

**LEGAL PROFESSION ADMISSION BOARD**

**SEPTEMBER 2009**

**CRIMINAL LAW AND 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 attempted 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 Materials:**

**This is an open book exam. Candidates may refer to any books and any printed or handwritten material they have brought into the examination room.**

**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, Mila and Fiona are members of a religious cult, and live in the same house. David and Mila are married. Mila suffers from diabetes. Fiona is a 20 year old woman who is intellectually handicapped.

Fiona falls ill with swine influenza, and is too sick to leave the house. Rather than going to a doctor, David and Mila go to their Minister, Reverend Bill, for advice. After hearing that Fiona is sick, Reverend Bill states:

*“If she is sick, it is God’s will. The good book says that if you pray for her and give her bread and water, God will decide whether or not to call Fiona to Him”.*

Over the next few days, Fiona’s health deteriorates. David and Mila continue to offer her bread and water once a day, but take no other action. David becomes more concerned about Fiona’s health and decides to try to convince Mila that a doctor should be called. However, prior to David speaking to her, Mila accidentally administers excessive insulin after drinking three (3) glasses of wine, and suffers hallucinations. When David tries to convince Mila that a doctor should be called to assist Fiona, Mila replies:

*“We cannot call a doctor. God has spoken to me. Fiona has the spirit of the devil in her, and the only way she can be saved is by removing the devil’s spirit. We must lock the door of her room, and keep her there until midnight. We must call Reverend Bill so that he can perform an exorcism of the evil spirit. God has told me that if I don’t comply with his orders, I must scratch out my own eyes!”*

Fearing that Mila will harm herself, David agrees not to call a doctor, and calls Reverend Bill instead. David informs Reverend Bill that Fiona is very sick, and that Mila wants an exorcism to be performed rather than calling a doctor. Reverend Bill agrees to perform an exorcism, and arrives at midnight. When David, Mila and Reverend Bill open the door to Fiona’s room, she is dead. Fiona died 15 minutes earlier from the combined effects of swine influenza and malnutrition.

**Discuss the criminal liability, if any, of David, Mila, and Reverend Bill.**

**(40 marks)**

**(Part B Question 2 follows)**

## Part B

Attempt any two (2) questions in this part.

### Question 2

Joshua is an 18 year old man, whose family is deeply religious. Joshua has realised that he is homosexual, but is frightened to tell his friends or family because they will disapprove.

One evening, Joshua goes to the house of his friend Harry to watch a football game on television. Over a period of three hours, Joshua and Harry each consume eight (8) cans of beer. Joshua tells Harry:

*“You are my best mate. I can’t keep living a lie. I haven’t told anyone else this, but I am gay”.*

Harry, who was sexually assaulted by an uncle when he was ten (10) years old, replies:

*“I cannot believe that you are a poofter. You repulse me. I hope you burn in hell!”*

Devastated by the words of his best friend, Joshua starts to walk out of the house. However, after thinking about Harry’s words, Joshua turns around and tackles Harry to the ground. Joshua punches Harry in the head, and chokes him until Harry loses consciousness. While unconscious, Harry suffers a heart attack due to a hereditary heart condition, and dies.

In a panic due to his belief that his friend may be dead, Joshua leaves the house. Joshua sees Mary, Harry’s mother, arriving home from work. As Mary is getting out of her car, Joshua hits her over the back of the head with the metal lid of a garbage bin, fracturing Mary’s skull. Mary is injured, but does not die.

**Discuss the criminal liability, if any, of Joshua.**

**(30 marks)**

### Question 3

William is in a relationship with Matilda, who he deeply loves. However, one Friday evening Matilda informs William that she does not love him anymore, and is moving overseas to live with a man who she met on the internet site ‘Facebook’.

William is greatly angered by Matilda’s treatment of him. He knows that Matilda wears an expensive Rolex watch. William decides to hire Kevin to help him *“teach Matilda a lesson”* and take the Rolex watch. William knows that Kevin is a member of a bikie gang, and has served time in jail for assault.

**(Part B Question 3 continues)**

**(Part B Question 3 continued)**

William and Kevin plan to attack Matilda when she is parking her car in the underground car park at the unit block where she lives late one night. Both men disguise themselves with balaclavas. As Matilda gets out of her car, William grabs her and restrains her. Kevin takes the Rolex watch from Matilda's wrist. However, rather than running away as William expects, Kevin pulls out a gun and hits Matilda over the head, knocking her unconscious. While Matilda is unconscious on the ground, Kevin has sexual intercourse with her.

William watches Kevin have sexual intercourse with Matilda, too frightened to intervene. Kevin finishes having sexual intercourse with Matilda, and begins to walk away. William sees a brick lying on the ground, and picks it up. William rushes up behind Kevin and hits him over the head with the brick, knocking Kevin unconscious.

While Kevin is unconscious on the ground, William repeatedly hits him on the head with the brick. Kevin is badly injured, but does not die.

**Discuss the criminal liability, if any, of Kevin and William.**

**(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) *Rogers* (1986) 86 A Crim R 542
- (ii) *Porter* (1933) 55 CLR 182
- (iii) *Zecevic* (1987) 162 A Crim R 645
- (iv) *Green* (1997) 191 CLR 334

**(b) The distinction between crimes of 'basic intent' and 'specific intent' as identified by the House of Lords in *DPP v Majewski* [1977] AC 443 and repeated in Part 11A of the *Crimes Act 1900* (NSW) is illogical and unprincipled. Part 11A of the *Crimes Act 1900* (NSW) should be abolished, and the intoxication of a defendant should be taken into account for the actus reus and mens rea of all crimes.**

**Discuss the above statement, including discussion of the judgment of Barwick C.J. in *R v O'Connor* (1980) 146 CLR 64.**

**(Part B Question 4 continues)**

**(Part B Question 4 continued)**

- (c)** The distinction between an honest and reasonable mistake of law and an honest and reasonable mistake of fact in the context of a statutory offence of strict liability is unclear, and should be clarified by statute.

**Discuss the above statement by reviewing the development of the defence of 'honest and reasonable mistake of fact' to statutory offences of strict liability, including a discussion of *Ostrowski v Palmer* (2003) 219 CLR 493.**

**(30 marks)**

**END OF PAPER**