



SQE2 sample question and discussion of answer

Advocacy (Criminal Litigation)

Last reviewed on 28 November 2023

Candidates will undertake 16 assessments in SQE2. To pass SQE2 candidates will need to obtain the overall pass mark for SQE2.

This sample question and discussion of answer is an example of an advocacy assessment. Candidates will have 45 minutes to conduct the advocacy.

For further detail see the SQE2 Assessment Specification.

Please note that the sample questions are provided to give an indication of the type of tasks that candidates could be set. They do not represent all the material that will be covered in SQE2. Future questions may not take exactly the same format.

Question and additional candidate papers

Email to Candidate

From: Partner
Sent: 13 December 202#
To: Candidate
Subject: Steven Jackson

I would like you to represent Steven Jackson at his initial appearance before the District Judge at West London Magistrates' Court today.

Mr Jackson is charged with a single offence of assault occasioning actual bodily harm on his wife Emma Jackson.

He asserts his innocence and intends to plead not guilty. The Court will therefore proceed to allocation and case management. Mr Jackson has no previous convictions or cautions.

The prosecution will invite the District Judge to decline summary jurisdiction on the basis that the case is too serious to be tried summarily. The prosecution will point to the nature of the injuries sustained by the complainant and the context in which they occurred.

Mr Jackson wants his case to remain in the Magistrates' Court. You will therefore need to be prepared to make appropriate representations to this effect on allocation.

[For the purposes of this assessment and irrespective of your submissions on allocation, the District Judge will retain summary jurisdiction and the case will remain in the Magistrates' Court. The District Judge will then proceed to ask you to address him/her on pre-trial issues.]

The District Judge will want to know the basis upon which Steven Jackson is pleading not guilty so that the case can be properly managed and a date set for trial. He/she will also want you to address him/her on the basis on which we seek to challenge the admissibility of Steven Jackson's confession in police station interview under caution.

Therefore, at today's hearing be prepared to address the district judge on the following matters:

- 1. why the Magistrates' Court should retain jurisdiction in this case;**
- 2. the basis on which Mr Jackson is pleading not guilty, including an outline of the disputed issues of fact and those which are agreed; and**
- 3. the legal arguments you will use in seeking to exclude Mr Jackson's confession.**

Thanks

Partner

Attachments:

1. Statement of Emma Jackson
2. Statement of Dr Dora Simpson
3. Statement of PC Collins
4. Record of police interview of Steven Jackson
5. Client's instructions
6. Sentencing Guideline for s.47 Offences Against the Person Act 1861

Note to Candidates:

- 1. For the purposes of the assessment, neither the prosecuting solicitor, nor the defendant will be present in the room with you. However, in constructing your arguments you should assume that they are present.**
- 2. You will address a single District Judge who will have heard the prosecution's submissions as to allocation. The District Judge will have a copy of Attachments 1-4 and Attachment 6.**

STATEMENT OF WITNESS

(Criminal Procedure Rules, r.16.2; Criminal Justice Act 1967, s.9)

Name: Emma Jackson

Age: Over 18

This statement, signed by me, is true to the best of my knowledge and belief and I make it knowing that if it is tendered in evidence I shall be liable to prosecution if I have wilfully stated in it anything which I know to be false or do not believe to be true.

I have been married to Steven Jackson for three years. We live at 9 Lancaster Road, London, with my daughter from my previous marriage (Katy, aged 16) and our son (Thomas, aged 13 months). Steven is not an easy man to live with. He drinks a lot and is aggressive. His business has money troubles, which have led to him becoming very uptight. He regularly loses his temper, which I find frightening.

A few months ago, I began to suspect that Steven might be having an affair. There was a lot of tension in the house. Steven kept coming home late. When I challenged him, he maintained he had been working. I was aware that he had been having business difficulties. I told him I was prepared to help but he was not interested. He started drinking a bottle of wine most nights. Several weeks ago, we had a heated argument. He stormed out of the house and did not return that night. The next day he apologised but warned me not to keep on at him as he had a lot on his mind.

