HINTS AND TIPS ON ANSWERING EXAM QUESTIONS

Assessment questions for university modules on criminal law typically fall into two categories: essay questions that ask you to evaluate critically an aspect of law; and 'problem' questions that ask you to explain the legal issues in a given factual scenario. This resource gives you some hints and tips for answering both type of question.

COMMON WEAKNESSES IN STUDENTS' ANSWERS

Students usually feel more confident tackling criminal law assessment questions than other areas of law, perhaps because we are familiar with criminal law on a daily basis. However, that can often lead students to be over-confident when they tackle exam or coursework questions. Some of the most common mistakes that students make in assessments for criminal law are:

o Not demonstrating critical thinking when answering essay questions (being too descriptive and not relating their discussion to the principles of criminal law);
o Not identifying and discussing all the key issues in the problem questions;
o Being unbalanced in coverage of the issues in the 'problem' questions (tending to work chronologically through the problems rather than focusing on the key issues);
o Explaining the relevant law superficially;
o Failing to apply the law to the particular facts of the given scenario;
o Failing to provide authorities for assertions about what the law is.

Fortunately, each of those weaknesses can be easily addressed.

ANSWERING ESSAY QUESTIONS: KEY POINTS

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Essay questions typically give you an opportunity to engage critically with contemporary issues in criminal law. Essay questions expect you to go beyond mere description of the law and demonstrate an awareness of:

- why the law is as it is;
- why the law may be controversial;
- how the controversies relate to overarching and pervasive principles of criminal law;
- how the law might be changed and improved.

SAMPLE ESSAY QUESTION 1

Critically analyse the significance of* Dica (Mohammed) *[2004] EWCA Crim 1103 for the law relating to criminal liability for HIV transmission.

This question relates to **chapter 10** (in particular **10.2**, **10.7** generally and **10.7.3.3** specifically), **chapter 1** (especially **1.3** in general and **1.3.3** specifically) and **chapters 3 and 4**. The question asks you to analyse critically the significance of a particular case: *Dica*. The way to do well is to show you have thought carefully about what the Court of Appeal decided in *Dica* and that you can situate the decision in the context of the wider debate about liability for HIV transmission, including subsequent case-law. Implicitly, the question is inviting you to explore what the law *should be* and then evaluate how closely English matches that.

The question was phrased in such a way that if you had not actually read the Court of Appeal's judgment in *R v Dica*, you will struggle to do well.

KEY POINT: You need to read the key cases. To excel in criminal law assessments, you have to show that you understand the decisions of the appellate courts and the courts' reasoning.

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You will not be able to get good marks if you cannot show that you have read and understood the key cases.

The best starting point for answering this question is to explain what the Court decided in *Dica* and how it fits into English law concerning HIV transmission (see **10.7.3.3**). You should explain *R v Dica* and *R v Konzani* (and *R v Clarence*). You also need to outline and discuss s. 20 of the Offences Against the Person Act 1861, the main offence under which prosecutions are brought (see **10.2**). Without a clear demonstration that you understand clearly the current law on HIV transmission in England, it will be difficult for you to be awarded a high mark.

The key points about *Dica* are:

- **The Court of Appeal ruled that *Clarence* is no longer authoritative**. The reasoning in Clarence (that consent to sexual intercourse of itself was to be regarded as consent to the risk of consequent disease) no longer applied.
- **By overruling *Clarence*, *Dica* opened up the possibility of prosecutions for HIV transmission: that is the key point. However, the Court of Appeal in *Dica* were not required to address other key issues about the scope of liability for HIV transmission, thus leaving lots of room for discussion about the actual extent of liability and the appropriateness of criminalising transmission.** The issues arising are not confined to HIV but apply to all STDs;
- **Consent is a defence to a charge under s. 20 in HIV transmission cases**. Consensual acts of sexual intercourse are not unlawful merely because there is a known risk to the health of one or other participant. Modern society does not criminalise those who willingly accepted the risks taken by adults consenting to sexual intercourse. Interference of that king with personal autonomy could only be made by Parliament;
- **The question of whether D is reckless, and whether the victim consented to the risk of a STD, are questions of fact and were case specific**.
- ***Dica* is a Court of Appeal decision, so it established precedents. However, there are important questions that were not addressed in *Dica* but which *Konzani* went some way towards clarifying.**

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See **10.7.3.3** for coverage of these points.

In answering this question you need to address broader points about the law:

- prosecutions will (usually) be brought under s. 20 of the OAPA (although a charge under s. 18 is possible if D has intentionally infected C) (**10.2** and **10.3**).
- The *mens rea* for s. 20 is that D must have foreseen the risk of some physical harm from his act (*Savage v Parmenter*) (**10.2.2**).
- Prosecutions so far have arisen in cases where D has been aware that he has HIV and has deliberately withheld his status from C.
- The law is unclear on the issue of whether D is liable under s. 20 when he transmits HIV not *knowing* that he has HIV but *suspecting* he might have it. *Adaye*, a first-instance decision, suggests that such a person will be liable, but that is not a precedent (see Samantha Ryan, 'Reckless Transmission of HIV: Knowledge and Culpability' [2006] *Crim LR* 981-992). Most of you did discuss this, which was good to see.
- However, for consent to the risk of contracting HIV to provide a defence, that consent has to be **informed consent** *(Konzani)* (**10.7.3.3**).
- The second (and consequent) point to be derived from *Konzani* is that where consent provides a defence it is generally the case that an honest belief in consent also provides a defence. However, the defendant's honest belief has to be concomitant with the consent which provided a defence. The Court of Appeal in *Konzani* said that "Silence in these circumstances is incongruous with honesty, or with a genuine belief that there is an informed consent" (**10.7.3.3**).

To do well in an answer to this question, you need to examine what the limits of the law are at the moment in terms of HIV transmission. The law punishes people who *know* that they have HIV and do not disclose that fact to the victim. However, *Dica* and *Konzani* left open many questions, particularly about the extent to which an individual will be and should be liable when he transmits HIV but does not know for sure that he has the disease but is aware that he might do. Students often mention *R v Adaye*, although the most perceptive answers explain that it is a first-instance case in which the defendant pleaded

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guilty ('HIV Bigamist Jailed for Infections', 12th January 2004, BBC News Online http://news.bbc.co.uk/1/hi/england/merseyside/3389735.stm) Some students say that it is a Court of Appeal decision: it is not. It does not establish a precedent.

The best answers will relate the issue of HIV transmission to broad principles of criminal law. For example, the question invites you implicitly to consider whether English law labels conduct fairly by criminalising HIV transmission under the Offences Against the Person Act 1861. Also, *Dica* and *Konzani* raise questions about the extent to which criminal liability should be based on objective or subjective approaches to culpability (**10.2.2** and **chapters 3 and 4** generally).

