CRIMINAL LAW READING LISTS
2023-2024

Plan of reading lists
(1) The grand tour
(2) Homicide offences
(3) Sexual and non-sexual offences against the person
(4) Issues in the criminal law
(5) Defences
(6) Complicity
(7) Inchoate offences
(8) Property/economic offences

Books
We will be using *Simester and Sullivan's Criminal Law: Theory and Doctrine*, 8th ed (Hart, 2022) ('S&S' on the reading lists) as our textbook, and you should buy that. But a textbook understanding of the criminal law will not be enough for you to do well in the exams, and so to get a critical understanding of the criminal law we will be consulting Herring, *Great Debates: Criminal Law*, 4th ed (Palgrave Macmillan, 2020) ('Herring' on the reading lists) and Norrie, *Crime, Reason and History*, 3rd ed (CUP, 2014) ('Norrie' on the reading lists). You should buy a copy of Herring (a second hand copy is fine), but should NOT buy a copy of Norrie. This is because (within the Cambridge system), you can access Norrie free of charge and online at
https://www.cambridge.org/core/books/crime-reason-and-history/58E0E135465FCCDA979103F95E8884DB
You should also buy the latest copy of *Blackstone's Statutes on Criminal Law* (and bring it with you to the supervisions!!).

Cases
In theory, I could set you 40 cases per reading list to read: there are that many cases that you have to know about. But that would place a huge burden on you in terms of your workload. Instead, in preparing these reading lists, I've focussed on referring you to four or five cases that tend to have major significance for the areas of law you have been studying, and which tend to come up time and time again in exam questions. Make sure that you read these cases carefully, and any notes on those cases that I refer you to. As for the rest of the cases you'll need to know for the exams, you can get those from your textbooks.

A warning and some advice
These reading lists look longer than they actually are because they are highly, highly structured, with lots of headings separating out the different parts of the area of the law that you will be looking at for a particular supervision. But these reading lists *are* long, and you shouldn't necessarily hope to get through them all in one go. Use Simester & Sullivan as your main source of understanding of the law, but don't get bogged down in lots of details that you won't need to know about for the exam. The exam is split into two parts – essay questions, and problem questions – and you are supposed to do two questions from each. You will not be able to do the essay questions well unless you get into the theoretical issues surrounding the criminal law – and for that, you have to get beyond your textbook and into reading articles and other materials (referred to on your reading list). So don't neglect that side of the reading.

mcbridesguides
I have written a number of essays for you to help you out with various aspects of your Criminal Law studies. These are available on my website www.mcbridesguides.com . I have concentrated on areas of the law that are not dealt with at all well in the textbooks. I will indicate on the reading lists as and when you will need to read one of these essays. When I do, MAKE SURE YOU READ IT before the supervision. It is far more important that you read these essays than anything else on the reading list. I

will be pretty displeased if I have to spend time in the supervision going over points that I have worked hard to set out clearly and at length in an essay for you. I want to use the supervisions to focus on going over past paper questions, and any queries that you still have AFTER you have read everything I have told you to read.

Written work
Every two supervisions, you will be expected to do some written work and hand it in, in the supervision. What written work will be specified on the reading list.

Questions for the supervision
Every supervision reading list comes with some 'Question for the supervision'. The intention is that you will think about these questions as you prepare for the supervision, and be ready to run through them in the supervision. Thinking about these questions will also help you with your reading, in terms of guiding you to what are the kinds of issues you should be concentrating on in your reading.

Past paper questions
At the end of every supervision reading list, you will find some past paper questions relevant to the reading for that supervision. We may get on to considering some of these questions in the supervision, but they will also be useful practice for you in the holidays.

Supervisions
Please note that (other than in 5th week of Lent Term, when I will be out of the country):

****I will not be holding any supervisions on Zoom this year****

If you are feeling ill, do not struggle on and attend the supervision and potentially make others sick. Simply get in touch with me (my email address is below) and we can see about slotting you into a later supervision group when you are better. If that isn't possible, you will always be able to get the notes for the supervision from someone else in your year.

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SUPERVISION 1
THE GRAND TOUR

Reading
(1) The core criminal offences
Go through S&S and do the task set out below.
(2) Actus reus
S&S, §§ 4.1
mcbridesguides → Criminal Law → Criminal Law Theory → Actions
(3) Mens rea
mcbridesguides → Criminal Law → Criminal Law Theory → Intentions
Stark, 'It's only words: on meaning and mens rea' (2013) 72 CLJ 155
(4) Strict liability
S&S, §§ 6.1-6.4
Herring, chapter 11
(5) The reach of the criminal law
S&S, ch 16
Herring, chapter 1
Norrie, chapters 1-2, chapter 5 (sections 1-3)
Ashworth, 'Is the criminal law a lost cause?' (2000) 116 LQR 225
Husak, 'The criminal law as last resort' (2004) 24 OJLS 207
Gardner, Review of Husak, *Overcriminalization: The Limits of the Criminal Law* (OUP, 2008) at:
https://ndpr.nd.edu/news/23674-overcriminalization-the-limits-of-the-criminal-law/
Edwards and Simester, 'What's public about crime?' (2017) 37 OJLS 105

Task (to be done by the supervision)
Write down the definitions of the *actus reus* and *mens rea* of the following offences: (1) murder; (2) constructive manslaughter (note – debatable whether this has a *mens rea* element); (3) gross negligence manslaughter (note – debatable whether this has a *mens rea* element); (4) assault occasioning actual bodily harm; (4) malicious wounding or inflicting grievous bodily harm; (5) wounding or causing grievous bodily harm with intent; (6) rape; (7) sexual assault; (8) criminal damage to property; (9) arson (note – trick question); (10) theft; (11) robbery; (12) burglary; (13) fraud (by false representation/by failing to disclose information/by abuse of position). (**Do NOT try to define these offences by Googling them – look in your textbook and get the definition from there.**)

Note: your definitions should be as clear and as straightforward as possible. A definition of murder which says that 'The actus reus of murder is killing someone; and the mens rea of murder is malice aforethought' is useless to you – What does 'killing' mean? What does 'malice aforethought' mean? A much better definition is 'The actus reus of murder is causing another's death, and the mens rea of murder is having an intent to kill or an intent to cause grievous bodily harm at the time you did the act that had the effect of causing someone else to die.'

Note: you may find it helpful in doing this exercise to look at some other criminal textbooks to compare their definitions of the above offences with those that you find in your set textbooks.

Questions for the supervision

1. Consider the meaning and significance of the following terms for the criminal law:
   (i) autonomy;
   (ii) welfare;
   (iii) harm;
   (iv) culpability.

2. Is it necessary to have so many different criminal offences?

3. What forms of behaviour should not be criminalised?

3. Is strict liability ever justified in the criminal law?

Past paper questions

1 The criminal law should be a tool of last resort: offences 'should be created only when absolutely necessary'. (LORD WILLIAMS OF MOSTYN)
Discuss.

7 In what circumstances can and in what circumstances should a defendant be convicted for failing to act?

5 Bruce is a young man who comes to live with his elderly aunt, Anna. Anna is in good mental health but is badly crippled. She is completely dependent upon him for her care. Discuss the offences, if any, which are committed in the following situations:

(*a*) Bruce convinces Anna to make him a gift of £200 in cash in recognition of his help.

(*b*) Bruce mistakenly puts a glass of vodka next to Anna's bedside instead of a glass of water. He later realises the mistake but does nothing to stop her drinking it. The vodka makes her mildly sick.

(*c*) After an argument, Bruce suddenly leaves the house without arranging alternative care for Anna. Anna is left without food and water for a week and she becomes very gravely ill. At the time of leaving the house, Bruce realises that this may happen but is unconcerned.

(*d*) As in (*c*), but Anna is taken to hospital. A doctor tells her that her life is in danger and that unless she agrees to be connected to an intravenous drip she will die. Anna professes a strong aversion to being kept in hospital, refuses the drip and dies.

(*e*) As in (*d*), except that the doctor ignores Anna's refusal. He connects Anna to the intravenous drip. Anna survives, though she suffers a marked psychological disturbance as a result of her treatment in hospital.

SUPERVISION 2
HOMICIDE OFFENCES

Reading

(1) Murder

(a) Actus reus

S&S, §§ 10.2, 4.2

Norrie, chapter 7

(b) Mens rea

mcbridesguides → Criminal Law → Murder → Mens rea for murder

S&S, §§ 10.3, 5.1(i)-(vi), 5.3

Herring, chapter 3 (debate 1)

Norrie, chapter 3

(c) Requirement of contemporaneity

S&S, § 5.8

Thabo Meli v *R* [1954] 1 WLR 228

Le Brun [1992] QB 61 (noted, Sullivan, (1993) 52 CLJ 487)

(2) Complete and partial defences to murder (outline only)

S&S, §§ 21.2, 10.4

mcbridesguides → Criminal Law → Murder → Partial defences

(3) Other homicide offences

(a) Constructive manslaughter

S&S, § 10.6(i)

(b) Gross negligence manslaughter

S&S, § 10.6(ii)

Notes on *Evans* (2009) by Williams, [2009] Crim LR 631 and Baker, (2010) 74 J Crim L 310

Norrie, chapter 6, section 4

(4) Discussion

S&S, § 10.7

Herring, chapter 6

Written work

Answer the following question:

9 *(i)* Abbie and Martha are elderly spinster sisters who advertise a room in their house for single male lodgers. Charles sees their advert. When the sisters meet him he informs them that he is alone in the world. Abbie and Martha feel so sorry for him that they decide that they will put him out of his misery by giving him some elderflower wine laced with poison. Charles drinks the wine and falls unconscious. The sisters, thinking that Charles is dead, persuade their nephew Brewster to bury the body in the cellar. Whilst Brewster is digging the grave, Charles recovers consciousness. In a desperate attempt to escape he runs towards the door. Brewster thinks that Charles is trying to assassinate him and he hits him on the back of the head with a shovel. Charles dies. There is medical evidence that Abbie suffers from senile dementia and that Brewster thinks he is the Prime Minister, following his being shot in the head during a mugging.

