



The University of the South Pacific

Examinations

Emalus Campus

Semester 1 2006

SCHOOL OF LAW

COURSE NAME: **CRIMINAL LAW AND PROCEDURE I**

COURSE NO: **LA 205**

TIME ALLOWED: **THREE (3) HOURS**

READING TIME: **TEN (10) MINUTES**

NUMBER OF PAGES: **FIVE (5) (including cover page)**

NUMBER OF QUESTIONS ON PAPER: **THIRTEEN (13)**

NUMBER OF QUESTIONS TO BE ANSWERED: **SEVEN (7)**

MARK ALLOCATED FOR EACH QUESTION:

PART A: All students must answer BOTH PARTS of this question which is worth 20 marks.

PART B: Students must answer FIVE questions from this part. Each question is worth 3 marks, making a total of 15 marks for the part

PART C: Students must choose ONE question from this part to answer. Each question is worth 15 marks

TOTAL MARKS: **FIFTY (50) MARKS**

MATERIALS PERMITTED IN EXAMINATION ROOM: **NONE**

Approved by Head of School

Date:

24/4/06

PART A

Students must answer BOTH PARTS of this question

Question 1

(a) Imagine you are a public prosecutor in the country of Pacifica. You are handed a brief with the following facts:

John and Mary were together in their garden when they started to argue about who should cook dinner that night. John became angry when Mary said that she was tired of always cooking and turned around and hit her hard across the back with a piece of wood. Mary cried out and fell down unconscious. Peter, a friend of Mary and John's was in the garden next door and he heard the cry. He rushed over and said to John "I did a first aid course, I know what to do". Peter then tried to roll Mary over and in doing so broke her spinal cord and she died. The evidence was that if he had given her proper medical treatment by not moving her and calling an ambulance then she would have lived. John was arrested and interrogated by the police. He said that he had not meant to hurt her "bad" when he hit her, he just meant to "teach her a lesson not to complain all the time". John is charged with murder.

The Pacifica Penal Code provides:

36 (1) Any person who with malice aforethought causes the death of another person by an unlawful act or omission is guilty of murder:

(2) Malice aforethought shall be deemed to be established by evidence proving any one or more of the following circumstances:

- (a) an intention to cause the death of or to do grievous harm to any person, whether such person is the person actually killed or not;*
- (b) knowledge that the act or omission causing death will probably cause the death of or grievous harm to some person, whether such person is the person actually killed or not, although such knowledge is accompanied by indifference whether death or grievous bodily harm is caused or not, or by a wish that it may not be caused.*

Using the Pacifica Penal Code and any relevant case law, discuss John's liability for murder.

(15 marks)

(b) How would your answer be different if the facts were these instead?:

John and Mary were together in their garden when they started to argue about who should cook dinner that night. John became angry when Mary said that she was tired of always cooking and turned around and hit her hard on the head with a piece of wood, crying out "I will kill you then you stupid bitch".

Mary cried out and fell down unconscious but not dead. John then thought that he had killed her and picked up her "body" and took her to a nearby river where he left her face down in the water. Mary then died of drowning.

(5 marks)

PART B

Students must answer FIVE questions from this part

Question 2

What is voluntary manslaughter and what are two different examples of it?

(3 marks)

Question 3

Discuss THREE principles that underpin the development of the criminal law.

(3 marks)

Question 4

What are the four requirements for criminal liability?

(3 marks)

Question 5

Discuss the differences between assault, battery and aggravated assault.

(3 marks)

Question 6

What are the *actus reus* and the *mens rea* of the following crime?

231(a) A person steals who, without the consent of the owner, fraudulently and without a claim of right made in good faith, takes and carries away anything capable of being stolen with intent, at the time of such taking, permanently to deprive the owner thereof.

(3 marks)

Question 7

Define what is meant by public order offences and give three examples of such offences.

(3 marks)

Question 8

What are three aims of the criminal law? Are these all consistent with each other? Explain your answer.

(3 marks)

Question 9

Is the issue of consent raised by the *actus reus* or the *mens rea* of the offence of rape? How?

(3 marks)

Question 10

In what circumstances can consent be a defence to a charge of assault?

(3 marks)

PART C

Students must answer ONE question from this part

Question 11

"The most important principle of criminal law is that a person should not be convicted unless he or she has a guilty mind"

Discuss this statement with reference to the criminal law of one or more countries in the South Pacific region.

(15 marks)

Question 12

Discuss some of the problems with the law on sexual offences in the region and some suggestions for reform.

(15 marks)

Question 13

Although there is no general duty to act in criminal law, there are some situations where failure to act is a criminal offence. Discuss these situations and also identify some of the reasons why there is no general duty to act. Do you agree with the law as it currently is?

(15 marks)

(TOTAL MARKS: 50)