Very strong answers explore the alternatives to criminalisation: dealing with HIV transmission primarily through education and public health mechanisms.

Good answers need to do more than merely outline the law. For a high mark, you must engage in *critical analysis* of the **significance** of *Dica*.

One way of demonstrating your ability to critically analyse the law is to engage with the views of academic writers. For example, in a lively article ('Reckless Transmission of HIV: Knowledge and Culpability' [2006] *Crim LR* 981-992) Samantha Ryan argues that criminalisation of HIV transmission should be confined to those who know they are infected and who are aware of the modes of transmission of HIV. This type of essay question is a good opportunity to discuss this (or other articles) in order to move your mark higher. Having said that, you do need to make sure you show that you have read and understood each of the articles you cite! Students sometimes think it is enough just to name-check academics without demonstrating a clear understanding of their arguments.

KEY POINT: When preparing for criminal law assessments, read academic articles on each topic. Focus on the gist of the writer's argument: summarise the viewpoint in a couple of sentences.

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The essay question is asking you about the *significance* of *Dica*. Weaker answers will simply set out the facts of *Dica* and *Konzani* without offering much in the way of critical analysis or answering the specific question on the exam paper. Those answers usually show little (or any) understanding of the reasoning in *Dica*. Such answers will typically receive a low mark.

In terms of the broader debate about criminalisation and HIV, there are lots of arguments on both sides that you could bring into your answer (but remember always to answer the particular question that you have been told to address: do not simply write everything you know about that topic!). The ones listed here are not exhaustive. In terms of arguments in favour of criminalisation (see **1.3** and **10.7.3.3**):

- **the harm principle**: HIV is serious harm and the function of the criminal law is to prevent harm to others;
- **Deterrence**: criminalisation sends a clear message to people about what is acceptable behaviour;
- **Public health**: the cost to the NHS of HIV transmission is significant and justifies the use of the criminal law (e.g. you could draw comparisons with how the law compels people to wear seatbelts when driving).
- **The 'thin ice' principle**: those who participate in 'risky' sexual behaviour must accept that their behaviour is sufficiently reckless to fall within the scope of the criminal law;
- ***Mens rea*, blameworthiness and culpability**: if a person knows that he has, or is aware that he might have, HIV then he is blameworthy for exposing another who is not consenting to a risk of infection;
- Even if the person is consenting, public health concerns and **paternalism** might justify criminalisation.

Arguments against criminalisation include:

- **Libertarian** arguments about the role of the criminal law (e.g. you could make comparisons with the arguments against criminalising consensual sado-masochistic sex): the state's role should be very limited and not extend as far as to punish transmission of disease;

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- **Deterrence does not work**: the deterrent function of the criminal law can be challenged, particularly as it relies on people knowing about the law and factoring it in to their decision-making;
- **Effectiveness**: what effects will/does criminalisation have? Does it mean that fewer people will get tested (as getting tested and discovering they have HIV then exposes them to the criminal law, if knowledge of status is required)? Will criminalisation actually impact on people's behaviour?
- **Paternalism criticised**: it is not the role of the criminal law to intervene in private matters, including sexual behaviour. Informed consent must provide a defence, otherwise the law becomes illiberal and overbearingly paternalistic.
- **Mens rea, blameworthiness and culpability**: although it is arguable that a person deserves punishment when he transmits HIV knowing his HIV-positive status and how HIV can be transmitted, it is less clear that lower forms of *mens rea* (e.g. recklessness, negligence) should come within the law. The danger is that we start extending the net of criminalisation very wide and using the label of criminal inappropriately (see **4.1.2**).
- **"Slippery slope" arguments** ; if we criminalise HIV transmission, why not criminalise all behaviour that infects others with viruses etc, such as recklessly sneezing on someone ?

SAMPLE ESSAY QUESTION 2

To what extent has the Supreme Court's decision in* Ivey v Genting Casinos UK Ltd *[2017] UKSC 67 clarified the meaning of the term 'dishonest'?

KEY POINT:

Essay questions will frequently use phrases such as "To what extent…" or "How far…" These prompt you to engage in critical analysis. Essay questions will not usually ask you simply to describe what the law is.

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This essay question requires you to demonstrate that you understand the decision in *Ivey* and its significance. If you just describe the facts of *Ivey*, you will not have answered the question and you will receive a low mark.

This question relates principally to **chapters 12 and 13**, in particular **12.2.2.2**.

You need to start by explaining that there is no statutory definition of 'dishonesty' although s. 2 of the Theft Act 1968 states when a person is *not* dishonest (students quite often overlook s. 2) (**12.2.2.2.1**). You also need to show that you understand why dishonesty is an important term in English law, referencing its centrality to theft and fraud offences. Really good answers will explain that dishonesty is a particularly important term in light of the broad interpretation of "appropriation" that the House of Lords developed in *R v Gomez* and *R v Hinks* etc (**12.2.1.4**).

These are the key points about *Ivey*:

- Since *Ghosh* [1982] QB 1053, in criminal cases, the jury had to apply a two-stage test for dishonesty: firstly, whether the conduct complained of was dishonest by the lay objective standards of ordinary reasonable and honest people; and, if the answer was yes, secondly, whether the defendant must have realised that ordinary honest people would so regard the behaviour (**12.2.2.2.4**).
- The Supreme Court explained that there were problems with the second stage of *Ghosh* (**12.2.2.2.5**):
  - the more warped the defendant's standards of honesty, the less likely was a conviction;
  - the rule was not necessary to preserve the principle that dishonesty had to depend on the defendant's actual state of mind;
  - it set a test which jurors often found puzzling;
  - it had led to divergence between the test for dishonesty in criminal and civil cases;

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- it represented a significant departure from the pre-1968 Act law, when there was no indication that such a change had been intended; and
- it had not been compelled by earlier authority.

- Accordingly, the second stage did not correctly represent the law and directions based on it should no longer be given. *Ghosh* was overruled.
- When dishonesty is in question, the fact-finding tribunal now has to:
  - **First, ascertain, subjectively, the actual state of the individual's knowledge or belief as to the facts. The reasonableness of that belief was a matter of evidence going to whether they had held the belief, but it was not an additional requirement that the belief had to be reasonable; the question was whether it was genuinely held.**
  - **When the state of mind was established, the question whether the conduct was honest or dishonest was to be determined by applying the objective standards of ordinary decent people.**
  - **There was no requirement that the defendant must appreciate that the conduct was dishonest by those standards (12.2.2.2.5).**

Strong answers to this question will note the significance of *R v Roberts* (1987), which held that the *Ghosh* direction needed only to be given where D stated that he did not think he was being dishonest (**12.2.2.2.4**). Many students make the mistake of saying that the *Ghosh* test was used in every theft and fraud case, which it was not.