Things improved for a time. On 27 November 202#, however, I discovered a text on Steven's phone that left me in no doubt that he was seeing another woman. When he returned home at approximately 11.15 pm, he came up to our bedroom. I could see that he was drunk. When I asked him about the text message, he started shouting and accused me of spying on him. I told him I wanted him out of the house. He reacted violently. He grabbed me by the arms and shoved me against the bedroom wall.

He started to pack a suitcase and stormed out of the bedroom onto the landing at the top of the stairs. I followed him and asked him what he was doing. He punched me in the face and then pushed me backwards causing me to fall down the stairs. He stormed down the stairs and out of the front door. I felt sick and dazed and realised immediately that I was hurt and bleeding. I rang my sister who took me to hospital. It was confirmed that I had fractured my nose and cut my lip, and had bruising to my face and ribs.

Signed: *E Jackson*

Dated: *28 November 202#*

STATEMENT OF WITNESS

(Criminal Procedure Rules, r.16.2; Criminal Justice Act 1967, s.9)

Name: Dr Dora Simpson

Age: Over 18

This statement, signed by me, is true to the best of my knowledge and belief and I make it knowing that if it is tendered in evidence I shall be liable to prosecution if I have wilfully stated in it anything which I know to be false or do not believe to be true.

I am a doctor based at St Mary's Hospital Accident and Emergency.

On 28 November 202# at 2.30am, I had cause to examine a female patient by the name of Emma Jackson.

She had a cut to her lip and bruising to the left side of her face and ribs as well as a fractured nose.

I cannot comment on how these injuries were caused.

After an X-ray, the patient was provided with painkillers, and discharged with no follow up treatment required.

Signed: *Dora Simpson* (witness)

Dated: *28 November 202#*

STATEMENT OF WITNESS

(Criminal Procedure Rules, r.16.2; Criminal Justice Act 1967, s.9)

Name: Sally Collins

Age: Over 18

This statement, signed by me, is true to the best of my knowledge and belief and I make it knowing that if it is tendered in evidence I shall be liable to prosecution if I have wilfully stated in it anything which I know to be false or do not believe to be true.

I am PC 1322 Sally Collins based at Hammersmith Police Station.

On 28 November 202# at 1800 hours, I attended 9 Lancaster Road, London, where I took a statement from Emma Jackson. I also took a set of photographs of injuries Emma Jackson said she had sustained on 27 November 202#. The photographs are exhibited as SC1.¹

Acting on information received, I attended the business premises of Steven Jackson at Longsdale Road, London, W12 8RT at 2030 hours on 28 November 202#. Mr Jackson was asleep at his desk. I woke, arrested and cautioned Steven Jackson on suspicion of assault occasioning actual bodily harm to Emma Jackson, contrary to s.47 Offences Against the Person Act 1861. It was clear to me that Steven Jackson was very drunk. His speech was slurred and he was unsteady on his feet. He was taken to Hammersmith Police Station where his detention was authorised in accordance with PACE 1984 and he was interviewed the following morning.

At 0730 hours on 29 November 202#, I conducted an audio-recorded interview with Steven Jackson together with PC 6531 Jason Jones (Exhibit SC2). The interview commenced at 0730 hours and concluded at 0752 hours. At the conclusion of the interview, Steven Jackson was charged with assault occasioning actual bodily harm on Emma Jackson and released on bail subject to conditions to attend West London Magistrates' Court on 13 December 202#.

Signed: *S Collins*

Dated: *29 November 202#*

¹ **Note to Candidates: Exhibit SC1 has not been produced for the purposes of the assessment.**

Record of Police Interview (Exhibit SC 2)

Person interviewed: STEVEN JACKSON
Place of interview: Hammersmith Police Station
Date of interview: 29 November 202#
Time commenced: 0730 hours
Time concluded: 0752 hours
Duration of interview: 22 minutes
Interviewer: PC Sally Collins 1322

Other persons present: PC Jason Jones 6531

STEVEN JACKSON cautioned and reminded of his entitlement to legal advice. JACKSON replied that he understood the caution and did not need a solicitor.

PC Collins: Do you understand why you have been arrested?

SJ: Yes, a false allegation of assaulting my wife.

PC Collins: Your wife alleges that you punched her and pushed her down the stairs at your home causing her to break her nose and hurt her ribs. She states the incident happened on the 27 November 202#, just after 11.15 pm. What do you have to say in response to the allegation?

