

LEGAL PROFESSION ADMISSION BOARD

MARCH 2014

CRIMINAL LAW AND PROCEDURE

Time: Three Hours

This paper consists of **four** questions.

All questions are of equal value.

Candidates are required to attempt all **four** questions.

All questions may be answered in one examination booklet.

Each page of each answer must be numbered with the appropriate question number.

Candidates must indicate which questions they have answered on the front cover of the first examination booklet.

Candidates must write their answers clearly. Lack of legibility may lead to a delay in the candidate's results being given and could, in some circumstances, result in the candidate receiving a fail grade.

This examination is worth 80% of the total marks in this subject.

Permitted Materials:

This is an open book examination. Candidates may refer to any books and any printed or handwritten material they have brought into the examination room.

As some instances of cheating and of bringing unauthorised material into the examination room have come to the attention of the Admission Board, candidates are warned that such conduct will result in instant expulsion from the examination and may result in exclusion from all further examinations.

This examination should not be relied on as a guide to the form or content of future examinations in this subject.

Question 1

David is an unemployed 20 year old man who lives in Newcastle, NSW. David suffers from psychosis, which is kept under control by medication. David's only two friends are Ryan and Sam, who are also 20 years old.

After a night of heavy drinking, Ryan suggests to his friends that they go to the freeway overpass and *"chuck some rocks off"* as *"it will be funny if a car crashes and the driver gets hurt-we can film it and post it on YouTube!"* David, Ryan, and Sam all agree to the plan. When they arrive, each of the men throw rocks the size of cricket balls over the fence of the overpass, which land on the road below. Sam films what is happening on his mobile telephone. A rock thrown by Ryan strikes James, a pedestrian, on the left shoulder. James suffers a bruise to the shoulder.

Soon after the men start throwing rocks, David starts to hallucinate, as the alcohol he has consumed aggravates his psychosis. David hears voices telling him the drivers of the cars below are aliens. David runs to a building site next to the overpass, and picks up a very large rock. He shouts *"The aliens must die! The aliens must die!"* and throws the rock off the overpass. It does not strike a car. He continues to run back and forth picking up large rocks and throwing them off the overpass.

Sam, frightened by what David is doing, says to Ryan *"Dave's going crazy! Let's get out of here before the cops come!"* Ryan replies: *"No, this is funny"*. Ryan shouts at David *"Hey Dave, make sure you kill all of those aliens!"*

David, after hearing Ryan's words, picks up the largest rock he can find. He throws it off the overpass. The rock strikes the windscreen of a car below, driven by Diana. She is killed instantly when she loses control of the car and it hits a telegraph pole.

Discuss the criminal liability, if any, of David, Ryan, and Sam

(Question 2 follows)

Question 2

Tom, a young man with financial problems, decides to rob the payroll of the company he works for in Cardiff, NSW. Tom purchases a shotgun and a disguise, but is unsure whether he has the courage to go through with his plan. After drinking half a bottle of vodka, Tom decides to carry out his plan and commit the robbery.

Tom drives to the car park of the office, and waits for Kylie, a security guard, to deliver the payroll. Kylie is armed with a pistol. As Kylie is about to enter the office, Tom rushes up behind her and hits her on the back of the head with his shotgun. Tom takes the payroll from Kylie. He manages to get into his car and start the engine when Kylie catches up with him.

In a daze from the blow to the head, Kylie shouts "*Stop right there, scumbag, or I will shoot!*" Tom starts the car, and drives away from Kylie. Kylie fires 4 shots at the car, aiming at the rear window. One of the shots strikes Tom in the shoulder. He escapes, and does not die.

After the incident, when Kylie is taken to hospital, it is discovered she has a hairline fracture of the skull. She tells police that she remembers "*bit and pieces*" of what happened, and that "*if I shot at that scumbag, it was only because he deserved it*".

Discuss the criminal liability, if any, of Tom and Kylie.

(Question 3 follows)

Question 3

Fiona is an 18 year old woman whose family and friends are deeply religious. Fiona lives in Adamstown, NSW. Fiona has realised that she is homosexual, but is frightened to tell her family or friends because they will disapprove.

One evening, Fiona goes to the house of her friend Samantha to watch their favourite football team, the Newcastle Knights, play. After the game, Fiona tells Samantha:

“You are my best friend. I can’t keep living a lie. I haven’t told anyone this, but I am gay.”

Samantha, who was sexually assaulted by a female physical education teacher when she was in Year 7 at school, replies:

“I can’t believe that you are a dyke! You repulse me! I hope you burn in hell for eternity for your sins! I never want to see you again!”

Fiona is devastated by the words of her best friend, and cannot believe Samantha is homophobic. She starts to leave the house. However, after thinking about what her friend has says, Fiona turns around and tackles Samantha to the ground. She chokes Samantha and repeatedly hits Samantha’s head against the ground.

Samantha loses consciousness due to being choked and having her head repeatedly hit against the ground. While unconscious, she suffers a heart attack due to a hereditary heart condition, and dies.

Discuss the criminal liability, if any, of Fiona.

(Question 4 follows)

Question 4

Select any **TWO** cases from the following list and state, providing reasons, whether or not you think they advanced, or did not advance, the development of criminal law

- i. *Wilson* (1992) 174 CLR 313;
- ii. *Taktak*(1988) 14 NSWLR 226;
- iii. *Zecevic v DPP* (1987) 162 CLR 645;
- iv. *White v Ridley* (1978) 140 CLR 342;
- v. *Lawrence* (1980)1 NSWLR 122;
- vi. *Osland*(1998) 197 CLR 316

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