Criminal Law for OCR AS

Answers to self-test questions and tasks

Chapter 1 The Nature of Law

Task 1

I hope you read the text above this task, if so, it should have been easy.

Whether the decision achieved justice is a matter of opinion. Some would say it was not just because they all consented. Others might argue that violence is wrong even if with consent, so the decision was just. As regards a legal opinion of justice, under the natural law view of justice the decision was correct as the behaviour was immoral. A positivist would agree with the decision being based on the rule not to cause intentional serious harm.

Morality played a role because one judge said that society itself was harmed by such behaviour, even if it happened in private. Therefore the law enforced morality by making the act illegal.

This decision is also a form of social control. The law has acted to control this type of behaviour and to prevent it happening in the future. The court balanced the interests of society (to be protected from acts of violence wherever they occur) against those of the people involved (to do what they want in private without the law interfering). The public interest was seen as more important so they were found guilty.

Task 2

Lord Bingham meant that no-one should be above the law, echoing Dr Fuller’s comments centuries earlier. The second part of this is a matter of opinion. Most would probably think that it should be part of the rule of law because it emphasises the fact that the rule of law should include equality. You could of course point out that it does not always apply in practice, as not everyone has equal access to the funds needed to obtain the law’s protection in court.

Self-test questions

1. Two sources of law are statute law and common law (also European law and Human Rights law)
2. Three differences between civil and criminal law are any of those given in the two lists under the headings ‘criminal’ and ‘civil’ law
3. The core principle of the rule of law is that no-one is above the law, including those who make it
4. The term for guilty conduct is *actus reus*
5. The term for a guilty mind is *mens rea*

Chapter 2 Actus Reus

Task 3

It could be argued in *Miller* that the dropping of the cigarette was a continuing act so that when he did nothing about the fire he had both *actus reus* and *mens rea*. The continuing act theory is actually the principle that the CA used, but the HL preferred the principle that if you create a dangerous situation you have a duty to do something about it, so can be liable for an omission.

Tasks 4 & 5

There is no guide for task 4, and the answer for task 5 is in the book.

Task 6
Your diagram should include a case such as Leicester v Pearson or Winzar for voluntary act. Any of the omissions cases such as Pittwood; White for the ‘but for’ test and Cheshire and Roberts for legal causation.

Self-test questions

1. The ‘3 Cs’ which may be included in the actus reus of a crime are
   - conduct
   - circumstances
   - consequences

2. The court found liability on the basis that it was a ‘continuing act’.

3. Two examples of when an omission can result in criminal liability are
   - when there is a contractual duty
   - when D created a dangerous situation

4. The thin skull rule is that D takes the victim as he or she finds them.

5. The quote at the beginning of the Chapter came from Pittwood.

Chapter 3 Mens Rea

Task 7

There is no guide for Task 7

Self-test questions

1. The quote at the beginning of this Chapter came from Woollin.

2. The two types of intent are direct and indirect.

3. The Nedrick test for oblique intent is
   - was death or serious bodily harm a virtual certainty?
   - did the defendant appreciate that such was the case?

4. Recklessness is now a subjective test as decided in Gemmell & Richards.

5. The principle in Latimer is that malice (mens rea) can be transferred.

Chapter 4 Strict liability

Task 8

You may have chosen other examples but here is one for each side.

It is unfair to convict D of a criminal offence without proving mens rea

It is unfair as there is no fault element, which should be a requirement of any offence which can result in a criminal conviction and maybe a prison sentence. That is why the HL in Sweet v Parsley refused to accept that the offence was one of strict liability and held this could only be the case if the Act specifically stated that it was.

It makes people more careful

It is fair to convict without proof of fault in offences where there is a risk to public health because if people know they may be convicted they will be extra careful, not only e.g., in instructing their staff.
properly but in checking that their instructions are carried out. An example where this seems fair is *Meah v Roberts*. However the case of *Shah* seems less fair as there was not a risk to health.

The other part of the task was aimed at getting you to think about the justice of imposing strict liability. There is no guide as it is purely a matter of opinion.