What offences, if any, have been committed by Abbie, Martha and Brewster?

Questions for the supervision

1. D strikes V with intent to cause him serious injury but inflicts only a superficial wound. Is D guilty of murder if:

(a) V refuses medical treatment, neglects the wound and dies of blood poisoning.

(b) V is put in an ambulance which catches fire and he is burnt to death.

(c) The ambulance is involved in an accident. The wound is re-opened, V sustains another wound to his arm and he is trapped in the ambulance. He loses so much blood from both wounds that he dies.

(d) He arrives at hospital and the nurse, instructed to give him a sleeping pill, by mistake administers a deadly poison of which he dies in five minutes.

(e) He is given an anaesthetic with all proper care, but, because of an undetectable allergy, he dies?

2. D, a robber, using V as a shield, shoots at X, a police officer trying to prevent the robbery. X, seeing no other way of saving his life, shoots at V. The bullet passes through V and hits D. Both D and V are killed.

3. Would you say that D intended V's death in the following cases?

(a) D wished to collect the insurance money on V's life, so he killed her. He maintained that he did not want her to die but he needed the money.

(b) D wished to collect the insurance money on an aeroplane. He plants a bomb on it, timed to explode when the plane is in mid-air. D knows that V, the pilot, will almost certainly be killed but hopes that she will escape. V died in the explosion.

(c) D wished to collect the insurance money on a house he owned. He set fire to it at night, knowing that V was asleep inside. V was killed.

4. In a sudden fight D knocks V down and believes that he has killed him. In a panic he throws the 'body' into the river. V drowns. Is D guilty of murder?

5. D, who thinks X has taken his place in a queue, shoves X out of the way. X stumbles against V who falls, hits his head and dies.

6. D burgles V's house. V is elderly and has a weak heart. (a) V is terrified by D's entry and dies of a heart attack. (b) V is unaware that D has entered the house, but the police are alerted by a neighbour. They arrive after D's departure with sirens blaring and enter the house. V is terrified and has a heart attack.

7. D, a central heating engineer, is called out to V's house to mend her central heating system. After 10 minutes he says that he has mended it. In fact, D does not know what he is doing and has only fiddled with the central heating system. Half an hour later the system explodes, killing V instantly and seriously injuring her four year old son.

Past paper questions

2 **Either** *(a)* 'The present law of murder in England and Wales is a mess. There is both a great need to review the law of murder and every reason to believe that a comprehensive consideration of the offence ... could yield rational and sensible conclusions about a number of issues. These could include the elements which should comprise the substantive offence; what elements, if any, should elevate or reduce the level of culpability ...' (LAW COMMISSION) (2004)

2 **Either** *(a)* 'Individual offences of homicide should exist within a graduated system or hierarchy of offences, thus satisfying the "ladder principle".' (LAW COMMISSION)

To what extent and how does the current law comply with this principle?

2 'Changing the *mens rea* for murder so as to require an intention to kill would restrict the reach of the offence appropriately. The partial defences to murder should then be abolished.'

Discuss.

8 (a) Rose, who is 14, has just given birth to a son. She does not know who the father is, but suspects that it is probably Stephen, who is 16. Rose's parents were unaware that she was pregnant and she is reluctant to tell them now. Not knowing what else to do, Rose decides to leave the baby outside Stephen's house in the middle of a cold January night. Tricia, Stephen's mother, is awoken by the cries of the baby. She finds the baby on the doorstep. She wakes Stephen up to show him. Stephen suspects the baby might be his. Tricia wants to take the baby in, but Stephen threatens to beat her up if she does. They decide to leave the baby where it is. The next morning the baby is found dead on the doorstep. He died from hypothermia.

What offences, if any, have been committed?

9. Kirsten and Lucy are good friends. Kirsten suffers from allergies and has been given pills by her doctors. She offers some of the pills to Lucy, saying 'these make you feel great'. Lucy does not know what the pills are, but takes them. Lucy suffers an allergic reaction to them and collapses. Kirsten runs away, although she realises that Lucy is seriously ill. Lucy is found by Mark, a passer-by. He picks up her up to carry her to a hospital, but drops her. Lucy bangs her head and dies.

What criminal offences, if any, have been committed?

10. Ollie and Phil are friends who have embarked on a hunting and mountain-climbing holiday together. During one of their climbs, Phil slips and is suspended in mid-air by the safety rope, which is also attached to Ollie. Ollie, who is terrified that he will be pulled to his death by Phil, cuts the rope so that Phil falls to the ground below. Phil suffers a broken back.

Ollie, who is a qualified doctor on a six month sabbatical from work, eventually reaches Phil. Ollie covers Phil with a blanket to make him more comfortable, but leaves in a panic when Phil's painful moans get louder. Phil would have survived if he had received proper medical care for his broken back, but six hours later, unable to stand the pain any longer, he shoots himself with his hunting rifle, and dies instantly.

What crimes, if any, have been committed?

SUPERVISION 3
SEXUAL AND NON-SEXUAL OFFENCES AGAINST THE PERSON

Reading

(1) Non-sexual offences against the person

(a) Assault
S&S, §§ 11.1-11.2
(b) Battery
S&S, § 11.3
(c) Assault occasioning actual bodily harm
Offences Against the Person Act 1861, s 47
S&S, § 11.4
(d) Malicious wounding or infliction of grievous bodily harm
Offences Against the Person Act 1861, s 20
S&S, § 11.5
(e) Wounding or causing grievous bodily harm with intent
Offences Against the Person Act 1861, s 18
S&S, § 11.6

(2) Sexual offences against the person

S&S, §§ 12.1-12.5, 12.10
(a) Rape and assault by penetration
Sexual Offences Act 2003, ss 1-2, 74-76 (meaning of consent)
S&S, §§ 12.6-12.7
mcbridesguides → Criminal Law → Rape
Rogers 'Further developments under the Sexual Offences Act' [2013] Archbold Review 7
Laird, 'Rapist or rogue? Deception, consent and the Sexual Offences Act 2003' [2014] Crim LR 492
Lawrance [2020] EWCA Crim 971 (noted, Ormerod, [2020] Crim LR 877; Buxton, (2020) 79 CLJ 391)
Herring, chapter 5
(b) Sexual assault
Sexual Offences Act 2003, s 3
S&S, § 12.8
(c) Causing a person to engage in sexual activity without consent
Sexual Offences Act 2003, s 4
S&S, § 12.9

Questions for the supervision

1. Is there an assault or battery in the following cases?

(a) D shakes his fist under V's nose. What if D says, 'if you were not such a little runt, I'd thump you'? What if V has locked himself in his car?

(b) D points a gun at V. D knows, but V does not, that the gun is unloaded.

(c) D slaps V on the back to congratulate him on passing an examination. D knows that V hates to be touched by anyone.

(d) D phones V to say, 'I'll be round in half an hour to beat you up.'

(e) D phones V up over 300 times within a three week period. D never says anything to V but simply waits for her to put the phone down.

(f) D phones V to tell her that her apartment block is on fire. In her panic to get out of her flat, V trips over a table and breaks her nose.

(g) D throws a stone at a cat. It hits V. What if D realised that there was a slight risk that he might hit V? Or, if he did not realise this but the risk would have been obvious to anyone who stopped to think?

2. What offences, if any, have been committed in the following situations:

(a) D, a constable, finds V, a 21 year old, having sex in a public park with her boyfriend. He sends the boy away and tells V that he will report her conduct to her parents unless she lets him have sex with her. V allows him to do so.

(b) D has sex with V by impersonating her fiancé E.

(c) D has sex with V by impersonating Robbie Williams.

3. X invites D to have sex with his wife, V, who, he says, is looking forward to it. V, who is obviously terrified, submits because of her fear of X. D is charged with rape. He testifies that it never crossed his mind that V was not consenting. How should the judge direct the jury?

4. D asks V to have sex with him. She agrees. Has D committed an offence in the following alternative circumstances:

(a) He fails to tell her that he is HIV positive.

(b) He tells her that he is impotent. They have unprotected sex. She becomes pregnant.

(c) V was drunk when she had sex with D.

Past paper questions

3 'What is lamentable about the [Sexual Offences Act 2003] is that the legislation, if looked at closely, has no clear message, is unprincipled and appears to pander to conservative public opinion, moralist demands and the need for the government to be seen as "doing something" and "getting serious about crime"'. (HOHLANDER)

Discuss.

6. Angela is devoutly religious. She has been going out with Bob for several months, but has made it clear to him that she thinks sex outside marriage is sinful. One night Angela and Bob both get very drunk. Bob, untruthfully, says to Angela 'God is telling me we should have sex'. She replies 'Let's do it'. Bob takes this to mean she wants to have sex and he has sex with Angela. She does not resist Bob, although she seems rather confused about what is happening. Angela is distressed by what has happened and goes to see her friend Charles. Charles gives her a hug. Charles is surprised to find out mid-way through the hug that is finding it sexually arousing, but nevertheless continues with it.

