



**Examiner's Comments**  
**02 CRIMINAL LAW & PROCEDURE**  
**September 2025 Examinations**

The exam was comprised of four questions, of which students were required to answer three (any two questions from Part A and the only question from Part B). All questions in Part A were of equal value (20 marks each), while the question in Part B was worth 20 marks.

**Question A1**

Question 1 tested students' knowledge of the various forms of homicide (murder by reckless indifference to human life, manslaughter by unlawful and dangerous act manslaughter, and manslaughter by gross criminal negligence) and assault (including the difference between wounding and grievous bodily harm). A complex issue concerning how those offences apply to unborn foetuses was also raised. The scenario otherwise required students to consider issues of voluntariness, causation and complicity in respect of those possible offences. Students were also required to consider the defence of automatism and the relevance of intoxication.

**Question A2**

Question 2 tested students' knowledge of the various heads of murder (including by omission or constructive murder) and robbery (which, in turn, involved considerations of assault and larceny). Particular emphasis was placed in this question on students' ability to understand the principles of complicity, including the difficulties associated with joint criminal enterprise and extended joint criminal enterprise, along with more complex issues of causation. Self-defence was also raised on the facts.

**Question A3**

Question 3 tested students' ability to construe a criminal statute to determine the fault element of a novel fictional offence, and subsequently the possible defence of an honest and reasonable mistake of fact, including the limits of that defence. Other issues covered in this question included larceny by finding, fraud and the defence of duress.

**Question B**

Finally, this question required students to critically reflect on the way in which "adjectival" criminal law (the law governing police investigative powers and pre-trial criminal procedure) affects the public policy considerations that underpin the criminal justice system.

**Characteristics of poor or average responses**

Poor or average responses to the 3 problem questions often failed to identify all of the relevant issues or applied the incorrect/incomplete law to the issues identified. For instance, poor or average responses to the first question often failed to identify that there was an issue as to the voluntariness of the actions of the accused, while poor responses to the third question often failed to construe the fictional act to determine the fault element of the offence.

Poor or average responses to question 4 tended to describe aspects of investigative powers, but did not show a sufficient amount of critical analysis of those elements as demanded by the question. That is, these responses did not articulate to what extent the limits on those powers reflected the competing values of the criminal justice system. There was also a tendency in these responses to focus solely on investigative powers without reflecting on any pre-trial criminal procedure.

Average responses identified the majority of the issues raised by the questions, but demonstrated a limited or incomplete understanding of the applicable law, or limited application of the law to the facts. It was particularly important in the first three questions to explain how and why the facts satisfied the legal test for the various elements of the possible offences. It was insufficient to simply conclude that those elements were satisfied.

There was also a tendency for students to write in point form, rather than in complete sentences. A problem question tests a student's ability to analyse a problem and to reason logically towards a conclusion. If the answer to the question does not clearly set out the reasoning, it is difficult to assess the student's ability to undertake this core requirement.

### **Characteristics of very good or excellent responses**

The characteristics of the very good responses were: identifying of all relevant issues; articulating the correct principles of law that applied; and clear, logical analysis of the legal issues raised by the facts, including weighing up the competing arguments as to how the law could or could not be applied to the facts provided (i.e. evaluating counter-arguments).

### **Common mistakes**

Unfortunately, poor responses exhibited limited time management. Failing to answer a whole question, or devoting insufficient time to one question, was a key way in which some students did not obtain passing marks. If there is insufficient material before the examiner in relation to one of the questions, it will be difficult for the student to pass the course.

Further, students are encouraged to focus on having a very clear understanding of the differences between concepts that may appear similar on their face. For example, some responses did not show an adequate understanding of the differences between the 3 distinct concepts of murder by reckless indifference to human life, manslaughter by unlawful and dangerous act, or manslaughter by gross criminal negligence. While each share some common traits, it was important for students to approach the exam with clarity as to their differences.

### **Areas for improvement**

The doctrine of complicity and statutory construction of criminal statutes are key skills for early-career criminal lawyers. Generally speaking, all students could improve in these two areas. I also encourage students to apply themselves to organising their exam time efficiently and proportionately to the marks available, and to prioritise the most contentious aspects of problem scenarios, rather than taking up valuable time by reciting uncontentious aspects.