



LAWS1011 – Criminal Laws 2
FINAL EXAMINATION - Session 2 2006

Time allowed: 2.5hours, plus 10 minutes reading time

Examination condition: THIS IS AN OPEN BOOK EXAMINATION.
You are permitted to bring any printed or handwritten materials into the examination room.

Total number of questions: 4

Value of questions: ***Each question is worth 30% of the final grade for this course***

Questions to be answered: ***You should answer ONLY 2 Questions – One question must be answered in each Part***

OTHER INSTRUCTIONS:

1. Your NAME and STUDENT ID should be written on the front of each exam booklet you use.
2. Your TEACHER'S NAME and your CLASS DAY AND TIME should be written at the top right hand corner of each exam booklet you use.
3. Write legibly in ink and leave a whole blank page between questions.
4. Answer each question in a separate booklet.
5. You may retain the examination paper.
6. Unless otherwise indicated, all facts and events take place in NSW.
7. 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 A – This question is compulsory

(This question is worth 30 marks)

Question 1

Mark is a recently retired politician who is seeking to stay out of the media. He takes his wife, his 8 year old daughter and 5 year old son to a restaurant for lunch. As he leaves he is approached in the car-park by David, a press photographer who tries to take photos of Mark and his family.

David starts aggressively yelling out “Look at me, look at me” and jumping all over the place. The camera is making whirring noises and a flash is operating with each photo taken. The noise, flashes and David’s antics scare the children who begin to cry and cower. The son begins to scream “No, no. Daddy make him stop”.

Without warning, Mark lunges at David and rips the camera out of David’s hands. The force of Mark’s action causes David to overbalance. He falls onto the edge of the concrete guttering and is knocked unconscious.

Mark screams, “You bastard, look what you’ve done to my kids. Take that.” He kicks David in the head and spits on him. Mark then says “You’ve lost the camera, dickhead”.

Tony, a patron who has just emerged from the restaurant watches the altercation and cheers when Mark approaches David’s prone body. As Mark kicks David, Tony yells out, “Good on you mate. A kick in the head is what he deserves. “

Mark’s wife has already put the children into their car. Mark throws the camera into the boot and gets into the passenger seat. The car leaves the car park at high speed.

When paramedics arrive at the scene, David is already dead. A post mortem reveals that he dies from haemorrhaging of the brain, caused primarily as a result of his head hitting the gutter. Being kicked in the head accelerated the death by further bruising the brain, but the kick alone would have been unlikely to have killed David.

When he is interviewed later that day by police, Mark says:

“I had no idea that I hurt the guy. I’m really distressed that this has happened. All I remember was that we came out of the restaurant and this guy ambushed us. The kids were screaming and really scared and I was trying to protect them. I tried to stop him but he kept taking photos of the kids. The only way to stop him was to grab the camera. I remember grabbing it from him, but the stress must have got to me. Everything seemed to go red. I must have lashed out but I don’t remember anything really after I’d grabbed the camera.”

The camera is found in Mark’s living room. Mark states:

“I didn’t want to keep it, but I had to take it off him. I’m sure that anyone in my position would have done the same. As I said, I don’t remember putting it in the car, but when I got home and saw it I thought, “Bugger him”. I was going to let the kids have it as a reward for being so brave. ”

Mark is later found to be heavily intoxicated and to have a blood alcohol level that would impair his decision-making abilities, but not prevent general social functioning.

The camera is owned by David's employer, Scuttlebutt Inc and worth \$4000.

What criminal offences may have been committed and if so are there any defences which might be successfully raised?

N.B. You should only discuss offences and defences covered in Criminal Law 2, and you are not required to discuss the defences of necessity or duress.

Part B – Answer only one question

(this question is worth 30 marks)

Question 2

You are a legal officer in the NSW Attorney General's Department. The Attorney has asked you to advise him on the adequacy of the current law in relation to protecting children in NSW from sexual assault. He asks you to:

- a. Outline the legislative reforms that have been made over the last 20 years to protect children from sexual assault (12 marks)
- b. Describe the extent to which these reforms been successful in reducing the level of child sexual assault in the community, and in securing convictions (8 marks)
- c. Discuss whether any additional strategies and law reforms can be implemented to protect children from child sexual assault. (10 marks)

Question 3

- a. "The law of assault should not undermine the important liberal values of individual autonomy and the right to be free from unwarranted state intrusion into one's private life" Discuss with reference to the judgments in *Brown* (1994) 1 AC 212 (page 688 in *Brown et al, Criminal Laws* (4th ed) Federation Press, 2006) and other relevant cases (20 marks)
- b. Should breaches of the rules on the sports field be also 'free from unwarranted state intrusion' as participants are deemed to have consented to the "rough and tumble" of the game? (10 marks)

Question 4

You are a legal officer in the NSW Attorney General's Department. The Attorney is considering codification of aspects of criminal complicity. He asks you to:

- a. Explain the current interpretation given by the courts to the notions of "joint criminal enterprise" and "common purpose" (15 marks)
- b. Discuss whether there is a need for clarification of the basis of liability in this area. (15 marks)