What criminal offences, if any, have been committed?

8 Sybil loves Basil, the husband of her identical twin, Audrey. Sybil, who is staying as a house guest with Basil and Audrey, sneaks into Basil's darkened bedroom, hoping that he will mistake her for Audrey, have sex with her and give her the diamond necklace that she knows he has bought for his wife. Basil, who suspects that he is HIV positive, realises that it is Sybil, but has sex with her anyway and gives her the necklace. Sybil later discovers that she has been infected with HIV.

The morning after Sybil and Basil have had sex, Audrey notices Sybil wearing the necklace and immediately guesses that Sybil is having an affair with Basil. Outraged, she begins to hit Sybil hard with her fists and to kick her legs, screaming, 'I am going to kill you for this!' Sybil, who has been drinking gin since breakfast to try to steady her nerves following the previous night's activities, does not believe that Audrey is really strong enough to hurt her seriously. Nevertheless, Sybil takes a heavy ornament from a side-table and hits Audrey with it on the head with full force, knocking her unconscious. Sybil drops the ornament and it breaks on the stone floor. Audrey suffers serious head injuries that require hospital treatment.

Discuss the possible criminal liability arising on these facts.

8 Brunhild is a headstrong woman who has let all her friends know that she will only have sex with a man who is strong enough to beat her at an informal boxing match in her back garden. Gunter, a longstanding admirer of Brunhild, enters the competition. Realising that Brunhild is stronger than him, he asks his twin brother Siegfried to pretend to be him and box against Brunhild. Siegfried does so and wins the boxing match against Brunhild, whose shoulder is badly bruised. Brunhild tells Siegfried that the door to her bedroom will be open for him that night.

In the night, Gunter enters Brunhild's bedroom and kisses and fondles her. Just as they are about to have sexual intercourse, however, Brunhild begins to doubt that the man in bed with her is in fact stronger than she is. She therefore pushes Gunter away with a quick, violent move and squeezes him against the wall. Feeling breathless, Gunter protests, 'Let me go', but Brunhild says, 'You are the stronger of the two of us, so you can go any time you like, can't you?' Gunter says, 'Look, this morning you actually fought with my twin brother. But I'm really just as strong as him. I'm tired now but if you let me come back tomorrow night, I'll wrestle you and win.' Brunhild says, 'See you tomorrow then', and lets him go.

The following evening Siegfried hides inside a cupboard in Brunhild's bedroom. When Gunter returns to Brunhild's darkened bedroom, Siegfried quietly slips out of the cupboard and helps Gunter to hold down Brunhild. Unaware that Siegfried is also there, Brunhild is now convinced that Gunter is indeed stronger than she is. Therefore, Brunhild allows Gunter to have sex with her.

What offences, if any, have been committed?

10 Bernard, an aspiring actor, hears a rumour that a famous movie director, Knut, is looking for an actor to cast in a new action hero series called 'The Lizard'. Bernard desperately wants to be cast in this role. Without invitation, he then goes to a party thrown by Knut in his mansion that same evening. The doorman, Said, lets him in when Bernard explains that he is the actor Knut will cast in his new show.

At the party, Bernard gets very drunk on the champagne constantly pressed into his hands by various waiters. As a joke, he tells Cyrus, an unemployed actor also at the party who (as Bernard knows) suffers from paranoid schizophrenia, that lizards will eat Cyrus alive later that evening unless Cyrus stabs Freddy, another party guest. Believing him and fearing for his life, Cyrus stabs Freddy in the upper arm and then runs away. Freddy's wound bleeds profusely but Said, who once did a first aid course, is able to stop the bleeding with an improvised bandage.

Olga, another party guest, faints at the sight of blood spurting from Freddy's upper arm and hits her head on the ground. She is unconscious. Knut wonders whether he should call an ambulance for Olga but, not wanting to spoil the party atmosphere unnecessarily, decides to carry Olga to a guest room first to see whether she will wake up. Knut plans to check on Olga in about 10 minutes or so to see whether she is alright, but he forgets all about her. The next morning, Olga is discovered dead. She had suffered a concussion as a result of her fall. If an ambulance had been called at the time when Knut had planned to check on Olga, Olga's life would have been saved.

What offences, if any, have been committed?

SUPERVISION 4
ISSUES IN THE CRIMINAL LAW

Reading

(1) Constructive liability

S&S, § 6.5
mcbridesguides → Criminal Law → Criminal Law Theory → Consequences
Horder, 'A critique of the correspondence principle' [1996] Crim LR 759
Mitchell, 'In defence of the correspondence principle' [1999] Crim LR 195 (reply by Horder at 206)
Stark, 'Deconstructing constructive liability' [2023] Crim LR 118
Herring, chapters 2, 6

(2) The relevance of consent to a defendant's guilt under the criminal law

S&S, § 21.1
Herring, chapter 4
Brown [1994] 1 AC 212 (discussed, Murphy, [2011] Crim LR 758; Tolmie, [2012] Crim LR 656; Herring, '*R* v *Brown* (1993)' in Handler et al (eds), *Landmark Cases in Criminal Law* (Hart Publishing, 2017))
Dica [2004] QB 1257 (noted, Weait, (2005) 68 MLR 121)
Cherkassky, 'Being informed: the complexities of knowledge, deception and consent when transmitting HIV' (2010) 74 J Crim L 242
BM [2019] QB 1 (noted, Clement, (2018) 77 CLJ 451; Williams, (2019) 135 LQR 17)

(3) The treatment of causation under the criminal law

S&S, § 4.2
Herring, chapter 2 (skip debate 1)
Simester, 'Causation in (criminal) law' (2017) 133 LQR 416
mcbridesguides → Criminal Law → Murder → Causation
Ibbetson, '*R* v *Jordan* (1956)' in Handler et al (eds), *Landmark Cases in Criminal Law* (Hart Publishing, 2017)
Environment Agency v *Empress Car Co* [1999] 2 AC 22
Notes on *Kennedy* (2008) by Miles, (2008) 67 CLJ 17 and Ormerod, [2008] Crim LR 222
Hughes [2013] 1 WLR 2461 (noted, Simester and Sullivan, (2014) 73 CLJ 14; Ormerod, [2014] Crim LR 234)
Simester and Sullivan, 'Causing euthanasia' (2019) 135 LQR 21
Field [2021] EWCA Crim 380 (noted, Rasiah, (2021) 80 CLJ 213)

Written work

Write an answer to one of the past paper questions provided for this supervision.

Questions for the supervision

1. What offences, if any, have been committed in the following situations:

(a) D, a constable, finds V, a 21 year old, having sex in a public park with her boyfriend. He sends the boy away and tells V that he will report her conduct to her parents unless she lets him have sex with her. V allows him to do so.

(b) D has sex with V by impersonating her fiancé E.

(c) D has sex with V by impersonating Robbie Williams.

2. X invites D to have sex with his wife, V, who, he says, is looking forward to it. V, who is obviously terrified, submits because of her fear of X. D is charged with rape. He testifies that it never crossed his mind that V was not consenting. How should the judge direct the jury?

3. D asks V to have sex with him. She agrees. Has D committed an offence in the following alternative circumstances:

(a) He fails to tell her that he is HIV positive.

(b) He tells her that he is impotent. They have unprotected sex. She becomes pregnant.

(c) V was drunk when she had sex with D.

4. D, a man, smacks the bottom of a 12 year old girl who is wearing shorts. Is D guilty of a sexual assault if he does so because (a) he caught her shoplifting; (b) he is a 'buttock fetishist'; (c) he is her father and she deliberately smashed his favourite pipe?

5. Has an offence been committed in the following situations:

(a) In the course of a game of football D deliberately trips up V.

(b) In the course of a fight behind the gym, D, a 16 year old schoolboy, knocks V unconscious.

(c) V has been rude to his father, D, who, as a result, beats his son on the backside with a stick, causing bruises which last for about a week.

(d) D asks V, his girlfriend, to pierce his nipple with a skewer.

6. When should the victim's consent to personal injury be ignored in assessing the criminal liability of the defendant?

7. D rapes V who is so outraged that she commits suicide. Is D guilty of a homicide offence in relation to V?

Past paper questions

1 Either *(a)* 'If the offence is defined in terms of certain consequences and certain circumstances, the mental element ought to correspond with that by referring to those consequences or circumstances. If a mental element as to a lesser consequence were acceptable, this would amount to constructive criminal liability.' (ASHWORTH AND CAMPBELL)

To what extent is the phenomenon of constructive liability present in the criminal law? Ought it to be avoided?

2 'The criminal law should not intrude unnecessarily into the private lives of adults.' (Home Office, *Setting the Boundaries: Reforming the Law on Sex Offences)*

Does it?

2 'The law regarding consensual sado-masochism should now be dealt with as an issue of consensual sexual activity, and should not become an issue of violence unless the level of violence or injury demands that approach and takes it out of the sexual category.' (MURPHY)

Discuss.

7. Fi and Gerry have been in a sexual relationship for several months. After drinking heavily together one evening, they decide to try sado-masochistic sex. While they have intercourse, each pours molten candle wax onto the other's skin. In their intoxicated condition, neither of them had anticipated that this would result in burns, but it does so. The burns to Fi are minor, but those to Gerry are much more serious.

