

Exam Skills for Success in Criminal Law



The Challenges of Studying Criminal Law

Criminal law is usually attractive to students due to its media presence. However, this can give the impression that it is an easy subject. In fact, it is conceptually difficult, and technical, so great care must be taken over structure.

There is also more topic overlap in criminal law than you will find in other subjects. Whilst there are distinct crimes to study, all crimes will share common features such as *actus reus*, *mens rea*, and the defences.

Furthermore, the criminal law necessarily deals with issues of morality. It is political and policy-driven, which means that the cases sometimes contain contradictory decisions. One example of this is the way in which the courts apply subjective and objective tests for liability. Should a defendant accused of a crime be judged on the facts as he saw them, or according to the standards of a reasonable person? In *mens rea*, a subjective approach is used, but in the defences, an objective standard is becoming the norm. Finally, in order to understand current definitions, you will need to appreciate how the law has developed historically. You'll therefore need a keen understanding of statutory interpretation and the current common law rules. For example, in understanding the topic of recklessness (a form of *mens rea*), you will study how the House of Lords settled on an interpretation of this concept in the **Criminal Damage Act 1971**, then changed its mind in 1982. This affected the concept of recklessness throughout the criminal law.

Your examiners want to see that you can deal with these challenges by demonstrating that you understand the law, can apply it with reason, and can also critically evaluate it.

This chapter will explore some techniques to help you achieve this to a high standard.

Study Skills for Criminal Law

The best route to good examination skills is to *develop good study and revision skills* from the outset. You should pay attention to the reading lists provided by your lecturers. You are likely to need a book of statutory material, especially if your module is assessed by exam. Attendance is key, especially at seminars, where you will be taught the fundamental skills for answering exam questions. These skills cannot be acquired by downloading notes, or even by attending lectures, but solely by practising exam-style questions. Examiners are interested in your ability to say *how* the law works in particular

situations, not just in your ability to learn it by rote. In other words, you should avoid being too descriptive, and concentrate on *legal analysis*. When a question is set for discussion in seminars, you should treat it as a possible exam question. In this way you will acquire good habits, which may need only minor modification in the examination. Don't forget to take good notes, as these will be invaluable later on. One way of doing this is to make notes *before* the lecture on your set reading, or before the seminar on the questions set, then add to your notes during or after the session. In this way you are *making* notes from your reading, and *taking* notes from your lecturer or tutor. These are both crucial skills for success.

Closer to the time of the exam, *consolidate your material* as much as possible. You could prepare two separate lists for each topic. One list is a checklist of the main points to be considered when answering any question on that topic. The second is a list of the key cases and the key legal principle the case contains. Once you have mastered the 'bare bones' of each topic, you can concentrate on refining your answers, and working on critical analysis and evaluation.

Achieving Success in Exams

In the exam itself, *planning and time management* are essential. Make sure you answer all the questions set. Consider the instructions carefully. Stick strictly to your time plan, leaving one question and moving on to another when that time is up.

Relevance and structure are also vital. If you are answering a question in which a defendant in charge of a level crossing has left the gate open, leaving an express train free to pass, killing a man who crosses, you should get straight to the point, which is that in the case of ***R v Pittwood (1902) 19 TLR 37***, a breach of contract leading to death imposed a duty of care on the defendant. You should not simply write everything you know about liability for omissions. Irrelevant material, however well researched or presented, will gain no marks. If the man is a volunteer, however, you will gain extra marks for distinguishing your facts from the facts of ***Pittwood*** and you might base the duty on another head of liability, for example on the voluntary assumption of care found in the case of ***R v Stone and Dobinson [1977] 1 QB 354***.

A good structure will help you cope with the challenge of overlap, and prevent your answer from becoming muddled. For example, if you are told that a defendant is under the influence of drugs or alcohol at the time of committing the offence, you need to consider the possibility that intoxication has negated *mens rea*, that a plea of automatism could be raised, or, in a murder case, that an abnormality of mental functioning arises for the purposes of diminished responsibility. The best thing to do is to consider the technical requirements of each 'defence' to enable you to make the correct decision.

You may be allowed to bring *statutory material* into the examination with you. Usually, the rules are that the statutes can be highlighted, but not annotated. Make sure that you do not copy them out—you are not going to gain credit for this! A better technique is to write, say, in a theft question: 'in taking the book from Jo's bag, Millie has assumed one of Jo's rights and has therefore appropriated the book (s. 3 of the Theft Act 1968)'. In this way, you are demonstrating that you know the broad effect of the statute and can apply it.

Your lecturers will emphasize the importance of *critical analysis in exams and other assessments*. In essay questions, this means that you need to be able to compare academic or judicial views on a topic, and formulate your own view. In problem questions, critical analysis comes from skilful application of the law to the facts. Students who write excellent answers will be able to use the judgments from the cases to answer the question, and will be able to distinguish cases by using minority judgments of their own analysis.