SJ: Has she made a formal complaint or has someone put her up to this?

PC Collins: Answer my question. This is your opportunity to give your account.

SJ: How long will this farce last? I am feeling really sick, and I've got to get to work this morning.

PC Collins: Please answer my questions. It is very much in your interest. We take incidences of domestic violence very seriously. I have explained the caution to you. This is your chance to have your say. We can sit in silence if you want to.

(6 minutes of silence elapses on the tape)

PC Collins: Tell me something about your relationship with Emma.

SJ: (Suspect's reply inaudible)

PC Collins: Your wife states that you came home drunk on the 27 November. She challenged you about an affair you have been having. She alleges that whilst you and she were in your bedroom, you lost your temper and shoved her against the wall.

SJ: I don't know what to say. I am speechless. My wife is making this up. She attacked me. You believe everything my wife says don't you?

PC Collins: It's not a case of what I believe Mr Jackson. This is your chance to comment. Your wife then says she was standing at the top of the stairs when you punched her and pushed her backwards down the stairs. Is that what happened?

SJ: You do. You believe it all. I didn't punch her or push her. She was drunk.

PC Collins: That's not what she says.

SJ: Look officer, how long is this going to take? I really need this matter to be sorted out quickly. You have had me here all night. I have already told you that I am feeling unwell, and I must get back to work this morning. I have a very urgent meeting to attend.

PC Collins: It depends on your willingness to cooperate, Mr Jackson. If you keep on denying the allegation, we will be forced to keep you here while we make further enquiries and then refer the case to the Crown Prosecution Service, which will take time.

SJ: It seems to me that you're going to charge me whatever I say?

PC Collins: If you deny the allegations against you, the matter will be referred to the Crown Prosecution Service who will need to consider the evidence before deciding whether to charge you.

SJ: Look, I accept that things have not been easy between Emma and me. She has a drink problem. I admit that I lost my temper the other night. I slapped her face at the top of the stairs and pushed her away. Emma then lost her balance and fell down the stairs. That's it now. Charge and release me, so I can get out of this police station and attend to my business.

Interview Terminated.

Client's Instructions

Name: Steven Jackson

DOB: 14 May 1979

Address: 9 Lancaster Road, London, W12 7PR.

I am a self-employed business man. I run my own carpet cleaning business.

The offence

I have been charged with assaulting my wife, Emma Jackson, occasioning her actual bodily harm. She is 36. We have one child, Thomas, aged 13 months. Emma has a daughter from her previous marriage, Katy, aged 16. She lives with us. I deny assault.

The relationship between my wife and I has become increasingly difficult over the past month or so. Every time I have returned home late she has started an argument. She drinks secretly. She tries to hide it from me but I know that she is a secret drinker. I have found empty bottles of vodka and gin in her handbag and in the rubbish bin. When I challenge her about it, she gets very defensive.

I admit that on occasions I have been verbally abusive to Emma. I have not, however, assaulted Emma. Emma easily loses her temper and when she does she is not in control of her actions, especially when she has been drinking.

To make matters worse my business is in financial difficulties. It has been under threat of insolvency. I am owed a substantial amount of money by two large companies who are themselves in financial difficulties. I have been working late trying to make up the money owed, and also trying to find new business.

My wife alleges that I assaulted her on 27 November 202#. She says I shoved her against the bedroom wall, punched her to the face and pushed her down the stairs at our home resulting in her fracturing her nose, sustaining a cut lip and bruising. This is not true.

I returned home late on 27 November. I think it was around 11pm. I had had a meeting with a potential customer, an area manager for a chain of restaurants, some distance away that evening, and I had been delayed on the way home by an accident on the motorway. I was tired. I was completely sober. I was confronted by Emma who was in the bedroom. I could see that she was drunk. She appeared to be upset. She had my mobile phone in her hand. I had been searching for it all day. I realised she had taken it. She confronted me about certain text messages, accusing me of having an affair.

