

Chapter 1: Introduction

Problem Questions

The issues discussed in this chapter will rarely be 'directly' examinable within a problem question. However, knowledge of these topics will assist you greatly when answering problem questions focused on other areas. For example, helping you focus on the elements of the offences/defences only, helping you evaluate the law as you apply it with the principles of criminalisation, helping you focus on relevant defendants (ie, not those unfit to plead or under the age of criminal responsibility), helping you understand the prominence of one case over another, and so on.

Essay Questions

There are several areas within this chapter that could be the focus of essay-type questions. For example, the role of the criminal law, the value of the principles of criminal law, and so on.

Below is an example of an essay-type question, and a bullet-point plan for a possible answer. This is for illustration purposes only. When writing an essay of this kind yourself, there will usually be alternative ways you could structure your answer, alternative points of discussion that could be raised, and you would certainly be expected to write in full prose (i.e., not in bullet-point form). The most important point to take from these plans is how they focus on identifying and discussing the subject of the debate within the question, not simply listing information about the relevant topic.

'It is always a good reason in support of a proposed criminal prohibition that it would probably be an effective way of preventing serious offence (as opposed to injury or harm) to persons other than the actor, and it is probably a necessary means to that end.'
(Feinberg, *The Moral Limits of the Criminal Law*, 1985)
Discuss.

Introduction:

- You need to make it clear that you understand what the question is asking about – so some general introduction of the criminal law theory, and the ambitions of Feinberg (identifying acceptable targets of criminalisation) will be useful.
- You then need to tell your reader how you will be answering the question – e.g., by explaining the position set out in the quotation, and then evaluating it in light of other theoretical approaches.

Body of the essay:

- The debate in this question is relatively clear – is the statement true? Therefore, you will need to structure your essay to discuss *both* sides of the debate, before concluding with what you believe is most convincing.
- In favour of the statement: 'Serious offence' can be just as important as physical harm to protect against, and we see this throughout the criminal law. For example, public order offences; regulation of pornographic material, and so on. This conception of the criminal law sees it as about maintenance of public order as much as a method for punishing physically inflicted harms.
- Against the statement: We can have a general disagreement that 'serious offence' should never be enough, and that a criminal law of last resort should only apply where physical harms have been caused. We could have a specific disagreement, saying that it will sometimes be a good reason, but not 'always' a good reason as the statement suggests. Or we could have a disagreement on the basis of better alternative approaches to conceptualising the criminal law (e.g., Duff's conception of public wrongs).

Conclusion:

- This is where you need to indicate which side of the debate is strongest, and maybe (if you do not believe one side is significantly stronger) suggest a compromise between the two.