# Answer guidance

## Question

1. D is at a party held by his neighbour, H. He sees some letters written to H by a girlfriend from which it is apparent that H is having an illicit affair. D confronts H and demands £1,000 or else he will inform W. H refuses to pay. D decides that he will therefore throw a concrete block into H and W’s pond which is full of fish. The block damages the pond. It springs a leak and the fish die. Discuss D’s liability for blackmail and criminal damage.
2. D applies for a lucrative post of chief accountant with a large firm stating, falsely, that she possesses a considerable array of high-level professional qualifications. She is, in fact, newly qualified with only basic certificates. The firm are impressed by her enthusiasm and energy and she is appointed to the post with immediate effect. She spends most of the first week browsing the internet looking for designer shoes and buys several pairs using a cancelled credit card. She also applies for several other credit cards, falsifying her credit history. During one lunch-hour, D goes to a café for a coffee, drinks it and leaves without paying. One of the firm’s clients suffers serious financial losses as a result of D’s inattention to her work. D maintains that, although she is easily distracted, she is perfectly capable of doing her job and therefore she is not dishonest. Discuss D’s criminal liability.

## Question 1

### Key issues:

Identify the legal issues:

* Blackmail (D’s demands to W)
* Criminal Damage (fish)

### Key law

You will find the relevant law here:

* Blackmail – unwarranted demand with menaces (section 11.3.1)
* Subjective belief in blackmail (*Harvey*) - section 11.3.2
* *Clear* (11.3.2)
* Defences to blackmail (reasonable belief) – section 11.3.3
* Criminal Damage Act 1971
  + Property under section 10 is discussed in 11.4.2
  + Lawful excuse is discussed in section 11.4.1

### Hints:

## Make sure all the elements of each offence have been satisfied and apply the law to the facts as you go along.

## Think about whether the fish counts as property under section 10

* Does the defendant’s subjective belief make any difference to the defence of lawful excuse?
* Don’t forget to reach an overall conclusion and provide legal advice.

## Question 2

### Key issues

Identify which offences apply:

* Fraud (false qualifications, internet buying, application for credit cards and the client’s losses)
* Making off without payment (failure to pay for the coffee)

### Key law

You will find the relevant law here:

* Fraud Act 2006 s2 (11.1.2)
* False representation *DPP v Ray, Frith, Rai, Silverman (11.1.2)*
* Dishonesty in fraud (11.1.2)
* Legal duty to disclose (11.1.3)
* Safeguarding financial interests in s4 (11.1.4)
* Obtaining services dishonestly (11.1.5)
* Making off without payment (section 11.2.2)

### Hints:

* The AR and MR must be dealt with in full. Work through each of these elements to decide which type of fraud is most appropriate. There is often overlap between these offences so it is crucial to do this. There are several common elements.
* Remember that there is no need for the representation to either operate on V’s mind or cause the obtaining.
* Dishonesty is an essential element of the MR for fraud and should follow the guidelines in Ivey.