5. Does the criminal law deal in an appropriate way with a person who infects another with a sexually transmissible disease?

3 When does, and when should, consent preclude criminal liability?

1 'Causation is not a single, unvarying concept to be mechanically applied without regard to the context in which the question arises.' (LORD BINGHAM)

Consider the accuracy of this dictum in the context of the criminal law.

4 'There are no underlying general *principles* of causation. Judges simply resort to considerations of "policy" to determine whether a particular defendant caused the specified harm.' (CLARKSON AND KEATING)

SUPERVISION 5
DEFENCES

Reading
S&S, chapters 17, 22
Herring, chapter 10
(1) Complete defences
(a) Self-defence
Criminal Justice and Immigration Act 2008, s 76 (as amended by Legal Aid, Sentencing and Punishment of Offenders Act 2012, s 148 and Crime and Courts Act 2013, s 43)
Criminal Law Act 1967, s 3
S&S, § 21.2
Norrie, chapter 10
Note on *R* v *Martin* at mcbridesguides → Criminal Law → Simester & Sullivan casenotes
(b) Duress
S&S, §§ 20.1-20.2
Stark, '*R* v *Howe* (1987)' in Handler et al (eds), *Landmark Cases in Criminal Law* (Hart Publishing, 2017)
Note on *R* v *Hasan* at mcbridesguides → Criminal Law → Simester & Sullivan casenotes
(3) Necessity
mcbridesguides → Criminal Law → Defences → Necessity
S&S, §§ 21.3-21.4
Note on *Re A* at mcbridesguides → Criminal Law → Simester & Sullivan casenotes
Stark, 'Necessity and *Nicklinson*' [2013] Crim LR 949
Norrie, chapter 8
(2) Partial defences to murder
(a) Loss of control
Coroners and Justice Act 2009, ss 54-56
S&S, § 10.5(i)-(iii)
Clinton [2012] 1 Cr App R 26 (noted, Ashworth [2012] Crim LR 539; Stark, (2012) 71 CLJ 260)
Dawes [2013] Crim LR 770
Norrie, chapter 11
(b) Diminished responsibility
Homicide Act 1957, s 2 (as amended by Coroners and Justice Act 2009, s 52)
S&S, § 10.5(iv)-(v)
Notes on *Dietschmann* (2003) by Virgo, (2003) 62 CLJ 540 and Barsby & Ashworth, [2003] Crim LR 550
Note on *Joyce* (2017) by Laird, [2017] Crim LR 881
Notes on *Golds* (2016) by Laird, [2017] Crim LR 316 and Gibson, [2017] Crim LR 543
(3) Intoxication: NOT A DEFENCE, EVER
mcbridesguides → Criminal Law → Defences → Intoxication
S&S, § 18.3
DPP v *Majewski* [1977] AC 443
Kingston [1995] 2 AC 355 (noted, Spencer, (1995) 54 CLJ 12; Gardner, (1995) 111 LQR 177; discussed, Crosby, (2010) 74 J Crim L 434)
Heard [2008] QB 43 (noted, Ormerod, [2007] Crim LR 654; Fitzpatrick, (2008) 72 J Crim L 16)
Simester, 'Intoxication is never a defence' [2009] Crim LR 3
Williams, 'Voluntary intoxication – a lost cause?' (2013) 129 LQR 264

Questions for the supervision

1. What is the difference between excuse and justification? Is this distinction useful?

2. When is the availability of a defence dependent on whether a normal/reasonable person would/might have acted in the same way as the defendant, in the circumstances which the defendant found themselves in/thought they were in? Why?

3. D's secretary, V, discovers that the company that employs D is engaged in drugs and arms smuggling. V takes her information to D, who goes to confront B, the head of the company. Has D committed an offence in the following alternative scenarios:

(a) B reacts by telling D 'Keep your mouth shut about this, or I will have you killed. Make sure V says nothing either – beat her up and tell her something worse will happen if she talks.' D, severely shaken by B's threats, attacks V with a baseball bat in the company car park that night and breaks one of her arms.

(b) The same as (a), but D feels himself unable to do anything to V unless he has had a drink first. He goes out at lunchtime and gets so drunk that when he leaves the bar, he falls over and in doing so knocks over a cabinet displaying some rock'n'roll memorabilia. The cabinet is destroyed.

(c) The same as (b), but when D leaves the bar he is so drunk that he thinks a beggar on the street asking him for money has snakes in his hair and that the snakes are attacking him. He stamps on the 'snakes', trying to kill them. In reality, he is stamping on the beggar's head and the beggar dies of his injuries.

(d) The same as (a), but when B threatens D, D – who, unknown to everyone, is a gun enthusiast and always has a gun holstered to his ankle – pulls out his gun and shoots B dead.

(e) When D confronts B, B has him sit down and offers him a drink, into which B secretly slips a drug that will have the effect of wiping D's memory of the last few hours, which will mean D will have no memory of what V has told him. The drug has an unexpected effect on D – it makes him want to have sex immediately, and D rushes back to his office and forces V to have sex with him.

(f) The same as (d), except the person D forces to have sex with him is B.

(g) The same as (e), except the drug has its intended effect, and D goes back to his office. When V asks him what B said, D replies, 'I don't know what you are talking about – why are you asking me these things?' V is extremely shaken by this response: it makes her think that D is part of the drugs and arms smuggling conspiracy. V tries to leave the office, but D stops her saying, 'Are you okay? I'm very concerned about you. I wouldn't want anything bad to happen to you.' V is so alarmed by these words that she grabs a chair and smashes it against D. D falls over, and hits his head on the side of the table and starts bleeding profusely. Without calling for any help, V runs out of the office and goes home. D bleeds out and dies.

4. D is walking down a street at night. He sees a Roman centurion coming towards him and, fearing for his safety, when they pass he punches the centurion in the face. The victim was in fact on his way to a fancy dress party and had no intention of harming D.

5. D is woken in the night and comes downstairs to find two men searching his kitchen. D, who is terrified, picks up his shotgun and fires at the two men as they climb out of the kitchen window, killing one of them and wounding the other. There is evidence that D suffers from paranoid delusions.

6. D, who has been sentenced to 10 years imprisonment for sexual offences against children, is charged with escaping from prison. What if he says that he escaped because -

(i) the prison was on fire and he was in imminent danger of being burnt to death; or

(ii) he feared for his life because of threats made by other prisoners?

7. In a capsized ferry 20 people are trapped in a rapidly filling lower deck. There is a rope ladder up which they might climb to safety. On the ladder is P who is frozen with cold and fear and unable to move up or down. After shouting has produced no response, D knocks P from the ladder into the water where he drowns. D and the other passengers escape up the ladder.

8. Dora, a motorist driving her two children to school, is hijacked by a gunman who tells her: 'Drive me to the barracks and stop opposite the sentry.' She realises he is going to shoot the sentry and demurs. He threatens to kill the two children unless she complies. She drives to the barracks where the gunman kills the sentry.

9. Should duress and necessity be defences to murder?

Past paper questions

(*b*) Why do you consider that the courts have traditionally been reluctant to recognise the existence of a defence of necessity? Are these concerns warranted?

6 'Necessity is a doctrine to be used sparingly to cover crises and gaps in provision which lead to an urgent need for remedial action; it is not a major organising principle of a modern legal system.' (SIMESTER AND SULLIVAN)

Discuss, with reference to the extent to which English criminal law currently recognises a defence of necessity.

5 'We may treat as a case of necessity one in which a valuable common interest is endangered and is preserved by the sacrifice of some less valuable interest. In such cases the gratitude of the community is due to the person who acts.' (RADBRUCH)

Discuss.

6 'Duress of threats and duress of circumstances are probably instances of the potentially wider defence of necessity… Other instances are self-defence and public and private defence.' (LONGMORE LJ)

Discuss.

3 Either *(a)* Is our understanding of the general defences to criminal liability enhanced by analysing them in terms of justifications and excuses?

5 Explain the extent to which 'reasonableness' does and should play a role in the law relating to defences in criminal law.

6 'So long as there is this objective element in the standard by which a person's reaction to duress by threats is to be judged, we find it hard to see how the person of reasonable firmness can be invested with the characteristic of a personality which lacks reasonable firmness.' (*Emery* (1992))

In light of this quotation, discuss the use of objective standards in the defence of duress, and contrast it with the use of objective standards in other defences in criminal law. How, if at all, should this aspect of these defences be reformed?

3 'I find it unsurprising that the law in this [jurisdiction] should have been developed so as to confine the defence of duress within narrowly defined limits.' [LORD BINGHAM]

Is duress under the current law confined in the way Lord Bingham suggests? Is it right that it should be?

2 **Either** *(a)* 'The defence of intoxication is strong on policy and weak on principle.' Discuss.

3 How, if at all, would you reform the law relating to the effect of intoxication on criminal liability?

6 When will an offence be characterised as one of specific rather than basic intent? Why does the distinction matter and is it satisfactory?

7 Idi and Nicholas are members of an amateur football team. Idi is determined that they should win the next match and instructs Nicholas deliberately to injure David, the star player in the opposing team. Nicholas is very frightened of Idi, who has a reputation as a man of violence, and he reluctantly agrees to do what Idi suggests. Secretly Nicholas decides he may well not carry out the plan. When the match starts, Kay, who knows of the plan, shouts encouragingly at Nicholas from the sidelines. Nicholas tackles David, who stumbles back, hitting his head hard on the edge of the goal post, cracking his skull and suffering severe concussion. David is rushed to hospital. Idi and Kay visit him later that night and Kay, overcome with remorse, kisses the sleeping David fondly on his lips. Idi dissolves a small quantity of bleach into David's drinking water, amused to see what effect this might have on David if he drinks it. But it is Kay, unaware of Idi's action, who drinks the water and she later suffers severe stomach cramps.

