



LAWS1011 – Criminal Laws 2
FINAL EXAMINATION - Session 2 2008

Time allowed: 2 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: Part A is worth 40% of the final grade for this course. Part B is worth 20% 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 40 marks)

Question 1

Moe is a 55 year old garden enthusiast, with a passion for growing roses. He has won many awards for his roses and is hopeful of winning this year's regional rose competition.

His next door neighbour is Larry, who is in his mid-twenties. Larry and his best friend Curly were both previously officers in the Australian Army Ordnance Corps where they had responsibility for storage of explosives. Larry has a number of chemicals and other items that can be used to produce explosives in a locked shed in his backyard. Larry and Curly have a hobby of taking these chemicals to the country to make bombs.

Moe and Larry dislike each other. Recently, Moe was forced to call the police at 3am to quell a noisy party next door. The next day, Larry came to Moe's front door and abused him for calling the police. He told Moe:

"Get a life, and stop obsessing about your pathetic roses".

Moe has recently had a chest infection which has prevented him from tending to the garden as much as he would like. As a result he consulted his doctor, Kath, who prescribed a syrup. Kim, the pharmacist, dispensed his medication, but in typing the directions, she inadvertently typed "50ml, four times a day", instead of "5ml, four times a day". The syrup contained dextromethorphan which, if taken in large doses can cause confusion, disorientation and in some cases hallucinations.

Moe took the medication as per the instructions on the bottle for two days. By the afternoon of the 2nd day his chest was much better but his speech was slurred and he was stumbling around. He began to feel anxious and disorientated.

At 4pm on the 2nd day, feeling very groggy from the medication, Moe lay down to have a sleep and was woken an hour later by loud noises coming from his front garden. Through the window he could see Larry and Curly jumping around and laughing. Larry was holding something in his hands.

Moe ran outside onto his front porch to see what they were doing. He was horrified to see Larry standing on the footpath, throwing blue paint from a large paint can onto his beloved roses. He yelled at them to stop and stumbled into the front garden. Larry started to walk slowly towards Moe waving the paint can and yelled menacingly:

"Roses were red, now they are blue, much better dead, and now for you".

As Larry got closer, Moe bent down to pick up a large pair of garden shears lying on the ground, and lunged at Larry, who fell down spilling blue paint all over the flower bed and the grass. The garden shears were lodged in his chest. Larry suffered a serious chest injury, including a pierced lung and heavy loss of blood.

On seeing his friend's condition in hospital that night, Curly decided to punish Moe for what he had done. He discussed with Larry his plan to poison all of Moe's roses. Larry liked this plan and gave Curly the key to his shed, telling him he had strong acid in there which would surely kill the plants.

In the shed, Curly found not only bottles of acid, but also other items, including gellignite and other materials for making explosive devices. Curly then decided to make a bomb.

Curly made an explosive device, capable of being detonated by a mobile phone. He set the timer for a 30 second delay. Standing in Larry's backyard and hoping Moe was sitting on his couch, Curly threw the bomb through an open lounge room window of Moe's house. He then activated the bomb with the mobile phone. After 10 seconds, he suddenly realised what he had done, and screamed out loudly, "Moe, run for your life, there is a bomb in your house". After a few seconds, a huge explosion could be heard, and the house burst into flames. Moe was away at a flower show when the explosion occurred, so he was unharmed.

The police interviews yielded the following statements:

Moe

Even though I felt very groggy, when I saw those two thugs pouring paint over my prize roses, I was really frightened that they would not stop until my whole garden was destroyed. I had to stop them, and the shears were all I had. I just meant to hit them with it. But when Larry started screaming, "I'm going to kill you" and trying to hit me with that heavy paint tin, I was sure I was going to die and that I had to do something quickly. I believed I was a goner if he got to me first. I suppose I must have meant to stab him, but I can't remember what I was thinking. It was all a blur. I was very scared.