**Task 9**

**Strict liability** – where there is no need to prove mens rea  
**Absolute liability** – where there is no need to prove actus reus or mens rea  
**Statutory nature** – coming from an Act of Parliament  
**Social utility** – something that benefits society  
**Public policy** – rules that protect the public as a whole  
**Regulatory offences** – ones that regulate about how people should behave regarding issues like pollution or health and safety and which are not truly criminal in nature

**Self-test questions**

1. Three areas of social concern where strict liability applies are pollution, the sale of food and public health.
2. Sweet v Parsley established that there is a presumption of *mens rea* in most criminal offences where the Act is silent on the matter.
3. The guidelines set out for imposing strict liability where the Act is silent were set out in *Gammon (Hong Kong) Ltd v AG of HK 1985*.
4. For reasons for and against imposing strict liability, choose 3 from the list under ‘Arguments for’ and 3 from the list under ‘Arguments against’.

**Chapter 5 Assault and Battery**

**Task 10**

Applying the rules on intent and recklessness to battery, the prosecution must prove the following

- for direct intent, that it was D’s aim or purpose to apply unlawful force.
- for indirect intent, that the application of force was a virtual certainty and D appreciated this.
- for recklessness, that D recognises a risk that unlawful force will be applied and goes ahead and takes that risk.

**Self-test questions**

1. The current definition of assault is to cause someone to apprehend immediate and unlawful personal violence.
2. Words alone can constitute an assault as shown in *Wilson*.
3. The *mens rea* for assault is intention or recklessness (to cause someone to apprehend immediate and unlawful personal violence).
4. A battery does not have to be hostile as seen in *Thomas*.
5. Consent and self-defence may make a battery lawful.

**Chapter 6 ABH**

**Task 11**
In Roberts, the action by the victim did not break the chain of causation because it was foreseeable. The type of action which might do so is ‘something daft’, as was decided by the CA in Williams & Davis.

**Self-test questions**

1. The quote at the beginning of this Chapter came from Ireland.
2. The three parts to the *actus reus* are
   - An assault (conduct)
   - Occasioning (causation)
   - Actual bodily harm (consequence)
3. *Mens rea* is needed for the assault, i.e. the conduct.
4. According to Roberts, something unforeseeable or daft could break the chain of causation.
5. The HL finally confirmed that the principle in Roberts was correct in Savage and Parmenter.

**Chapter 7 GBH**

**Task 12**

The most appropriate offence is wounding under s 20 OAPA. Wounding requires both layers of the skin to be broken – Eisenhower. This is the case as Steve suffered a ‘deep cut’.

Causation needs to be considered. It can be said that ‘but for’ Mick’s act in throwing the brick Steve would not have fallen so would not have suffered harm, so factual causation is proved – White. Legal causation is based on having a ‘chain of causation’ between the act and the result. Mick’s act in throwing the brick may not have directly caused the harm, but Steve falling off his bike and there being a sharp stone on a country lane are both foreseeable so will not break the chain of causation – Roberts.

Recklessness as regards ‘some harm’ is enough. There is no need to intend or be reckless as to serious harm for s 20 – Mowatt. By throwing a brick at someone Mick can be said to have at least been reckless as to causing some harm.

There is a possibility of s 18 if Mick intended serious harm (Parmenter). However, s 20 seems the most appropriate and will be easier to prove.

NB: It will not be s 47 ABH as it is a ‘deep cut’ needing ‘several stitches’ so there is no need to discuss this. For s 18 and s 20 there is no need for a prior assault or battery so leave these out too.

**Self-test questions**

1. ‘Wound’ has been interpreted as any puncture of the skin.
2. ‘Grievous bodily harm’ has been interpreted as serious harm.
3. The cases which support the answers to the above two questions are C v Eisenhower and Saunders.
4. The difference in the *mens rea* between s 20 and s 18 is that for s 20 it is intent or subjective recklessness as to some harm and for s 18, it is intent (only) as to serious harm.
5. The maximum sentences for s 20 and s 18 respectively are 5 years and life.

