






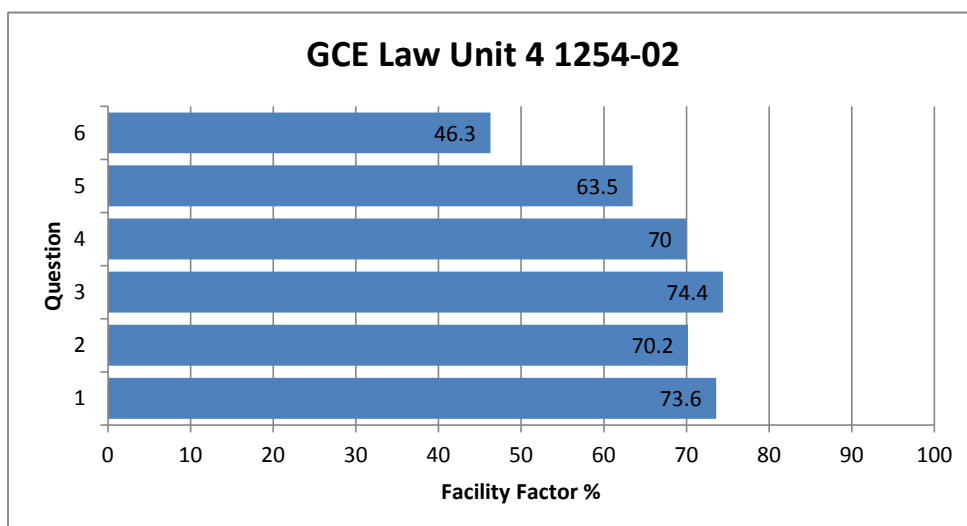


GCE Law Unit 4 1254-02

All Candidates' performance across questions

						
Question Title	N	Mean	SD	Max Mark	FF	Attempt %
1	488	18.4	4.4	25	73.6	69.1
2	293	17.5	5.1	25	70.2	41.5
3	460	18.6	4.8	25	74.4	65.2
4	166	17.5	5.3	25	70	23.5
5	678	15.9	4.3	25	63.5	96
6	23	11.6	5.1	25	46.3	3.3



Option 2: Criminal Law and Justice

SECTION A

*Answer **two** questions from this section.*

1. "The Crown Prosecution Service is the indispensable heart of the criminal justice system."
Discuss. [25]

1. Before the access to justice act 1985 set up the Crown Prosecution Service, the police and private citizens bought criminal prosecutions. In 1970, the justice pressure groups and Philips Royal Commission wrote a review on the Prosecutions in Wales and England. In the review it stated that 'it wasn't in the interest of justice for one body to be responsible for two very different functions of investigation and prosecutions.' As a result, the access to justice Act 1985 set up the crown prosecution service to give the justice system an independent element.

Initially the crown prosecution service was under-staffed, under-resourced and had problems obtaining information and details to the police. Then in 1997 the Labour government set up the Glidewell review (a review into the crown prosecution service). In 1998 the review was published and many changes were put into place which became effective in 1999. One change being that the thirteen areas that were all ready set up around the UK, to be enlarged to forty two areas. Another being that the discontinuance rates to be published separately.

The Glidewell review also made

a change for the relationship with the police to improve which meant working closely together ^{with the CPS} to make a fall in the discontinuance rates.

The access to justice act 1999 gave the ~~all~~ crown Prosecution Service higher audience rights, which meant they were able to carry the case over into higher courts. This was a major improvement because it saved money and time.

Narey case workers were ~~introduced~~ introduced into the magistrates court which handled straight forward guilty pleas, this enabled the Crown Prosecution Service to handle more complex cases.

In 2003, the access to justice act gave the Crown prosecution Service the right to become junior judges, with the first man becoming judge in 2005.

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Lacking knowledge, some relevant eval points.



A01:5

A02::3

A03:2

10

1. The CPS is the crown prosecution service, and is responsible for prosecuting criminal cases in England and Wales. It is an independent organisation headed by the director of public prosecutions (DPP) Alison Saunders, who was appointed in November 2013. The DPP has to report on the running of the CPS to the Attorney General, this is QC MP Dominic Grieve. He is chief legal adviser to the crown. There are certain offences that can not be prosecuted without the Attorney General's permission, such as assisting a suicide which is laid out in statute by the Suicide Act 1961.

Before the CPS, it was the police's job to investigate, charge and prosecute criminals. But this was outlined as a problem in the Justice Report 1970. And again in the Royal Phillips Commission in 1978. In this report it was said that the police shouldn't investigate and prosecute, and problems were identified along with inconsistency across the country. This report recommended the establishment of the crown prosecution service (CPS).

The CPS was established in 1985, under the prosecution of offences act 1985.

This meant vital changes for the criminal justice system that we have in place here in England and Wales.

The previous practice was that the police would ~~prosecute~~ charge and prosecute.

But the Criminal Justice Act 2003 amended

s-37 of the police and criminal evidence act 1984, moving the decision to charge a suspect away from the police and to the CPS.

Now, the police will investigate and gather evidence of the case and present the file to the CPS. Also CPS direct has been set up, and is available 24/7 to police, in order to advise police on whether to charge a suspect.

The CPS has five main roles. The first is to advise the police on whether or not to charge a suspect. Secondly, they review files/cases given to them by the police. Thirdly they prepare the case for court, and the fourth role is to present the case in court as the prosecution at the trial. The last aim is the main aim of the CPS, to decide if they are going to prosecute or not.

In order to carry out this final aim, they look to the code for prosecutors in the CPS. This contains 2 tests they have to apply to the case before them. The first is the full code test, which has two limbs. The first limb is the evidential test. This is where the CPS will look at the strength of evidence against the defendant in question, and ask if there is a realistic possibility of conviction, this is an objective test. If the evidence is reliable it's more likely to pass this test, it's reliable if it's from an eye witness, confession or DNA evidence. If it's from confession by oppression, eye witness, CCTV or hearsay it's less likely to pass, as it's unreliable evidence.

