

LEGAL PROFESSION ADMISSION BOARD

SEPTEMBER 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

David and Philip are 25 year old men working for an IT company in Sydney, NSW. Both despise their boss, Greg, as he has repeatedly overlooked them for promotion.

One evening, whilst sharing a cappuccino at the coffee shop, David and Philip decide to play a "practical joke" to "scare the hell" out of Greg. The plan is for David and Philip to dress up as zombies, and for David to punch Greg while Philip "distracts" Greg. While at the coffee shop, David tells Philip that, before re-training as an IT specialist, he had spent time in a juvenile detention centre for aggravated assault when he had stabbed a fellow student in the playground while attending high school. David tells Philip "*No one puts shit on me and gets away with it*". They attend a costume shop and rent zombie costumes. David and Philip drive to Greg's house, and park in the street outside the house.

David hides in bushes near the front door of the house, while Philip knocks on the door and shouts "*Please come out and help, someone has been hit by a car!*" When Greg comes out of his house, Philip shouts "*Boo!*" and David comes up behind Greg and punches him in the back. Philip starts to run away, but turns around to see David repeatedly kicking Greg in the head shouting "*This is the last time you disrespect me, scumbag!*" Philip calls out "*Leave him alone and let's get out of here!*" David continues to kick Greg in the head 3 more times, before leaving. The following day, while in hospital, Greg has a brain haemorrhage and dies.

Discuss the criminal liability, if any, of David and Philip.

(20 marks)

Question 2

Barry is the operator of "Barry's Dangerous Diving Tours", which conducts diving tours in the shark infested waters of Lake Macquarie, NSW. Fiona and Henry are a newlywed couple, who decide to take a diving tour during their honeymoon. Henry takes the first dive, with Fiona on the boat with Barry. Prior to the dive, Henry was given only a very brief instruction session, and he is an inexperienced diver. Barry, who has financial difficulties, realises the shark cage behind the boat in which divers swim has a hole in it, but doesn't have the money to repair the cage.

Whilst Henry is diving, a large shark swims through the hole and into the cage. Henry activates the alarm on the cage, and it is raised to the surface. The shark is still in the cage, and circling Henry. There is a speargun on the deck of the boat. Fiona, seeing Henry in danger, screams hysterically "*Shoot the shark! Shoot the shark! If you don't I will jump in!*" Barry picks up the speargun, and shoots at the shark. The spear passes through Henry's shoulder, and hits the shark, killing it.

Henry is dragged aboard the boat, bleeding profusely. Fiona faints, due to the shock of what has happened. Barry, fearful that he has done something wrong, decides not to call for help until he can think of what he will tell the police, and until he can remember the details of a good lawyer to contact. After 30 minutes, Barry docks the boat and calls for an ambulance. When the ambulance arrives, Henry is dead.

Discuss the criminal liability, if any, of Barry in respect of what happened to Henry.

(20 marks)

(Question 3 follows)

Question 3

Simon is a 25 year old man, who was discharged from the army with post-traumatic stress disorder after serving with the SAS in Afghanistan. He recently broke up with his long term girlfriend Kate, and suffers from depression. Since the break-up of the relationship, he has been drinking heavily.

One Friday night, he attends the local pub with his friend Dave. Simon drinks 5 beers over a 45 minute period. Kate enters the pub with a group of friends. She tells Simon she wants nothing to do with him, and to leave her alone. For the next 30 minutes, Simon watches Kate, while he drinks another 3 beers. Kate starts playing a game of pool with Will, a man she has met in the bar. Simon believes Will and Kate are flirting, and sees Will put his arm around Kate's waist.

Simon walks up to the pool table, and tells Will *"Get your filthy hands off my girlfriend, or you will be spending the night in the hospital"*. Kate interjects: *"You're not my boyfriend and you don't own me"*. Will tells Simon *"Piss off mate, you heard what she said"*.

Dave tells Will *"I'd be careful if I were you. My mate was with the army in Afghanistan, and he knows how to handle himself"*. Will replies *"You were in Afghanistan were you? How many babies did you kill while you were over there?"*

Dave realises that the best course of action is to get Simon out of the pub, and he grabs Simon and pushes him out the door. He tells Simon *"Mate, it's not worth it. Let's just go home"*. Simon appears to calm down, and responds *"Yeah, it's not worth it"*. Simon and Dave walk about 400 meters down the street. Without warning, Simon turns around and runs back into the pub. He confronts Will, and says *"This is what happens to scum who touch my girlfriend!"* He picks up a pool cue, and hits Will over the head as hard as he can. Will suffers a brain haemorrhage and dies.

Discuss the criminal liability, if any, of Simon.

(20 marks)

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) *Tolmie* (1995) 37 NSWLR 660;
- (ii) *Falconer* (1990) 171 CLR 30;
- (iii) *Royall* (1991) 172 CLR 378;
- (iv) *DPP v Morgan* [1976] AC 182;
- (v) *Abusafiah* (1991) 24 NSWLR 531;
- (vi) *Porter* (1933) 55 CLR 182.

(20 marks)

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