

LEGAL PROFESSION ADMISSION BOARD

MARCH 2009

CRIMINAL LAW AND PROCEDURE

EXAMINERS COMMENTS

GENERAL COMMENTS

Overall, there was an improvement in the standard of the exam answers this semester, which indicates that most students prepared well, and thought carefully about exam technique. However, as in previous semesters, students who did poorly did so for a combination of the following reasons:

- Inability to manage the time allocated in the exam efficiently, so that the first two questions attempted were of good or adequate quality, but the last question was not attempted at all, or the answer given extremely brief;
- Inability to identify a number of the major issues in the problem questions;
- When the legal issue was correctly identified, failing to demonstrate an understanding of the legal principles by discussing how the legal principle applied to the facts in the problem questions. Students who discussed the application of the legal principle to the facts of the problem question received significantly higher marks than those students who did not;
- In respect of the 'essay' options in Part B Question 3, answering the question by stating the law without answering the question by providing argument supported by reasons.
- A few students misread the exam instructions so that they attempted Part A Question 1, and 2 essay questions from Part B Question 4.

Most students answered Part A and the 'problem' questions in Part B (Questions 1 and 2), rather than attempting one of the 'essay' question options in Part B Question 3.

SPECIFIC COMMENTS

PART A

The **major** issues students were expected to discuss were as follows:

David

- Aggravated Break and Enter

- Murder of Kevin
- Aggravated Assault of Gloria
- Intoxication
- Provocation

Sam

- Aggravated Break and Enter
- Complicity to Murder of Kevin and Aggravated Assault of Gloria

Aggravated Break and Enter and Murder were comprehensively discussed by most students. Many students did not discuss intoxication, and of those who did, many did not discuss Section 428C (2) of the *Crimes Act 1900* (NSW). In respect of Provocation, most students adequately identified the subjective and objective limbs of the defence, but many students did not discuss the possibility that David had not lost self control, because he “thought for a few moments” and changed his mind from committing suicide to deciding to shoot at Kevin. In respect of Complicity, most students only discussed joint criminal enterprise and the doctrine of common purpose, and did not discuss Sam as a principal in the second degree to the murder of Kevin and aggravated assault of Gloria by handing David the gun, and encouraging David to put Gloria “out of her misery” (*Stokes v Difford* (1990) 51 A Crim R 25).

PART B-QUESTION 2

The **major** issues students were expected to discuss were:

Fred

- Involuntary Manslaughter
- Necessity
- Duress

Most students correctly identified involuntary manslaughter in respect of the deaths of both Gloria and Jim. In respect of Jim’s death, it was arguable either way that it was unlawful and dangerous act, or criminal negligence. However, many students discussed the death of Gloria poorly, not discussing the issue of whether Fred had a duty to act in respect of criminal negligence due to his omission to notify the authorities of Gloria being left in the ocean (*Taktak* (1988) 14 NSWLR 226), and the issue of causation. Many students did not discuss necessity or duress at all, and of those who did, many simply left the discussion at correctly identifying that necessity

and duress were not defences to murder, without discussing their application to involuntary manslaughter.

PART B-QUESTION 3

The **major** issues students were expected to discuss were:

Greg

- Aggravated Assault
- Attempted Murder
- Intoxication
- Self Defence
- Insanity

Although a number of students did not address the issues in this question as thoroughly as they did in the early questions due to inadequate time management, the overall quality of the answers was good. A number of students discussed automatism without discussing insanity. Some students raised diminished responsibility, rather than focussing on insanity when the question stated that Greg “suffers from a psychological issue causing him to suffer hallucinations”. Students who discussed how the legal principles applied to the facts in detail (such as the relevance of Troy having only one arm, and Greg hitting him over the head with his baton 3 times to the defence of self defence) obtained higher marks. In respect of the interaction between intoxication and the defence of insanity, a number of students failed to identify and apply *Derbin* [2000] NSWCCA 361.

PART B-QUESTION 4

Few students attempted the ‘essay’ question option in Question 4. Of those who did, the best students provided a reasoned argument that answered the question, while other students simply stated the law without providing any reasoned arguments which answered the question. In particular, many students who attempted Part B Question 4 (a) simply gave a case summary of two of the cases listed, without providing any detailed analysis of whether or not the decisions advanced the law.