

LEGAL PROFESSION ADMISSION BOARD

MARCH 2013

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, plagiarism and of bringing unauthorised material into the examination room have come to the attention of the Admission Board, candidates are warned that such conduct may 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

John is a student studying for a Diploma in Law at the Law Extension Committee. On Tuesday night, after a boring criminal law and procedure lecture, he decides to head into the city for a few drinks. He goes to an upmarket bar, and between 9.00 PM and 1.00 AM drinks 7 alcoholic cocktails. He meets Diana, an attractive woman in her early 20's who works as a junior Solicitor, and aspires to be a Barrister.

John introduces himself to Diana, and they have a conversation. To impress Diana, John tells her that he is the son of a Supreme Court judge, is well connected in the legal world, and is studying for his Doctor of Laws at Sydney University. None of these things are true. John promises to introduce Diana to "my dad, the Supreme Court judge" and tells Diana his "father" will assist "anyone who is a friend of mine".

John continually buys expensive cocktails for Diana, and insists on topping up her drinks. Over a 2 hour period, Diana drinks 5 cocktails.

Diana and John agree to catch a taxi to John's house for a "nightcap". After arriving, they drink 2 glasses of wine. Diana tells John about how much she is looking forward to meeting his father and discussing with him her aspirations to be a Barrister. Diana feels dizzy, disorientated, and tired. John kisses Diana, and she kisses him back. Diana tells John she is tired. John continues to kiss Diana. Diana begins to lapse in and out of consciousness. John has sexual intercourse with Diana.

When she awakes the next morning, Diana is unsure about whether or not she and John had sex the previous night. John tells her they did have sex, and how beautiful she looks. Diana asks John "When can I meet your father?" John confesses that he lied about his father being a judge, and tells Diana he is a law student who works during the day as a storeman at Coles. Diana exclaims "You scumbag! You took advantage of me! You will pay for this!" Diana then storms out of John's house.

Later that day, Diana telephones her brother Will, and tells him what has happened. Will tells Diana he will "sort out" John. Will goes to John's house that evening, and knocks on the door. When the door opens, Will punches John in the face, breaking John's nose. As John collapses to the ground, Will shouts "That's for what you did to my sister last night, you scum!" and runs off. Will later tells Diana that he wasn't trying to hit John very hard.

Discuss the criminal liability, if any, of John and Will.

(Question 2 follows)

Question 2

Debbie, a 45 year old armed security guard, is about to enter the office of a company to deliver the company's payroll when she is struck on the back of the head with a cricket bat by Dave. Dave runs off with the payroll. Debbie is dazed by the blow to the head. She gets off the ground and chases after Dave. Dave gets into the front seat of his car, and starts the motor. He begins to drive the car away from Debbie, out of the car park of the building and towards a main road. Debbie fires two shots at the car. One of the shots strikes Dave in the shoulder.

Dave, in a panic, stops the car and immediately reverses it towards Debbie. The car strikes Debbie, and she is thrown over the rear of the vehicle. She does not die, but suffers two broken legs, a broken pelvis, and ruptured spleen. Dave then attempts to drive off, but passes out due to blood loss. He does not die.

Later, when interviewed by police, Debbie states that after she was struck on the head she only remembered "bits and pieces" of what happened, including "that scumbag robber getting into the car". However, she could not remember firing at Dave.

Discuss the criminal liability, if any, of Debbie and Dave.

Question 3

Billy is a young man with a mild intellectual disability. He lives with his uncle Travis. Travis has been recently released from jail, after serving a sentence for armed robbery. Travis is also a member of an outlaw bkie gang. Billy regards Travis as a "hero".

Billy and Travis smoke marijuana one evening. Travis tells Billy that while in jail, he found out that Phil, who lives next door, was in jail 10 years ago for child molestation. Travis tells Billy that child molesters "deserve to be bashed" and that they should "deal with that scumbag" so that he will leave the neighbourhood. Billy agrees to go along with Travis, but tells Travis "We shouldn't go overboard. We should just scare him so he leaves".

When they arrive next door, Billy and Travis see Phil sitting on his front verandah listening to a radio. Travis walks up to Phil, and pulls out a knife. Billy did not know Travis had a knife. Upon seeing Travis pull out the knife, Billy runs away. Travis stabs Phil in the chest, and the knife strikes an artery. Travis runs away. Phil staggers to the road while bleeding profusely, looking for help. He is struck by a car and killed.

Discuss the criminal liability, if any, of Travis and Billy.

(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) ***Green* (1997) 191 CLR 334;**
- (ii) ***Chhay* (1994) 72 A Crim R 1;**
- (iii) ***Osland* (1998) 197 CLR 316;**
- (iv) ***Moffa* (1977) 138 CLR 601;**
- (v) ***Dudley and Stephens* (1884) 14 QBD 273;**
- (vi) ***Porter* (1933) 55 CLR 182.**

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