**Summary and evaluation of the non-fatal offences**
Task 13
The principles match the cases as follows

<table>
<thead>
<tr>
<th>Principle</th>
<th>Case</th>
</tr>
</thead>
<tbody>
<tr>
<td>Silence may be enough for an assault</td>
<td>Ireland 1996</td>
</tr>
<tr>
<td>Grievous means really serious harm</td>
<td>Smith 1961</td>
</tr>
<tr>
<td>Words may be enough for an assault</td>
<td>Wilson 1955</td>
</tr>
<tr>
<td>A battery can be via another person</td>
<td>Haystead 2000</td>
</tr>
<tr>
<td>Actual bodily harm is anything that causes personal discomfort</td>
<td>Miller 1954</td>
</tr>
<tr>
<td>Mere emotions such as fear, distress or panic are not enough for actual bodily harm</td>
<td>Chan-Fook 1994</td>
</tr>
<tr>
<td>Wound means an open cut</td>
<td>C v Eisenhower 1984</td>
</tr>
</tbody>
</table>

Task 14 examination practice

Question 1 (A01 10 marks)

The first step in all civil cases is to attempt to negotiate. It is expensive to take a case to court and negotiation may avoid the necessity. Sometimes the people involved in the case will do this directly; the alternative is to negotiate through a solicitor. It may be that the parties to the case will try to negotiate but won’t succeed in reaching an agreement. They may then employ a solicitor and at that point the solicitors may open more formal negotiations. They may have a better chance of success as solicitors will have more experience in this. Before the solicitors start to negotiate a letter before action is issued by the claimant’s solicitor. This letter states what will be in the claim if the claimant takes the matter to court. The idea is to be clear about what is wanted in order to be able to reach a settlement at this stage without going to court. Negotiation is part of the ‘pre-action protocol’. Negotiation is quite an informal process because there is no fixed procedure or particular rules. The two sides will negotiate with each other (or their solicitors will) either by letter or through a meeting, but there are no time limits or other constraints. If they reach a compromise they can ‘settle out of court’ and the claimant is paid the agreed amount and that ends the matter. However, sometimes the claimant goes ahead with the preliminary stages of making a claim while negotiations continue. This means negotiations sometimes continue right up until the case is due to be heard. If that is the case, the attempt at negotiation hasn’t saved much time, although it does save the cost and time of the court case itself.

Another form of alternative dispute resolution is mediation. This is a normal procedure in many cases and the court will often refer the matter to mediation before hearing the case. It is similar to negotiation but a little more formal because it involves a third party. Although mediation is not compulsory there are strong pressures on the parties to try it. In most family cases mediation must at least be considered. It was to be made compulsory under the Family Law Act but the provision never became law, so it is still a matter of choice. However, in most divorce cases the couple must attend a Mediation Information Assessment Meeting before going to court. This is a preliminary meeting giving information about mediation and how it works.
Mediation involves a third person helping the parties to reach an agreement without going to court. This person is impartial and hears what both sides have to say and then tries to get them to compromise. The people involved may meet with the mediator or the discussions may be separate. This would be more suitable where there is an element of hostility. It would be better in such cases for the people to talk separately with the mediator and not to meet. It is more likely to keep things calm and result in a settlement. The mediator has to be paid by the parties, except in the case of a small claim where there is a free service offered by the court.

Both these alternative forms of dispute resolution aim to keep matters out of the legal system, although it is likely that any form of compensatory settlement may be smaller than that made by a judge in court.

Question 2 (A01 10 marks)

In the civil courts, claims are allocated onto different tracks. The first track is the small claims track and cases on this track are heard in a special room in the county court. The maximum claim for this track is £10,000, and in personal injury cases it is £1,000. A district judge presides over the case which is heard in private rather than the usual open court. The advantage of this would be that it is a much quicker and cheaper process than a full court hearing.

The next track is the fast track and this deals with claims between £10,000 and £25,000 and personal injury claims over £1,000. Cases on this track will start in the county court, again with a district judge. There is a strict time-table set by the judge so that the case is dealt with speedily and efficiently, and costs are limited, which is an advantage.

The third track is the multi-track and all cases over £25,000 are allocated to this track. Cases on this track will start in the High Court. Again, the judge will manage the case and set a time-table, sometimes following a case management meeting. Although on this track the judge will still manage the case and try to keep to a timetable, the disadvantage is that court costs in the High Court are higher. Also, if the case is complex the lawyer’s fees and costs for expert witnesses will be greater.

