

INSTITUTE OF LEGAL EXECUTIVES

UNIT 18 – CRIMINAL LITIGATION*

Time allowed: 3 hours plus 15 minutes reading time

Instructions to Candidates

- You have been provided with a clean copy of the case study materials for you to use in this examination.
- You have **FIFTEEN** minutes to read through this question paper and the case study materials before the start of the examination.
- **It is strongly recommended that you use the reading time to read the question paper fully.** However, you may make notes on the paper or in your answer booklet during this time if you wish.
- **All questions are compulsory. You must answer ALL the questions.**
- Write in full sentences – a yes or no answer will earn no marks.
- **Candidates may use in the examination their own unmarked copy of the designated statute book: Blackstone's Statutes on Criminal Justice and Sentencing 2008, 4th Edition, B Mitchell & S Farrar, Oxford University Press**
- Candidates must comply with the ILEX Examination Regulations.
- Full reasoning must be shown in answers. Statutory authorities, decided cases and examples should be used where appropriate.

Information for Candidates

- The mark allocation for each question and part question is given and you are advised to take this into account in planning your work.
- Write in blue or black ink or ball point pen.
- Attention should be paid to clear, neat handwriting and tidy alterations.
- Complete all rough work in your answer booklet. Cross through any work you do not want marked.

Do not turn over this page until instructed by the Invigilator.

* This unit is a component of the following ILEX qualifications: **LEVEL 6 CERTIFICATE IN LAW, LEVEL 6 PROFESSIONAL HIGHER DIPLOMA IN LAW AND PRACTICE and the LEVEL 6 DIPLOMA IN LAW AND PRACTICE**

Question 1

Reference: Question relates to **CASE ONE – Maurice Jones** in the case study materials.

- (a) The police have asked Maurice Jones to attend a local police station to be interviewed in relation to this matter. How can Kempstons be remunerated for work in relation to this interview.

(5 marks)

- (b) What advice will you give Maurice Jones in relation to the interview, and how he should conduct himself during it?

(8 marks)

- (c) Now assume that matters have proceeded further, and that Maurice Jones has been convicted of theft and false accounting after a trial on indictment. Trial counsel advises that in the summing-up the judge failed to direct the jury that a confession by Miss Brookes was admissible only against her. He also advises that the sentence of five years imprisonment imposed is unduly harsh by reference to other sentences in similar cases.

Explain the procedures to be adopted to appeal against conviction and sentence and the principles and criteria the appellate court will apply.

(12 marks)

(Total: 25 marks)

Question 2

Reference: Question relates to **CASE TWO – Aftab Ali** in the case study materials.

- (a) What is the maximum period for which Aftab Ali can be detained before he is charged or released, and what other powers do the police have in relation to the conditions of his detention.

(5 marks)

- (b) Advise Aftab Ali of the procedures available to the police in this case to establish that he is, or is not, the offender, any options open to him and your role as his legal adviser in relation to these matters.

(10 marks)

- (c) Eventually Aftab Ali is charged with the burglary. The jewellery has still not been recovered and the police are still seeking the other two offenders. The police decline to bail Ali, and will oppose bail at court.

Explain the legal basis and grounds of the prosecution's application to remand Aftab Ali and outline the submissions that will form part of your bail application.

(10 marks)

(Total: 25 marks)

Question 3

Reference: Question relates to **CASE THREE – Darren McCann** in the study materials.

- (a) Complete the relevant parts of the Form CDS14 (**Document A**) in respect of Darren McCann.

THESE PARTS ARE PART A AND PART B1-B4. ALL OTHER PAGES ARE INTENTIONALLY OMITTED

Important: Write your Candidate number clearly on Document A and attach it securely to your answer booklet.

(8 marks)

- (b) Explain the procedures which will take place from first appearance to the conclusion of mode of trial proceedings and the basis upon which any options available to the court, prosecution or defence will or could be exercised.

(9 marks)

- (c) The case is to be tried on indictment. Explain the procedures which the court, prosecution and defence must or may undertake from the conclusion of mode of trial proceedings to the commencement of the trial in the Crown Court.

(8 marks)

(Total: 25 marks)

Question 4

Reference: Question relates to **CASE THREE – Darren McCann** in the case study materials.

- (a) You have obtained witness statements from Owen and Benny McCann. Both effectively corroborate Darren McCann's version of events.

What issues arise in relation to the reception of the evidence of Owen and Benny by the court, and what procedures will or may be adopted?