If that is satisfied the CPS will move onto the second limb of the ~~evidential~~^{full code} test, which is the public interest test. In this test it is asked if it's in the public interest to prosecute the defendant, factors will make it more or less likely to pass the test. Factors which make it more likely to pass is if the defendant appears to be the ring leader of the offence, violence was involved or ~~if~~ if it was against someone who serves in public like a nurse or policeman. Factors which reduce it's chances of passing is if it's a minor offence, through mistake or misjudgement.

If the above test is satisfied the CPS will continue to prosecute. But if the case in question failed, the second test is applied. This is the threshold test. It asks two questions, firstly if there is a realistic possibility of conviction and secondly if there is reasonable suspicion the defendant is guilty. If this is passed, the public interest test which is contained within the full code test will be applied.

The CPS will prosecute offences that pass their tests. But they don't do this for all crimes, just the more serious crimes. The minor offences are left with the police to make a decision, this accounts for around 72% of all offences in England and Wales. This has helped improve ^{the} relationship between the police and the CPS.

There have been many reports which criticise the CPS and how effectively they carry out their role of prosecuting criminal cases in England and Wales.

The Narcey report in 1998, highlighted problems with the CPS in regards to the delay in bringing cases to court. This criticism gave way to a big reform. In that more training of case review workers was given, which meant they could deliver straightforward cases of a guilty verdict in court. Meaning that CPS lawyers could focus on more complex cases. The code was also reviewed for extra guidance.

With the Glidewell report 1999, came the criticism of a bad relationship between the CPS and the police, and again about delays. This led to the CPS being split into 42 areas in England and Wales, as opposed to the previous 13, to work with the police. In a bid to improve relations and cut delays.

Shortly after the case of Stephen Lawrence, came the McPherson report of 1999. Where issues of racism were raised that were present in ~~the~~ the police. Resulting in a racial equality being implemented in all police stations, to tackle the problem. Regular inspections are carried out to ensure this.

The access to justice Act 1999 also resulted in changes for the CPS. It meant that CPS direct Offices, 2 of which are in Wales, were

opened 24/7. To help those charged and give them representation in court.

In 2009, the public prosecution service laid out three aims for the CPS. Those being: to protect the defendant; to protect the witnesses and victims; and to administer justice.

In conclusion, I think it is clear to see that the CPS is the indispensable heart of the criminal justice system. It has successfully resolved problems when faced with criticisms, which you can clearly see with the reforms that followed the 3 reports in 1998 and 1999. It has also taken away any bias judgement that was present before the establishment of the CPS. The CPS sets out clear guidelines to follow that are applicable to all cases they are faced with. Showing the CPS has such a vital role, we couldn't go back to previous practice without it.

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8+11+3

(22)

A.

1.) The CPS is undoubtedly the indispensable heart of the criminal justice system as it is ~~the~~ ^{the} CPS that allows the prosecution of offenders to be carried out properly and fairly and allows the police to carry on with their job of investigation.

The CPS is an independent prosecuting body that works closely with the police. It was created by the Prosecution of Offences Act 1985 and came into force on the 1st January 1986. This was the sister Act to the Police and Criminal Evidence Act 1984.

To be able to fully understand why the CPS is at the heart of the criminal justice system, it is important to reflect on its history and the reasons why it was set up.

The first police force was established by Sir Robert Peel in 1829 and by 1856 there were over 239 police forces. There was not a British police force however, as we are not a police state. In 1879 the ^{office} ~~office~~ of the Director of Public Prosecutions was set up and by 1930 the majority of state prosecutions were brought by the police. The Royal Commission on the Police 1962 stated that this position was no longer tenable and recommended the establishment of an independent prosecuting body.

In 1970, the pressure group 'Justice' ^{Published} ~~published~~ the ^{report} ~~report~~ 'The case for the prosecution' calling for an independent prosecuting body like the independent authority of procurator fiscals used in Scotland and District Attorneys in America.

The Royal Commission on Criminal Procedure 1981 recommended the setting up of independent bodies for investigation and prosecution. The report

was concerned that there was no ~~uniform~~ ^{each one presented according to own ideas.} system of prosecution in England and Wales. As a result the government passed the Prosecution of Offences Act 1985 and ~~this~~ ^{this} was the act that set up the CPS.

In its first ten years the CPS was ~~idolled~~ ^{ridiculed} with problems. There was a lack of funding. The ~~govt~~ ^{government} had set aside £41 million for the CPS and in its first year £173 million had been spent. There were also staff shortages. As a result of lack of ~~ending~~ ^{funding} the CPS couldn't attract the top quality lawyers. There was also a lack of coordination between local prosecuting authorities and the police, resulting in a high number of discontinued cases. As a result of this the CPS was reorganized several times between 1986 and 1999.

As a result of the Widdowson (1992) and ~~Narey~~ ^{Narey} (1997) reports, the ~~govt~~ ^{govt} CPS was externally reorganized into areas similar to the 43 police forces. The D.P.P. would be at its head and would be appointed by the Attorney General. Below the D.P.P. there would be 42 crown prosecutors. Each area was then divided into branches, ~~held by~~ ^{with} each branch held by a crown prosecutor and staffed by solicitors, caseworkers and support workers.

There were ~~criticisms~~ ^{criticisms} of the CPS. The main ~~criticism~~ ^{criticism} was the high number of discontinued cases. This was as a result of poor case prep by understaffed staff, errors in witness warnings by police, inadequate or erroneous indictments and counsel being briefed too late.

The CPS has five main roles. Their main role is to advise ~~police~~ ^{police} on the admissibility of evidence to the courts. They also review cases ~~after~~ ^{after} charge, have responsibility of the case over from police and conduct

cases in the ~~case~~^{Crown} and the Magistrates Court.

The CPS use two tests when deciding when to prosecute, the evidential test and the public interest test.

The evidential test is concerned with the admission of evidence into court. The CPS will also have to decide if based on the evidence, a jury or the magistrates are more likely to convict using the 51% rule. This test ~~requires~~^{requires} the CPS to ask three questions; has the evidence been obtained by breach of the Police and Criminal Evidence Act 1984?, how strong is any identification evidence against the suspect? and has any witness got a dubious motive?