This is not the first time that Emma has said this, and I have not been having an affair. In that moment I realised that things were not going to change between us. I admit that I was angry. I reached for a suitcase and began to pull clothes out of various drawers. Emma asked me what I was doing. I told her our marriage was over and that I was leaving. She screamed at me and tried to hit me. I pushed her away. She

accused me of having an affair. She said I was unfit to be Thomas's dad and, that if I attempted to divorce her, I would not see Thomas again and that she would take the business from me.

We were yelling at each other. I accused her of being drunk. I grabbed my suitcase and went onto the landing at the top of the stairs. I just wanted to leave. Emma followed me and attempted to block my way at the top of the stairs. I put my suitcase down and tried to talk to her, but she became hysterical. She lunged at me with her fists clenched, but as she did so, she tripped over my suitcase and lost her balance and, regrettably, fell down the stairs.

I did not punch her or push her down the stairs. I admit I was angry. I did not realise that she was hurt; she was still screaming at me, telling me to get out of the house, so I just left. I was arrested the following evening at my office. I had been drinking for much of the day. Emma's sister had sent me a text saying I was to keep away from Emma and that Emma was in hospital.

I had never been arrested before. I have no previous convictions or cautions, and have never been to court before.

Detention at the police station

I was detained overnight by the police. I woke up in a cell with a dreadful headache. I told the officer that I felt sick. I was given a cardboard sick bowl and a glass of water. This was at 6.00 am in the morning. I was offered breakfast but felt too sick to eat it. I had not eaten anything for 24 hours and felt very weak.

I asked the officer what was going to happen to me. I was informed I would be interviewed later that day. I told the officer I needed to be released as I had a very important business meeting and contractual commitments to meet. The meeting was with the potential client from the evening of 27 November. I really needed the new work. I was told my job would have to wait.

I had been offered legal advice when I arrived at the police station. I did not know any solicitors, and so I asked if I could see the duty solicitor. I was told that the duty solicitor had three other individuals to see before me and that I would therefore have to wait a while to see him. I was told I could be interviewed within the next hour, if I was ready to cooperate. I decided not to wait for the duty solicitor.

The police interview

The officer's attitude throughout the interview was hostile and aggressive. She said that if I kept denying the allegation, she would have to make further enquiries and that I would be kept at the police station. I was feeling very sick. I also needed to get out of the police station to get to my meeting. My business needed the new work if it was going to survive.

I decided that I was not going to be believed and that the only way I was going to be released was to admit that I slapped and pushed my wife causing her to fall. It was a foolish thing to do, but I felt under pressure. I was not thinking straight during the interview, and I said things that were untrue.

I now wish to retract what I said in interview.

Assault Occasioning Actual Bodily Harm/Racially or Religiously Aggravated ABH

Crime and Disorder Act 1998, s.29, Offences against the Person Act 1861, s.47

Effective from: 01 July 2021

Assault occasioning actual bodily harm, Offences against the Person Act 1861 (section 47)

Racially or religiously aggravated ABH, Crime and Disorder Act 1998 (section 29)

Triable either way [Section 47](#)

Maximum: 5 years' custody

Offence range: Fine – 4 years' custody [Section 29](#)

Maximum: 7 years' custody

These are specified offences for the purposes of sections 266 and 279 (extended sentence for certain violent, sexual or terrorism offences) of the Sentencing Code.

STEP 1 Determining the offence category

The court should determine the offence category with reference *only* to the factors listed in the tables below. In order to determine the category the court should assess *culpability* and *harm*.

Culpability

The level of culpability is determined by weighing all the factors of the case. Where there are characteristics present which fall under different levels of culpability, the court should balance these characteristics giving appropriate weight to relevant factors to reach a fair assessment of the offender's culpability.

A – High culpability

- o Significant degree of planning or premeditation
- o Victim obviously vulnerable due to age, personal characteristics or circumstances

- o Use of a highly dangerous weapon or weapon equivalent*
- o Strangulation/suffocation/asphyxiation
- o Leading role in group activity
- o Prolonged/persistent assault

B – Medium culpability

- o Use of a weapon or weapon equivalent which does not fall within category A
- o Lesser role in group activity
- o Cases falling between category A or C because:
 - Factors in both high and lesser categories are present which balance each other out; and/or
 - The offender’s culpability falls between the factors as described in high and lesser culpability

C – Lesser culpability

- o No weapon used
- o Excessive self defence
- o Impulsive/spontaneous and short-lived assault
- o Mental disorder or learning disability, where linked to the commission of the offence

* A highly dangerous weapon can include weapons such as knives and firearms. Highly dangerous weapon equivalents can include corrosive substances (such as acid), whose dangerous nature must be substantially above and beyond the legislative definition of an offensive weapon which is; ‘any article made or adapted for use for causing injury, or is intended by the person having it with him for such use’. The court must determine whether the weapon or weapon equivalent is highly dangerous on the facts and circumstances of the case.