Problem questions: planning and writing your answer

The best method to adopt, and the one adopted throughout this book, is IRAC—identify the issues, explain the rule, apply the law to the facts, and reach a conclusion.

Identifying the issues and relevant facts means that you will need to work out in general terms what area of criminal law the question is about. Most will concern some particular issue of the *actus reus* (AR)/MR of an offence or whether the defendant has the benefit of a defence. The facts of problem questions will not reflect decided cases exactly. They generally fall in between and include a range of issues, giving you an opportunity to demonstrate your skills and knowledge. You will need to highlight these issues for discussion.

The next step in the IRAC method is to explain the rules. You should start by defining the relevant offences, using the correct common law or statutory definition. Deal with each defendant separately. What is the *actus reus* and *mens rea* of these offences? You should then consider defences. Some defences should be dealt with at the end of your discussion on *actus reus* and *mens rea*. Loss of control and diminished responsibility are examples of this type of defence. Other 'defences' such as intoxication are not, strictly speaking, defences, but a negation of one element of the offence.

Working through the structure of *actus reus*, *mens rea*, and defences for each defendant, you should explain the *rule of law* (the *ratio* of a case or a statutory provision) and explain it. For example, in discussing the **Adomako** test, discuss all four guidelines in the case to establish a finding of gross negligence manslaughter.

Your points must be backed up with authority (relevant cases and statutory provisions), and be *applied* to the facts. Your answer will also be improved by referring to opposing judgments and academic commentary. In an examination, you are generally not expected to include dates, courts, or citations (although they are included in this book for ease of reference). Do not 'invent' facts or describe the facts of cases. Sometimes the facts are deliberately ambiguous. Quite often you will need to argue in the alternative. For example, if the harm done to the victim amounts to a wound, then the answer is ... on the other hand, if the harm is held not to amount to a wound the alternative lesser offences may be ...

Now, consider your *conclusion*. Is the defendant guilty of murder or manslaughter? Do any defences work? What is the most likely outcome? There is no 'right' answer. Instead, credit will be given to those students who have presented a coherent argument, often for both the prosecution and defence, which is logically argued.

Essay Questions

Essay questions are quite different to problem questions. In problem questions, you are asked to give specific legal advice on a factual scenario. In essay questions, you are normally being asked to discuss or analyse a legal issue which is the subject of debate. You will very rarely simply be asked to explain or describe what you know about a certain area of the law. A good answer to an essay question will persuade the examiner of the argument. Simply ask yourself: 'Am I answering the question set?'

A common mistake in an essay question is the 'shotgun' approach—simply stating everything you know about a topic. This type of answer lacks focus. Essay questions are often regarded as more difficult than problem questions, because you have to decide the parameters of your answer. You do need to be familiar with the literature in the area, and have knowledge of areas due for or in need of reform. There is, however, no reason why you cannot do well in them as long as you have prepared the topics. Usually, you are provided with a quote from a case or an article which represents one view of the current state of the law. Your task is to say whether or not you agree with that interpretation. You

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may feel that you have nothing to contribute at this stage to an academic discussion on, say, the effect of the law following the **Coroners and Justice Act 2009** on victims of domestic abuse accused of murder. However, this is a topic which has been discussed at length by legal academics and judges—so do refer to these discussions.

In summary, the difference between essay questions and problem questions is this—in a problem question you are being asked to use your legal knowledge to apply to a specific set of facts and to conclude, giving legal advice. In an essay question, you are being asked to analyse a legal problem, and attempting to reach a conclusion on a point of law which is uncertain and the subject of debate. In other words, you need to know what the law is, what it was previously, and how it might be changed.

Summary

The importance of exam technique cannot be overstated. Criminal law is a very technical subject, and answers can appear muddled if they are not properly planned and structured. The general structure of *actus reus*, *mens rea*, and defences should be adopted. For problem questions, focus on the issues straight away, and apply the law to the facts given throughout, using relevant authorities. Focus on the *ratio* of cases and the effect of statutory provisions. Don't forget to conclude. If you have several options, discuss these in turn. Finally, make sure you have answered the correct number of questions, and allocated the requisite amount of time to each one. In essay questions, ensure any points you have made are supported by evidence, that you have weighed up any proposals for reform, and that you have focused on the question set.



TAKING THINGS FURTHER

- Finch E and Fafinski S *Legal Skills* (6th ed OUP, 2017).
- McVea H and Crumper P *Exam Skills for Law Students* (2nd ed OUP, 2006).
- Strong S I *How To Write Law Essays and Exams* (5th ed OUP, 2018).