The public interest test is more ~~controversial~~^{controversial} as even though the evidential test may have been satisfied, the CPS ~~may~~^{may still} not prosecute if it is not in the public interest to do so. The arguments for and against prosecution are provided in the code for ~~Crown~~^{Crown} prosecutors.

The idea that the CPS is the ~~heart~~^{indispensable} heart of the criminal justice system is one that can't be changed. Despite the disadvantages ~~of~~ and criticisms of the CPS, it is ~~the~~^{the} authority that allows the police to be able to continue with their job of investigation. This ~~keeps~~ allows the police to continue to keep the public safe, which is obviously the number one priority of the criminal justice system.

The CPS also ensures that the police are not expected to do ~~a~~ both investigation and prosecution as we know from past experience that this is a system that simply does not work.

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Detail?

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Ap1: 7
Ap2: 11
Ap3: 3

21



Option 2: Criminal Law and Justice

SECTION A

*Answer **two** questions from this section.*

3. Evaluate the criteria used by the courts in deciding whether Parliament intends an offence to be one of strict liability. [25]

3. Sometimes ~~there is~~ Actus reus alone can constitute a crime. If there is an absence of Mens rea, the offence is known as a strict liability offence as in Prince 1975.

In Gammon Hong Kong v Attorney General 1985, the builders failed to follow original plans which resulted in part of the building to collapse. The Hong Kong building regulations were breached which could result in up to £250,000 fine or three years imprisonment. The defendants ~~appealed~~ appealed because they thought they weren't liable for the result as they didn't know the changes that were made were substantial.

Lord Scarman in the Gammon Hong Kong case stated that there must be a presumption of innocence when ~~tried~~ ~~in~~ ~~a~~ ~~court~~ ~~of~~ ~~criminal~~ ~~law~~ tried in a court of criminal law. This statement was later reaffirmed on very strong grounds by the house of Lords in the case Bla minor v DPP 2003.

Lord Scarman then set down four regulatory offences which are

i) Where there is a issue of ~~social~~ ^{Public safety} ~~concern~~. This could be down to alcohol,

drugs, and the Sale of Alcohol to a minor as in Sweet v Parsley 1972.

ii) An issue of Social concern

iii) Where the act States Strict Liability is intended with the words knowingly and intentionally being used as in Alphacell v Woodward 1970

iii) where the penalty is small.
The bigger the crime the less likely the punishment AS in Deyemi 2009.

It is thought that strict liability may not be as effective as thought. Especially in the food industry. The food industry has unwelcomed publicity, and even if unconvicted would expect to see a fall in sales.

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Copious facts!

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Ap1:5

Ap2:3

Ap3:3

11

3. In order to secure a criminal conviction in our criminal justice system we need to show the defendant's actus reus and mens rea.

This is true for almost all offences.

But offences of strict liability requires no mens rea from the defendant, only the actus needs to be proved.

These offences are usually minor offences like parking offences or regarding hygiene. And offences of strict liability ~~can~~ do not allow the defence of mistake to be raised.

The case of *Bushnell* 1999 confirmed duress can be a defence to strict liability crimes, giving a presumption that automatism and

Self defence can also be used.

In regards to human rights there have been questions raised whether to be convicted without mens rea is against article 6, right to a fair trial, of the European convention of human rights. But this was denied by the court of appeal in the case of R v G 2008. Because article 6 relates to trial procedures and can not be used to question the substance of the law.

Offences of strict liability are concerned with voluntary actions. Where as absolute liability, established by the case of Winzar 1983, can be voluntary or involuntary actions.

In order for the courts to decide if an offence is one of strict liability, there are four factors they have to consider. But they will always begin with the presumption that mens rea is required to secure a conviction. This was shown by the case of Gammon 1985. The four factors are then used to confirm or ~~the four factors are~~ first if it's a regulatory rebut this presumption.

The first factor is when it is asked if the offence is regulatory or true in nature. True crimes have a stigma attached to them, like rape or manslaughter. Whereas regulatory crimes have little or no stigma attached to them, such as parking offences. If the crime is regulatory in nature it is more likely to be one of strict liability. A case where this factor was used in practice is Sweet v Parsely 1970.

The second factor is wording. The court will look carefully at the wording of the offence in its statute, if there are words such as 'intentionally' or 'knowingly' then it infers the requirement for *mens rea*. If there are no such words it implies *mens rea* isn't required and the offence is one of strict liability. A case where this was used is the case of Woodward 1972, in regards to pollution in pipes leading to a river.

The third factor used to decide if parliament intends an offence to be one of strict liability is social concern. Over time these issues will change, but in general they relate to issues regarding pollution, gambling, alcohol and public safety. Strict liability is attached to these offences in order to promote extra vigilance in society. An example of this in practice is the Shah 1999, where the defendant was convicted of selling lottery tickets to children under 16.

This case, of Shah 1999, also established the legal principle that it only has to be proved that the defendant is responsible for the act or state of affairs, not that he/she is blameworthy.

The final factor courts consider to confirm or rebut the presumption laid out in Gammon 1985, is gravity of punishment. If the offence is serious and carries a big punishment, like for example GBH s. 18 of the offences against the persons act 1861, it's not likely it will be a strict liability offence. Because Parliament didn't intend for it to be. Seen in the case of Callow v Tillstone 1900.

I believe that the criteria used by the courts in deciding whether Parliament intends an offence to be one of strict liability, ~~is~~ are satisfactory. Because they look at all the key points to find out if Parliament's intent was for it to be strict liability. And now from the case of R v K 2001, the courts will presume it isn't unless made clear that there's no mens rea requirement or strongly inferred.

However, I do recognise that there are many flaws. The biggest is that they all, all four factors, solely rely on judge interpretation. This is problematic because different things can mean different things to different people. Also there is a problem in that it could be a source of injustice in our criminal justice system as it is so easy to impose by using these 4 factors, the ~~criteria~~ criteria. *

There have been calls for reform. Especially for Parliament to make clear if they have intended for the offence to be one of strict liability or not. The Law Commission has called for a criminal liability bill (1998) to make this area of the law a lot clearer for the courts.