What offences, if any, have been committed?

11 Eric lives upstairs from Grace and Fred, who have just had a baby, Jilly. The nursery is just below Eric's bedroom. In consequence of Jilly being a bad sleeper, Eric is kept awake by her crying every night. Eric, who only has one bedroom, has asked Grace and Fred, who have two, to swap their bedroom (which is below Eric's kitchen) with the baby's bedroom, so that Eric can get some sleep. Frank and Grace have refused to do so.

To get his revenge on Frank and Grace, Eric records Jilly's high-pitched cries and plays the Jilly tapes at intervals throughout the night in his kitchen. Frank and Grace soon figure out what Eric is doing. Frank confronts Eric about it. Eric smirks and says, in an ironic tone: 'You're not gonna object to my virtual Jilly's cries, are you? She is the greatest joy in my life now! Surely you must feel the same?' Frank punches Eric with his fist in the face, breaking Eric's nose and causing some serious internal bleeding. Eric is rushed to hospital where he tells Norita, the nurse, what has happened. Norita, who thinks Eric is 'a real shit for doing that to his poor neighbours', moves Eric to the back of the queue and doesn't send him to have a brain scan. On account of the delay, Eric dies from his injuries.

Meanwhile, Frank returns to the flat, where Jilly has awoken from the commotion and cries her piercing, uncontrollable wail. Grace shouts at Frank, 'This is all your fault! I can't cope with this baby anymore! I know you can't either but I'm never coming back!' Then she walks out, banging the door closed behind her. Jilly cries even louder. To have just one moment of peace and quiet, Frank walks over to Jilly's cot and places a sofa cushion lightly over her head to muffle the sound. Jilly suffocates.

What offences, if any, have been committed?

7 Sonja, 45, lives with her 55-year-old husband Frank and their 17-year-old son Derek. Ever since Derek was born, Frank has treated Sonja with great brutality and prohibited her from leaving the house without him. He has also told her that he will kill her and Derek if she ever tries to leave him. Sonja believes him. One morning Frank punches Sonja in the face with so much force that he breaks her nose. Derek jumps at Frank, pummelling him with his fists and shouting that he hates him. Frank shakes him off and, before he goes off to work, tells Sonja that he wants Derek out of his sight forever and that if Derek is still at home when he comes back in the evening he, Frank, will kill him.

Derek and Sonja decide that their only chance of finding safety from Frank is to kill him that evening. Sonja says that she has found an old tin of rat poison in the shed which she believes contains enough arsenic to kill Frank. Derek and Sonja spend the afternoon digging a big hole for Frank's body in the back garden. Then Sonja cooks a heavily spiced curry, mixes the rat poison into it and leaves the food on the kitchen counter for Frank to eat when he comes home late at night. Their plan is that they will go to sleep early, with Derek hiding in the attic in case Frank searches for him, and that they will bury Frank together in the morning.

When Frank comes home close to midnight he eats the curry and collapses soon thereafter. Derek, who has stayed awake, then drags Frank's apparently lifeless body outside to the hole in the garden. While he is busy shovelling earth over Frank's body, Derek suddenly hears Frank groan. Realising that Frank is still alive and afraid of what Frank would do to him and his mother were he to recover, Derek panics and hits Frank on the head with the shovel multiple times until Frank no longer groans. At the post mortem it is found that Frank had not ingested enough rat poison to kill a human being and that the sole physical causes of his death were the fractures and blood loss from the wounds inflicted with the shovel.

Consider the criminal liability of Sonja and of Derek.

SUPERVISION 6
COMPLICITY

Reading
S&S, chapter 7 (read very quickly first time to get an overview and then do the rest of the reading and then come back to this chapter and read it more carefully)
(1) Liability as a principal for something done by someone else
(a) For committing actus reus through agency of innocent party, with mens rea
(b) For inducing someone else to commit actus reus, while having mens rea yourself
Cogan and Leak [1976] QB 217
Millward [1994] Crim LR 527
(c) Where offence committed by co-principal and object of joint enterprise between you and the co-principal was to commit that offence
Gnango [2012] 1 AC 827 (noted, mcbridesguides → Criminal Law → Complicity; Buxton, [2012] Crim LR 275; Rogers, [2012] Archbold Review 8)
(2) Liability as an accomplice for offence committed by principal
National Coal Board v *Gamble* [1959] 1 QB 11
Gillick v *West Norfolk & Wisbech AHA* [1986] 1 AC 112
Bryce [2004] 2 Cr App R 35 (noted, Rees & Ashworth [2004] Crim LR 936)
Note on *Jogee* in mcbridesguides → Criminal Law → Complicity
Jogee [2017] AC 317
Commentary on *Jogee* by Buxton, [2016] Crim LR 324 (reply by Dyson and counter-reply at [2016] Crim LR 638); Ormerod and Laird, [2016] Crim LR 539
Notes on *Johnson* (2016) by Stark, (2017) 76 CLJ 4; Laird, [2017] Crim LR 216
Note on *Crilly* (2018) by Krebs, (2018) 82 J Crim L 209
(3) Discussion of the law
Herring, *Great Debates*, chapter 9
Criticisms of the treatment of legal history in *Jogee* by Stark, 'The demise of "parasitic accessory liability": substantive judicial law reform, not common law housekeeping' (2016) 75 CLJ 550 and Simester, 'Accessory liability and common unlawful purposes' (2017) 133 LQR 73

Written work

Write an essay discussing the following quote:

'Joint criminal enterprises are a distinct moral phenomenon. Absent legislative reform, the inadequacy of traditional aiding/abetting doctrine to deal with the complexity of multi-party wrongdoing will inevitably generate pressure, either to restore joint criminal enterprise liability or – disastrously – to water down the mens rea requirements of aiding and abetting itself' (SIMESTER).

Make sure that your essay refers to the post-*Jogee* case law, and does not rest content with repeating apocalyptic predictions about the effect of *Jogee* that you may find in the articles.

Questions for the supervision

1. At A's instigation-

(a) P, a nurse, administers to V a tablet which A told her was a sleeping pill but which, as A knows, is a deadly poison;

(b) P tells lies in the witness box, fearing that A will kill him if he tells the truth;

(c) P has sexual intercourse with A's wife, V, believing A's story that she wishes him to do so. As A well knows, V does not consent but submits out of fear of A;

(d) P drives A's car on the motorway. The wheel of the car falls off killing V. P is charged with causing death by dangerous driving and is acquitted. A knew that the axle on his car was in need of repair.

2. At a party, A, without P's knowledge, laces P's orange squash with vodka. Because he has drunk the vodka, P's blood alcohol is above the limit and he is convicted of driving in that condition. Is A liable?

3. A knows that P makes his living by armed robberies. He supplies P with a revolver and ammunition. Two months later P uses the revolver to shoot dead (i) a policeman who is impeding his escape after a robbery (ii) his wife with whom he has had a sudden quarrel. Is A liable?

4. A, a doctor, supplies V, a 14 year old girl, with the contraceptive pill because V has told him that she can no longer resist the amorous advances of P, her 18 year old boyfriend. P, encouraged by this news, has sex with V who enthusiastically co-operates because she has the pill. Is A liable?

5. A, who has a grievance against V, pays P £100 to set fire to V's car which usually stands in the drive of V's house. What if:

(i) when P goes to V's house, the car is not there, so he sets fire to the house instead; or (ii) P goes to the wrong house and sets fire to W's car. W is A's best friend.

6. A's wife, V, disappears mysteriously every Friday evening. A employs P to follow her and, if she is committing adultery, kill her. P finds that V is not committing adultery but attending keep fit classes. He kills her.

7. A and P are successful burglars. A never carries arms but he knows P always carries a loaded revolver and that he might use it to cause GBH or to kill if it was necessary to evade capture. They have done 50 jobs without a hitch. On the 51st job they are interrupted by the police. P shoots and kills a policeman. Is A liable?

8. As in 7, but A and P have agreed that P might use the gun to frighten, perhaps firing over the head of anyone who intervenes, but not to injure or kill in any circumstances whatsoever. When they are interrupted, P takes careful aim and shoots a policeman through the heart.

9. A employs P to kill V and supplies him with a gun. A changes his mind, tells P that the plan is cancelled and demands the return of the gun. P shoots V with A's gun.

Past paper questions

2 'A close examination of the case law suggests that the better account requires one who aids and abets to know or intend the essential matters of the principal's crime'. (SIMESTER) Discuss.

7 'Intellectually, there are problems with the concept of a joint [enterprise] … where S foresees that P may go too far; sincerely wishes that P will not, and makes this plain to P; and yet S goes ahead, either because he hopes for the best, or because P is an overbearing character, or for some other reason. … How can a jury be directed at the same time that S is guilty only if he was party to an express or tacit agreement to do the act in question, and that he is guilty if he not only disagreed with it, but made his disagreement perfectly clear to P? Are not the two assertions incompatible?' (LORD MUSTILL in *R.* v. *Powell and English* (1998))

How is the problem identified by Lord Mustill now resolved in law? Is the law's resolution doctrinally and morally satisfactory?