Although cases on the fast track start in the county court and cases on the multi-track start in the High Court there is a provision in the Civil Procedure Rules for the case to be moved up a track if it is very complex or down a track if it is relatively simple. This is a good thing because it means some simple cases can be heard in the county court even if the amount involved is quite high. Similarly, a complex case involving a relatively small amount of money may be heard in the High Court.

Overall, the track system makes sense because the simpler the case the lower the costs. The flexibility provided by the Civil Procedure Rules is a clear advantage because the case will go to the court which is most appropriate and this will not be based solely on the value of the claim.

Question 3 (A01 10 marks)

The role of the judge is to direct the jury on the law and the role of the jury is to make a decision based on the evidence. This means there is a partnership between the judge and the jury which provides a balance between legal expertise and common-sense judgments.

Jurors are between the ages of 18 and 75 and must have been resident in the UK for a period of at least five years since the age of 13. Jurors must also be on the electoral register for local or national elections. Some people are disqualified from serving on a jury. A person sentenced to a lengthy period of imprisonment is disqualified for life. In the case of a lesser prison sentence there is a ten-year disqualification. At one time the police and lawyers could not serve on a jury but this was abolished under the Criminal Justice Act 2003. Jurors are selected at random from the electoral register so this should mean that it represents a cross-section of society.

When the jury comes into court each member is sworn in. There is a right to challenge jurors, e.g., if one is known to the defendant or to a witness. The jury listen to all the evidence during the trial,
which can last for several days or even weeks. It is the job of the jury to listen to the evidence and then come to a decision on the guilt or innocence of the defendant based on this evidence.

The jury retires to a separate room to discuss the evidence and makes a decision in secret. This is to protect jurors from having pressure put on them to make a decision one way or the other. The jury does not have to give a reason for the verdict it comes to. The foreman of the jury tells the judge what that decision is and whether it was reached unanimously. A majority verdict is possible if the jury has not reached a unanimous decision after two hours. This could be 11:1 or 10:2. The lowest possible majority verdict is 9:1 and that is only if the number of jurors has been reduced to 10, e.g., through illness. The number of jurors cannot drop further than ten; if that happened a new jury would have to be sworn in.

Once the jury reaches a verdict on guilt or innocence the judge must accept the verdict. There is no right to challenge the decision, although there could be an appeal if the decision is clearly contrary to the facts.

Question 4 (A03 10 marks)

The jury system is seen as more open than trial by a single judge and it also involves the public in the criminal legal system. In R v Sussex Justices, ex parte McCarthy 1924, the judge stated that justice must not only be done, but must be seen to be done. The jury system is supposed to ensure that this is the case as it means a trial by a mix of people from a variety of backgrounds rather than a judge alone. This is known as the right to be judged by your peers and is a long-standing tradition in the English legal system. Also, the decision is made on the facts of the case by a unanimous or majority vote after debating the facts.

There are both advantages and disadvantages to having a case heard by a jury. The main advantage is that with twelve people the decision is less likely to be biased as any bias is likely to be cancelled out. This could be a bonus for defendants if there is a reason a magistrate may be biased against them, so it will depend on the facts of the case and the particular circumstances. Another advantage is that juries are not only seen as impartial, but also make a decision based on fact and common sense, even ignoring the judge’s advice if it seems to go against common sense (even if legally correct). Juries are supposed to be representative of ordinary people and more involved with justice than law, so a jury decision may be seen to be fairer. Juries are less likely to be rule bound and more likely to seek a sensible result. However, this is not always an advantage because, as juries don’t have to follow guidelines, their decisions can be unpredictable. There are other disadvantages to having trial by jury. Sometimes the law is hard to understand and clever lawyers or dominant fellow jurors can influence jurors into making a particular decision. On the other hand, it can be said that juries are an antidote to excessive legal technicalities because lawyers have to restrict their use of legal jargon when they are addressing ordinary people. A related problem is that the law can be hard for juries to understand. An example is the Offences against the Person Act which is very old and uses obscure language. This means the judge will have to explain to the members of the jury a lot of the terms used, e.g., what the words ‘grievous’ and ‘malicious’ mean.