* Also, because it relies on a judge. The criteria is the same but the results could be ~~inconsistent~~ inconsistent. Because of different interpretations of this criteria.

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This is true for almost all offences.

But offences of strict liability requires no mens rea from the defendant, only the actus needs to be proved.

These offences are usually minor offences like parking offences or regarding hygiene. And offences of strict liability can do not allow the defence of mistake to be raised.

The case of Bushwell 1999 confirmed duress can be a defence to strict liability crimes, giving a presumption that automatism and

Self defence can also be used.

In regards to human rights there have been questions raised whether to be convicted without mens rea is against article 6, right to a fair trial, of the European convention of human rights. But this was denied by the court of appeal in the case of R v G 2008. Because article 6 relates to trial procedures and can not be used to question the substance of the law.

Offences of strict liability are concerned with voluntary actions. Where as absolute liability, established by the case of Winzar 1983, can be voluntary or involuntary actions.

In order for the courts to decide if an offence is one of strict liability, there are four factors they have to consider. But they will always begin with the presumption that mens rea is required to secure a conviction. This was shown by the case of Gammon 1985. The four factors are then used to confirm or rebut this presumption. The four factors are, firstly if it's a regulatory

The first factor is when it is asked if the offence is regulatory or true in nature. True crimes have a stigma attached to them, like rape or manslaughter. Whereas regulatory crimes have little or no stigma attached to them, such as parking offences. If the crime is regulatory in nature it is more likely to be one of strict liability. A case where this factor was used in practice is Sweet v Parsely 1970.

The second factor is wording. The court will look carefully at the wording of the offence in its statute, if there are words such as 'intentionally' or 'knowingly' then it infers the requirement for mens rea. If there are no such words it implies mens rea isn't required and the offence is one of strict liability. A case where this was used is the case of Woodward 1972, in regards to pollution in pipes leading to a river.

The third factor used to decide if parliament intends an offence to be one of strict liability is social concern. Over time these issues will change, but in general they relate to issues regarding pollution, gambling, alcohol and public safety. Strict liability is attached to these offences in order to promote extra vigilance in society. An example of this in practice is the Shah 1999, where the defendant was convicted of selling lottery tickets to children under 16.

This case, of Shah 1999, also established the legal principle that it only has to be proved that the defendant is responsible for the act or state of affairs, not that he/she is blameworthy.

The final factor courts consider to confirm or rebut the presumption laid out in Gammon 1985, is gravity of punishment. If the offence is serious and carries a big punishment, like for example GBH s. 18 of the offences against the persons act 1861, it's not likely it will be a strict liability offence. Because Parliament didn't intend for it to be. Seen in the case of Callow v Tillstone 1900.

I believe that the criteria used by the courts in deciding whether Parliament intends an offence to be one of strict liability, ~~is~~ are satisfactory. Because they look at all the key points to find out if Parliament's intent was for it to be strict liability. And now from the case of ~~R v K~~ 2001, the courts will presume it isn't unless made clear that there's no mens rea requirement or strongly inferred.

However, I do recognise that there are many flaws. The biggest is that they all, all four factors, solely rely on judge interpretation. This is problematic because different things can mean different things to different people. Also there is a problem in that it could be a source of injustice in our criminal justice system as it is so easy to impose by using these 4 factors, the ~~extra~~ criteria. *

There have been calls for reform. Especially for Parliament to make clear if they have intended for the offence to be one of strict liability or not. The Law Commission has called for a criminal liability bill (1998) to make this area of the law a lot clearer for the courts.

* Also, because it relies on a judge. The criteria is the same but the results could be ~~inconsistent~~ inconsistent. Because of different interpretations of this criteria.

8+10+3



21

(3.) A crime is defined as being 'a legal wrong that can be sanctioned by criminal proceedings that may result in punishment' and as 'a ^{violation} ~~the~~ violation of the rights and duties of the community considered as a community'. The general principle of criminal law is 'Actus non Facit reum, nisi mens sit rea', the act is not guilty unless the mind is guilty. The fundamental principle of criminal law is that a crime requires both an Actus reus and a mens rea however there is a ~~single~~ exception to this rule.

The Actus Reus is the Latin term for the physical act, ~~of it~~ or the actual ^{crime} ~~point~~ that has been committed rather than the thought process leading up to the crime. The actus reus consists of conduct, consequence / result, state of affairs or an omission.

A conduct crime is committed simply by doing an act such as the crimes of burglary or theft. A consequence crime happens as a result of someone's act such as the crime of murder. A state of affairs is a combination of circumstances at a given time or a case of being in the wrong place at the wrong time. An omission is committed when a person fails to act or complete an action is such that it justifies criminality, such as the case of R v Stone & Dobson (1983).

The second element of the crime is the mens rea. This is the Latin term for guilty mind or criminal intent. It can be specific / direct intent such as murder or basic / oblique intent such as speeding. The mens rea for murder was established in the case of R v Stone (1947) where it was ~~decided~~ ^{decided} the mens rea for murder was malice aforethought. This meant ~~the~~ the court had to ~~establish~~ ^{establish} ~~it~~ a ~~per~~ intent to kill or intent to cause GBH. This had been increased to the third element of reasonable foresight under Smith (1961) but returned to the

original two elements during the case of Maroon v Shanley (1986). R v Woollin (1998) ^{backs this up.} ~~backs this up.~~

The rules regarding negligence were set out in the case of Donoghue v Stevenson (1932) where it was established that there was a contractual relationship and harm as a result of negligence. As a result of this case we now have the third element. ^{There} ~~There~~ now has to be a duty of care, a ^{breach} ~~breach~~ of the duty and a risk of serious harm.

Gross negligence is another aspect of mens rea usually used in cases of medical negligence. However even if a breach of duty is established it may not result in criminal liability, ^{even if the result is death.} Such as the case of R v Adomako (1995).

An important aspect of mens rea is recklessness.

