

THE UNIVERSITY OF  
NEW SOUTH WALES



FACULTY OF LAW

## **LAWS 1011 - CRIMINAL LAW 2**

Final Examination - November 2004

Time allowed: 2 Hours and 30 minutes, plus 10 minutes reading time

Total number of questions: 4

Answer TWO questions only.

This paper is worth 60% of the marks for Criminal Law 2. All questions are of equal value. Each answer is worth 30% of the marks for the subject.

This paper may be retained by the candidate.

Candidates may bring any printed or written material to the examination.  
Underlining and annotation are permitted in typed notes and texts.

### **Other Instructions:**

1. Print your student number and name on the front cover of your answer book.
2. Print your teacher's name and the day & time of your class on the top right hand corner of each answer book.
3. Answer each question in a separate book.
4. Answers must be written legibly in ink.
5. Unless otherwise indicated, all facts and events take place in NSW.
6. Students are permitted to use abbreviated citations of primary sources (eg Crabbe and s18(1)(a), rather than Crabbe v The Queen (1985) 156 CLR 464 and ss18(1)(a) Crimes Act 1900 (NSW)).

## PART 1– Answer only ONE question

Courtney and Rikki met when they were at school and engaged in some petty crime together as teenagers. Courtney left school before Rikki and moved interstate. They had not seen each other since. Courtney returned to Sydney last year.

One night recently Rikki walks into the Swinging Arms, a bar that Courtney regularly drinks at. She is recognised by Courtney, and they have a beer together.

In the course of reminiscing about old times, Rikki learns that Courtney now owns a CD store, Idol Records. She asks him about how profitable it is and how much cash they take in a day. Courtney laughs and asks Rikki:

“So, still up to no good, eh?”

Rikki shrugs her shoulders and changes the subject. A little later Rikki returns to the topic and says:

“So you’d go to the bank around 3.30 then, eh?”

Courtney replies:

“Actually I only go to the bank once a week on Thursdays, but don’t get any ideas. I don’t want any trouble; I’ve got a mortgage to pay off.”

Rikki says:

“You know I’d never make trouble for you – we always looked after each other.”

Courtney smiles. Nothing more is said on the topic. They finish their beers and say goodbye.

Two weeks later, on a Thursday, Courtney is working alone at Idol Records. Rikki walks into the store with a balaclava on her head. She says:

“Hi Courtney, it’s Rikki. Bet you’re surprised to see me. I’ve come to rob you. No need for any violence – just give me all the cash in the till. Report it to the police, and claim the loss on insurance – just don’t give them my name.”

Courtney shakes his head saying:

“I tried going straight, but no one gives you a break.”

He opens the till and gives the all the cash in it to Rikki. In all there is \$10,000 in cash. Rikki leaves without another word.

Courtney reports the events to the police and returns home. The next day he finds a brown paper parcel with \$3000 cash in it on his doorstep. There is nothing on the parcel to indicate where it has come from. Courtney keeps the cash but does not tell anyone about it.

In his initial statement to Police, Courtney says:

“A woman entered the store and threatened me with violence if I did not give her the store takings. I was scared that she might have a gun and so I gave her all the cash.”

Unknown to Courtney, Rikki has another person waiting for her outside the store – Dan. Dan is Rikki’s boyfriend. Dan has a borderline personality disorder and has trouble controlling his temper. He is often violent. Rikki has told him that she plans to rob Idol Records but that it will be an easy “inside job” as she knows Courtney. Dan has agreed to drive Rikki to and from the store but says to her,

“I’m not going into the store with you. I don’t want to be involved in any robbery. Driving you there is stressful enough for me already.”

As he is waiting outside the store for Rikki to return, a bicyclist crashes into the car. The car is Dan’s most important possession and he gets out of the car in a rage. He takes a baseball bat from the car and begins to beat the bicyclist with the bat fracturing the bicyclist’s skull and causing deep gashes to his head.

Rikki runs out of Idol Records - sees Dan beating the bicyclist - and runs away screaming:

“You sick bastard. I never want to see you again. I hope they lock you up”.

Eventually Dan is restrained by bystanders until police arrive, and subsequently convicted of malicious wounding and sentenced to 3 years imprisonment.