3 Does English criminal law have a distinct doctrine of 'joint enterprise' liability? Does it need one?

(d) Lando tells Binks that he is going to 'slash Porkins across the cheek', and invites Binks to join him. Binks agrees. When they find Porkins, Lando stabs him straight through the heart, killing him instantly.

7. Dani and Eli decide to burgle Fifi's house if she is not in. They get to the front door, which is opened by Fifi. Eli pulls out a knife and stabs Fifi to death. When interviewed by the police Dani admits that although she knew Eli often carried a knife, she did not think he had it with him that day. When Eli is interviewed by the police he reveals he was given the knife by Fifi's ex-girlfriend, Gabby, who had told Eli 'If you get the chance, give Fifi a scare with this.' Gabby explains that when she said this, she meant it as a joke, although she was aware that Eli might take it seriously.

What criminal offences, if any, have been committed?

9 Danyl gave evidence in a trial which resulted in the conviction of a drug dealer. The dealer's two adult children, Joe and Ollie, decide that they will get revenge for their father's conviction by going to Danyl's house and, if he does not give them his car and apologise for what he did, they will shoot him in both of his knees. They borrow a gun from their mother, Cheryl, having told her that they plan to use it to steal some money from a bank.

Joe and Ollie turn up at Danyl's house late at night. Joe breaks a window and they both climb through it into the kitchen. Danyl and his wife Stacey are woken by the noise and go downstairs to see what is happening. Danyl sees that Joe is holding the gun and knocks it out of his hand. Danyl punches Joe in the face, knocking him to the ground, and then starts kicking him hard in the head, breaking his nose. Joe shouts to Ollie for help. Ollie picks up a carving knife and pushes it towards Joe. Joe begs Danyl to stop kicking him. Danyl refuses to do so and Joe sticks the knife into Danyl's thigh.

Danyl continues to kick Joe. Ollie picks up the gun from the floor and carefully aims it at Danyl's chest to stop him. Just before Ollie shoots, Stacey rushes forward to help Danyl and the bullet hits her in the head, killing her instantly. Ollie pulls Stacey's gold necklace from her neck, puts it in his pocket, and drags Joe out of the house.

Consider what offences, if any, have been committed.

9 Jana has been in a long term and very unhappy relationship with Kevin. As a result of Kevin's abuse, Jana's previously normal ability to control her response to his behaviour has been reduced. One evening, Kevin tells Jana that he is going to go to have sex with their neighbour, Lacie, and that then, in the morning, Kevin will give Jana another beating. Jana begins to become very agitated, and is overcome with emotion. Jana goes to their other neighbour, Marcia, and asks to borrow a hand-gun 'to end the years of pain'. Marcia, who has been drinking heavily, wonders briefly whether there might be a risk that someone will get hurt. Marcia then thinks no more on the matter and lends Jana a gun, intending to help Jana with whatever she is doing. When Kevin returns from having sex with Lacie, he taunts Jana about her reduced self-control, and falls asleep on the sofa. Jana shoots Kevin in the chest. Kevin is taken to hospital, where, in order to make things worse for Jana, he refuses any medical treatment, and dies.

What crimes, if any, have been committed?

SUPERVISION 7
INCHOATE OFFENCES

Reading

(1) Encouraging or assisting someone to commit an offence

Serious Crime Act 2007, ss 44-46, ss 47-48 (*note* that ss 47-48 do not create any offences; so you can't be found guilty of an offence under ss 47-48: those sections merely define when someone will commit an offence under s 44, or s 45, or s 46)

S&S, § 9.2

Spencer and Virgo, 'Encouraging and assisting crime: legislate in haste, repent at leisure' [2008] Archbold News 7

http://www.publications.parliament.uk/pa/cm201314/cmselect/cmjust/639/639.pdf

(2) Attempt to commit an offence

Criminal Attempts Act 1981, s.1

S&S, § 9.4

Khan [1990] 1 WLR 813

Attorney General's Reference (No 3 of 1992) [1994] 1 WLR 409

Pace and Rogers [2014] 1 WLR 2867 (noted, mcbridesguides → Criminal Law → Inchoate Offences → Attempt; Virgo, (2014) 73 CLJ 244)

Herring, chapter 8

(3) Conspiracy to commit an offence

Criminal Law Act 1977, s.1

S&S, §§ 9.3

Jackson [1985] Crim LR 442

mcbridesguides → Criminal Law → Inchoate Offences → Conspiracy

(3) Impossibility

S&S, § 9.5

Shivpuri [1987] AC 1 (noted, Glazebrook, (1986) 45 CLJ 363)

(4) Committing one of offences covered in (1), (2) or (3), above, as an accomplice

S&S, § 7.6(v)

Questions for the supervision

1. A urges B, 'Kill V!'
   (i) B indignantly refuses.
   (ii) B agrees that he will kill V, but five minutes later changes his mind.
   (iii) B shoots at V, intending to kill him, but misses.

2. A creeps into V's bed while she is asleep and starts having sex with her. V is in fact awake but pretending to be asleep because she has always had a fantasy about a stranger having sex with her in this kind of situation.

3. A and B agree to have a 'threesome' with V, by force if necessary. In fact V is very happy to have sex with both A and B at the same time.

4. A puts a message on Facebook encouraging people to meet outside The Prince Regent in the middle of Cambridge at 12 noon tomorrow to 'cause havoc' in the City. He thinks that people may riot, steal, rob and burgle. When he turns up at the designated place, nobody is to be seen.

5. A and B agree that they will meet at 1 am outside Midwest Bank to break in and steal. B has no intention of carrying out the agreement. X, Y and Z make a similar agreement. X and Y intend to carry it out, but Z does not.

6. A hires B to murder V. A is to play no part in the murder.

7. A and B are V's butler and housemaid respectively. They know that C plans to burgle V's house on 1st April. A and B, without C's knowledge, agree that they will leave the windows unlocked to facilitate C's entry. C changes his mind and stays at home in bed.

8. A and B agree to inflict GBH on V. A is on the point of 'kneecapping' V when he is arrested. Are A and B guilty of (i) conspiracy to murder; (ii) attempted murder?

9. A and B, having been invited by C to have sex with C's wife, V, are uncertain whether V is consenting or only submitting through fear of C. They agree that they will have sex anyway. V is not in fact consenting. Just as A is about to have sex, V's son arrives. Are A and B guilty of (i) conspiracy to rape; (ii) attempted rape?

10. A and B are charged with conspiring to damage property being reckless as to whether life is endangered. What is the *mens rea*?

11. A 'stages' a robbery of his jeweller's shop with a view to claiming on his insurance policy. He informs the police. He asks the insurance company for a claim form. He fills in the form. He posts it. At what point is he guilty of an attempt to obtain by fraud?

12. A believes that V keeps the famous Kimberley diamond in his safe. He incites B to steal the diamond from the safe. B and his mate C make a plan to steal the diamond. They blow open the safe. It is empty. Encouragement? Conspiracy? Attempt?

13. Should impossibility be a defence to inchoate offences?

14. How satisfactory are the new statutory inchoate offences of encouragement and assistance?

Past paper questions

5 **Either** *(a)* '[A]s the form of criminal liability moves further away from the infliction of harm, so the grounds of liability should become more narrow.' (ASHWORTH)

Discuss, with reference to the law relating to inchoate liability and secondary participation.

3 'The decision in *Pace and Rogers* (2014) was a step backwards for the law of attempt.' Discuss.

(a) Does English law need an offence of conspiracy?

(ii) Sebastian, an athletics coach, and Lawrence, an athlete, agree that Sebastian will obtain a forbidden performance-enhancing drug for Lawrence to take before he competes in a marathon, for which large cash prizes are available if he comes in the top five. Sebastian does not think he will be able to obtain the drug which Lawrence wanted, but Sebastian manages to buy another forbidden performance-enhancing drug which is much stronger than the one they agreed he should obtain. He gives the drug to Lawrence without telling him that the drug is different. Lawrence swallows the drug. He suffers an allergic reaction and he dies.

What offences, if any, has Sebastian committed?

8 Paul wishes to get revenge on Tatiana who has recently left him for another man, David. He therefore asks Oliver to beat up David. Oliver agrees to do this, but only if Paul pays him £5,000. Paul says he needs time to think about this. The next day Tatiana hosts a party. She goes to a supermarket intending to shoplift some alcohol if she can. She puts a bottle of whisky in her pocket, but changes her mind when she sees a store detective and puts the bottle back on the shelf. At the party, alcohol flows very freely. When David tells Tatiana that it is time for him to drive home, she encourages him to have another whisky, which he does. When he eventually leaves, Oliver leaps out from behind the hedge intending to hit David with a candlestick which he has found in a dustbin nearby. David, seeing Oliver, jumps into his car and drives home, clearly drunk. Oliver, realizing that he is too late to make his attack, goes home, taking the candlestick with him.

Discuss the possible criminal liability of all parties.

8 John is a 40 year old sadist with a buttock fetish and Edward is a masochist. Consider what offences, if any, have been committed in **each** of the following **alternative** circumstances:

(i) Edward, who is 15, asks John to beat him on his bottom with a cane. John, who is very drunk, does so. Edward is so badly bruised by the caning that he is unable to sit down for a week.

(ii) Edward, who is 16, asks John to spank him. John, thinking Edward is 14, does as Edward requests without causing him any injury.