Recklessness is defined as the ^{taking} ~~taking~~ of an unjustifiable ^{risk} ~~risk~~ such as the case of R v Cunningham (1957), where it was established the ~~test~~

The test for recklessness was objective i.e., what would the reasonable person do. ^{This took another} ~~the~~ ^{he} in the case of D.P.P v Caldwell (1982) where it was established that for offences against the person, ~~the~~ Cunningham and objective would remain but for criminal damage the test would be Caldwell. This was because Cunningham was too narrow for the Criminal Damage Act. The law took a further turn in the case of

D.P.P v Lawrence (1982) which added the word 'serious' ^{under} ~~under~~ to the word 'obvious' ~~from~~ ^{under} Caldwell, this meant the courts ~~now~~ had to establish if the act was 'obvious' under Caldwell and 'serious' under Lawrence.

In the case of R v Reid (1990) it was accepted the Caldwell, ^{Lawrence} ~~Lawrence~~ test was ^{harsh} ~~harsh~~ and too difficult for juries to understand. Lawrence was ^{eventually} ~~eventually~~ ^{abolished} ~~abolished~~ by the Road Traffic Act 1990.

In the case of R v A and another (2003), the Court of Appeal felt ^{bound} ~~bound~~ by the House of Lords

decision in Caldwell. On appeal to the House of Lords, ~~the app~~ the decision in Caldwell was 'expressly and dramatically' ^{criticised} ~~criticised~~ by Lord Goff. The House stated that Caldwell was ~~criticised~~ ^{criticised} by Lord Goff, just as it had to understand and it affected their sense of justice. The House stated in the case of Caldwell 'the law took a ~~wrong turn~~ ^{turn}'. Once Caldwell had been criticised, the house ~~stated~~ ^{avoided} the subjective definition of recklessness given in the Draft Criminal Code (1989). This stated that a person was reckless with ~~respect~~ ^{respect} to a circumstance where he is ~~aware~~ ^{aware} of ~~the~~ ^{the} risk, but goes on to take it when it would be unreasonable to do so.

Although the general principle is that a law requires both an actus reus and mens rea, strict liability is the ^{exception} ~~exception~~ to this rule. Strict liability offences are offences committed without the need for mens rea.

Strict liability is largely ^{statutory} ~~statutory~~ in nature and generally ^{Parliament} ~~Parliament~~ indicates liability is strict. They can also be regulatory in nature such as road traffic regulations (parking on yellow lines), food hygiene regulations and health and safety regulations (sewage disposal). There are also examples of common law strict liability with public nuisance and criminal libel. An example of criminal libel is the case of Lemon v. Newsgroup Newspapers Ltd (1978).

The courts decide whether an offence is one of strict liability in two ways, the presumption in ^{favor} ~~favor~~ of strict liability and the presumption in favor of mens rea.

The first type is the presumption in favor of ^{strict} ~~strict~~ liability. It is stated that ^{if} ~~if~~ ^{Parliament} ~~Parliament~~ has used a word / phrase (mens rea words) out of an act, the courts are to assume it is a ^{matter} ~~matter~~ of strict liability. The case of R v. Prince (1975) is an example of this, where it was held that the

Each of mens rea words indicated that it was a matter of strict liability. The cases of *Cundy v Lezary* (1889) and *Callow v Tillstone* (1900) back up the presumption in favor of strict liability.

The second option ^{open} ~~is the~~ to the courts is the presumption in favor of mens rea. An example of this is the case of *Sweet v Parsley* (1970). Sweet was convicted in first instance under the Prince ruling however had her conviction overturned by the House of Lords as it was held it was a case of strict liability.

Examples of other cases that back up this presumption are the cases of *D.P.P v B* (2000) and the case of *R v U* (2001).

The House of Lords held that where a case is a matter of a serious offence, the courts were to assume a need for mens rea.

In the case of *Crabtree* it was held that the ~~strong~~ presumption in favor of mens rea was weaker for regulatory offences than for serious offences.

A regulatory offence is an offence in which no moral issue arises and the penalty is relatively small. As a result of the cases of *Sweet*, *B* and *U*, Prince has little effect on serious cases and is now mainly used for regulatory offences.

The courts must look at whether an issue of morality arises, if the matter is one of social concern such as the case of *Marran Ltd v Shah* (1999) and issues that are sections of the Act must be read together, not separately.

There are arguments both in favor and against strict liability. An argument for strict liability is the promotion of care. A high standard of care means less danger to the public. Another advantage is that it is a strong deterrent. Many companies are under the control of specific bodies such as the Health and

Safely inspectorate. This puts more pressure on companies to comply within the rules. Another advantage is that there is limited threat to liberty, as ~~stated they are generally~~ ~~law~~ ~~see~~ it is stated that strict liability is only available to crimes ~~that~~ that are not serious. Another advantage is that argument in favour is that it can sometimes be difficult to establish a mens rea, which is especially true in the case of big companies.

There are some arguments against however. It is argued that it can result in injustice, as it is sometimes hard to establish mens rea. It is also argued that it is inconsistent as strict liability does nothing to prevent the idea that more cases be created alike.

In conclusion, the courts are able to decide whether parliament intends or come to be one of strict liability through the use of the presumption in favour of strict liability and the presumption in favour of mens rea. By looking at each of these in turn the courts are able to come to a conclusion that will enable them to impose ~~on~~ the correct punishment.

The police can raise objections to the court granting bail based on the criteria set out in the Criminal Justice and Public Order Act (1994).

(extra information added in second booklet to this question).

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Losing
focus here
Focus is
on AR/MR,
Not S.L

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N/R.

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Cases?

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Good

Explain
relevance
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Examples of other cases that back up this presumption are the cases of *D.P.P v B* (2000) and the case of *R v U* (2001).

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EVAL

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Good

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There are some arguments against however. It is argued that it can result in injustice, as it is sometimes hard to establish mens rea. It is also argued that it is inconsistent as strict liability does nothing to prevent the idea that more cases be created alike.

In conclusion, the courts are able to decide whether parliament intends a crime to be one of strict liability through the use of the presumption in favour of strict liability and the presumption in favour of mens rea.

By looking at each of these in turn the courts are able to come to a conclusion as to what will enable them to impose ~~on~~ the correct punishment.