The question is specifically asking about the clarity of the law now. The key point is that **dishonesty remains a question of fact for the jury or magistrates to decide (12.2.2.2.5)**. You should therefore discuss the consequences of leaving the fact-finder with responsibility for applying their own standards to others' behaviour:

- potential for inconsistency;
- the assumption behind *Ivey* is that there are common standards of honesty shared by ordinary decent people;

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- there may be a core meaning of dishonesty that most people will agree on: not every case is controversial (e.g. the typical shoplifting case in which a person takes a bottle of whiskey from a shop knowing full well that they should not do so will not involve any issue as to whether D was dishonest);
- the honesty of a person's behaviour may be less clear in some difficult cases (e.g. modern-day Robin Hood figures, tourists who do not realise that payment is expected for public transport at particular points);
- magistrates may have their own views about dishonesty that reflect their social and cultural values.

KEY POINT:
Students frequently overlook the importance of the jury and magistrates in theft and fraud cases. Remember to emphasise who decides whether a person is dishonest.

SAMPLE ESSAY QUESTION 3

Critically analyse the view that, "the defence of duress by threats is too narrowly drawn and excludes people who deserve to be excused from criminal liability."

This is typical of questions that require you to make a reasoned assessment of the scope of a defence available in English law. For detailed analysis of the relevant law, see **6.2**.

KEY POINT: **Essay questions will often ask you to make a judgment about the significance of a particular case or aspect of the law. You need to demonstrate that you understand what the relevant law is, but go further and articulate a clear and logical argument that integrates description and analysis. Essay questions tend not to ask you simply to describe what the law is and students who get beyond description and show that they have thought about what the law should be are likely to do well.**

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The legal tests for duress by threats are essentially contained in *Graham* (1982) 74 Cr App R 235 (confirmed in *Howe* [1987] 1 AC 417) and *Hasan* [2005] UKHL 22. The House of Lords in *Hasan* took a strict approach to the tests, making it clear that very few people should be able to plead duress. The Lords' reasoning was primarily based on deterrence: they suggested that duress was being pleaded by people associating with, for example, drug dealers, who were turning to the duress defence when coerced into trafficking drugs and other criminal offences. However, the strict approach means that more deserving defendants might be excluded.

THE LEGAL TESTS FOR DURESS BY THREATS

Here are the tests set out by Lord Lane CJ in *Graham* (1982) 74 Cr App R 235 (affirmed by the House of Lords in *Howe* [1987] 1 AC 417):

"Was the defendant, or may he have been, impelled to act as he did because, as a result of what he reasonably believed [the person issuing the threat] had said or done, he had good cause to fear that if he did not so act [that person] would kill him or … cause him serious personal injury?

If so, have the prosecution made the jury sure that a sober person of reasonable firmness, sharing the characteristics of the defendant, would not have responded to whatever he reasonably believed [the person making the threat] said or did by [doing as the defendant did]? The fact that a defendant's will to resist has been eroded by the voluntary consumption of drink or drugs or both is not relevant to this test (actually, there's no issue of intoxication in this problem)."

Following *Hasan,* a person will be unable to plead duress if he "voluntarily remains associated with others engaged in criminal activity in a situation where he knows or ought reasonably to know that he may be the subject of compulsion by them or their associates."

In *Bowen* the Court of Appeal set out relevant characteristics for the purposes of the second of the two tests in *Graham.* Stuart-Smith LJ said: "[D] may be in a category of persons who the jury may think less able to resist pressure than people not within that category." Obvious examples are:

- **"age:** where a young person may well not be so robust as a mature one";
- **"possibly sex**, though many woman would doubtless consider they had as much moral courage to resist pressure as men";

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- **"pregnancy**, where there is added fear for the unborn child";
- "**serious physical disability**", which may inhibit self-protection;
- "**recognised mental illness or psychiatric condition**", such as PTSD leading to learned helplessness.

Stuart-Smith LJ (at 167): "In most cases it is probably only the age and sex of the accused that is capable of being relevant. If so, the judge should…confine the characteristics in question to these."

He ruled as irrelevant the following;

1) "The mere fact that the accused is more **pliable**, **vulnerable**, **timid** or **susceptible to threats** than a normal person are not characteristics with which it is legitimate to invest the reasonable / ordinary person for the purpose of considering the objective test." (*per* Stuart-Smith LJ at p. 166)

2) "Characteristics due to **self-induced abuse**, such as alcohol, drugs or glue-sniffing, cannot be relevant."

KEY ISSUES FOR DISCUSSION

In an essay question like this, students need to identify the main areas of controversy with the particular law and explore each in turn. With duress, here are some of the main discussion points. Note that for each point, it is important to think carefully about how you can integrate it into your overall argument. So for example, if your argument is that the duress defence is too narrowly confined, you might write, "The House of Lords' deterrence-based judgment in Hasan provides evidence that the law is too restrictive. For example, the nature of the threat required is somewhat arbitrary.' You could then turn to the law to illustrate that point.

- **the nature of the threat**: only a threat of death/serious injury can found a duress defence:
  - this means that the law excludes people who are subject to other threats, such as serious criminal damage, which may have a serious impact on them. For example, if person A says to person B, 'if you do not steal that bicycle I will break your arm', B will be able to plead duress. If A's threat is, instead, that 'I will burn down your house and destroy all of your possessions', then B will not be able to plead duress.

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You can adopt the same approach with other important aspects of the law on duress. For example:

- **the requirement of imminence and immediacy**: *Hasan* was strict on this point. some argue that people should still have the defence available even if the threat was not capable of being carried out at that moment. The Court of Appeal in R v Hudson & Taylor [1971] 2 Q.B. 202 had held that the threats described by the defendants were no less "present" because they could not be implemented at the very moment of the commission of the offence but only a few hours later: if in fact they were effective to neutralise the wills of the defendants at the time they were giving evidence, they could be sufficient to establish the defence of duress. However, in *Hasan*, Lord Bingham stated that the decision 'had the unfortunate effect of weakening the requirement that execution of a threat must be reasonably believed to be imminent and immediate if it is to support a plea of duress' (at paragraph 27). He continued (at paragraph 28):

> 'It should however be made clear to juries that if the retribution threatened against the defendant or his family or a person for whom he reasonably feels responsible is not such as he reasonably expects to follow immediately or almost immediately on his failure to comply with the threat, there may be little if any room for doubt that he could have taken evasive action, whether by going to the police or in some other way, to avoid committing the crime with which he is charged.'

