibility of assault, which most were able to define and explain confidently. However, application was weaker and often failed to explore Bob's *mens rea*. Clearly, Bob did not intend to cause fear of immediate personal violence and, given his drunken state, he probably gave no thought to whether his conduct was having that effect. *Prima facie*, this meant that he was not reckless. However, those candidates who recognised that intoxication was implicated were able to explain that Bob would be unable to explain away his failure to foresee the risk because voluntary intoxication would be no defence to a crime of basic intent. Yet the approach to intoxication was very variable in quality. Many candidates disposed of it very briefly without pausing to supply even the basic explanations of voluntary intoxication and the crucial distinction between specific and basic intent offences. Others simply asserted that voluntary intoxication can never be a defence. Stronger candidates began the assessment of Alan's liability by dealing with the battery offence on Bob, often referring to a case such as ***Savage***. This provided the framework for an analysis of the liability for the injury to Chris, in which the *actus reus* of battery was again established, whilst the *mens rea* was put on the basis of recklessness or by arguing for transferred malice. The extreme allergic reaction was then categorised as at least actual bodily harm on the ***Chan-Fook*** test and the causal connection was related to the 'thin-skull' rule. Even so, a surprising number of candidates assessed Alan's liability purely in terms of the injury to Chris and without reference at all to any offence against Bob. Thus, the consideration of *mens rea* was often incomplete and deficiencies were compounded by a failure to discuss the meaning of actual bodily harm (or an excessive reliance on the doubtful formulation in ***Miller***) and, especially, by a failure to explain how the thin-skull rule would be applied to overcome any difficulties of causation. Recognising the "extreme allergic reaction", some candidates presented very good discussions of s20 unlawful and malicious infliction of grievous bodily harm, though some displayed familiar confusion in asserting that a wound is needed for this offence. The attempts to locate this in a break in the layers of skin resulting from the allergic reaction were, perhaps, a little fanciful. Many candidates clearly understood the *mens rea* for this offence and either asserted that Alan intended some harm or that he recognised the risk of some harm as it was a "powerful detergent". Some candidates went further and argued that this meant that he intended serious injury under s18, failing to register the fact that Alan could hardly have intended Chris's "extreme allergic" skin reaction. There were many very good responses which recognised that Alan could raise the defence of self-defence. These answers explained that the defence would depend on the necessity for the use of force and on the force used actually being proportionate to the harm threatened. Given Alan's mistake as to Bob's intentions, stronger candidates discussed the significance of the ***Gladstone Williams*** case or that of Beckford, and also debated whether Alan could have come down from the ladder and escaped instead. Allied to this there was often a discussion of 'pre-emptive strikes' and the case of ***Bird***. The cases of ***Clegg*** and ***Martin*** featured prominently in the discussion

of the proportion aspect, where, surprisingly, candidates frequently asserted that the force used must have been excessive because Alan was using a “powerful detergent” (which was, in reality, little more than a bucket of soapy water). Some candidates concentrated almost exclusively on this aspect whilst others treated the mistake made by Alan as a separate defence in itself rather than merely as a factor in the assertion of the defence of self-defence.

