

LAW EXTENSION COMMITTEE

CRIMINAL LAW AND PROCEDURE WINTER 2013

EXAMINER'S COMMENTS IN RESPECT OF SEPTEMBER 2013 EXAM

The majority of students who attempted the exam prioritised their time correctly, attempting all of the exam questions rather than spending too much time on the first question and failing to complete the exam. Most students organised their answers well, using headings and sub headings for different issues. Most students appeared to have followed the advice given in lectures and in materials on Webcampus regarding the correct exam technique. In respect of the questions, the major issues requiring discussion were as follows:

QUESTION 1

David

- Murder

Phillip

- Psychic assault
- Murder (Complicity-Joint Criminal Enterprise and the Doctrine of Common Purpose)

Most students dealt with the criminal liability of David adequately (the most likely mens rea element of the facts being intention to inflict grievous bodily harm).

The most challenging part of the question was to comprehensively deal with the issue of complicity in respect of Phillip. Students who thoroughly dealt with the issue of joint criminal enterprise and the doctrine of common purpose (in particular, whether or not Phillip knew it was possible David would commit an act causing death, and do so with an intention to kill or intention to inflict grievous bodily harm) obtained higher marks than those who did not discuss the issue in detail, or did not discuss joint criminal enterprise and the doctrine of common purpose at all.

QUESTION 2

The major issues requiring discussion were:

Barry

- Involuntary Manslaughter (Criminal Negligence)
- Necessity

Most students correctly identified involuntary manslaughter. Some students discussed murder, although it was difficult to see how Barry had the requisite mens rea for manslaughter. In respect of involuntary manslaughter by criminal negligence, many students failed to identify the circumstances in which a duty to act arises (*Taktak* (1988) 14 NSWLR 226). A number of students failed to identify that any application of the defence of necessity ceased when Barry subsequently decides not to seek immediate help for Henry, and waits for 30 minutes until he can think of the details of a good lawyer.

QUESTION 3

The major issues requiring discussion were:

Simon

- Murder
- Provocation
- Intoxication
- Diminished Responsibility

A number of students failed to discuss provocation, and focussed upon the defences of automatism and insanity, due to Simon's past in the army. However, it was extremely difficult to see how Simon's actions could be construed as involuntary, either by reason of insanity (the test in *Porter* (1933) 55 CLR 182) or non-insane automatism (*Falconer* (1990) 172 CLR 30). The only potentially applicable defence in respect of psychological impairment was diminished responsibility (Section 23A of the Crimes Act 1900), although it is also difficult to see how that defence would apply.

The most important defence to discuss was provocation (Section 23 of the Crimes Act 1900). Most students identified the subjective limb of the defence, and the two parts of the objective limb of the defence (gravity of provocation and degree of response). Some students failed to correctly identify which characteristics of the defendant could be taken into account in respect of the two parts of the objective limb. Many students failed to identify that there was a significant issue as to whether or not Simon had lost self-control, or was simply angry and seeking revenge for Will flirting with Kate.

In respect of intoxication, a number of students failed to discuss the relevance of Section 428F of the Crimes Act, which states, inter alia, that where it is necessary to compare the state of mind of a

defendant with a reasonable person, the reasonable person is considered not to be intoxicated. provision is relevant to the two parts of the objective limb of the defence of provocation.

QUESTION 4

Overall, this question was attempted more thoroughly than in past exams. However, the strengths and weaknesses of the answers were similar to the March 2013 exam. Some students only discussed one case rather than two (indicating they had either not read the question, or had run out of time). Most students structured their answer adequately, by briefly settling out the facts of the case; identifying the ratio decidendi of the case; and identifying any notable dissenting judgments. Many students failed to discuss, giving reasons, as to whether or not the case advanced the law, but simply identified the ratio decidendi of the case.

G.J.SARGINSON

CHAMBERS

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