Other points relate to the requirement that **D's belief in the threat to be based on reasonable grounds** (which excludes some who genuinely but mistakenly believe in a threat if there are no reasonable grounds for their belief) and **the nature of the objective test**: is it fair to judge a person against the standards of a reasonable person (even allowing for the characteristics listed in *Bowen*)? There is an argument that the test should be more subjective, so that jurors assess whether this defendant could have realistically been expected to resist this particular threat. A further issue is **murder**: duress is not a defence to murder, which is arguably illogical and unfair (a person charged with deliberately inflicting grievous bodily harm could plead duress but if the victim dies then duress is unavailable).

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One of the main issues with the duress defence is the 'voluntary association' exclusionary rule: *Hasan* is strict, holding that any person who *should* know that he *might* be subject to compulsion will be denied the defence. That excludes people who did not in fact appreciate that they might be subject to compulsion. The *Hasan* rule is also strict in that it does not refer to appreciation of being coerced to commit particular offences, just to compulsion generally. In her partially dissenting speech, Baroness Hale made the point that the majority's decision means that abused women who are coerced by their abusive partners to commit offences (eg drugs offences) will be denied the defence. This sort of point enables you to relate your discussion of the law to broader issues about gender and the law may impact on some vulnerable women in a particularly harsh way.

This is not an exhaustive list of the issues. The key pieces of advice in answering a question like this are:

- be clear about what you want to argue in response to the specific question that has been set and then use the relevant law to support and develop your argument.
- Make sure you have a well-structured answer. That means you need to give thought to the logical order in which you will cover the issues. Avoid having a long descriptive first part of your answer, with a token paragraph or two at the end where you note some controversies. Answer the question directly from the outset, and ensure that each of your paragraphs puts forward a separate point that advances your argument.

COMMON WEAKNESSES

Common weaknesses in answers to this question might be:

- **Not demonstrating sufficiently precise understanding** of the law. For example, students often write sentences such as, "The House of Lords in *Hasan* decided that you cannot plead duress if you associate with criminals." That is getting towards what the Lords said, but precision matters in law. The test as formulated by Lord Bingham is that the defence is excluded when a person *should* know that he *might* be subject to compulsion. That is not the same as "associating with criminals".
- **Spending too much time on just some of the relevant issues** (for example, whether duress should be able as a defence to murder). This type of question is asking you to demonstrate the breadth of your knowledge about a topic, not just one part of it.
- **Not having a clear argument.** Students quite often tell us that they are not confident in expressing an opinion. It is important to remember that university level study is all about critical thinking, which includes the ability to analyse arguments forensically and critically

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KEY POINTS ABOUT ANSWERING ESSAY QUESTIONS

A strong answer to an essay question will:

- **explain the key points about the particular case and showing that you understand the appellate court's reasoning;**
- **explain what the current law is concisely and clearly, while recognizing that the law can be ambiguous or undeveloped;**
- **engage with the views of academics;**
- **highlight the uncertainty in the law as it is;**
- **actually answer the particular question set!**

SAMPLE PROBLEM QUESTION 1

Problem questions require you to read a fictional scenario containing criminal law issues. Your task is to explain the issues and relevant law. The questions will usually ask you, in one way or another, to 'discuss' whether a person is criminally liable or to 'analyse the criminal law issues in this scenario'. Read the follow scenario and think about how you would answer the question.

Ava and Ben have been married for four years. Their relationship has been tempestuous. Both suffer from alcohol dependency syndrome. In the last year, Ben has become addicted to gambling. He has grown increasingly abusive towards Ava. He belittles her in front of friends, controls her access to money and hits her when

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he is drunk. Ava has suffered from depression for five years, a condition that has been exacerbated by Ben's abusive behaviour. She has confided in friends that she feels hopeless and suicidal but fears that if she tries to leave Ben he will hurt her. One night in the pub, her friend Chloe tells her, "Don't just take his abuse: get mad with him, the bastard! Don't put up with it anymore!" When Ava gets home, Ben is playing computer games with his friend, Daniel. She overhears them talking enthusiastically and explicitly about a woman named 'Ellie'. Ava confronts them, asking "Who the hell is Ellie?" Ben replies, "She's this woman we met at the gym. And I've been sleeping with her. And if you don't get us some beers, I'm going to hurt you." Ava becomes angry. She picks up a beer glass, smashes it over Ben's head and then forces the jagged edge of the glass into his neck, causing significant bleeding. She throws a paperweight at Daniel causing cuts to his face. Ben is rushed to hospital, where Ivan, a junior doctor, administers a drug to which Ben is allergic. Ben dies. Medical evidence indicates that the allergic reaction may have contributed to Ben's death.

Discuss Ava's criminal liability.

WHERE TO START?

There are a lot of issues in this problem. The first thing you need to do is identify the issues and prioritise them. Imagine you work for the Crown Prosecution Service and have been asked to decide on the appropriate charges that should be brought. Given that there's a dead body in the problem, you obviously needed to focus on homicide as the key issue.

KEY POINTS:

- **Prioritise the issues in a problem question.**
- **Allocate appropriate time for each issue, but focus on the important and difficult issues.**

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Murder?

The prosecution will have to prove beyond reasonable doubt that Ava satisfies the *actus reus* and *mens rea* for murder (**9.1.1** and **9.2.1**). Ava seems to have the *mens rea* for murder, as she forces the jagged edge of a broken beer glass into Ben's neck, suggesting she intends to cause at least serious harm (it is highly likely she foresees serious harm as a virtually certain consequence of her actions (*Moloney* (1985), *Woollin* (1999): see **9.2.1**). This is a point you would deal with fairly swiftly. There is no need to describe how the *mens rea* for murder has developed over decades. In fact, a straightforward direction to the jury in accordance with *Moloney* (1985) will suffice: did Ava intend to kill Ben or cause him really serious harm?

Has she caused Ben's death? We are told of an intervening act that may have contributed to Ben's death. You need therefore to outline the principles of causation that apply to this situation.

Has Ava Caused Ben's death?

You need to explain concisely the relevant principles of causation (see generally **2.6**).

Is Ava the factual cause of Ben's death, in the sense that but for her actions he would not have died (*White (*1910))? Factual causation is usually straightforward; here, Ben would not have been in hospital had Ava not caused his significant bleeding.

