

W201 The Individual and the State

How to answer a Criminal Law problem question

Before you tackle TMA05 and TMA06 you need to master the **method** described in the Manuals (see for example pages 160 -161 in Manual 3). You can also use this method in a simple form in TMA 04 Question 1.

The method involves

- a) understanding the **order** to deal with offences and defences in
- b) understanding how to **state the law first** and then apply it separately to the facts

a) **The order**

With offences against the person (everything from murder down to common assault and including sexual offences) start with the most serious offence first then deal with lesser offences. Deal with defences after the relevant offence or offences.

How do you know when you have considered sufficient offences and need not go on to further lesser offences? This is a matter of judgment but generally if there is clear liability for a more serious offence you can stop. You could also stop if the lesser offence offers the prosecutor no greater scope for achieving a conviction.

When you reach property offences in Manual 4 you will have to refine this approach. Instead of dealing with the most serious offence first it is better to tackle offences chronologically or take one accused at a time.

b) **Law first**

Don't jump in and state your conclusion first. (For example do not begin by saying "I think the accused is/is not guilty").

1. First set out the actus reus and quote any relevant case law.
2. Then separately apply the law to the facts (only now say whether the actus reus is made out or not or whether the position remains unclear).
3. Set out the mens rea and quote any relevant case law.
4. Separately apply the law to the facts (say whether the mens rea is made out or not).
5. Repeat this process for any lesser offence if relevant.
6. Define any defence and quote any relevant case law.
7. Separately apply the law to the facts (say whether the defence is made out or not).