(iii) Edward, who is 12, places a message on a sado-masochist website asking for a sadist to contact him. John emails him. Edward replies, saying he is 18 and wants John to spank him. John agrees to do so but subsequently has second thoughts.

(iv) Edward, who is 43, writes a letter to John asking John to beat him on the bottom with stinging nettles. As Edward is on the way to post the letter it is blown out of his hand by the wind and is lost.

(v) Edward, who is 25, suggests to John that he should cane his adult friend Susan who, Edward says, is a masochist and would enjoy the experience, the more painful the better. Edward knows that Susan would not consent to any such activity. John agrees to cane her. Unknown to both of them, Susan died yesterday.

SUPERVISION 8
PROPERTY/ECONOMIC OFFENCES

Reading
(1) Criminal damage to property
Criminal Damage Act 1971, ss 1, 5
S&S, §§ 14.5-14.6, 5.2
Jaggard v *Dickinson* [1981] QB 527
Caldwell [1982] AC 341 (*note* now overruled – but still interesting)
G [2004] 1 AC 1034 (noted, Ibbetson, (2004) 63 CLJ 13; Metcalfe & Ashworth [2004] Crim LR 369; mcbridesguides → Criminal Law → Simester & Sullivan casenotes)
Herring, chapter 3 (debate 2)
Norrie, chapter 4
Crosby, 'Recklessness – the continuing search for a definition' (2008) 72 J Crim L 313
(2) Theft
Theft Act 1968, ss 1-6
S&S, §§ 13.1-13.4, 13.6-13.8 (do ***not*** under any circumstances read § 13.5)
Hinks [2001] 2 AC 241 (noted, Shute [2002] Crim LR 445; Parsons, (2004) 68 J Crim L 520; mcbridesguides → Criminal Law → Simester & Sullivan casenotes)
Ivey v *Genting Casinos (UK) Ltd* [2018] AC 391, [52]-[75] (noted, Virgo, (2018) 77 CLJ 18)
Barton [2020] EWCA Crim 575 (noted, Sullivan and Simester, 'Judging dishonesty' (2020) 136 LQR 523)
Herring, chapter 7
(3) Robbery
Theft Act 1968, s 8
S&S, § 14.3
DPP v *RP* [2013] Crim LR 151
(4) Burglary/aggravated burglary
Theft Act 1968, ss 9-10
S&S, § 14.4
(5) Fraud
Fraud Act 2006, ss 1-5
S&S, §§ 15.1-15.5

Written work

Answer the following question:

Albert has recently taken over the running of a barber's shop, known as the Salon. He has expanded the services provided. Consider what offences, if any have been committed in the following circumstances.

(i) Barbara, who has a foot fetish, is employed as a chiropodist. Recently Chris, a famous footballer, came to The Salon to have an in-growing toenail treated. Barbara became so excited when she touched Chris' foot that she started to suck his big toe. Chris considered this to be disgusting and he kicked out at Barbara in anger. He broke her nose.

(ii) David is employed as an optician. He told Albert that he was qualified to treat poor eyesight although he had failed his professional exams because his own sight was so poor.

Elizabeth recently came to The Salon to have laser treatment to correct a squint. David could not really see what he was doing but, by luck rather than judgment, the treatment worked. Elizabeth was so pleased with the result she gave David a £50 tip.

(iii) Albert was recently approached by Fran who offered to sell him a large box of condoms cheaply. When Albert asked where they had come from, Fran said, 'Ask no questions and you will get no lies.' In fact, Fran had found the box in a skip, but she did not say that to Albert. Albert purchased the box of condoms which was clearly marked 'defective goods'. George had been to The Salon for a haircut. As he was leaving Albert asked him whether he wanted anything for the weekend. George said he did and bought a packet of condoms. That night George had sex for the first time with his girlfriend Hayley. Unfortunately the condom he used had a hole in it. Hayley caught genital herpes from George, involving painful blisters and flu like symptoms. She also got pregnant. George was aware that he had herpes but he did not realise that the condom was defective.

Questions for the supervision

1 D, wearing a coat with concealed pockets, enters a supermarket and puts two bottles of whisky into the trolley provided. He is arrested and confesses that it was his intention, when unobserved, to transfer the bottles to his pockets and remove them from the shop without payment. Has he stolen the bottles?

2. D asks his friends to sponsor him in a marathon to be run in aid of the Save-the-Dolphin Fund (a registered charity). D completes the run and receives £200 from his friends. He uses the money to pay his gambling debts.

3. D, an employee in V's shop, takes £50 from the till when the shop closes on Saturday afternoon, confidently expecting to be able to replace the money on Monday when it opens. He is robbed on his way home from the pub on Saturday night and is unable to replace the money.

4. D sees some valuable books displayed for sale outside a shop belonging to V, a second-hand bookseller. He writes his name in them, takes them into the shop and offers to sell them to V.

5. P asks D to keep an eye on his house while P is away and he gives D his keys.

(a) D goes into the house to see if there is anything worth taking and takes an attractive ornament.

(b) D goes into the house to see that all is well and notices a very attractive ornament which he takes.

7. In order to induce P to buy his car D says untruly that he has owned the car since it was new and that it has only travelled 10,000 miles. P buys the car. What if

(i) P, who is hard of hearing, did not hear what D said;

(ii) P heard but did not believe what D said;

(iii) P heard and believed what D said but he wanted the car to exhibit in a museum and did not care how many owners it had had or how many miles it had travelled?

8. D tells P that he ought to buy shares in a new start-up company developing a new form of mobile phone technology, which D says is in his opinion will be a dead-cert. to be a great

success. D has no idea whether the company will be successful. P buys £1,000 of shares. He has just sold the shares for £100,000.

9. D, who has been given a gold chain by her rich uncle, offers to sell it to P for £100. P asks if it is solid gold. D, who has no idea whether it is solid gold or not, says that it is. P buys it. What if the chain is not/is solid gold?

10. D is a solicitor. P is a client who approaches D for legal advice relating to his divorce from his wife. D realises that P is rather stupid and says that his only hope is to go to court to get a legally enforceable deed of separation. This will involve a lot more legal fees than the preferable route of seeking a compromise.

11. D offers to give financial advice, falsely claiming to be a qualified accountant. P pays him £1,000 for advice in investments. The advice proves to be excellent and the fee is reasonable.

Past paper questions

Or *(b)* '[There is a view] that inadvertence, however negligent, cannot constitute *mens rea* since we cannot blame a man for what he does not know. That view has been convincingly demolished: whether I notice some aspect of my action or its context may depend on the attention I pay to what I am doing, and be thus within my control; failure of attention may be as 'voluntary' and culpable as other omissions...'

2 To what extent is it accurate to say that the purpose of the law of theft is to prevent interference with an owner's property rights?

4 'Judges may not enquire about the accused's mental state, self-control, and culpability unless they find preliminarily that the accused's conduct meets an objective standard of liability. The objective standard is the manifestly criminal act.' (FLETCHER)

Discuss, with particular reference to the law of theft.

Or *(b)* To what extent, if at all, can the decision of the House of Lords in *Hinks* be considered principled?

5 'After *Hinks* (2000), it can no longer be argued that the protection of property rights against forcible invasion is the main purpose and function of the law of theft.'

Discuss.

2 'The theft offence criminalises the tainted touch. The offence of fraud by failing to disclose information criminalises the tainted thought.'

Discuss.

4 'The practical advantages of a general fraud offence have been bought at the expense of undermining important principles.'

Discuss, with reference to the Fraud Act 2006.

3 'When seeking to resolve a question of principle in criminal law, it appears to me that one should normally bear in mind legal coherence, protection of the public, fairness to defendants and the realities of jury trials'. (LORD NEUBERGER)
Discuss.

6 Should property offences be designed to protect and reinforce property rights? Does the current law of fraud (including conspiracy to defraud), theft and criminal damage suggest that a coherent rationale underlies these offences?

(*a*) Mike, a male prostitute, agrees to let Neil have sex with him on condition that Neil pays £50 cash and uses a condom. Mike realises afterwards that Neil has not worn a condom. Neil has no money with him either, something which Neil knew from the start.

(*a*) Kate works for an advertising agency. A client comes to the office. Kate agrees to provide advice at a fee of £1,500, which is three times the normal rate for such a service. Kate provides the advice. A month later, the client sends a cheque in payment of the invoice sent by Kate's employer. The cheque cannot be banked because the client accidentally forgot to sign it.

(a) Harry goes into a bookshop. He secretly takes away a book, intending to return it immediately if it is not of use to him in preparing for a forthcoming examination. He discovers that the book is useful, so he does not return it until his examinations are over. By this time a new edition of the book has appeared and the original book has become unsaleable.

10 Bond suggests to James that he might like to break into the house of his acquaintance, Felix, to see if there is anything worth stealing. The next day James decides to do so. Once in the house, he is frightened by an unexpected noise and glimpses movement. Concerned that he has been detected, he shoots at what is in fact his own reflection in a mirror, which smashes. Felix is awoken and comes downstairs carrying his (legally owned) shotgun. Felix shoots at James, who, despite being wounded in the arm, flees with a painting, grabbed from an easel. Later that day Vesper offers James £50,000 for the painting, believing it to be an 'old master' but not wanting to ask too many questions of James, who she suspects is a burglar. James realises that Vesper thinks the painting is valuable, but he believes that it was painted by Felix and is worthless. He accepts Vesper's offer, and she pays him the agreed sum.
What offences, if any, have been committed?

