

LEGAL PRACTITIONERS ADMISSION BOARD/LAW EXTENSION COMMITTEE**SUMMER 2013-2014****CRIMINAL LAW AND PROCEDURE****EXAMINERS COMMENTS****General Comments**

Overall, the quality of examination answers was not as high as the previous semester. A number of students did not complete the exam by answering all 4 questions. A number of students, when answering the problem questions (questions 1-3 of the exam) did not answer the whole of the question. A number of students did not appear to apply the principles of exam preparation and exam technique discussed by the lecturer during lectures; the weekend school; and in materials on Web campus.

In respect of each question, the major issues requiring discussion were as follows:

Question 1**David**

- Murder
- Insanity or Substantial Impairment of Mind (Section 23 A Crimes Act 1900), including the issue of Intoxication

Ryan and Sam

- Intoxication (for both Ryan and Sam)
- Aggravated Assault (for Ryan)
- Complicity (for both Ryan and Sam)

In respect of David, some students discussed manslaughter rather than murder, although it is difficult to envisage how David did not have an intention to kill, or intention to cause grievous bodily harm; or reckless indifference to human life. Of the students who discussed the defence of insanity, most (but not all) identified the principle in *R v Derbin* (2000) NSWCCA 361 that the defence of insanity could arise even if self-induced intoxication was the trigger of the disease of the mind.

Of the students who discussed substantial impairment by abnormality of mind (Section 23A *Crimes Act 1900*), many students did not identify that the effects of self-induced intoxication were not to be taken into account (Section 23A (3) *Crimes Act 1900*).

In respect of the issue of complicity (i.e. Ryan and Sam's potential criminal liability for murder), many students identified the issues of joint criminal enterprise and the doctrine of common purpose, but many students did not analyse the issue in detail, nor discuss whether or not it was possible Ryan and Sam knew it was possible David would act with an intention to do harm less than grievous bodily harm (*Gillard v The Queen* (2003) 219 CLR 1). Many students did not discuss whether Ryan could be liable for complicity by reason of intentionally encouraging David by shouting "Make sure you kill all those aliens". Some students did not discuss the issue of withdrawal in respect of Sam (*White v Ridley* (1978) 140 CLR 342).

Question 2

Tom

- Aggravated Robbery

Kylie

- Aggravated assault and/or attempted murder
- Automatism and/or self defence

Most students identified aggravated robbery as the potential offence of Tom, and the factual scenario was straightforward in this regard. Some students, however, did not identify and discuss aggravated robbery, but simply discussed robbery. There were no potential defences for Tom.

In respect of Kylie, of the students who discussed attempted murder, some students failed to identify and discuss the necessity that she must have an intention to kill, and recklessness or an intention to cause grievous bodily harm was insufficient. In respect of aggravated assault, the appropriate offences to discuss were Sections 33 or 35 of the *Crimes Act 1900*. When discussing the potential defences, the most appropriate defence to discuss in detail was automatism, because of Kylie's concussion.

However, many students failed to discuss the importance of her comments that she remembered "bits and pieces" of what happened and that "If I shot at that scumbag, it was only because he deserved it" in respect of ascertaining whether or not her actions were voluntary. Of the students who discussed self-defence, many students failed to identify the importance of the fact that Tom was driving away from Kylie, and her comment "If I shot at that scumbag, it was only because he deserved it" in respect of whether Kylie believed on reasonable grounds she needed to shoot Tom to defend herself. Many students failed to discuss the difficulty in Kylie arguing on the one hand her actions were involuntary (automatism) and on the other hand her actions were voluntary, but she believed on reasonable grounds she needed to shoot Tom to defend herself (self-defence).

Question 3

Fiona

- Murder (including causation)
- Provocation

Most students identified murder as the major potential offence, although some students did not discuss murder at all, but discussed involuntary manslaughter.

The issue of provocation (Section 23 of the *Crimes Act 1900*) was the issue that required a detailed discussion. Some students did not correctly identify all the elements of provocation, including the characteristics of Fiona that could be taken into account in respect of the two parts of the objective limb of provocation. Many students identified provocation, but did not discuss it in sufficient detail to obtain high marks for the question.

Question 4

Overall, this question was answered adequately by students. Some students only discussed one case rather than two, which limited the marks available to them. The answers of some students, however, made it clear that they had not understood the case being discussed. The structure of most answers was appropriate, with students briefly setting out the facts of the case; identifying the ratio decidendi of the case; identifying any notable dissenting judgments; and discussing whether or not the case advanced the law. Students who obtained high marks for the question demonstrated a good understanding of the ratio decidendi of the case, and gave a well-reasoned argument as to whether or not the case being discussed advanced the law.

G.J.SARGINSON

CHAMBERS

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