Media coverage can also influence jurors even though there are restrictions on what can be printed. This can be a disadvantage because it can lead to bias. Bias could occur if, e.g., the defendant has a background of violence which is reported in a local paper and seen by the members of the jury. Local prejudice can be a problem in particularly emotive cases and if the case involves a young child or a vulnerable person the jury may be keen to punish someone, and may not rely only on the facts when reaching a decision on guilt or innocence. In this case, it may be better having the case heard by a magistrate who will concentrate on the law and should be less emotionally involved than a jury. This is the defendant’s choice if it is a triable either-way offence, but not if it is indictable.
Overall, it can be said that juries provide a balance to the judge in a trial and give the appearance of impartiality and open justice. However, in some circumstances a trial by jury may not be in the defendant’s best interests.

Question 5 (A01 10 marks)

Actus reus is usually known as the conduct of a crime or the ‘guilty act’. That conduct must be voluntary so in Leicester v Pearson D was not liable because he did not act voluntarily. He had been pushed on to the zebra crossing by another car. His act was not voluntary so actus reus was not proved.

Actus reus usually involves an act rather than an omission (a failure to act). However there are times when there is a duty to act and in this case not acting would be a crime. An example is where there is a voluntary duty to act, as in Stone & Dobinson where a man and a woman were guilty of manslaughter because they had taken on a duty to care for the man’s sister but failed to get medical help when it was needed. A contractual duty to act also makes a person liable for not doing what is agreed in the contract and this can be seen in Pittwood, where a gatekeeper failed to close the gate and someone was killed by a train. Failing to stop after an accident or failing to give a specimen of breath can also amount to the actus reus of an offence. Sometimes, just being in a certain place can be enough as in Winzar. These are called state of affairs crimes, where the actus reus is based on circumstances rather than an act.

Causation is part of the actus reus and if it cannot be shown that D caused the result there is no crime, as in White. It is important in result crimes like causing actual bodily harm and murder or manslaughter. In Pagett a man held a girl in front of him and she was killed when he shot at the police and they returned fire. Here it could be said that but for the fact that he held her in front of him when he fired at the police she would not have died, and this is factual causation. For legal causation there must be an unbroken link between D’s actions and the result. The chain can be broken by an intervening act but only if it is not foreseeable. It was foreseeable the police would shoot back so this did not break the chain and he was guilty of manslaughter. In Roberts, it was foreseeable that the girl being assaulted would try and get away so he was guilty of causing her actual bodily harm.

Examiner’s note: There is a lot that can be covered in a question like this and you would not have time to write everything you know about actus reus. It is fine to reduce the discussion of omissions and causation to a few examples and concentrate on the conduct.

Question 6 (A02 10 marks)

Frank may be liable for an offence against the person and the harm would appear to exclude assault, battery or ABH. The words ‘several stitches’ show the harm is serious and there is a wound. The two offences Frank is likely to be charged with are grievous bodily harm (GBH) and/or wounding under s 20 and s 18 of the Offences against the Person Act 1861. For GBH the harm must be serious (Saunders), and the words ‘several stitches’ indicate that it is. However, wounding is most appropriate and a charge of wounding under either section is possible as the actus reus is the same. Both require ‘unlawful and malicious wounding’. A cut needing stitches will be a wound as described in Eisenhower, because both layers of the skin must have been cut to need stitches. The rules on mens rea will decide which section is most appropriate. As Frank ‘pulled out a knife’, it would indicate that he had sufficient mens rea for s 18. This requires that he intended serious harm, as established in Parmenter. Even if serious harm was not his aim or purpose, which is how direct intent was described in Mohan, the jury are likely to decide that he appreciated that serious harm was a virtual certainty as a result of stabbing Sergei, so he will have indirect intent as established in Nedrick and confirmed in Woollin. If the jury were not convinced that he intended serious harm, then the alternative charge under s 20 would be easy to prove. Mowatt confirms that mens rea is
only needed for some harm, not serious harm. Frank would have at least foreseen the risk of some harm resulting, and this is Cunningham recklessness, which is enough for s 20.