(8 marks)

- (b) Explain the legal, evidential and other issues which will or may arise at trial and the approach the defence should adopt in the conduct of the trial.

(10 marks)

- (c) Shortly before the trial Darren McCann tells you he is thinking of changing his plea to guilty 'to get it all over with'. How should you deal with this situation?

(7 marks)

(Total: 25 marks)

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StudentBounty.com

DOCUMENT A
CDS14 to be used with question 3(a)

Form CDS14

PROTECT- PERSONAL INFORMATION

MAAT Ref:

Application for Legal Aid in Criminal Proceedings

legal services
COMMISSION

Before completing this form, please refer to the guidance notes available on the LSC website.
The information you declare in this form will be checked with the Department for Work and Pensions,
HM Revenue and Customs and others.

Priority case:

Custody

Vulnerable

Youth

Late application in Crown Court
(for trial) and date / /

Case Type:

Summary Committal for Sentence

Either way Appeal to Crown Court

Indictable Trial already in Crown Court

Part A - About you

Your details

1 Title: _____ 2 First name: _____ 3 Surname: _____

4 Other names: _____ 5 Date of birth: / /

See Note 1

6 National Insurance No:

Letters	Numbers	Letter

7 Tick if Appeal to Crown Court and no changes in circumstances Go to Part B

8 Single Married Married, but separated Divorced

Widowed Living with a partner date of separation / / Civil Partner

9a Home phone number _____ Mobile phone number _____

Work phone number _____

Email address _____

Usual home address _____

_____ Post code _____

9b Is the address: Owned by you You are a tenant Temporary address Owned by your parents

Use my solicitor's address as my correspondence address **See Note 2**

9c Postal address (if different from home address) _____

_____ Post code _____

Your age **See Note 3**

10 I am under 18 No Go to question 11

Yes

I am jointly charged with an adult No Go to page 3

Yes Go to page 3

Please note that this form is also available in Welsh.

Part A - About you

Your relationship status

If you have a partner, you must also fill in their details below and throughout the form(s) where necessary. 'Partner' refers to a person you are married to or a person you normally live with as a couple.

Your benefit status

See Note 4

11a Do you or your partner receive any of the following benefits?	You	Your partner
Income Support	No <input type="checkbox"/> Yes <input type="checkbox"/>	No <input type="checkbox"/> Yes <input type="checkbox"/>
Income-Related Employment and Support Allowance (ESA)	No <input type="checkbox"/> Yes <input type="checkbox"/>	No <input type="checkbox"/> Yes <input type="checkbox"/>
Income-Based Jobseeker's Allowance (JSA)	No <input type="checkbox"/> Yes <input type="checkbox"/>	No <input type="checkbox"/> Yes <input type="checkbox"/>
Guarantee State Pension Credit	No <input type="checkbox"/> Yes <input type="checkbox"/>	No <input type="checkbox"/> Yes <input type="checkbox"/>

11b If you have been remanded into court custody and you claim Income-Based JSA when did you last sign on? Date...../...../.....

Your partner's details - if you don't have a partner, go to page 3.

See Note 5

12 Is your partner involved in the case as:
 Victim Prosecution witness Co-defendant with a conflict None

13 Your partner's first name:

14 Your partner's surname:

15 Your partner's date of birth: / /

16 Your partner's NI No: Letters Numbers Letter

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17 Partner's address if different from your own:

See Note 6

18 Your partner's current contact details if they are unable to sign the declaration on this form:

Place and address where they are staying e.g. the name of the hospital and ward: _____

Please give reasons why your partner is unable to sign: _____

Part A - About you

Further information.

Monitoring Information.

See Note 8

Are you male or female?

Male Female Prefer not to say

Equalities Information

The Equality Act 2010 defines disability as: a physical or mental impairment which has a substantial and long-term adverse effect on a person's ability to carry out normal day-to-day activities.

Do you consider yourself to have a disability? Yes No Prefer not to say

If yes, please select the most appropriate definition. If you have multiple disabilities please select the definition that reflects the predominant disability.

Definitions:

Physical Impairment	<input type="checkbox"/>	Cognitive Impairment	<input type="checkbox"/>
Sensory Impairment	<input type="checkbox"/>	Long-Standing Illness	<input type="checkbox"/>
Mental Health Condition	<input type="checkbox"/>	Health Condition	<input type="checkbox"/>
Learning Disability/Difficulty	<input type="checkbox"/>	Other	<input type="checkbox"/>

Equal Opportunities Monitoring Tick the most appropriate option.

