

Support Materials

English Legal System G141

Exemplar Candidate Answers

These materials should be read alongside the approved specimen question papers and mark schemes.

Question 1

(a) Describe the sentences available for adult offenders. [18]

(b) Discuss the advantages and disadvantages of custodial sentences. [9]

QWC [3]

Total Marks [30]

Specimen Answer A

a) When an offender is convicted in the crown court it is the trial judge alone

who determines the appropriate sentence.

Once the defendant has been found guilty it must be decided first what category of sentence is appropriate and then the amount, duration and form of that sentence.

There are a number of sentences available for adult offenders.

Firstly a custodial sentence may be taken into consideration. There are two elements to this sentence i.e. for a person aged 18 or over it is a sentence of imprisonment or a suspended sentence.

For a person under 18 a custodial sentence may include detention in a young offenders institution or a sentence of custody for life.



RECOGNISING ACHIEVEMENT

In section 143 of the Criminal Justice Act it states “ In considering the seriousness of any offence the court must consider the offender’s culpability in committing the crime and any harm which the offence caused, was intended to cause or might foreseeably have caused.”

A court should not pass a custodial sentence unless it considers that the crime was so serious that only a custodial sentence is justified.

The next type of sentence is a community sentence . This can only be imposed if the offence was serious enough to warrant such a one. 44% of offenders are given these. The Criminal Justice Act has established a single Community order which can be applied in the following possibilities. An unpaid work requirement, a curfew requirement etc.

A custodial or community sentence can only be ordered where certain statutory conditions are satisfied.

An adult offender can face a fine for their offence apart from murder. This carries a more serious life sentence. The court must ensure that the amount of the fine reflects the seriousness of the offence.

There is no set maximum in the Crown Court but in the Magistrates’ the highest is £5000 .

Three quarters of criminal cases that come to court are the least serious offences that’s why fines are the most common given out sentence for an adult offender.

Home detention curfews are another type of sentence that can be taken into account.

Prisoners sentenced between three months and four years imprisonment can be released early on licence that includes a curfew condition. i.e. remain at a certain address at certain times. They are used as a punishment to reduce the offender’s criminal activity and protect the public from anti social behaviour.

The Court may consider an absolute or conditional discharge. These are miscellaneous sentences i.e. an absolute discharge means that no action is taken at all and is generally made where the defendant’s conduct is wrong in law but no one would blame them for what they did.

A conditional discharge means no further action will be taken unless the offender commits another offence within a specified period of up to 3 years.

In any given sentence the judge must first give his reasons for the sentence and explain the effectiveness of the sentence.

Any court dealing with an adult offender in respect of his offence must have regard to the following purposes of sentencing.



RECOGNISING ACHIEVEMENT

the punishment of offender

reduction of crime

reform of offender

protection of the public

These specifications were set out by the Criminal Justice Act.

b) For adult defendants a custodial sentence means prison. Most of those given custodial sentences do not serve a full sentence in custody and are released early on licence.

It is argued that imprisonment lacks any reformation power as criminals spend time with other criminals and this is how they acquire new ideas. There is now little effective training and education due to budget cuts thus making prisoners time in prison a waste of time as they are not doing anything worthwhile.

The stigma remains of having been in prison increasing the difficulty of finding full time employment. Some academics argue that prisons only prevent the offender from re-offending for a short while and in time they will do it again. Prisons are also very expensive to run, it costs £24,000 + per year to keep a prisoner and why continue with this when an offender can be dealt with just as effectively and far more cheaply in the community. Prison conditions are poor and therefore there has been many cases of suicide over the last decade. Many of whom have been under 21. So should the court really be issuing out sentences if this is the result.

To my mind the only advantage of a custodial sentence is that offenders once in prison cannot commit an offence again and therefore the public is protected.

To conclude on this point the disadvantages of custodial sentences outweigh the good .

I propose radical changes. Sentences should not be given for trivial offences. If we took away the kids, mentally ill and the asylum seekers the prison population would be cut by 40.000

Prisoners should put something back into society i.e. community order. They should be recognised for their good and not be left to stew on their negative thoughts in overcrowded prisons as this only creates resentment and a conscience to reoffend..

The government has done nothing to address this issue and average prison populations in Europe are a third lower than in the UK.

Marks

Part a) would be awarded **10 marks**, putting it at the top of level 2. Unfortunately much of the answer does not really answer the question and is completely irrelevant. The different types of sentence are all mentioned but only there is only some limited description on custodial sentences, no real description of community sentences and adequate description of fines and discharges.

Part b) would be awarded **8 marks**, putting it just into level 4. There is a fairly balanced discussion of both the advantages and disadvantages of custodial sentences.