Larry

We were just mucking around and that dumb-ass old man went psycho. We only poured paint on his stupid flowers. I have no idea why he suddenly attacked me. All I meant to do was pretend to throw paint at him. He looked really weird, like he was on drugs or something. I think he was just pissed off at me for always having loud parties. He's just an old fool who has forgotten what it's like to be young and have fun ... I had no idea Curly would make a bomb. We only discussed poisoning the roses, not killing Moe. That Curly has always had a short fuse. A few months ago he lost it in a pub and smashed some guy's face for accidentally tripping him, causing his beer to spill.

Curly

When I saw what the old guy did to Larry, I lost it. Initially I just wanted to destroy his stupid roses, but when I saw the explosives in the shed, I decided that he deserved more. But once I'd pressed the button on my phone, I suddenly realised what would happen so I changed my mind, and yelled out to him to run. I honestly then decided to save him. Anyway, luckily he wasn't home so it's OK. At least the insurance will cover the house.

What, if any, criminal offences have been committed by Moe, Larry and Curly. Are there any defences which might be successfully raised?

Do NOT discuss any of the following:

- property damage/arson offences or any offence discussed in the Dishonest Acquisition chapter*
- offences in relation to possession of explosive devices*
- terrorism related offences*

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

Part B – Answer only one question

(this question is worth 30 marks)

Question 2

Consider the following statements from the NSW parliamentary debates on the 2007 introduction of a new statutory definition of consent in sexual assault offences:

1. "Throughout the campaign the Opposition has called on the Government to increase funding to the criminal justice system to remove delays, provide further assistance to victims, set up one-stop shops, and provide special courts for sexual assault offences. One of the primary recommendations of the Criminal Justice Sexual Offences Task Force was that there be specialised courts with training for judges, prosecutors, witness assistance officers and other people... The Government has failed to respond to the Opposition's request for specialised courts" (Mr Greg Smith (Epping)).

2. "Many people here tonight know a lot more about the law on this issue than I do, but I reckon I know what is right and I certainly do not oppose any changes designed to ensure that more perpetrators of sexual assault are convicted. I understand that this is a difficult area and that some potential legal intricacies must be ironed out. I believe that sexual assault in our community is so serious and so heinous a crime that we in this place must do everything we can to ensure that the perpetrators of sexual assault are brought to justice. Occasionally that means we must experiment with the law. It sometimes means that we should try things that may not go along with the traditional concept of mens rea, but if we have to do that to secure justice then so be it" (Mr Rob Stokes (Pittwater)).

(a) It is a general principle of the criminal law that for serious crimes, the offence's elements should include a subjective mens rea. Should the law of sexual assault follow this general principle and retain a subjective standard, or is this a case where an objective standard is appropriate?

(10 marks)

(b) Assume that you work at a Rape Crisis Centre. A new client visits the centre and tells you that she has been the victim of a violent sexual assault by her husband. She comes from a conservative and somewhat patriarchal family context. She wants to understand what might happen to her husband as a result of his actions. She asks you to explain:

(i) the legal options that she now has; and

(ii) the potential outcomes for her husband if she pursues a charge of sexual assault against him.

(10 marks)

OR

Question 3

You are a legal officer in the NSW Attorney General's Department. An independent member of Parliament who represents the interests of the music industry has introduced a private member's Bill that contains the following offence:

Any person who has downloaded digital music files in a music player which is in their possession and cannot produce a receipt of purchase is deemed to be guilty of larceny.

The Attorney is concerned that this offence is badly drafted and asks you to:

- (a) explain the reasons why such behaviour is currently not within the offence of larceny;
10 marks)
- (b) discuss whether the proposed offence is an appropriate response to illegally downloaded music.
(12 marks)

Question 4

“Despite increasingly complex legislative definitions of offences, criminal law remains essentially about controlling behaviour based on cultural norms – as understood by finders of fact”

Discuss
(20 marks)

END OF PAPER