



LAWS1011 – Criminal Laws 2
FINAL EXAMINATION - Session 2 2007

Time allowed: 2.5 hours, 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

Zara is a 20 year old aspiring model. She is hoping to follow in the footsteps of the world's top models. Zara is doing a photo shoot in Coffs Harbour when she discovers she is pregnant. She decides that becoming a mother at this time will interfere with her modelling career, so she sends an email to her doctor and good friend Dr Arnold Ache:

Hi Doc,

I have just found out that I am pregnant and I would like to have a termination. Can you help me?

I'm staying at the Pacific Resort in Coffs Harbour. I will return to Sydney in 10 days.

Best regards

Zara

Dr Ache responds as follows:

Dear Zara,

I am sending you some RU486/PG tablets to take care of your problem. Just take one RU486 tablet and 2 days later take the other tablet and everything should be fine. Come and see me when you return to Sydney.

Cheers

Arnie

(Dr Ache is authorised to prescribe RU486/PG tablets for the purposes of termination of pregnancy)

After Dr Ache's last patient leaves, he sits down and consumes a half bottle of whisky over the next hour to relax. He drops the package containing the tablets into the mail box on his way home.

Zara receives the package and soon after taking the first tablet, she experiences breathing problems. Her throat suddenly swells up. By the time the ambulance arrives, she is dead. The cause of death is anaphylactic shock due to a severe allergic reaction to penicillin tablets. Zara's allergy is noted on her medical records. Dr Ache inadvertently sent her penicillin tablets instead of the RU486 tablets. The fetus did not survive.

Bernie, an unemployed carpenter, and Chris, an electrician, are members of an organisation called the "Baby Saviour Group" (BSG). They are opposed to abortion and regularly organise peaceful protests outside doctors' surgeries where abortions are performed. Bernie knows that Dr Ache performs abortions. Bernie has become frustrated with the lack of success of their peaceful protests and decides that the group needs to ramp up its methods to become more effective. He has a plan which he discusses with Chris.

Four weeks after Zara's death Dr Ache is driving home from his surgery when, on approaching an intersection and applying his foot to the brakes, he suddenly hears a loud "pop" and notices smoke coming from the front of the car. He loses control of the car, and slams into an oncoming car, driven by Desmond. Dr Ache suffers a broken leg and extensive burns to his skin. Desmond, the other driver, is not seriously injured in the collision and walks out of the car, but suffers a heart attack 5 minutes later, and is rushed to hospital. He is an 80 year old man who has suffered with congestive heart failure for the last 2 years. At the hospital, he is admitted to the intensive care unit and put on life support, but 3 days later the doctors turn off the life support and Desmond dies.

The "pop" sound and the smoke in Dr Ache's car occurred as a result of some firecrackers which Chris placed under the doctor's car. For some days prior to the collision, Bernie had been telling

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Chris that they should step up their protest activity by killing a doctor who kills unborn babies. Chris has resisted this as he insists that BSG should remain a peaceful group. However Bernie will not be deterred.

On the day of the collision Bernie angrily orders Chris to place a bomb in Dr Ache's car. When Chris says he wants no part of such a plan, Bernie threatens to maim Eva, Chris's 14 year old daughter. He says to Chris: "If you don't do it, she will have scars on her pretty face for the rest of her life. Don't forget this. I know where you live". Chris agrees to do what Bernie suggests.

Chris is terrified that Bernie will carry out his threat, as he has seen Bernie's violent tendencies in the past. So Chris makes a make-shift bomb with some weak firecrackers, which he believes will not be sufficient to kill anyone, but which will look like a real explosion. He is hoping to appease Bernie so Eva will be safe. Chris attaches the contraption to the underside of Dr Ache's car in the parking lot next to the surgery, while Bernie acts as lookout.

When Bernie later discovers that Dr Ache is still alive, he phones Chris and says: "I told you what would happen if you screwed up. Don't say I didn't warn you". Chris is terrified of what Bernie will do and keeps a tight watch on his daughter. The stress is getting to him. One evening after Eva has gone to bed, Chris is watching TV in a groggy state, having consumed a few beers. He hears a noise from the back of the house, and panics, thinking that Bernie has finally come to carry out his threat. Chris grabs the gun which he has been carrying for the last few days, tiptoes towards the back of the house, and on seeing a shadow inside the door, shoots twice before hearing a thud. When he turns on the light, he is shocked to discover that he has shot his daughter.

What criminal offences may have been committed by Dr Ache, Chris and Bernie. Are there any defences which might be successfully raised?

(Do not discuss any offences in relation to damage to the motor vehicle or any offences in relation to possession of firearms)

N.B. You should only discuss offences and defences covered in Criminal Laws 2

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 objective standards of various criminal offences and defences. She asks you to:

- a) Specify those offences and defences where the reasonable or ordinary person test is used. (5 marks)
- b) Describe the differences between the reasonable person and the ordinary person and how these operate in the criminal law. (5 marks)
- c) Discuss whether there is any place for objective standards of culpability for serious offences in the criminal law. (20 marks)

OR

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Question 3

You are a legal officer in the NSW Attorney General's Department. Following a number of high profile cases, there has been much public criticism that there are too many defences to crimes which serve the perpetrators of crime better than the victims. You have been asked to prepare a report on whether the various categories of criminal offences and criminal defences should be rationalised. He asks you to:

- a) Consider whether murder and the various categories of manslaughter should be combined into one offence of unlawful homicide. (10 marks)
- b) Advise on whether the defences of substantial impairment and provocation should be abolished. (10 marks)
- c) Advise whether the current law regarding Intoxication strikes the right balance between protecting the interests of the community and fairness to the accused. (10 marks)

OR

Question 4

"If the battered woman syndrome is to be effective, changes need to be made. It needs to be demedicalised. This would mean dropping the title 'syndrome' and might necessitate changing the definition of 'expert' to include branches of expertise that do not explain social problems in terms of individual pathology. It would also mean using the defence to ensure that the right questions are asked: those which focus on the defendant's circumstances and alternatives rather than her psychological state." (E Sheehy et al, 1992, reproduced on page 642 of the text). Discuss. (30 Marks)

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