(b) In this question, candidates were required to discuss Dave’s liability for the murder of Edward. Invariably, candidates provided the common law definition of murder and then explained various elements from that definition before suggesting that a *prima facie* case of murder could be established. However, the quality of explanation and application was very variable. Stronger candidates recognised that there were no issues about the *actus reus* and so turned their attention to the *mens rea*, where they were able to suggest that David must have intended serious injury when he stabbed Edward in the leg. Many candidates, however, chose to complicate this issue by attempting to argue in terms of indirect intention or foresight of virtual certainty. Sometimes, this was incorrectly explained as requiring that the outcome *was* a virtual certainty rather than that it was *foreseen* as such. The argument that David must have aimed to kill Edward or must have foreseen the virtual certainty of death when stabbing Edward in the leg was very unconvincing, and sometimes seems to have proceeded from a failure to observe that it was a wound to the leg rather than to some other, perhaps more obviously seriously, vulnerable part of the body. Equally, any suggestion that he foresaw the virtual certainty of serious injury simply seemed unnecessary, given that it was much more likely to have been his aim. Many candidates apparently lacked the confidence to focus entirely on *mens rea* issues and so wrote extensively on matters such as causation, and more generally on the other elements in the *actus reus* of homicide. At best, this approach simply gained little credit, at worst it appeared to distract the candidate from recognition of the much more important *mens rea* issues and so resulted in a weak analysis of the *prima facie* liability for murder. Having established *prima facie* liability for murder, most candidates then went on to consider whether the offence could be reduced to manslaughter by a successful plea of provocation or of diminished responsibility. There were, however, candidates who examined one or other but not both. There were also some candidates who wrote about insanity rather than diminished responsibility, or who combined discussion of the two defences, sometimes presenting a very confused mixture of the two. Discussion of insanity was of some merit but David would have been much more likely to be successful with the diminished responsibility defence than with the insanity defence. Analysis of provocation was often very accomplished, many candidates being able to explain and apply both the subjective and objective test with some confidence. Both the immediate dispute and the pattern of parking (as perceived by Dave) were identified as possible provocation, the idea of cumulative provocation emerging through cases such as ***Humphreys***. Similarly, candidates were alert to the possibility of the cooling-off period and the idea of revenge, and frequently quoted ***Ibrams*** and ***Thornton***. The quality of explanation and application of the objective test was more variable. Candidates who were familiar with the current approach, represented by ***AG for Jersey v Holley*** and the Court of Appeal interpretation in ***James***, were usually able to argue that Dave’s tendency to lose self-control because of his obsessive state of mind would not be considered. However, many candidates seemed unaware that the law had developed beyond ***Camplin***, and of those who were, some still cited ***Smith*** as the current authority. Once again, many candidates wrote very good explanations of the defence of diminished responsibility and it was especially pleasing to note the continuation of a recent trend in such answers, in which candidates have displayed understanding of all three elements, rather than merely, say, the ‘abnormality of mind’ element. The most likely explanation of the source of Dave’s

abnormality was as an inherent cause, and this was recognised by many candidates. However, credit was also available to those who strove valiantly to argue for a condition of arrested or retarded development of mind. Inevitably, the application of the final element (did it substantially impair his mental responsibility for his acts or omissions?) was difficult to achieve with any precision but candidates generally made credible suggestions.

(c) Of the three possible choices, involuntary manslaughter was by far the least popular. Approximately equal numbers of candidates attempted one or other of the remaining choices. The answers were very similar in style and content to those encountered in previous years.

Murder and Voluntary Manslaughter

There were some very good answers discussing problematic areas in the law. There was some reference to the *Law Commission Reports*, though many candidates discussed criticisms deriving from them without acknowledging the source. There was frequent reference to structural issues, in particular, the mandatory life sentence related to the proposed creation of a structure involving degrees of murder. Overwhelmingly, candidates criticised a structure which could equate the liability of a concerned relative for his/her act in assisting a terminally ill victim to die with that of a serial killer, though they rarely noticed that this could be dealt with in setting a tariff within the life sentence framework. Many candidates also commented on *actus reus* issues with reference to the definitions of 'human being', under the Queen's Peace, death and, more questionably, the year and a day rule. Most candidates also explored *mens rea* issues, presenting some very good discussion of the problems with intention. This typically focused on the fact that intention to cause grievous bodily harm is sufficient and on the problems encountered in dealing with the definition and status of oblique intention. Some candidates explored partial defence issues, usually paying more attention to provocation than to diminished responsibility. The main focus in provocation was on criticisms about its differential application to men and women and the inherent difficulties in employing a reasonable man test where the offence involves killing. Criticisms of diminished responsibility were more general in nature, candidates asserting that the defence is not consistent with modern medical thinking and is very imprecise in its application.

Involuntary Manslaughter

Of the relatively few candidates answering this part, most explored deficiencies in constructive and gross negligence manslaughter with little reference to general overview issues. Answers were often very brief and merely listed points without being able to develop them. Stronger candidates tended to criticise, in particular, the confusion between civil and criminal law concepts in gross negligence manslaughter and the general imprecision of a test which, ultimately, depends upon the jury's view of how bad D's conduct was.

Non-fatal Offences

There were many very good answers with candidates exploring both general structure and more specific *actus reus*/*mens rea* issues, using good examples and authority. Comments tended to focus on anomalies in the hierarchy of maximum sentences, antiquated language and the constructive nature of the offences. Potential *actus reus* issues such as the meaning and status of 'wounding' were typically referred to as problems with language. Many candidates used authority but few answers actually discussed the issues arising in cases in any depth to illustrate the criticisms being made. There was also frequent reference to the law of non-fatal offences being developed by judges as a criticism in itself, an apparent failure to acknowledge

that statutory interpretation and the use of precedent are part of the normal role of a judge in interpreting and developing the law. Some candidates produced very superficial answers which mentioned lots of points briefly and contained little use of authority. A number of candidates used proposals for reform to demonstrate criticisms but many simply listed the proposals without any comment or link to criticisms.

