

**LEGAL PROFESSION ADMISSION BOARD**

**SEPTEMBER 2008**

**CRIMINAL LAW AND PROCEDURE**

**TIME: Three Hours.**

The 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 materials 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**  
**(Compulsory)**

John and Bill hatch a plan to rob Gloria, the heiress to a cosmetic empire. They gain entry into Gloria's apartment where the only person they find is Pearl. Pearl is a frail 80 year old and is Gloria's aunt. John pulls out a butcher's carving knife from under his shirt and orders Pearl to hand him her diamond wedding ring, which she is wearing. When Pearl refuses to do so, John chops off her ring finger. The pain and shock causes Pearl to fall unconscious to the floor. Bill does nothing throughout, being too frightened of John whom he idolizes, but knows has a history of violent conduct. Additionally, Bill had not known that John had a knife until John produced it.

Thinking that Pearl had died of a heart attack, John and Bill agree to dispose of her body. As Bill is carrying Pearl down the emergency stairs of the apartment building, he panics and drops Pearl heavily. As a result, Pearl dies from a fractured skull.

Bill yells out to John that he has had enough, and rushes down the stairs and out of the building. As Bill is leaving the building, he encounters Gloria, who has just returned. In a panic, Bill punches Gloria in the face, hoping that Gloria will be knocked out by the punch. Gloria, who is wearing very high stiletto shoes, loses her balance and dies when her head hits the sharp point of a fence.

**Discuss the criminal liability, if any, of Bill and John.**

**(40 marks)**

**PART B**

**(If more than two questions are answered from Part B, only the first two will be marked)**

**Question 1.**

Andy has just been released from prison after a sentence of ten years for committing a number of violent crimes. He decides to start a new life with the help of Vicki, his younger sister and a devout Catholic who converts him to her faith. At Church one Sunday morning, Vicki tells Andy that she is regularly beaten up by her husband, Clem, whenever he returns home drunk. Andy persuades his sister that Andy should have a 'man to man' talk with Clem about his appalling treatment of Vicki when the three of them next go on a picnic.

This occurs on the next Sunday when Andy and Clem are by themselves and enjoying a spot of fishing on the riverbank. Andy tells Clem that his violent treatment of Vicki is immoral and cowardly. Clem quickly becomes upset and shouts at Andy:

**(Question 1 of Part B continues)**

**(Question 1 of Part B continued)**

“Who do you think you are, you good for nothing lump of prison shit! Go fuck your sister and your Holy Mother of God!”

Andy is enraged by the remark, and demands that Clem apologize. Clem refuses. Andy then throws his full weight at Clem, causing them both to fall into the river. Andy submerges Clem’s head under the water and is about to release him when he hears some rustling in the bushes nearby. Thinking that Vicki is watching, and interpreting her silence as to mean that she wants Clem to be taught a good lesson, Andy holds Clem underwater for another half minute. Clem drowns. The rustling in the bushes is caused not by Vicki, but by Dave, a tramp who is delighted by such exiting free entertainment.

**Discuss the criminal liability, if any, of Andy and Dave.**

**(30 marks)**

**Question 2.**

Max, a young man with financial problems, decides to rob the payroll of the company he works for. Max purchases a gun and a disguise, but is unsure whether he has the courage to go through with his plan. After drinking half a bottle of vodka, Max decides to carry out his plan to commit the armed robbery.

Max drives to the carpark of the office, and waits for Mary, a security guard, to deliver the payroll. Mary is armed with a pistol. As Mary is about to enter the office, Max rushes up behind her and hits her on the back of the head with his shotgun. Max makes off with the payroll, and manages to get into his car and start the engine when Mary catches up to him.

In a daze from the blow to her head, Mary shouts “Stop right there, scumbag, or I will shoot!” Max starts the car, and drives off. As he does so, Mary shoots him in the shoulder. In a state of pain and fearing Mary may shoot again, Max turns the car around, and drives directly at Mary. The car strikes Mary, and she is thrown to the ground, striking her head. Mary suffers a fractured skull, but is not killed.

**Discuss the criminal liability, if any, of Max and Mary.**

**(30 marks)**

**(Question 3 of Part B follows)**

**Question 3.**

**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 positively advanced the law:-**

- (i) *O'Connor* (1980) 146 CLR 64
- (ii) *Ostrowski v Palmer* (2003) 218 CLR 493
- (iii) *Zecevic* (1987) 162 CLR 645
- (iv) *Adams v Kennedy* (2000) 49 NSWLR 78

**OR**

(b) The determination of whether an offence is one requiring proof of *mens rea*, or is one of strict liability, is rife with uncertainty and unpredictability. It would be far better for the legislature to clearly stipulate the nature of the offence they have created.

**Discuss.**

**OR**

(c) Despite its best efforts, the High Court has been unable to clearly articulate the circumstances in which provocative conduct of the victim reduces the offence of murder to manslaughter. The defence of provocation should be abolished.

**Discuss.**

**(30 marks)**

**- End of Paper -**