

LEGAL PROFESSION ADMISSION BOARD

MARCH 2009

CRIMINAL LAW & PROCEDURE

TIME: Three Hours

This paper consists of **four** questions.

Candidates are required to attempt **Part A, and two questions only from Part B.**

Part A will count for 40 marks, and each question from Part B will count for 30 marks.

If a candidate answers more than the specified number of questions in Part B, **only** the first **two** questions will be marked.

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.

Permitted Material:

This is an open book exam. Candidates may refer to any books and any printed or handwritten material they have brought with them.

As some instances of cheating and of bringing unauthorised material into the examination room have come to the attention of the Admission Board, candidates are warned that such conduct will 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.

Part A

Question 1

David is depressed as a result of the breakdown in his marriage to Gloria. David and Gloria live in separate houses, with Gloria having changed the locks on the doors of the house where she lives, and David previously lived before they separated.

After drinking heavily one afternoon, David calls his friend Sam and asks for his help in retrieving wedding photos of David and Gloria. David knows that Sam has previously worked as a doorman at a Kings Cross nightclub, and was convicted of assault many years ago. Sam suggests that he and David break into Gloria's house that night, and take the photos while she is asleep. David agrees.

David and Sam attend Gloria's house at 2.00am. Sam has a hammer and screwdriver, but he and David are able to enter the house after finding the back door unlocked. Unknown to David, Sam also has a loaded gun, which he always carries with him. When in the house, David hears moaning noises emanating from Gloria's bedroom. Unable to resist his curiosity, David opens the door and finds Gloria having sexual intercourse with David's brother, Kevin.

Gloria exclaims *"David, you pervert! Get out of here! Your brother is ten times better in bed than you ever were!"*

Sam (who had by this time pulled out the gun he had with him) had followed David into the bedroom, and upon hearing Gloria's words, tells David *"Mate, that is the most disgusting thing I have ever seen. If she was my wife, I would put her out of her misery!"*

David, seeing Sam holding the gun, grabs it from Sam and points the gun at his own head intending to commit suicide. However, after thinking for a few moments, David fires the gun at his brother Kevin. Kevin dies instantly. David then exclaims *"I love you Gloria, I never want to lose you!"* David fires the gun at point blank range into Gloria's left leg. Gloria is injured, but survives.

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

(40 marks)

(Question 2 Part B follows)

Part B

Attempt ONLY TWO (2) questions in this part.

Question 2

Fred operates a business transporting divers to and from a shipwreck off the north coast of NSW. Dianne, Jim and Fiona are three friends who are avid divers, and attend a cruise on Fred's dive boat, along with 20 other divers.

After the dive has been completed, Fred miscounts the number of people on the dive boat. The boat returns to shore, leaving Dianne Jim and Fiona in the water.

After the dive boat has docked at shore and the divers left the boat, Fred realizes that 3 divers are not on the boat, and are still in the ocean. Concerned about bad publicity for his business, Fred does not call the police, but travels back out to the shipwreck. The journey takes 3 hours. When he arrives, Fiona has died as a result of a faulty oxygen tank.

Fred sees both Dianne and Jim. He helps Dianne onto the boat. Dianne sees a fin circling Jim, and cries out "Shark!" Fred responds by grabbing the loaded rifle he keeps on the boat, and fires a warning shot into the sky. Dianne exclaims "Shoot the shark, you idiot!" Fred responds by stating "It could be a shark or a dolphin, I'm not sure". Dianne states "It's definitely a shark! Shoot it, or I will dive into the water myself and save Jim". Fred fires the gun, but the bullet hits Jim, killing him.

Discuss the criminal liability, if any, of Fred.

(30 marks)

Question 3

Greg is a security officer at a shopping centre. Greg suffers from a psychological condition which causes him to suffer hallucinations. However, Greg is able to keep his psychological condition under control by taking medication and not consuming alcohol.

Prior to attending work one evening, Greg takes his medication and consumes 3 cans of beer while celebrating an important victory by his favourite football team, the Newcastle Knights.

While on duty, Greg sees Troy, a heroin addict with an amputated arm, steal a packet of biscuits, and run towards the exit of the shopping centre. Greg calls out "*Stop, security!*" and chases after Troy. Greg tackles Troy to the ground. Troy struggles, and lashes out with his leg, kicking Greg in the groin. Greg responds by hitting Troy over the head 3 times with his baton, leaving Troy badly concussed.

(Question 3 Part B continues)

(Question 3 Part B continued)

After restraining Troy, Greg marches him back towards the security office. However, on the way to the office, Greg suffers an hallucination. Greg believes that Troy is a murderer, and must be stopped before he kills again. Greg places his hands around Troy's throat, choking him until Troy becomes unconscious. Before Greg can cause any further harm to Troy, he is restrained by other shoppers. Troy survives the attack.

Discuss the criminal liability, if any, of Greg.

(30 marks)

Question 4

Answer EITHER (a) or (b) or (c):

(a) Select any TWO cases from the following list of cases and state, providing reasons, whether or not you think they advanced the law:-

- (i) *Tolmie* (1995) 37 NSWLR 660
- (ii) *Papadimitriopolous* (1957) 98 CLR 249
- (iii) *Falconer* (1990) 171 CLR 30
- (iv) *Adams v Kennedy* (2000) 49 NSWLR 78

(b) "The present law of extended common purpose liability is unjust, overbroad and anomalous. It should be re-expressed to narrow its ambit" (per Kirby J in *Clayton* (2006) 231 ALR 500 at 524)

Discuss the above comment in the context of the development of the law of complicity since 1994.

(c) On 1 January 2008, Section 61HA of the *Crimes Act 1900* (NSW) came into effect. Section 61HA (3) (c) introduces an objective test into the mens rea of the offence of sexual assault. The effect of Section 61HA is to fundamentally change the mens rea element of the offence of sexual assault.

Discuss whether or not Section 61HA (3) (c) of the *Crimes Act 1900* (NSW) advances the law of sexual assault.

(30 marks)

END OF PAPER