Question 7 (A02 10 marks)

For Don, the appropriate offences are battery and ABH. The word ‘slightly’ clearly shows that neither s 20 nor s 18 is relevant. Battery is the application of unlawful force. Grabbing someone’s coat will be a battery, as touching a person’s clothes can amount to the application of unlawful force, as stated in Thomas. If the battery causes harm the appropriate charge will be ABH under s 47 of the Offences against the Person Act 1861 which is an assault occasioning actual bodily harm. The battery will be an assault as this word covers both assault and battery in the Act. A cut, even if slight, is likely to be seen as ABH as it is more than trivial, as required by Chan-Fook. The main issue regarding s 47 is one of causation. Factual causation is straightforward as but for Don’s actions Kevin would not have been hurt. As for legal causation, both Roberts and Savage are relevant. In Roberts, it was held that a foreseeable event would not break the chain of causation between an assault (assault or battery) and any resulting injury. In Savage, the throwing of the beer was a battery and the glass breaking was foreseeable, facts which are quite similar to these. It is foreseeable that pulling someone off the dance floor could cause them to fall, and a table with glasses on is common in a club, so Don caused the harm. It was also confirmed in Savage that mens rea was only needed for the battery, so the prosecution only have to prove that Don recognised a risk of applying force (Cunningham recklessness). Here Don grabbed Kevin’s jacket so this presents no problem as he clearly intended the battery (touching the jacket is enough, as in Thomas), and the battery caused the harm, as in Savage, so a charge under s 47 should succeed.

Question 8 (A03 10 marks)

It is widely recognised that there are problems with the Offences against the Person Act; in particular s 47 is unclear. Proposals for reform have been made over a period of decades. Report No 361, published in 2015 by the Law Commission (LC), contains the latest proposals for reform. These are similar to earlier proposals which led to the 1998 Draft Bill, but this was never enacted.

The Offences against the Person Act was passed in 1861 and there is a clear need for modernisation and simplification of the outdated language, which the LC refers to as ‘archaic’.

For s 47 there needs to be an assault which occasions actual bodily harm (ABH). The word assault is ambiguous, it means the specific offence of causing someone to apprehend immediate personal violence as defined in Ireland, but also means both an assault and a battery for the purpose of finding an ‘assault’ which occasions harm for s 47, also seen in Ireland. Occasioning is also unclear and the new proposals would use the word ‘causing’ which would be better understood.

Even actual bodily harm is a strange expression and not readily understood. The proposed reforms suggest the word injury instead of actual bodily harm (with serious injury to replace grievous bodily harm). There is also a suggestion in the latest LC project to add a new offence for causing minor injuries, which would fall between battery and ABH, with a maximum 12-month sentence. This is different from the original proposals but would achieve better justice in cases such as Savage and Roberts. In those cases the injury was only minor and there was no mens rea for the harm, but the defendants were both guilty under s 47 which carries a possible five-year prison sentence. The new offence would require mens rea for the minor injury and would have a maximum sentence of 12 months. On the issue of sentencing, it is also wrong that the sentencing for s 47 has the same maximum as for s 20 (grievous bodily harm) when the level of injury is so different. The proposed reforms would certainly achieve greater justice.

In most areas of criminal law, the guilty act must be accompanied by a guilty mind (i.e., there should be both actus reus and mens rea). Although s 47 requires both of these, they do not correspond. This mismatch between what is intended or foreseen, and what results is particularly unfair, as the LC
points out. It is known as ‘constructive liability’ because liability is constructed from the actus reus of one offence (s 47) and the mens rea of another (assault or battery). The latest LC proposals would uphold the ‘correspondence principle’ and abolish constructive liability for the non-fatal offences, again achieving better justice.

The LC notes that there is no clear hierarchy under the Offences against the Person Act. No distinction is drawn to highlight the differences between the offences or to clarify them. This relates to the other offences but is particularly prominent in s 47 because of its lack of correspondence and confusing wording. This leaves the law confusing and justice cannot be achieved until the reforms are put in place.

As noted at the beginning, this is not the first time the LC has proposed changes (the LC summarises the history of proposed changes and reforms were first put forward in 1980). A report from the LC was produced in 1993 and led to a Draft Bill in 1998, but this was never enacted.

In conclusion, the 2015 Report has produced a much clearer definition for what is now ABH and suggested a new offence where the injury is minor. Such reforms are badly needed and would help to clarify the law and achieve better justice. However, there is no guarantee that the new proposals will receive parliamentary time. It is unjust that neither the public nor those involved in the legal system can understand the law. Justice requires clarity and, as the LC notes, the current law is incoherent and the language is archaic and confusing. It is time it is changed.