Harm

Category 1

Serious physical injury or serious psychological harm and/or substantial impact upon victim

Category 2

Harm falling between categories 1 and 3

Category 3

Some level of physical injury or psychological harm with limited impact upon victim

STEP 2 Starting point and category range

Having determined the category, the court should use the corresponding starting points to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions. A case of particular gravity, reflected by multiple features of culpability in step one, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out below.

The table below contains a non-exhaustive list of additional factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point. In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

Harm	Culpability		
	A	B	C
<i>Harm 1</i>	<i>Starting point</i> 2 years 6 months' custody	<i>Starting point</i> 1 year 6 months' custody	<i>Starting point</i> 36 weeks' custody
	<i>Category range</i> 1 year 6 months' – 4 years' custody	<i>Category range</i> 36 weeks' – 2 years 6 months' custody	<i>Category range</i> High level community order – 1 year 6 months' custody
<i>Harm 2</i>	<i>Starting point</i> 1 year 6 months' custody	<i>Starting point</i> 36 weeks' custody	<i>Starting point</i> High level community order
	<i>Category range</i> 36 weeks' – 2 years 6 months' custody	<i>Category range</i> High level community order – 1 year 6 months' custody	<i>Category range</i> Low level community order – 36 weeks' custody

<i>Harm 3</i>	<i>Starting point</i> 36 weeks' custody	<i>Starting point</i> High level community order	<i>Starting point</i> Medium level community order
	<i>Category range</i> High level community order – 1 year 6 months' custody	<i>Category range</i> Low level community order – 36 weeks' custody	<i>Category range</i> Band B fine – 26 weeks' custody

Factors increasing seriousness

Statutory aggravating factors:

- Previous convictions, having regard to a) the *nature* of the offence to which the conviction relates and its *relevance* to the current offence; and b) the *time* that has elapsed since the conviction
- Offence committed whilst on bail
- Offence motivated by, or demonstrating hostility based on any of the following characteristics or presumed characteristics of the victim: disability, sexual orientation or transgender identity
- Offence was committed against an emergency worker acting in the exercise of functions as such a worker

Other aggravating factors:

- Deliberate spitting or coughing
- Offence committed against those working in the public sector or providing a service to the public or against a person coming to the assistance of an emergency worker
- Offence committed in prison (where not taken into account as a statutory aggravating factor)
- Offence committed in a domestic context
- History of violence or abuse towards victim by offender
- Presence of children
- Gratuitous degradation of victim
- Abuse of power and/or position of trust
- Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution
- Commission of offence whilst under the influence of alcohol/drugs
- Offence committed whilst on licence or subject to post sentence supervision
- Failure to comply with current court orders

Factors reducing seriousness or reflecting personal mitigation

- No previous convictions or no relevant/recent convictions
- Remorse
- Good character and/or exemplary conduct
- Significant degree of provocation
- History of significant violence or abuse towards the offender by the victim
- Age and/or lack of maturity
- Mental disorder or learning disability, where not linked to the commission of the offence
- Sole or primary carer for dependent relative(s)
- Determination and/or demonstration of steps taken to address addiction or offending behaviour
- Serious medical conditions requiring urgent, intensive or long-term treatment

Discussion of answer

Advocacy (Criminal Litigation)

KEY LEGAL POINTS

These include the following:

Note that case law and exact statutory citations (e.g. provisions of the Police and Criminal Evidence Act 1984 (PACE) and the PACE Codes of Practice (COP) are not required.

Venue for trial

- Some application to the case of the Allocation Guideline as regards sentence, complexity of the case, and powers of the court.
- The likely sentence on conviction with reference to the sentencing guideline for ABH.