Ethnic Monitoring

White	Mixed	Asian or Asian British	Black or Black British	Chinese	Other Ethnic Group
British <input type="checkbox"/>	White and Black Caribbean <input type="checkbox"/>	Indian <input type="checkbox"/>	Black Caribbean <input type="checkbox"/>	Chinese <input type="checkbox"/>	Other <input type="checkbox"/>
Irish <input type="checkbox"/>	White and Black African <input type="checkbox"/>	Pakistani <input type="checkbox"/>	Black African <input type="checkbox"/>		Prefer not to say <input checked="" type="checkbox"/>
White other <input type="checkbox"/>	White & Asian <input type="checkbox"/>	Bangladeshi <input type="checkbox"/>	Black other <input type="checkbox"/>		
	Mixed other <input type="checkbox"/>	Asian other <input type="checkbox"/>			

This will be treated in the strictest confidence and will be used purely for statistical monitoring and research.

Part B - Interests of Justice

I apply for the right to representation for the purposes of criminal proceedings under the Access to Justice Act 1999

1 Case details

See Note

1a Arrest Summons Number (ASN) (if available)

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1b **What charges have been brought against you?**
Describe briefly what you have been accused of. E.g. theft of £1,000 from your employer or assault on a neighbour.

Date of offence: / /

1c Please indicate the type of offence you have been charged with. If you are charged with multiple offences, please indicate the most serious.

- Class A: Homicide and related grave offences
- Class B: Offences involving serious violence or damage, and serious drugs offences
- Class C: Lesser offences involving violence or damage, and less serious drugs offences
- Class D: Sexual offences and offences against children
- Class E: Burglary etc
- Class F: Other offences of dishonesty (specified offences and offences where the value is £30,000 or less)
- Class G: Other offences of dishonesty (specified offences and offences where the value involved exceeds £30,000 but does not exceed £100,000)
- Class H: Miscellaneous other offences
- Class I: Offences against public justice and similar offences
- Class J: Serious sexual offences
- Class K: Other offences of dishonesty (high value) (if the value involved exceeds £100,000)

1d Are there any co-defendants in this matter? No. Go to question 2 Yes

If 'yes', please give their names.

1e Give reasons why you and your co-defendants cannot be represented by the same solicitor.

2 The court proceedings

2 I am due to appear/appeared before the _____ court

On _____ / _____ / _____ at _____

Part B - Interests of Justice

And (tick whichever applies)

My case has been sent to the Crown Court for trial under section 51 of the Crime and Disorder Act 1998.*

My case has been transferred to the Crown Court for trial. *

I was committed for trial to the Crown Court.*

I was convicted and/or sentenced and I want to appeal against the conviction or sentence.

I was convicted and committed for sentence to the Crown Court.*

A retrial has been ordered under the Criminal Appeal Act 1968.*

Other (please give the nature of the hearing)

*Sections 4a and 4b do not need to be completed.

3 Outstanding matters

If there are any other outstanding criminal charges or cases against you or your partner, give details, including the court where you are due to appear.

4 Reasons for wanting legal aid

See Note 10

4a. Please tick the reason or reasons below which apply to your case.

(i) It is likely that I will lose my liberty if any matter in the proceedings is decided against me.

(ii) I have been given a sentence that is suspended or non-custodial. If I break this, the court may be able to deal with me for the original offence.

(iii) It is likely that I will lose my livelihood.

(iv) It is likely that I will suffer serious damage to my reputation.

(v) A substantial question of law may be involved (whether arising from legislation, judicial authority or other source of law).

(vi) I may not be able to understand the court proceedings or present my own case.

(vii) Witnesses may need to be traced or interviewed on my behalf.

(viii) The proceedings may involve expert cross-examination of a prosecution witness (whether an expert or not).

(ix) It is in the interests of another person (such as the person making a complaint or other witness) that I am represented.

(x) Any other reasons.

4b. Please give details of the reason or reasons you selected in question 4a:

[Empty rectangular box for writing]

Part C - Declaration

You must complete declarations which apply to your application.

Authority by your partner

If you have a partner whose details have been completed on this form, they must sign the authority below.

This is a true statement of my financial circumstances, *as supported by the information detailed on the CDS15 (*delete if not applicable).