Is Ava the legal cause of Ben's death? This is where it is a little more tricky, but taking the case-law as a whole, the Court of Appeal rarely finds that the chain of causation is broken by substandard medical treatment (**2.6.3.5.1**). The key cases are:

- *Jordan* (1956) (in which the victim was stabbed and a drug was administered in hospital to which he was allergic. The victim died. The wound had mainly healed at time of administration of the drug. The Court of Appeal held that the chain of causation was broken because the treatment was 'palpably wrong':
- "[D]eath resulting from any normal treatment employed to deal with a felonious injury may be regarded as caused by the felonious injury, but we do not think it

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necessary to examine the cases in detail or to formulate for the assistance of those who have to deal with such matters in the future the correct test which ought to be laid down with regard to what is necessary to be proved in order to establish causal connection between the death and the felonious injury. It is sufficient to point out here that this was not normal treatment. Not only one feature, but two separate and independent features, of treatment were, in the opinion of the doctors, palpably wrong and these produced the symptoms discovered at the post-mortem examination which were the direct and immediate cause of death, namely, the pneumonia resulting from the condition of oedema which was found."

- *Jordan* is a bit of an outlying case though, as it does not quite fit with the trend of the causation cases involving poor medical treatment (**2.6.3.5.1**).
- *Jordan* was distinguished in *Smith* (1959): the issue was whether the stabbing was an "operating and substantial cause" of the victim's death: 'If at the time of death the original wound is still an **operating cause and a substantial cause**, then the death can properly be said to be the result of the wound, albeit that some other cause of death is also operating. Only if it can be said that the original wounding is merely the setting in which another cause operates can it be said that the death does not result from the wound. Putting it in another way, only if the second cause is so overwhelming as to make the original wound merely part of the history can it be said that the death does not flow from the wound' (emphasis added) (**2.6.3.5.1**).
  - *Cheshire* (1991): The jury had to decide whether they were satisfied that the accused's acts could fairly be said to have made a **significant contribution** to the victim's death. The judge had to direct the jury that they had to be satisfied that the Crown had proved that the acts of the accused caused the death, and that the acts need not be the sole or even the main cause of death, it being sufficient that his acts contributed significantly to that result. Even though negligent medical treatment was the immediate cause of death, that should not exclude the accused's responsibility unless the negligent treatment was so independent of his acts and in itself so potent in causing

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death that the jury regarded the contribution made by his acts as insignificant (**2.6.3.5.1**).

- A key case on causation is *R v Dear* (1996) (although not a medical negligence case) in which the Court of Appeal reviewed the authorities on causation and said that the jury in Dear's case were entitled to find that his conduct was an "**operating and significant cause** of death" (**2.6.3.5.1**).

Note that in the problem scenario you are given little information. All you are told is that Ivan administers a drug to which Ben is allergic and that 'may have contributed to Ben's death.' One of the skills that problem questions are testing is your ability to state when you do not have enough information to come to a proper, definitive conclusion about a person's liability. After all, if you are a lawyer in practice, you need to know when to seek further information; you should never leap in and advise someone when you do not have enough information. You would seek further information about the medical evidence. In answering this question, you need to state that. Be clear that you need further information before being able to advise Ava or state whether she is guilty of murder. In exams, we expect students to explain the relevant legal tests that the jury will have to apply and then come to a reasoned conclusion, hesitant if needs be, about whether the person satisfies the legal tests. Here, the jury will have to decide whether Ava's conduct was the operating and significant cause of death; has she contributed significantly to Ben's death? On the facts, it seems that she has, but we need more information about the medical evidence before we can decide.

KEY POINT: Remember that exam questions that use problem scenarios will frequently have limited information in them. That is deliberate. We are testing you on your ability to explain what further information you need before you can come to a proper assessment of a person's liability.

Defences to Murder?

Does Ava have any defences? One possibility here is loss of control (**9.3.2.2**). You must explain the tests laid down in s. 54 and s. 55 of the Coroners and Justice Act 2009. The

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most common mistake in answers to this type of question is that students focus insufficiently on the statute's precise wording (**9.3.2.2.3**). This type of question requires you to pick your way through the statute, picking out the key issues.

The burden of proof in respect of the defence of loss of control rests on the prosecution to disprove the defence beyond reasonable doubt (s. 54(5)). This burden arises once 'sufficient evidence is adduced to raise an issue with respect to the defence'.

It seems that A's actions resulted from her 'loss of control' (she becomes enraged), which need not be sudden (s. 54(2)).

Did the loss of control have a qualifying trigger? In this problem, the trigger would most likely be under s. 55(3) (fear of serious violence: "I'm going to hurt you") but could also be under s. 55(4) (circumstances of an extremely grave character causing B to have a justifiable sense of being seriously wronged).

Did A act in considered desire for revenge (s. 54(4)? If so, the defence fails.

Might a woman of A's age, with a normal degree of tolerance and self-restraint and in the circumstances of D, have reacted in a similar way? Here, you need to explain how A's "circumstances" would be relevant. Section 54(3) states that in subsection (1)(c) the reference to "the circumstances of D" is a reference to all of D's circumstances other than those whose only relevance to D's conduct is that they bear on D's general capacity for tolerance or self-restraint. So her alcoholism and depression are not relevant to the extent that they bear on her general capacity for tolerance or self-restraint (see *Rejmanski* (2017) discussed at **9.3.2.2.3**).

There is an additional issue here concerning the revelation of Ben's infidelity with Ellie. The issue is that s. 55(6)(c) states that in considering whether the loss of self-control had a qualifying trigger, "the fact that a thing done or said constituted sexual infidelity is to be disregarded". The key case on this point is *R v Clinton* and you need to examine that case closely to do very well in this question. The key point is that if sexual infidelity is the only

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potential trigger, the prohibition in s. 55(6)(c) has to apply. However, if sexual infidelity is part of the wider circumstances of the loss of control then this paragraph from *Clinton* applies:

> "Para 49 Confining ourselves to the second component (the qualifying trigger or triggers under section 55), for the reasons already given, if the only potential qualifying trigger is sexual infidelity, effect must be given to the legislation. There will then be no qualifying trigger, and the judge must act accordingly. The more problematic situations will arise when the defendant relies on an admissible trigger (or triggers) for which sexual infidelity is said to provide an appropriate context (as explained in this judgment) for evaluating whether the trigger relied on is a qualifying trigger for the purposes of section 55(3)(4). When this situation arises the jury should be directed: (a) as to the statutory ingredients required of the qualifying trigger or triggers; (b) as to the statutory prohibition against sexual infidelity on its own constituting a qualifying trigger; (c) as to the features identified by the defence (or which are apparent to the trial judge) which are said to constitute a permissible trigger or triggers; (d) that, if these are rejected by the jury, in accordance with (b) above sexual infidelity must then be disregarded; (e) that if, however, an admissible trigger may be present, the evidence relating to sexual infidelity arises for consideration as part of the context in which to evaluate that trigger and whether the statutory ingredients identified in (a) above may be established."