8 Beatrix falls madly in love with Norman, who persuades her to give him her collection of antique statues which he then sells. Norman falsely assures Beatrix that he has had a vasectomy and they have unprotected sexual intercourse. Nine months later Beatrix gives birth to his baby by caesarean section. Beatrix becomes deeply depressed, is prescribed strong medication, and returns home to live with her parents. One evening she sits up late into the night drinking whisky with her father, Potter. He taunts her for being ugly and unattractive and she hits him on the head with the whisky bottle. He is badly wounded and dies five weeks later.
What offences, if any, have been committed?

(*c*) Karen asks Len if he will go to London for her on an errand. Len says he will, provided that Karen gives him the money for his fare. Karen gives Len her cashpoint card, and tells him to withdraw £100 from her bank account to cover his expenses. Len takes the card, but then changes his mind about going to London. He none the less withdraws £100 from Karen's account, intending to use it to pay a bill that he knows she owes.

8 Ethel tells Reg that she has heard a rumour that an old lady, Vera, who lives near them, has a valuable teapot in her house. They agree that Reg will check out whether it is worth stealing, and that, if it is, he will steal it. Reg persuades Vera to let him enter her house, pretending to be a policeman. Once he is inside, Vera realizes that she has been tricked and pushes the alarm button her nephew George, an electrician, has wired up for her. The wiring is faulty and she is electrocuted and dies. Reg, unable to see any teapot, grabs two vases from the table and rushes out. He drops one vase in the road, where it smashes. He sells the other to Sid for £10. Sid suspects it may be stolen property but decides to ask no questions.

What offences, if any, have been committed?

9 Brian, Nigel and David are rivals in the annual village 'finest pumpkin' competition, which carries a £10 prize.

Brian creeps into Nigel's garden one night, intending to inspect the pumpkin in the greenhouse and, if it looks good, to deface it with a knife. Just as he is stepping into the greenhouse, a security light comes on, so he runs off.

Nigel's wife, Elizabeth suggests that Nigel should break into David's greenhouse and take his pumpkin, but Nigel disagrees. Elizabeth then suggests that she should approach David's wife, Ruth (who Elizabeth knows hates the pumpkin competition) and tell Ruth to destroy David's pumpkin. Nigel agrees with this plan. Elizabeth phones David's house to talk to Ruth but discovers that Ruth has gone on a three-week holiday and cannot be contacted. Hoping to get David disqualified, Nigel starts a false rumour to the effect that David has used a banned fertiliser to boost his pumpkin's growth.

David plans to destroy Brian's pumpkin with a powerful weed-killer which he has concealed in a water bottle. He visits Brian for tea one day and leaves the bottle on the kitchen table, waiting for a chance to sneak into the greenhouse. While no one is looking, Brian's son Adam, aged 6, finds the bottle and, thinking it contains water, pours some of the contents into his pet rabbit's bowl and some into the teapot on the table. The rabbit dies as soon as it drinks from the bowl. Brian and David suffer severe stomach ache from drinking the tea.

Discuss the possible criminal liability arising on these facts.

8. Hal hands Izzy an iPod, which he says is Jack's, continuing 'I know how much you dislike Jack, why don't you drop this off Magdalen Bridge?' Izzy does so. In fact the iPod is Izzy's own. Later that day, Izzy discovers this and confronts Hal. Hal replies that the date is 1st April, and that his suggestion to her was just an April Fool joke.

The iPod lands in a boat being rowed under the bridge by Kath. Finding it later, Kath puts it in her bag. She means to hand it in to the police station, but forgets. Coming across it after several months at the bottom of her bag, she says to herself 'Oh well, I don't suppose they could have got it back to its owner anyway', and keeps it.

What crimes, if any, have been committed?

8 Victoria lives in a residential home for the elderly. Dorian, her nephew, needs money but knows that Victoria would not give him any. He therefore asks his friend Ralph to visit Victoria, posing as a religious guru, and convince her to make a generous donation to 'The Prayer-Wise Foundation' (which, as Ralph knows but Victoria does not know, is run by Dorian). Ralph visits Victoria, pretending to be a religious guru. He tells Victoria that, embraced by his prayers, the Foundation's donors may find eternal life after death. When Victoria asks how she could be sure to enjoy eternal life under this arrangement, Ralph replies: 'We cannot even know whether eternal life is possible! But shouldn't we do all we can in this life to reach eternity, if it exists?' Hearing these words of wisdom, Victoria hands Ralph £900 in cash for 'The Prayer-Wise Foundation'. Ralph keeps £100 for his own use and hands the remainder to Dorian for the Foundation.

When Dorian phones Victoria a few days later, she tells him that she is thinking of changing her will, which is currently in Dorian's favour. Dorian immediately goes out to buy some rat poison. When Ralph visits him later that day, Dorian says to him: 'Victoria is losing her marbles, now she wants to change her will! We must stop her before it is too late.' Dorian then suggests that Ralph should take Victoria out to eat a hot curry and slip the poison into her food to kill her. Ralph says, 'All right, I'll do it', and takes the poison with him, even though he has no intention of poisoning Victoria's food.

Later that evening and with the bag of poison still in his pocket, Ralph takes Victoria out for an Indian meal. Ralph orders prawns as a starter and hot curry as a main dish. Victoria suffers an unexpected allergic reaction to the prawns and dies instantly. Ralph quickly removes from Victoria's lifeless neck a valuable antique necklace and takes it with him as a memento.

What offences, if any, have been committed by the surviving participants?

7 The following events occur in the Law Library. Discuss the possible criminal liability arising in each situation:

(i) Claudia deliberately places the library book she has been using in the wrong section of the library in order to prevent other students from using it before she returns the following day to continue reading it.

(ii) Erica sees the library book she has been looking for on Bruno's desk. When he leaves for a coffee break, Erica removes the book. After some time working with the book, Erica realises that what she had thought was just a bookmark is an unopened letter addressed to Bruno. Not knowing what to do with the letter, she throws it into the bin.

(iii) Les snatches a library book that he needs from Tess's hand, saying that he will make it impossible for Tess to work peacefully in the library if she complains to the staff. Tess is scared and does not report Les's behaviour to the staff.

(iv) Tess instead complains to Vince, her boyfriend, about Les. Without telling Tess, Vince and his friend Anthony lie in wait for Les outside the library. When Les comes out, they jump out and push him hard against a wall. Les hits back, punching Vince's nose, which starts to bleed. Anthony suddenly pulls out a pair of scissors and uses them to stab Les in the leg. Vince realises that they are his scissors, which he lent to Anthony earlier that afternoon.

(v) Dan is preparing online applications for vacation placements with law firms. There is a statement on the application form requiring that all criminal convictions be disclosed, but Dan fails to notice it. He does not mention that he was convicted three years ago, when aged 15, for a minor criminal damage offence. He claims to have got a First in his first year exams (in fact, he got firsts on two papers but an Upper Second overall). He saves the completed application on the computer without submitting it.

10 Patrick and Colin are heart surgeons. For some years, they have been developing a new type of pacemaker which can help to regulate abnormal heart rhythms, which they jointly own. Patrick has a patient who, he believes, would especially benefit from their latest model. Patrick proposes to implant the model in surgery the following day. Colin objects, saying that while he also feels sure that the model is safe and effective, it is their ethical responsibility first to register the model with the regulator and await approval. Patrick points out, quite correctly, that not all doctors are that cautious. Later than day, he slips the latest model into his pocket and takes it home with him, intending to use it in surgery the following morning. Patrick expects that the implant will enable his patient, who would otherwise be likely to die within weeks, to live for another five to ten years.

Colin soon notices the disappearance of the model and guesses that Patrick must have taken it. He visits Patrick at home that evening with a bottle of whisky, which he says is a peace offering. His true motivation is furtively to take the model back, if he can find it. Patrick invites Colin in and they go to the lounge. When Patrick offers Colin some whisky, Colin asks for coffee instead. While Patrick is busy in the kitchen making coffee, Colin searches Patrick's jacket, left behind in the lounge, and finds the pacemaker. He takes the pacemaker and walks towards the door. Patrick spots him, grabs Colin by the arm and wrestles the pacemaker out of his hands. He then pushes Colin out of his house and presses the door closed.

From the velocity of the push, Colin loses his balance and falls down the entry steps to the house, and breaks his leg.

What offences, if any, have been committed?

8 Drunk after formal hall, Caroline sees an inoffensive official notice at the bottom of her college staircase. She mistakes this for racist graffiti, and so obliterates it with a permanent marker pen. The next day, Caroline sees a sandwich left over from a function in the foyer of her Faculty building. Caroline takes the sandwich, intending to give it to a homeless person later on her way home. Another student, Dorcas, motivated by hatred of Caroline, grabs the sandwich from Caroline, and begins to eat it in front of her. Caroline suspected that Dorcas would do that, and also knows that Dorcas is allergic to the sandwich filling. Caroline forces the sandwich from Dorcas's mouth. As a result of the short exposure to the sandwich, Dorcas breaks out in pimples. Dorcas texts her boyfriend, Eric, to ask whether he still thinks she is beautiful. Eric's friend, George, urges Eric to tell Dorcas 'no', intending to make Dorcas clinically depressed, and possibly cause her to commit an act of self-harm. Eric lies and tells Dorcas 'yes', mainly hoping that Dorcas will sell Eric one of the few remaining tickets to her college May Ball, which she does.

What crimes, if any, have been committed?