Question 2

(a) There were a number of different ways in which to structure an answer to this question, one obvious way being to deal first with Isi's possible liability both in relation to Farrah and to Gill, and then with Gill's liability in relation to Isi. This structure had the merit of permitting the development of explanation of assault/battery/assault occasioning actual bodily harm as a group of offences before taking up the still more serious offence(s) possibly committed by Gill. Most candidates did identify the complete range but there were some who dealt with the possible assault on Farrah by Isi but completely missed Isi's possible battery committed against Gill. In dealing with Isi and Farrah, candidates invariably understood that the initial offence, if any, would be an assault and most were able to examine the key *actus reus* issue of fear of *immediate* personal violence, referring to cases such as ***Smith v Superintendent of Woking Police Station***, ***Ireland*** and ***Constanza***. However, the application was often hesitant as candidates did not always perceive that a reluctance to leave the house could itself be interpreted as a fear of being subjected to violence immediately she tried to do so. Conversely, proof of *mens rea* was perhaps too readily assumed by candidates. It seems very likely that Isi intended to cause Farrah general distress and fear but it is perhaps more questionable whether, having regard to her age, Isi intended Farrah to fear immediate personal violence or was aware of the risk that Farrah would fear it. Part of the reason why the specific harassment offences were introduced was to eliminate the doubts about the application of the more traditional offences, such as assault, to this kind of conduct. Some candidates were content to stop at this point in their analysis of Isi's possible liability towards Farrah. However, most perceived that, if an assault could be established, this opened up the possibility of a more serious charge of assault occasioning actual bodily harm based on an allegation of psychiatric injury suffered by Farrah in consequence of her response to the threats. As in answers to question 1(a), candidates here frequently cited ***Chan-Fook*** for the meaning of actual bodily harm and for the extension to psychiatric harm. Some candidates incorrectly suggested that some *mens rea* was required beyond that necessary for the assault itself, whilst others, equally incorrectly, tried to argue for the offence irrespective of the presence of an assault, simply because actual bodily harm had been caused. Some candidates quite properly speculated on whether the psychiatric harm was sufficiently serious to amount to grievous bodily harm and so introduced the case of ***Burstow***, though not all seemed to understand that this would have the advantage of circumventing any requirement for an assault or a battery. More perceptive candidates recognised that a difficulty about proving this offence would be to show that Isi intended or foresaw *any* injury, let alone injury of a psychiatric nature. When dealt with, the discussion of Isi's liability for slapping Gill was generally quite thorough and convincing. The obvious offence was battery, though the pulling of hair and repeated hard slaps could possibly have amounted to actual bodily harm, even if at the very margins. Here, the definition of actual bodily harm in terms of interference with health and comfort suggested in ***Miller*** was apt to create a slightly misleading impression. Surprisingly, some candidates were not satisfied to leave it at that and attempted to argue for the still more serious offence of unlawful and malicious infliction of grievous bodily harm. It was very difficult to see how the facts could have sustained a charge based on that degree of injury. On the other hand, that offence was the obvious one in relation to the injuries suffered by Isi herself, most clearly

as unlawful and malicious wounding but possibly also as grievous bodily harm. Candidates generally recognised this and were able to give good accounts of the meaning of 'wound' and 'grievous bodily harm', though, as always, there were many candidates who asserted that grievous bodily harm requires proof of a wound, inextricably mixing up the two concepts. Stronger candidates explained the *mens rea* as intention or recklessness as to some injury but, again, many fell into error here in asserting that intention or recklessness as to a wound or as to serious injury is required, whilst others simply left it at the general 'intention or recklessness'. Even strong candidates tended to be a little weak in applying the law, often failing to emphasise that, at best, Gill was likely to have been aware only of the risk of injury to Isi from striking the glass door. Quite possibly, it would be something to which she would have had little chance to give thought in the heat of the dispute. This led on to a possible defence of self-defence, raising some of the issues already addressed in the comments on answers to question 1(a). Here, though candidates should have explained the basic framework of the defence, the major issue was likely to be the proportion between the injury inflicted and the harm threatened. Given that it was unlikely that Gill inflicted the injuries intentionally, and that her basic response to being slapped was to push Isi, it was strongly arguable that her response was proportionate, and that the more serious injuries suffered by Isi were neither foreseen (even if some injury might have been) nor commensurate with Gill's actual conduct. Many candidates succeeded in addressing the issues in this way, though weaker candidates made assumptions about proportion based entirely on outcome. A small number of candidates also argued that Isi herself might be able to plead self-defence in relation to her slapping Gill. There was certainly merit in this argument, even if the conclusion might ultimately be that Isi had peremptorily used force where none was yet necessary.