The most important point is that these are ultimately questions for the jury to decide.

KEY POINT: In answering criminal law problem questions, think first like a prosecutor, then like a defence barrister, then like a juror. If you look at the problem from those three perspectives in turn, you can be confident that you have considered the key issues.

Ava would also seek to plead diminished responsibility as a partial defence to a murder charge (**9.3.2.1**). You therefore need to set out the tests in s. 2 of the Homicide Act 1957 (as amended by the Coroners and Justice Act 2009) and explain what the jury will need to decide:

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- Was Ava suffering from an abnormality of mental functioning?
- If so, did that arise from a 'recognised medical condition'?
- Did it substantially impair her ability to understand the nature of his conduct, form a rational judgment or exercise self-control? (In *R v Golds* (2016) the Supreme Court held that "substantially" is a word for the jury to apply using their common sense).
- Does it provide 'an explanation' for Ava's acts in killing?

In Ava's case, we know she suffers from depression and alcoholism and has suffered abuse. The key case on alcohol is *R v Dietschmann (2003)* (**9.3.2.1.4**):

In a case where the defendant suffered from an abnormality of mind of the nature described in s.2(1) (as originally enacted), and had also taken alcohol before the killing, and where there was no evidence capable of establishing alcohol dependence syndrome as being an abnormality of mind within that subsection, the subsection meant that if the defendant satisfied the jury that, notwithstanding the effect of the alcohol he had consumed and its effect on him, his abnormality of mind substantially impaired his mental responsibility for his acts in doing the killing, the defence should succeed. Section 2(1) does not require the abnormality of mind to be the sole cause of the defendant's acts in doing the killing. Even if the defendant would not have killed if he had not taken the drink, the causative effect of the drink did not necessarily prevent an abnormality of mind suffered by the defendant from substantially impairing his mental responsibility for the killing. A jury should be directed along the following lines:

"Assuming the defence have established that the defendant was suffering from mental abnormality … the important question is: did that abnormality substantially impair his mental responsibility for his acts in doing the killing? You know that … [he] had a lot to drink. Drink cannot be taken into account as something which contributed to his mental abnormality and to any impairment of mental responsibility arising from that abnormality. But you may take the view that both the defendant's mental abnormality and drink played a part in impairing his mental responsibility for the killing and that he might not have killed if he had not taken drink. If you take that view, then the question … to decide is this: has the defendant satisfied you that, despite the drink, his mental abnormality substantially impaired his mental responsibility for his fatal acts…?";

If the jury are so satisfied, then the defence succeeds: *R v Dietschmann* (2003) (**9.3.2.1.4**).

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On alcoholism and diminished responsibility, the key case is *R v Stewart* (2009), which the Court of Appeal in *R v Kay* (2017) stated is a clear and sensible approach to the issue (**9.3.2.1.4**):

- Alcohol dependency syndrome can be an abnormality of mental functioning, but that depends on its nature and extent and whether the defendant's consumption of alcohol before the killing was fairly to be regarded as the involuntary result of an irresistible craving for drink.
- Diminished responsibility always raised complex and difficult issues for the jury. Nevertheless, the resolution of those problems continued to be the responsibility of the jury, and they were inevitably required to make the necessary judgments not just on the basis of expert medical opinion but also by using their collective common sense and insight into the practical realities which underpinned the individual case.

The jury will have to decide whether Ava has an abnormality of mental functioning following these directions.

If you are aware of Sally Challen's case ([2019] EWCA Crim 916, you might be tempted in answering this sort of question to write something along the lines of, 'Sally Challen was found guilty of manslaughter not murder and this case is very similar. Both involve the defence of 'coercive control''. It is similar to Challen's case but be clear that the latter did not establish a new defence of 'coercive control'. The Court of Appeal in *Challen* ordered a re-trial because evidence of her mental disorders (disorders which may have resulted from her being subject to coercive and controlling behavior by her husband, the victim) was not available at her trial. The tests for diminished responsibility that the jury must apply are those set out in s. 2, as amended.

Ava might also plead **self-defence** (**6.4**). Students often deal superficially with self-defence, thinking that it is enough simply to name it and say that the defendant can plead it. Make sure you set out in full what the law is. The crucial provision is s. 76 of the Criminal Justice and Immigration Act 2008. The key points to note are:

- S. 76 clarifies how s. 3 of the Criminal Law Act 1967 and the common law are to be interpreted and applied, so you need to explain the context to s. 76.

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- Ava will argue that she used reasonable force to defend herself.
- Although s. 76 contains lots of subsections, in Ava's case the legal situation is fairly straightforward. The jury must decide whether she used reasonable force and to decide that question by reference to the proportionality of the force in the circumstances as Ava believed them to be (s. 76(3)), but she is not entitled to rely on any mistaken belief attributable to intoxication (s. 76(5)).
- Ultimately, whether the degree of force is reasonable is for the jury to decide.

Assault on Daniel

While Ava's liability for Ben's death is clearly the most important issue to consider, Ava could also be charged with some sort of assault on Daniel, as she has thrown a paperweight at him causing cuts to his face. The most likely charge is under section 47 of the Offences Against the Person Act 1861, assault occasioning actual bodily harm. It seems that the cuts are more than 'transient and trifling' and she satisfies the *mens rea* requirements, namely she intentionally or recklessly applied unlawful force to Daniel (see **10.2.2**). Alternatively, she could be charged under s. 20 of the Offences Against the Person Act 1861, in that she wounded Daniel and appreciated that some harm would result from her actions (*Savage & Parmenter*, **10.3**).

Note that she cannot plead loss of control or diminished responsibility in respect of charges relating to Daniel's injuries. Students often make the mistake of arguing that these defences apply to a wide range of charges, but remember they are partial defences only to murder. However, self-defence could be argued here.

KEY POINT: When you answer a problem question, stay focused on explaining the relevant tests that the jury will have to apply. Offer a reasoned conclusion as to whether the person satisfies the tests. It is your ability to explain and apply the relevant law that is going to lead to the highest marks.