Basis of not guilty plea, summary of disputed and agreed facts

- Identifying the key factual issue in the case: a denial that the defendant's conduct caused the complainant's injuries as alleged.
- Identifying disputed and agreed facts by analysing the evidence supporting the prosecution and defence cases.

Legal arguments to exclude confession evidence

- Police and Criminal Evidence Act 1984 (PACE) s.76: some application as regards identifying the 'things said or done' which were likely to have rendered the confession unreliable.
- PACE s.78: some application as regards breaches of PACE/COP relating to the confession which would mean the fairness of the proceedings would be adversely affected if the confession was admitted.

SAMPLE RECORDING

A recording of a sample candidate performance is provided below. This recording is an example of candidate who would be assessed as clearly passing the assessment.

The recording is not perfect nor a model answer and there are further points which could be made.

The link to the recording is here:

[SQE2 Criminal Litigation Oral Advocacy: Sample Candidate Performance](#)

ANALYSIS

Why has the sample candidate clearly passed the assessment?

The following guidance is not intended to be prescriptive but will help you to understand why the sample candidate in the recording would be graded as clearly passing in relation to the assessment criteria for the assessment.

The assessment criteria

The assessment criteria for advocacy are as follows:

Skills

1. Use appropriate language and behaviour.
2. Adopt a clear and logical structure.
3. Present a persuasive argument.
4. Interact with/engages the court appropriately.
5. Include all key relevant facts.

Application of law

6. Apply the law correctly to the client's situation.
7. Apply the law comprehensively to the client's situation, identifying any ethical and professional conduct issues and exercising judgement to resolve them honestly and with integrity.

The candidate's performance in relation to the criteria above was clearly competent for the following reasons:

SKILLS CRITERIA	
Use appropriate language and behaviour	The candidate's submissions were clear and understandable and their use of language which was appropriate for the courtroom setting (e.g. "If I may address you"). The candidate addressed the District Judge appropriately ("Judge").
Adopt a clear and logical structure	The candidate used signposts to guide the judge through their submissions (e.g. "In relation to allocation the prosecution submit..."). The candidate organised facts in a logical order to support their arguments (e.g. "I would submit that these lesser culpability factors would enable the court to view this as a Medium Culpability offence.").
Present a persuasive argument	The candidate was hesitant at times but presented their case with confidence and purpose overall. The candidate sought to influence the judge's decision making (e.g. "Mr Jackson's confession should be excluded under s.76 PACE on the grounds that it is unreliable because it was obtained in breach of the Codes of Practice").

Interacts with/engages the court appropriately	The candidate made submissions at an appropriate pace and directed the court to the ABH sentencing guideline.
Include all key relevant facts	<i>The candidate referred to facts that were relevant to their legal submissions (e.g. the candidate referred to the complainant's injuries; the defendant's lack of previous convictions; the interviewing officer's comments that the defendant would be detained longer if he continued to deny the allegation).</i>
LAW CRITERIA	
Apply the law correctly to the client's situation	<p>The candidate identified the relevant legal principles and applied them correctly to the client's case, e.g. the court should retain jurisdiction because it would have adequate sentencing powers if the defendant were convicted.</p> <p>The candidate addressed some of the issues in dispute and the correct basis of the defendant's plea.</p> <p>The candidate also submitted that the defendant's confession could be excluded on the grounds of unreliability and/or unfairness, because the interviewing officer had breached the PACE /COP.</p>
Apply the law comprehensively to the client's situation, identifying any ethical and professional conduct issues and exercising judgement to resolve them honestly and with integrity	<p>The candidate's legal analysis is sufficiently detailed in the context of the client's case. The candidate used the sentencing guideline to identify a realistic outcome if the defendant was convicted by assessing the defendant's culpability and harm; considering the starting point and sentencing range; and mitigating factors that could lead to a downward adjustment in sentence.</p> <p>The candidate also identified the key issues in dispute and recognised that the defendant's case is that the complainant's injuries were caused by her own actions and not the defendant's.</p> <p>The candidate identified some breaches of PACE/COP which were likely to have rendered the confession unreliable and/or would mean that the fairness of the proceedings would be adversely affected if the confession was admitted.</p>