The police can raise objections to the court granting bail based on the criteria set out in the Criminal Justice and Public Order Act (1994).

(extra information added in second booklet to this question).

EVAL

Ap1: 7

Ap2: 11

Ap3: 3

21

SECTION B

Answer one question from this section.

5. Study the text below and answer the questions based on it.

“A woman from Abergavenny whose bail conditions banned her from entering every shop in England and Wales admitted breaching them after being captured on CCTV entering a Tesco store. In mitigation, her solicitor told Cwmbran magistrates court that the defendant had gone into town with her sister, and that her sister had left her outside the store in charge of one of her children, who ran into the store. The breach occurred when the defendant entered the store in pursuit of the child. Her solicitor described the bail condition as an odd condition which could cause somebody to starve to death. The court renewed the defendant’s bail upon the same conditions, with the added condition that she must sleep at her sister’s address.”

Adapted from the South Wales Argus, 4th October 2012.

- (a) Explain the powers of courts to grant conditional bail.

[11]

5A. Bail is a release from custody pending ~~trial~~ trial. There are two types of bail, Court bail and police bail.

Bail is under the ~~1975~~ 1975 bail act which enables the courts to grant bail while pending trial. Before allowing bail the courts must determine whether ~~the~~ the defendant passes the no real prospect of custody test which came about from Legal Aid Sentencing and punishment of offenders (LASPO) 2012.

The courts had the ability to obtain the defendant's passport to prevent them fleeing the country. they can also set conditions for the defendant to follow, for example, live at a certain address, report to a police station, and so on. If the defendant breaches any of their bail conditions the courts can issue fail to appear warrants.

These warrants enable the police to go to the home of the defendant or to their place of work to arrest the defendant for not turning up to court. These are also known as the operation turn-up.

5A. Bail is a release from custody pending ~~trial~~ trial. There are two types of bail, Court ~~bail~~ and police bail.

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5+1=6.



5a) The concept behind bail is that you are free, and not reprimanded in custody, until the next stage or date of your trial. This upholds article 5, right to liberty, of the European convention of human rights. Bail can be issued to a defendant at any time between charge and their trial, where they will be charged and sentenced or acquitted.

The main area of law regarding bail is contained within the bail act 1976. s.4 of the bail act 1976, contains the presumption that certain defendants will receive bail, and the court follows this when granting bail. The presumption in section four includes: all defendant's prior to conviction, defendant's that have been ~~sentenced~~ convicted but cases have been adjourned ~~to~~ to obtain pre sentence reports and those who are at court as a result of breaching community sentences. The presumption makes clear that it does not include those defendants who are appealing their sentence or conviction, or defendants who have been committed to the crown court for sentencing by the magistrates court.

When the court is deciding whether to grant bail to the defendant in question, they will take into account a number of factors. These factors will include: the seriousness of the offence; the character of the defendant; community ties the defendant may have; the defendant's previous record with surrendering to bail; ~~the~~ strength of evidence. The CPS will take into account and consideration the above factors ~~for~~ when looking at a case where the court has refused the defendant bail.

Section 27 of the criminal justice and public order act 1994 has given the court the power to grant bail with conditions. These conditions can be anything from electronic monitoring, to imposing a curfew on the defendant. The court when granting bail with conditions, can impose conditions in addition to the ones above. These can be conditions such as not entering specific areas ~~off~~ or properties like ~~displayed~~ in the case of the woman in the above scenario, or surrendering passports and remaining at a stated residence for the duration of the bail the defendant is granted.

When the defendant has been granted bail ~~by~~ the courts they have to turn up for court on the date specified for their trial, or for sentencing if the trial was adjourned ~~for~~ to obtain pre sentence reports. The defendant's also ~~have to~~ have to keep and comply with any bail conditions the court has imposed. *

The court can impose conditions if necessary to prevent them from committing a crime whilst out on bail, to stop them interfering with a witness, or to stop them absconding. If the defendant in question is under 18, so therefore classed as a youth, any bail conditions could be used in order to protect the defendant, the main concern is the youth defendant's welfare.

Conditions that are attached to bail can also be present to protect the defendant.

As previously mentioned, defendants have to comply with bail conditions. Otherwise the court has the power to issue police to arrest any defendant who is suspected of ~~not~~ being in breach of bail conditions. They are able to make the arrest without needing a warrant.

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The court can impose conditions if necessary to prevent them from committing a crime whilst out on bail, to stop them interfering with a witness, or to stop them absconding. If the defendant in question is under 18, so therefore classed as a youth, any bail conditions could be used in order to protect the defendant, the main concern is the youth defendant's welfare. Conditions that are attached to bail can also be present to protect the defendant.

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7+1

8.

(5).

A.) Bail is the right of a person suspected of a criminal offence to be released from charge ~~while~~ pending further enquiries or until trial while remaining under arrest. This is a result of the European Convention on human rights 1950, article 5 the right to liberty. It is linked with the golden rule of criminal justice 'innocent until proven guilty'. The Bail Act (1976) makes bail a statutory right to everybody, regardless of the crime of which they are suspected.

A suspect may wait bail as it allows them to carry on with their normal lives, avoid cashiers in removal vans and prepare their defence.

There are two types of bail, police bail and court bail. The Criminal Justice and Public Order Act (1994) grants the police the subject to grant bail subject to conditions such as surrendering passport or reporting to a police station.

The police can also refuse to give a suspect bail if the suspect is likely to breach their bail conditions or abscond or reoffend.

If the police have refused bail, the suspect is brought before the magistrate court within 24 hours. Appealing to the magistrates for bail is the second opportunity for the suspect to be granted bail. When the magistrates consider bail, they start from the viewpoint that everyone is entitled to bail. This is the result of the Bail Act 1976 where bail is a statutory right.

The magistrates, when considering bail, will take into account a number of factors. First they will consider any community ties and the character and antecedents of the suspect. This could mean any community work or clubs or associations that the suspect is a part of. By looking at the character of the defendant the magistrates are able to find out about the genuine nature of the defendant and whether or not granting them bail is a good idea.