SAMPLE PROBLEM QUESTION 2

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Janet is the landlady of the 'Purple Rose' pub. She lives in a flat above the pub. The flat is accessible via a staircase inside the pub. After she has closed the pub for the evening, Janet goes upstairs to her flat. Unbeknown to her, Yasmin and Quentin have hidden in the pub's toilets. They are addicted to heroin and are desperate to acquire money. They emerge into the bar area and consume lots of vodka. Quentin takes banknotes from the bar's cash register and hands them to Yasmin. She says, 'Shall we see what valuables are upstairs?' Quentin replies, 'Yeah, there's probably jewellery and more cash up there.'

They ascend the stairs to Janet's flat. Janet hears their footsteps as they climb the stairs. She grabs a baseball bat that she keeps for security and strikes Yasmin twice with full force across her head, killing her instantly. Quentin runs downstairs. Janet follows him, chasing him out of the pub and 400 metres along the street. She hits him with the baseball bat three times, breaking several of his ribs. She takes the banknotes back from him and returns to the pub. Quentin survives. A medical report indicates that Janet does not suffer from any medical or psychiatric condition.

Discuss the criminal liability of Janet and Quentin, including any defences that may be available to each of them.

KEY POINTS:

- **J would be charged with murder (more likely murder than manslaughter, given her intention to cause serious harm to Y)**
- **Her defence is self-defence. This is a 'householder case' so the issue is whether she used reasonable force, with the focus of discussion needing to be on the phrase 'grossly disproportionate'.**
- **J would be charged under s. 18 for her attack on Q. Her defence of self-defence is less arguable than on the murder charge, but the issue for the jury is whether the force used was disproportionate.**
- **Q has committed theft and burglary. He has no defences, including intoxication.**

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JANET

J has killed Y and seriously injured Q.

KILLING Y

She appears to have intended to cause serious harm to Y, therefore satisfies the mens rea for **murder**, without the need for a *Woollin* direction (see **9.2**). If one were needed, the jury would be told to ask whether they are sure that J appreciated that serious harm was a virtually certain result of her actions (House of Lords in *Woollin*).

There is no causation issue here: Y dies instantly. This is an example of how students sometimes digress on to irrelevant issues, wasting time and words.

If she did not intend serious harm, she can be charged with unlawful act manslaughter (**9.3.3**). She has committed an assault on Y by intentionally applying unlawful force (*Fagan v MPC*). Her acts of twice hitting her with full force with a baseball bat are objectively dangerous (sober and reasonable people would appreciate those actions would cause some harm: *Church*, *Newbury*).

INJURING Q

She will be charged under s. 18 of the Offences Against the Person Act 1861 (**10.4**), as she has caused grievous bodily harm (GBH) (serious harm (*Smith*)) by breaking his ribs, and seems to have intended to cause GBH, as she strikes him three times with the baseball bat. If not s. 18, she satisfies the requirements for s. 20: she has caused GBH and has been at least reckless. She has subjectively foreseen that some harm would result (*Cunningham*, *Savage & Parmenter*).

On a murder or manslaughter charge, **the central issue is whether she will be found not guilty because of the householder defence** under s. 76 of the Criminal Justice and Immigration Act 2008 ('CJIA 2008'), as amended by s. 43 of the Crime and Courts Act 2013 (see **6.4**). She will plead self-defence and defence of property at common law and under s. 3(1) of the Criminal Law Act 1967, which provide that she can use 'reasonable force' to prevent a crime. S. 76 sets out the tests.

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The jury will be directed to consider whether the force used by J was reasonable in the circumstances as she believed them to be: s. 76(3). Here, with the sound of footsteps approaching her, J has a genuine and reasonable belief in the need to use force. There is nothing to suggest she is intoxicated, although even if she was and she had a mistaken belief in the need to use force, the jury will still judge her on the facts as they were. The essential issue concerns the degree of force used.

This is a 'householder case' (s. 76(8A)): J uses force "while in or partly in a building, or part of a building, that is a dwelling", she is not a trespasser and at that time J believed Y to be in, or entering, the building or part as a trespasser.

In a case where the injured person was in the building at the time of the incident, the question under s.76(8A)(d) is whether a defendant believed that that person was in the building as a trespasser: *Cheeseman* [2019] EWCA Crim 149.

S. 76(8B) makes clear that this is a householder case even though J lives in one part of the building and works in another:

76(8B) Where—
(a) a part of a building is a dwelling where D dwells,
(b) another part of the building is a place of work for D or another person who dwells in the first part, and
(c) that other part is internally accessible from the first part,

that other part, and any internal means of access between the two parts, are each treated for the purposes of subsection (8A) as a part of a building that is a dwelling.

As a householder case, the degree of force J used is "not to be regarded as having been reasonable in the circumstances as D believed them to be if it was grossly disproportionate" in the circumstances as she believed them to be.

That is a question for the jury to decide. The degree of force used is judged objectively; it is not for J to define what she considered to be reasonable, otherwise there would be no standard at all in the law.

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In *Ray* [2017] EWCA Crim 1391, a five-panel CACD presided over by the LCJ set out the correct approach to deciding in householder cases whether the force used was 'reasonable':

- Once the jury have determined the circumstances as the defendant believed them to be, the issue, under s. 76(3), for the jury is (as it always has been at common law) whether, in those circumstances, the degree of force used was reasonable (para 24).
- In determining the question of whether the degree of force used is reasonable, in a householder case, the effect of s. 76(5A) is that the jury must first determine whether it was grossly disproportionate. If it was, the degree of force was not reasonable and the defence of self-defence is not made out (para 25).
- If the degree of force was not grossly disproportionate, then the effect of s. 76(5A) is that the jury must consider whether that degree of force was reasonable taking into account all the circumstances of the case as the defendant believed them to be. **The use of disproportionate force which is short of grossly disproportionate is not, on the wording of the section, of itself necessarily the use of reasonable force.** The jury are in such a case, where the defendant is a householder, entitled to form the view, taking into account all the other circumstances (as the defendant believed them to be), that the degree of force used was either reasonable or not reasonable (26).
- The terms of the 2013 Act have therefore, in a householder case, slightly refined the common law in that a degree of force used that is disproportionate may nevertheless be reasonable (27).

On the facts, it is possible that the jury would acquit J of murder/manslaughter, as they are likely to sympathise with her in her fearful situation. The issue is whether the force used is 'over the top'. The trial judge will guide the jury by explaining, in accordance with s. 76(7), that a person acting for a legitimate purpose may not be able to weigh to a nicety the exact measure of any necessary action; and that evidence of a person's having only done what the person honestly and instinctively thought was necessary for a legitimate purpose constitutes strong evidence that only reasonable action was taken by that person for that

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purpose. Some jurors may consider that striking Y twice was unreasonable, given that the first blow is likely to have rendered Y unconscious.

Decisions on reasonable force are fact-specific. Here we have little information (three lines) to guide us. Section 76(8) makes it clear that all relevant factors can be taken into account.

