



LAWS1011 – Criminal Laws 2

FINAL EXAMINATION - Session 2 2009

- 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: Part A is worth 30% of the final grade for this course. Part B 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.

Anita is an 18 year old university student. On a Friday night she goes with her friends Paul and Jeremy to an inner-city nightclub. She has drunk half a bottle of Vodka before entering the club and becomes quite intoxicated while dancing. After dancing for some time, Anita kisses Paul. He responds by placing his hands on her buttocks and dancing closely with her. Anita allows him to do this. Anita then turns around and moves Paul's hands onto her breasts. Jeremy is dancing nearby and cheers when he sees this happen.

Malcolm is 45 years old and recently divorced from his wife. He has told his friends that he is uncertain about how to find another partner and is going to go to some nightclubs to see if he can meet women. Malcolm has been largely ignored by everybody in the nightclub. He appears to be significantly older than everyone else. Malcolm has also been drinking heavily, and the bar staff have decided to refuse him service if he tries to order another drink as they consider him to be heavily intoxicated.

Malcolm sees Paul touch Anita's breasts and hears Jeremy cheering. Joe, a person standing next to Malcolm also sees what has happened. He leans over to Malcolm and says with a laugh, "There you go mate, finally someone who'll take you home. Try your luck - see if you can grab her tits too". Malcolm staggers over to Anita, and says "Hi I'm Malcolm." Anita smiles at Malcolm and Malcolm begins dancing next to her. Joe yells out, "Show us your moves mate". A moment later Malcolm rubs his hands up and down Anita's buttocks. Anita screams and Malcolm holds up his hands and says "Oh, sorry. My mistake". As he holds up his hands one of his palms touches Anita's breast.

James, a security guard, sees the incident and comes over to Malcolm. Without saying a word he grabs Malcolm by the collar of his jacket and drags him out of the nightclub. He shoves him into the street calling, "Get lost, you pervert". Malcolm tries to stumble down the footpath, but falls over and seems incapable of getting up again.

Selma is in a line outside the nightclub waiting to be allowed to enter. She sees the way James shoves Malcolm and calls out, "Think you're a big man? Shoving an old bloke like that? Beat your girlfriend too do you?"

James turns around and grabs Selma. Without a word James throws Selma violently into the street. An oncoming car driven by Nora drives straight into Selma. Selma dies instantly.

When police attend the scene they find that Malcolm is so intoxicated he cannot speak clearly and appears disoriented. He has difficulty standing up. James is subjected to a blood test and found to have anabolic steroids in his blood. James regularly works out in his local gym and has hopes of representing Australia in javelin throwing. Police take the following statements the next day:

Malcolm: "This is all a horrible tragedy. I'm not really sure about what's appropriate behaviour these days. Those guys were fondling the girl and I thought that that sort of stuff was OK in nightclubs. I thought they all get high on ecstasy and get all touchy feely. I didn't think she'd mind. After all I was just touched her bottom once. At least I thought I did – I was so drunk I can't really remember what I was trying to do. The touching of her breast was totally inadvertent; I couldn't really stand up straight. I'm really sorry."

Nora: "I was driving on the speed limit. I never saw the woman – she seemed just fly into my car from the footpath."

James: "I'd had a shocker of a day. My girlfriend had dumped me and there were a lot of idiots in the club. Then this old drunk bloke starts feeling up the patrons. I couldn't really say anything to him inside because it was so noisy and he looked too drunk to understand. So I just removed him with what I thought was reasonable force and sent him on his way with a few choice words. Just a standard crowd control moment. Then, this person starts abusing me. I'm the bouncer, I can't control the crowds if they don't respect me. So I grabbed this person and removed them from the line. Maybe I pulled a bit hard, but I didn't realise that it was a woman and she was so light. I'm devastated about what's happened. I'm not going to say anything about whether I take anabolic steroids. I want a lawyer."

Anabolic steroid abuse has been found to lead to anger management issues.

What offences may have been committed in this scenario? You should also discuss any defences that may be available if there is an evidentiary basis for raising the defence.

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

A “right to life” advocate has been recently elected to NSW Parliament. She wishes to introduce a private members Bill which contains the following clauses:

- a) Any act of abortion which is not based on the need to prevent the death of the mother amounts to an act of manslaughter
 - b) Any doctor who engages in any act that hastens death of a patient – including switching off a respirator or dialysis machine – is guilty of manslaughter.
- (a) In what way would these provisions, if enacted, change the law in NSW in this area? 15 marks
- (b) Is such a reform desirable? 15 marks

Question 3

There have been media reports that a magistrate has dismissed a charge of larceny where the defendant had been caught taking money from a charity collection tin which was sitting on the footpath outside a shopping centre. The magistrate was reported to have held that “the defendant’s claim that he was only borrowing the money means that there was no intention to permanently deprive”.

It has been suggested to the Attorney General that the law in this area should be modernised by repealing larceny (s 116 All larcenies to be of the same nature, s 117 Punishment for larceny) and increasing the penalty for the goods in custody offence (s 527C Persons unlawfully in possession of property) to 5 years.

- (a) Was the magistrate’s decision, as reported, correct according to the current law in NSW in this area? 10 marks
- (b) What are differences between the offences of larceny and goods in custody? 10 Marks
- (c) Do you support the Attorney General’s proposed reform? 10 Marks

Question 4

“An increasing trend in criminal law is to concentrate on what the accused thought rather than what they did as a basis for liability.”

To what extent do you think this statement is true, and do/would you consider such a concentration to be a positive development in criminal law? 30 marks

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