QWC would be awarded **3 marks** as it just gets into level 3.

Giving a total of **21 marks** out of 30.

Specimen Answer B

a) There are four main categories in which sentences for adult offenders can be placed. These are custodial, community, fines/ monetary and miscellaneous.

For a custodial sentence the defendant must be over 21. Some of the reasons for a custodial sentence are to punish offenders, to protect the public and to deter other criminals. These reasons must be presented in writing. There are some early release rules on custodial sentences. If you have been given a sentence of up to 4 years you will automatically be released after half of your sentence and usually be on licence for the rest of it. A custodial sentence more than 4 years could be after serving $\frac{1}{2}$ or $\frac{2}{3}$ of sentence.

When released on licence some offenders can be given a home detention curfew. This is where wear tags can be used to monitor the offender. They can only leave the house in exceptional circumstances.

Offenders could also be given custody plus which means a short period in custody and the rest under supervision. This is to make sure future prospects are not ruined for the offender. Intermittent custody is when the offender serves some of their sentence in custody and some out. For example if they are relied on for a job they could spend evenings and weekends in prison.

The CJA 2003 changed the system of community sentences so they are now community orders. There are 12 requirements which could all be attached. The minimum age for community orders is 16. One condition that could be attached is unpaid work. This cannot last more than 12 months and will be between 40- 300 hours. Another requirement is prohibited activity. This is where offenders are stopped from doing things for a certain amount of time. E.g. contacting other gang members or the victim.

The third category is fines, where money goes into the criminal justice system and can be imposed for anything but murder. The Magistrates' Court have limits to the fines they can give, these are normally £5000 but can be £20000 for businesses. When a Judge or magistrate is giving a fine they take into account D's earnings. The Crown Court has unlimited amount for a fine they can give but rarely give it as a punishment.

One example of a miscellaneous sentence is absolute discharge. The D doesn't serve any sentence at all, they are convicted but not blamed for what happened. Another example is a deferred sentence. They won't sentence straight away but within 6 months. This may be if they have a job or think the circumstances might change.



RECOGNISING ACHIEVEMENT

b) There are advantages and disadvantages of custodial sentences. One main advantage is that it protects the public from serious offenders. The D can be helped so they have a chance after prison to get work and rebuild relationships, custody plus.

With intermittent custody the prisoner can keep employment, education, and family ties. One main disadvantage for the criminal is .that it ruins the chance of a good life when they out of prison. Most offenders don't serve all of their sentence and there are high re- offending rates after prison. Prison can also teach the offender new tricks for committing crime. When an offender is given intermittent custody there is a risk of prisoners not returning.

Marks

Part a) would be awarded **17 marks**, putting it into level 4, as all the major types of sentence are described in some level of detail. This example shows a good breadth of answer.

Part b) would be awarded **8 marks**, putting it just into level 4, as there are points on both the advantages and disadvantages and there is also some discussion, although towards the end the points tend to be simply stated rather than discussed.

QWC would be awarded **3 marks** as it reaches the level 3 criteria.

Giving a total of **28 marks** out of 30.

Specimen Answer C

- a) There are two main courts to choose from when sentencing. These are the magistrate's and the crown court.

Adult offenders tried in the crown court will be put across many types of sentences. To be sentenced as an adult you must be over 18 years were you will be sentenced according to your crime.

There are many types of sentencing: community service order, intermittent custody custodial sentences and suspended sentences; discretionary, mandatory and fixed term sentences are a wide variety available for the judge to impose.

The only sentence imposed for life is the discretionary and mandatory sentence. The judge can only impose this sentence on the adult offender if he has committed murder.

If a suspended sentence is used on an adult offender it means that the sentence is deffered for at least 2 years. If during that time the offender commits an offence he will have that sentence imposed. If no offence has been committed he will have the sentence cleared.

A community service order can also be imposed on the offender according to the Criminal Justice Act 2003. within this order the offender will be placed on a scheme where he will have to cary out many hours of work or whatever his sentence imposes like drug treatment.

A fine can also be given.

- b) The advantage of custodial sentences is that it locks criminals up. They are kept away from ordinary people and cannot commit crimes. Mandatory and discretionary is good for murderers.

Marks

Part a) would be awarded **8 marks**; it is a level 2 answer with a few sentences described in a limited way. Much of the answer is not relevant to the question.

Part b) would be awarded **2 marks** (top of level 1) as it only makes one valid point.

QWC would be awarded **2 marks**; although parts do not make sense there is enough structure and use of correct terminology to reach level 2 descriptors.

Giving a total of **12 marks** out of 30.