(b) The specific instruction in this question was to discuss the liability of Jack and of Leon for *involuntary* manslaughter. Most candidates acted directly upon it and confined their analysis to unlawful act and gross negligence manslaughter. Some, however, felt it necessary first to give a brief explanation of the elements of the offence of murder before ruling out any possibility that it could have been committed. Essentially, this was a failure of confidence which simply deprived such candidates of valuable time in which to explore the really important issues. Jack's liability for Karl's death depended upon proof of a causal connection between his offence of battery or (continuing) assault or (more generally and without the need to introduce any detail of its elements) the offence of kidnap, and Karl's death from being struck by Leon's car and being left by Leon. Jack's offence could be interpreted as 'dangerous' in the sense that any sober person could foresee that there might be injury resulting from a struggle to escape and/or from an attempted escape from the car itself in which injury might be caused in a variety of ways, including being struck by other traffic (***Roberts***). If, then, there was a causal connection between Jack's offence and the initial injury to Karl resulting from his being struck by Leon's car, that connection must have persisted unbroken to Karl's death, since Leon did nothing further that could have broken the connection (he *omitted to act* after the collision). That collision was unlikely itself to have been a *novus actus interveniens* because there is no suggestion in the facts that Leon's driving was in any way at fault. The probable explanation appears to be that Leon had no opportunity to see and avoid Karl as he rounded the bend. That also means that Leon's culpability, if any, lay not in his manner of driving but in his failure to assist Karl even though he was aware that he had collided with him. Thus, Leon's liability, if any, was for gross negligence manslaughter in breaking his duty incurred when, albeit accidentally, he created a dangerous situation for Karl by seriously injuring him. It would further have to be proved that Leon's omission caused Karl's death in the sense that, had he fulfilled his duty, Karl would not have died. Additionally, a jury would have to be convinced that Leon's

conduct was "so bad in all the circumstances" that it should be regarded as criminal negligence. Of course, there is no difficulty in asserting that both Jack and Leon caused Karl's death, each in his own way. There were some very good answers in which candidates *did* discuss both unlawful act and gross negligence manslaughter. It was widely recognised that Jack had committed an unlawful act, typically assault or battery, but sometimes kidnapping. Candidates usually went on to discuss the fact that this act was dangerous, referring to the test in **C*hurch*.** Most candidates made some attempt to deal with the issue of causation, recognising, at the very least, that the factual scenario was similar to the case of ***Roberts*** (with frequent reference also to the case of ***Williams***). Stronger candidates engaged in a thorough analysis of this area and, in particular, of the possibility that Leon's conduct amounted to a *novus actus*. However, weaker candidates dealt with the whole area very superficially, barely recognising that there was a substantial issue to be addressed. In dealing with gross negligence manslaughter, most candidates outlined the law confidently, relying on ***Adomako***, and succeeded in applying it in at least a tolerably accurate way. Even so, Leon's duty was often said to derive from his driving rather than from his creation of a dangerous situation in knocking over Karl (***Miller***). Though some candidates failed to deal with Leon's conduct as an omission, opting instead to treat the breach of duty as a matter of poor driving – for which there was no evidence, as suggested above – many did argue perceptively for the omission to render assistance or get help, a failure which they considered to fall below the standard expected of a reasonable man. A smaller number of candidates explored the causation issue here, some perceptively citing the case of ***Misra and Srivastava***. Many candidates considered the ***Bateman*** test for gross negligence but rarely got much beyond simple assertion in application, and some simply avoided any real application by insisting that only a jury could determine whether or not the negligence was sufficiently bad to be criminal. Some candidates were perhaps excessively influenced by Lord MacKay's suggestion in ***Adomako*** that "the ordinary principles of negligence" apply to determine whether D has been in breach of a duty of care owed to V, and so were induced to introduce largely unhelpful discussion of cases such as ***Caparo v Dickman***. Yet others sought to argue that Leon's liability would be for unlawful act manslaughter, treating his collision with Karl as an unlawful act, but then struggled to apply this in any coherent manner. Similarly, some candidates attempted to apply gross negligence manslaughter to Jack, with equally confusing consequences.

(c) For comments on answers to this question, see the comments on the answers to question 1(c), above.

Note:

In view of the fact that there were very few scripts dealing with **Contract**, it is not possible to make any comments of any particular value in relation to questions 3 and 4.

Mark Ranges and Award of Grades

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