The mag court will take into account any previous bail record the suspect may have. If a suspect has previously been granted bail and they have breached their bail conditions in the past, the court may decide not to grant the suspect bail. The court will consider the seriousness of the offence the suspect has committed. Despite the fact as a

result of the Bail Act 1967 any suspect is entitled to bail regardless of the crime, the seriousness of the crime will have a big effect. In a case of murder, a suspect is less likely to be granted bail not only because of the seriousness of the crime but for their own safety.

Lastly the court will consider the strength of the evidence against the witness. This is so that the CPS will be able to inform them of if this is so that they investigate as part of the evidential test.

The courts will have the power to place a suspect in a bail hostel if they have been refused bail.

If a suspect does not have a permanent address, the court has the power to grant the suspect bail provided they live at a bail hostel. The police can do not have the power to do this.

(5).

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A suspect may not bail as it allows him to carry on with his normal lives, avoid cashiers in remand wings and prepare his defence.


There are two types of bail, police bail and court bail. The Criminal Justice and Public Order Act (1994) grants the police the subject to grant bail subject to conditions such as surrendering passport or reporting to a police station. Good

The police can also refuse to give a suspect bail if the suspect is likely to breach his bail conditions or abscond or reoffend.

If the police have refused bail, the suspect is brought before the magistrate court within 24 hours. Appealing to the magistrates for bail is the second opportunity for the suspect to be granted bail. When the magistrates consider bail, they start from the viewpoint that everyone is entitled to bail. This is the result of the Bail Act 1976 where bail is a statutory right.

The magistrates, when considering bail, will take into account a number of factors. First they will consider any community ties and the character and antecedents of the suspect. This could mean any community work or clubs or associations that the suspect is a part of. By looking at the character of the defendant the magistrates are able to find out about the genuine nature of the defendant and whether or not granting him bail is a good idea.

The mag court will also take into account any previous bail record the suspect may have. If a suspect has previously been granted bail and they have breached their bail conditions in the past, the court may decide not to grant the suspect bail. The court will consider the seriousness of the offence the suspect has committed. Despite the fact as a

result of the Bail Act 1967 any suspect is entitled to bail regardless of the crime, the seriousness of the crime will have a big effect. In a case of murder, a suspect is less likely to be granted bail not only because of the seriousness of the crime but for their own safety. 

Lastly the court will consider the strength of the evidence against the witness. This is so that the CPS will be able to inform them of as the CPS is calling them to investigate as part of the evidential test.

The courts will have the power to place a suspect in a bail hostel if they have been refused bail.

If a suspect does not have a permanent address, the court has the power to grant the suspect bail provided they live at a bail hostel. The police cannot do not have the power to do this.

7+1=8

SECTION B

Answer one question from this section.

5. Study the text below and answer the questions based on it.

“A woman from Abergavenny whose bail conditions banned her from entering every shop in England and Wales admitted breaching them after being captured on CCTV entering a Tesco store. In mitigation, her solicitor told Cwmbran magistrates court that the defendant had gone into town with her sister, and that her sister had left her outside the store in charge of one of her children, who ran into the store. The breach occurred when the defendant entered the store in pursuit of the child. Her solicitor described the bail condition as an odd condition which could cause somebody to starve to death. The court renewed the defendant’s bail upon the same conditions, with the added condition that she must sleep at her sister’s address.”

Adapted from the South Wales Argus, 4th October 2012.

- (b) Evaluate the importance of bail in the criminal justice system.

[14]

5b) Bail is something of significant importance in our criminal justice system we have in place here in England and Wales. This is for a variety of reasons, that I will go on to discuss.

The first is because it upholds Article 5, right to liberty, of ~~the~~ the European convention of human rights. This is important because it means that we are able to be free until the next stage of the trial process. It also protects the key principle of innocent until proven guilty. Because we are not in custody when there is doubt about our criminal liability.

Bail is really important for protection. It protects people in society from highly dangerous criminals, because there is a widely held presumption that if a defendant poses a high risk then it is unlikely that they will be granted bail. This allows society to feel protected and have ease that this dangerous criminal is not allowed to cause more distress within society. Showing that bail is an important aspect because we have public support of it.

5b) (continued from other booklet).

When bail is refused to a defendant it can be because of a variety of reasons. In police bail, s.38 of the Police and Criminal Evidence Act 1984 states that it is the custody officer who will decide if the defendant is granted or refused bail. Generally the custody officer will grant bail, but if ^{or he} she has reasonable grounds to believe the following things then they will refuse bail. The following things are that the defendant may interfere with a witness, the defendant will abscond, there is doubt about the defendant's name or address, there is worry he won't surrender to bail or he might commit another crime whilst on bail.

For court bail the court must have substantial grounds not to ~~refuse~~ grant bail. These can be fear defendant may commit another crime whilst on bail, a witness may be interfered with or that they won't surrender to bail.

These factors that are in place to allow the refusal of bail makes bail even more important in our criminal justice system. Because they provide safeguards for everyone. In that there are certain people who can't be trusted to be granted bail so are a risk if not reprimanded in custody.

S.4 of the Bail Act 1976 states the presumption that most people (defendants) will be granted bail. It's a presumption that includes all defendants before conviction, all defendants who have been charged but trial has been adjourned to obtain pre-sentence reports and defendants who are at court for a breach of a community sentence.

The presumption doesn't include defendants who are appealing against sentence or conviction, or those who have been committed to the crown court for sentencing by the magistrates court.

This adds to bail's importance because most people will fall into the categories in the presumption in S.4 of the Bail act 1976, protecting the principle of innocent until proven guilty. And those who are appealing have already been convicted and sentenced, meaning the view of the court is that they should be in prison so it allows society to be protected again.

Recent reforms make bail important too. Because firstly we have the concept of street bail, brought about by S.4 of the criminal justice act 2003.

This allows police to grant bail without going to the police station and filing out paperwork.

~~Thus~~ Thus allowing the police to concentrate on more serious crimes as they save time with enforcing street bail.

S.19 of the criminal justice act 2003 now allows the prosecution to appeal, when they believe the defendant should not have been granted bail.