I agree to the Legal Services Commission, HM Courts and Tribunals Service or my partner's solicitor checking these facts with others such as the Department for Work and Pensions and HM Revenue & Customs. I authorise those people or organisations to provide the information that they may request.

Signature..... Date / /

Full name (in BLOCK CAPITALS).....

Your declaration

This is a true statement of my/my partner's financial circumstances.

I understand that if I tell you anything untrue on this form or the documents I send with it or leave anything out:

- a) I may be prosecuted for Fraud, which may result in a prison sentence or a fine
- b) My legal aid may be stopped and I may be asked to repay my costs in full to the Legal Services Commission (LSC)
- c) If my case is in the Crown Court, the LSC may amend the level of contribution payable

I also agree to:

- d) Provide more evidence of my/my partner's finances if the LSC or their agents or HM Courts and Tribunals Service (HMCTS) ask for it
- e) Tell the LSC or HMCTS if there are any changes to my/my partner's income or capital position. This includes the sale of property, change of address, change in employment and change in my capital position.

I understand that I am required to tell my solicitor and write to the Court if I no longer want public representation and I understand that if I decline representation, I may still be liable for costs incurred to that date.

I understand that, in Crown Court proceedings, the information given in this form will be used to determine my liability to contribute to the costs of my defence under an Income Contribution Order (during the case) and/or a Final Contribution Order (at the end of my case, if convicted).

I understand that I may be required to provide further details of my finances to the LSC, their agents or HMCTS to help them decide whether an Order should be made and the terms of any Order.

I understand that, if my case goes to the Crown Court, if I fail to pay one or more monthly payments in accordance with my Income Contribution Order, interest may be charged and/or enforcement proceedings may be brought against me and I may have to pay the cost of those enforcement proceedings, in addition to the payments required under the Contribution Order.

I authorise such enquiries as are considered necessary to enable HMCTS or the LSC or their agents or my solicitor to ascertain my/my partner's income and capital position. This includes my consent for parties such as my bank, building society, the Department for Work and Pensions or HM Revenue and Customs in providing information to assist HMCTS or the LSC or their agents with their enquiries.

I consent to the LSC or my solicitor contacting my partner for information and/or evidence regarding their means, including where they are unable to sign or fill in this form. I understand that if the information they provide is incorrect or if they refuse to provide information my legal aid may be withdrawn (if my case is in the magistrates' court) or I may be liable to pay sanctions (if my case is in the Crown Court).

Additionally if I am convicted and I am ordered to pay a Final Contribution Order, if I do not pay that amount then interest may be charged and/or enforcement proceedings may be brought against me in the County Court or High Court, which could result in a charge being placed on my home. I will also be liable for the cost of those enforcement proceedings.

I also understand that this form must be fully completed before a representation order can be issued.

Signature..... Date / /

Full name (in BLOCK CAPITALS).....

Data Protection Act - Privacy Notice

We will use the information you provide in this form, and any other information we may receive, to process your application for legal aid. We will process it in line with the principles of the Data Protection Act 1998 and any relevant confidentiality provisions.

If false or inaccurate information is provided and fraud is identified, details will be passed to fraud prevention agencies to prevent fraud and money laundering. Further details explaining how the information held by fraud prevention agencies may be used can be found on the Legal Service Commission website: <http://www.legalservices.gov.uk/civil/forms.asp>

The LSC is the data controller. If necessary, we may check information we may already hold about you if you have applied for Civil or Criminal legal aid funding before and share the information you provide with organisations, such as: the Department for Work and Pensions, HM Revenue and Customs, Land Registry, Companies House and on occasion Credit Reference Agencies.

We will only share the information if it is necessary to protect public funds or where we are lawfully required to do so.

We or HMCTS on our behalf may also process your information to produce management or research information. The results of our research will only be published in a statistical or anonymous form.

We will keep information for as long as is necessary to fulfil our duties under the Access to Justice Act 1999. You have the right to look at the personal information held about you, to inspect it, and have it corrected if it is wrong.

For official use only

List any other factors considered when deciding the application, including any information given orally.

Decision on the Interests of Justice Test Passed Refused

I have considered all the available details of all the charges against the Interests of Justice criteria. I give the following reasons:

Decision on financial eligibility:

Magistrates' court

Passed

Refused

Crown Court

No income contribution

Contribution due

Signature..... Name of appropriate officer

Date / /

Case number

Representation Order number