***You are a solicitor with the DPP. You are asked to advise on the following:***

- ***Is there is any likelihood of a conviction for a conspiracy offence (10 marks)?***
- ***What other offences, if any, may Rikki have committed (14 marks)?***
- ***What other offences, if any, may Courtney have committed (6 marks)?***

***N.B. You can assume that Courtney operates Idol Records as a sole trader.***

## **Question 2**

George and John are brothers who have just finished Year 12 at high school. They live on a farm with their parents but attended the local school in town. During the summer following the end of Year 12 they are both working on the farm, trying to help their parents. George was born with a mild intellectual disability – he gets frustrated and loses his temper easily. It has been a real struggle for George to complete Year 12, and he has finished at the bottom of all of his classes. George also limps as he was born with one leg shorter than the other. John has been a good student and consistently gets high grades. He is hoping to go to university.

George and John have been arguing all summer. They have been working together every day and the tension between them is high. The brothers have never gotten on well with each other. George realises that he has a disability and is resentful of the academic achievements of John. John makes fun of George and teases him when he does not understand things.

Late one afternoon George and John are having an argument in the living room at home. John is angry at George because he did not properly do the fencing work that had to be done that day. John yells at George:

‘You’re an incompetent fool. We can’t trust you to do anything’.

George says:

‘I tried my best and I’ll fix it tomorrow’.

John says:

‘As usual, that’s not good enough. The fencing had to be finished today, stupid. You just can’t get anything right, can you?’

George ran out of the living room and then returned with their mother’s gun which was behind the front door. He pointed it at John and said:

‘Shut up Johnno. You think you’re so great at everything, but you’re not. You’re a mean brother and I hate you. I’m going to teach you a lesson this time’.

At this point George and John’s mother Barbara walks into the living room from the kitchen and sees George with the gun. Barbara has been chopping up carrots and has a large kitchen knife in her hand. She runs towards George, screaming:

‘George, calm down! Give me the gun’.

She still has the knife in her hand and is holding it up in the air. George walks away from her, still holding the gun. George says:

‘Get away Mum and put down that knife. This is between me and John’.

Barbara continues to run towards to George. George then trips on a rug. The gun discharges and the bullet hits Barbara in the stomach and goes straight through her body. It then hits John and pierces a crucial heart valve.

Their father Mark rushes in from outside when he hears the gun go off. He sees Barbara on the floor clutching her stomach and groaning, and John behind her lying motionless. George is in the corner, crying and says:

‘I’m sorry Dad. I didn’t want this to happen. John was just so mean though’.

Mark calls an ambulance and John and Barbara are rushed to hospital. Both are pronounced dead on arrival.

George is arrested by the police.

***1) Assume you are a DPP lawyer advising the police as to which charges should be laid against George based on the allegations outlined above. What would your advice be and why? (15 marks)***

***2) Now assume you are a defence lawyer advising George regarding the charges that have been laid. What advice would you provide to him regarding defences that he could raise at trial and why? (15 marks)***

## **PART 2 – Answer only ONE question**

### **Question 3**

The Victorian Law Reform Commission has recently recommended that sexual assault be amended as follows:

#### **Rape**

- (1) A person commits rape if he intentionally has sexual intercourse with another person without that person's consent.
- (2) It is a defence to a charge of rape that the accused held an honest belief that the complainant was consenting to the sexual penetration.
- (3) The accused must produce some evidence that he had an honest belief that the complainant consented before this matter can be left to the jury. The mere assertion by an accused that he believed the complainant was consenting shall not constitute sufficient evidence of an honest belief as to consent.
- (4) The defence of honest belief in consent is not available where:
  - (a) the accused did not take reasonable steps, in the circumstances known to the accused at the time, to ascertain that the complainant was consenting; or
  - (b) the accused did not turn his or her mind to the possibility that the complainant was not consenting.

*You are a policy officer in the Criminal Law Review Division of the NSW Attorney General's Department. The Attorney has asked you to provide an advice on:*

- *What the current key features of NSW's sexual assault law is (10 marks);*
- *How the Victorian proposal is different to the NSW approach (10 marks);*
- *What advantages or disadvantages there would be in adopting the Victorian proposal (10 marks).*

*N.B. You are not required to discuss aggravated offences or offences involving indecency.*

### **Question 4**

'The "defences" in the criminal law are artificial, unwieldy and confusing. Arguments and evidence about such "defences" should only be relevant as mitigating factors in the sentencing process.'

*Discuss (30 marks)*