Allowing for further and more detail consideration of bail which is important when we are unsure of defendant's involvement and criminal liability.

The law regarding granting of bail to murders has also been reformed, by the criminal justice and public order act 1994. So now in exceptional circumstances murders will be given bail, seen in *Calder v UK* 2000. This occurred due to the old law being in breach of the European convention of human rights, article two. Showing bail is important in keeping a

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In conclusion, there are a number of ways that
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11,

19

(b) The importance of bail in the criminal justice system cannot be questioned. While upholding the rights of the person who has been charged of an offence, it also allows the public to remain safe. Bail allows the police extra time to build up cases against the defendant and allows them to thoroughly investigate and consider evidence. This is extremely helpful as it makes sure the ~~person~~ correct person is prosecuted and prevents miscarriages of justice.

Bail is the right of a person suspected of a criminal offence to be released pending further enquiries or until trial while remaining under arrest. This is a result of article 5 of the European Convention on human rights, 1950, the right to liberty. It is linked with the golden rule of criminal justice 'innocent until proven guilty'. The Bail Act 1976 makes bail a statutory right for all suspects regardless of the crime of which they are suspected.

Bail allows a person to carry on with their normal lives and avoid conditions in remand wings. It gives the defendant a chance to prepare their defence as they also have occasional access to a lawyer while in custody.

There are two types of bail - police bail and court bail.

Police bail can be divided into 3 categories, bail pending further enquiries, bail following charge and bail following arrest under a warrant.

Bail pending further enquiries is defined under s.27 of the ~~Police~~ Police and Criminal Evidence Act 1984. The Section states that a defendant will be granted bail on the condition that they return to the station at the appointed day and time.

This is useful as the police can only hold a suspect in custody for a total of 96 hours.

This condition gives the police valuable time to gather more evidence or to arrange an ID parade.

Bail following charge will be allowed to a suspect after they have been charged, provided they prove to be a good 'bail risk'.

Bail following arrest under a warrant is defined under s.1 of the Magistrates Court Act 1980.

This Section states that if a ~~suspect~~ the police want

to arrest someone by use of a warrant, they must apply to the magistrates court for the warrant. When considering the warrant, the magistrates will want to know what the police intend to do about bail. If they indicate that they want bail, the magistrates will endorse the back of the warrant. This is also known as 'backing for bail'.

The Criminal Justice Act 2003 introduced the concept of street bail. Street bail means that if an officer stops a suspect in the street and the suspect is known to the defendant, he can bail him there and then to reappear at the station within 24 hours. This is a quick option of bail and means that police can carry on with their job instead of having to spend time dealing with minor offences.

The Criminal Justice and Public Order Act (1994) gave the police the power to grant bail subject to conditions. This might mean that the police will require a suspect to surrender their passport, live at a specified address, obey a curfew, stay away from specific people or places or report to a police station at appointed days and times. These conditions ensure that the suspect sticks to their bail conditions and reduces the chance of other offences being committed. Based on the text set on the question paper this is obviously what has happened to the woman from Aberystwyth. Criteria from her bail restrictions obviously ensures she stays away from shops to prevent her reoffending.

There are a number of reasons why the court may refuse a person bail. A person is likely to be refused bail if they are likely to abscond, commit other offences, interfere with witnesses or obstruct the course of justice or for their own safety. These restrictions place great emphasis on the fact that

bail will only be refused under specific circumstances, reflecting the fact that the rights of the suspect are valued as much as public safety. This reinforces the idea that bail is an extremely important element of a system as it is important that there is a fair and non biased force authority to ensure basic human rights are upheld and that the principles of criminal justice are respected.

The second type of bail is bail through the courts. If the police have refused bail under the bail criteria, the suspect is to be brought before magistrates within 24 hours.

Court bail is the second type and a opportunity for a suspect to be granted bail. The magistrates start from the view that everybody is entitled to bail as a result of the Bail Act 1976. When considering bail the magistrates will take into account the character, antecedents and any community ties of the suspect, any previous bail record, the seriousness of the crime and the strength of evidence against the suspect. The police can raise objections to this under the criteria set out in the Criminal Justice and Public Order Act 1994. The magistrates will take into account the reasons why the police refused the suspect bail in the first place before coming to their own conclusion. This may be the same reasons that the police refused bail or it may be based on something completely different.

The powers of bail is also important when it comes to youth justice. Young people are entitled to bail the same as adults and they may be refused bail based on the same conditions. Young people who have been refused bail however can only be kept in local authority accommodation if they are over 16 years old, have committed a violent or sexual offence or have previously breached bail conditions in the past.

This is reflective of the fact that all suspects are

entitled to bail regardless of crime or age.

Although the ^{idea} ~~concept~~ of paying money to the court to secure bail is not practised in the UK, the concept does have a place. A defendant who is known to the court and is acceptable to the court can act as a surety on behalf of the defendant. The surety can choose to pay up front or not up front a sum of money called a recognisance to secure the defendant's attendance in court. The surety must prove he did all he could to prevent the defendant breaching his bail conditions. If the defendant does breach conditions or not turn up to court, the surety may have to go to court themselves.

The importance of bail in the criminal justice system cannot be denied. Bail is a powerful tool used not only to the suspect's advantage but to the police. The bail decision may be first and foremost to secure the rights of the defendant but it also grants the police ~~some~~ precious time to build a case and gather evidence.

The bail decision is an exceedingly important one. The decision affects not only the rights of the suspect but the rights of the public so it's not a decision to be taken lightly. It is very important that people have a fair opportunity as the results could be loss of liberty. This ~~is~~ makes bail one of the most important aspects of the criminal justice system.

(b) The importance of bail in the criminal justice system cannot be questioned. While upholding the rights of the person who has been charged of an offence, it also allows the public to remain safe. Bail allows the police extra time to build up cases against the defendant and allows them to thoroughly investigate and consider evidence. This is extremely helpful as it makes sure the ~~police~~ correct person is prosecuted and prevents miscarriages of justice.

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EVAL

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11 + 1 = 12

Have to credit
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20