Key point: problem questions will usually have limited information on some key issues. Identify those and explain what further information you need before you can come to a firm conclusion.

J might also plead loss of control on a murder charge, under s. 54 of the Coroners and Justice Act 2009 (CJA2009), which will succeed if the prosecution cannot prove beyond reasonable doubt that it the defence is not made out (s. 54(5)) (**9.3.2.2**). She appears to have lost control (s. 54(1)(a), which is attributable to her fear of serious violence (s. 54(1)(b) and s. 55(3). The defence will argue that a woman of J's age, with a normal degree of tolerance and self-restraint and in her circumstances, might have reacted in the same or in a similar way. The jury will likely be sympathetic, although if they judge that she acted in a 'considered desire for revenge' (s. 54(4)) her defence will fail and she will be guilty of murder.

She cannot plead diminished responsibility, as we are told explicitly that she does not suffer from any medical or psychiatric condition.

When charged with injuring Q her defence will be the same as for killing J. However, this occurs outside of a dwelling so the jury will be told to consider whether the degree of force used was disproportionate in the circumstances as D believed them to be: s. 76(6). Here, it is less likely that the jury will acquit her, as Q is running away, therefore it was not necessary to use force to defend herself. She may argue that she honestly believed it was necessary to protect her property, although the jury is likely to conclude that the force was disproportionate in the circumstances. Even if one blow with the bat was proportionate (which is debatable) three blows seems to be 'over the top'. However, the jury will decide, judging her use of force objectively.

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QUENTIN

Q has committed theft under s. 1 of the Theft Act 1968 (TA1968) (**12.2**), by appropriating Janet's property, namely the banknotes and the vodka, dishonestly and with the intention of permanently depriving her of it. Q is clearly dishonest by the standards of ordinary decent people: *Ivey v Genting Casinos*, but note that that remains a question of fact for the jury or magistrates.

He has also committed burglary under s. 9(1)(b) of the TA1968, as he steals and attempts to steal (**14.2**). The only issue is whether remaining in the pub constitutes "entering" as "a trespasser". It is arguable that when he emerges into the bar area from the toilets he "enters…a part of a building" as a trespasser; he makes an effective and substantial entry into that part of the building (*Collins*). By climbing the stairs, he is entering a part of a building as a trespasser, but by that point he has already taken the banknotes and vodka. In any event, the pub's closing means that he no longer has permission to be in the building, which he appreciates, and has become a trespasser. He has exceeded the permission granted to him when he entered the premises; *Jones and Smith.*

Q has no viable defences. In this type of problem question, students sometimes spend a long time (too much time) discussing intoxication as a possible defence. Theft and burglary are offences of specific intent as they require proof of intent ('intention of permanently depriving…'; 'with intent to commit…': see **12.2** and **14.2**). Following *Majewski*, Q's intoxication is relevant, but only on the issue of whether he actually had the *mens rea* for those offences (**5.5.2**). Q clearly knows what he is doing and clearly intends to deprive J permanently of the money and anything else he finds. That's all you need to say.

COMMON WEAKNESSES

- **The key issue here is the householder defence**. Most students will spot it, but some will not. Failure to spot that or to explain the law accurately inevitably limits your mark. Quite a few students will loosely state something like "the householder

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defence applies here" but not explain the relevant test that the jury has to apply in such cases, which is whether D's use of force was **grossly disproportionate**. Just saying "she can use the householder defence" is not enough. You need to explain and explore the defence fully. There is a lot to discuss here in terms of whether J can use the defence. **This is the key issue.**

- Students will sometimes focus insufficiently on the facts in the scenario. Here, students might explain that J will be judged on her belief at the time, but spend too long discussing the relevance of a mistaken belief. Look at the facts here. **J's property is actually being burgled. How is J feeling at that point?** It is likely she is frightened. That's all you need to say. She is not mistaken about what is going on: a burglar is ascending the stairs to her flat.
- Students often lack depth in their discussion of the meaning of reasonable force. The CJIA says a lot about this and you need to explain in full the relevant provisions. In particular, look again at s. 76(6A), 76(7) and 76(8). http://www.legislation.gov.uk/ukpga/2008/4/section/76

- A common weakness in this type of question is **spending way too much time on dishonesty and property offences**. Here, Q is dishonest! Sometimes liability will be clear-cut and you need to state that. Not every aspect of a problem will be moot.
- Some students might overcomplicate the issues:
    - E.g. J has hit Y twice with a baseball bat, which might prompt some students to discuss at length the meaning of 'oblique intent'. The question is simply, did J intend to kill Y or cause GBH? Did she foresee GBH as a virtual certainty? **If the issue is simple, keep your analysis concise.**
    - E.g. *'Janet has inflicted grievous bodily harm on Quentin when she hits him three times with a baseball bat, breaking several ribs. On the facts of the scenario however it is hard to determine the mens rea that Janet has, more information is required to determine what she intended to inflict the grievous bodily harm.'* If you saw someone hitting another person three times with a baseball bat breaking their ribs, would you really need more information to decide whether they intended to cause serious harm?

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- Students might also digress into lengthy discussions of every aspect of the law on burglary.
    - There is a somewhat moot issue about the point at which Q and Y are trespassers. Actually though, the case law (*Walkington* [1979] 2 All E.R. 716) says that a jury is entitled to conclude that a counter area within a shop is a part of a building from which the public are excluded (see **14.2.2.2**).
        - In *Walkington*, the appellant was seen in a department store to enter into a counter area situated on the sales floor and there open the till drawer (which was empty). He then left. He was charged with entering as a trespasser "part of a building" with intent to steal. He claimed in evidence that he had not realised that he was not permitted to enter the counter area. He was convicted following the trial judge's direction to the jury in which he left to them the issues as to whether the counter area was a part of the building and whether the appellant had knowingly entered it as a trespasser. The jury were further left to decide whether at that time the appellant intended to steal.
        - Walkington's appeal was dismissed. 1) The jury were correctly left to consider the issue of trespass; and (2) the evidence clearly indicated the appellant's intention to steal the contents of the till; a person entering premises intending to steal is guilty of an offence notwithstanding that there is nothing in the premises worth stealing.
    - Anyway, they clearly are exceeding the permission given to them: *Jones & Smith*.

LESSONS TO LEARN:

- **always pay close and detailed attention to the key issues in a problem;**
- **problem questions will always have at least one issue which needs discussion in depth. Identify it and concentrate on it in your answer;**
- **be selective about what you include in your answer. Just because you know something, doesn't mean it should go in if it is not relevant.**

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