



The University of the South Pacific

Semester 1 2007

**FACULTY OF ARTS AND LAW
SCHOOL OF LAW**

COURSE NAME: LA205

COURSE NO: Criminal Law and Procedure I

TIME ALLOWED: 3 [Three] Hours

READING TIME: 10 [Ten] Minutes

NUMBER OF PAGES: 10 [Ten] including this cover page

NUMBER OF QUESTIONS ON PAPER: 4 [Four]

NUMBER OF QUESTIONS TO BE ANSWERED: Any 3 [Three]

MARK ALLOCATED FOR EACH QUESTION: 20 [Twenty]

TOTAL MARKS: [60] Sixty

INSTRUCTIONS

1. You must answer ANY 3 out of the 4 questions in this exam paper.
2. Write your answers in the answer booklet provided
3. Each Question is worth 20 marks. This exam is worth 60% of your overall mark
4. You may take any WRITTEN materials into the examination room EXCEPT Text Books.
5. The scenarios in this exam are set in the fictional jurisdiction of Pacifica. Extracts from the *Pacifica Penal Code*, which are based on various Penal Codes throughout the South Pacific, are included for your use.

Approved J. R. P. (Nos) 23/05/07

QUESTION 1

You must answer **BOTH** parts (a) **AND** part (b).

Part A

Alpha and Beta, both aged 15 years, were school friends. Alpha's father was a member of a shooting club and also frequently played "Skirmish", a pretend war game where participants were "shot" with fake ammunition that left red paint stains on their clothing. Both Alpha and Beta were obsessed with guns and, unknown to their father, together often went to the forest near their homes to practise with the guns. Both became good marksmen.

One particular day they decided to take a target shooting pistol and a high velocity rifle and some ammunition to the State Forest. They invited Joe to join them. Joe was the school bully and they despised him. They told him that the gun was loaded with fake ammunition. They demonstrated this by Alpha "shooting" Beta with the low velocity shooting pistol which left only a red stain and a bruise.

They decided to play a game where they took it in turns playing the role of a hunted fugitive with the others playing the role of the police. Joe took first turn as the fugitive and was given ten minutes head start into dense bushland before Alpha and Beta took pursuit. Alpha and Beta later told police that they "decided to teach Joe a lesson... just to frighten him and have some fun" and without Joe's knowledge had substituted live ammunition into the shooting pistol. During the ensuing game Alpha and Beta spotted Joe in bushland and in pursuit both discharged a single round. Alpha fired a live round from the target shooting pistol and aimed to miss Joe however it ricocheted off a rock and struck Joe. This caused a wound which would not have been sufficient to cause death. However at the same time Beta fired a round of the "fake paint" ammunition from the rifle which also struck Joe and caused severe bruising near the point of the wound caused by the live pistol round.

Joe was rushed to hospital but later died from complications to the wound caused by poisoning from the red paint which had seeped into

the wound in combination with bacteria attacking the wound as a result of poor hygiene practices in the hospital ward.

The Police Prosecutions Corps of Pacifica have sought advice from the Director of Public Prosecutions of Pacifica as to which offences of unlawful killing should be dealt with at the committal hearing.

Advise the Director of Public Prosecutions (DPP) of all the possible charges open under the *Pacifica Penal Code* involving unlawful homicide and all relevant legal issues underpinning the charges.

(12 marks)

Part B

Suppose that just before Alpha discharged the live round Joe had seen him and shouted at him “You are the most stupid inhabitant of this island and you are the son of a coconut crab”. Alpha had in fact failed first grade and left school early and had always been self conscious that his mother, due to a congenital birth defect, had a strangely misshapen head with bulging eyes not unlike that of a coconut crab. When he was interviewed by the police Alpha told them that he had just snapped when he heard those words and fired three live rounds at Joe. How would this alter your advice to the DPP in respect of the offences committed by Alpha?

(8 Marks)

(Total 20 Marks)

QUESTION 2. You must answer BOTH Parts (a) AND (b)

Part A

Suppose that during the game of “Skirmish” referred to in **Question 1 (a) above** neither Alpha nor Beta were able to find Joe and so went in different directions to search for him. During Beta’s search Joe saw Beta before he saw Joe. Joe shouted to Beta “Come on gutless one. Have a go” whereupon Beta turned and, seeing Joe, discharged a round of “fake

paint” ammunition at him. As he tried to evade the round Joe slipped on a tree root and was struck on the temple by the “fake paint” round and rendered unconscious. Beta then advanced toward Joe with the rifle pointed menacingly toward him. Joe, upon recovering and seeing this, leapt behind the tree but fell down a steep cliff behind the tree and lodged on an inaccessible ledge breaking both legs. It was necessary to air lift Joe out with a rescue helicopter and he was taken to hospital and made a full recovery. Had he not been rescued he would probably have died of exposure overnight as the temperature in that part of the forest dropped to -4 degrees that night.

Advise the Director of Public Prosecutions as to whether Beta should be charged with any offences under the *Pacifica Penal Code* arising out of these incidents.

(10 marks)

Part B

Will is employed as a foreman on a cattle farm in Pacifica. His job includes rounding up the cattle and arranging to take them to market. On 15 December Will was approached by a relative with a request to buy 3 cattle for a family feast. A total of Vt10,000 was paid to Will who, on the 16th December, selected 3 beasts and shortly after midnight slaughtered them at the cattle farm so they would be fresh for the feast later that afternoon. He then transferred them by truck to the site of the feast. The money was used by Will to pay for his new MP3 player. When the cattle were discovered to be missing by the manager of the farm the police were called. Will was interviewed by the police. He told them that he had selected and slaughtered the cattle but thought that he was entitled to them under a scheme that had existed at the farm whereby cowboys who provided their own horses for use on the farm were entitled to select one cow each year for their own use. The manager of the farm said he had been told of such a scheme by Will but denies that the scheme had been in operation since he took over as manager last year. Discuss the criminal responsibility of Will for any offences under the *Pacifica Penal Code*.

(10 Marks)

(Total 20 Marks)

Question 3 You must answer BOTH Part (a) AND part (b)

Ivan was a veterinary surgeon who worked as a temporary employee for another veterinary surgeon, Peter, who went on vacation to Australia for a month. When Peter returned he found his veterinary practice in a run down state and had heated words with Ivan. It was eventually agreed that Peter would pay Ivan Vt50,000 for his work during the month. Peter threw down an envelope containing cash onto the table and asked Ivan to sign a receipt acknowledging he had received Vt50,000 cash in full payment for his services. Peter had mistakenly included in the envelope an additional Vt30,000 which he had intended to use to pay his Telecom telephone bill. Ivan grudgingly signed the receipt and took the envelope and left. When he got home he counted the money and found that he had been “paid” an additional Vt30,000. He kept the money. When Peter found that the additional amount of money was missing he called the police. When he was interviewed by the police Ivan said that he thought that he had been paid a bonus by Peter and kept the money.

Discuss Ivan’s criminal responsibility for any offences under the *Pacifica Penal Code*.

(10 Marks)

Part (b)

Later that day Peter went down to the Automatic Teller Machine (ATM) to draw some money out of his account to be used to pay the telephone bill. When he got to the bank, which was closed, he found that the ATM was offline at that time but that the Bank had programmed the machine to dispense up to Vt80,000 as a matter of convenience for its customers without checking the account balance. Upon discovering this Peter made two withdrawals each of Vt80,000 from the machine although he knew that at that time he only had a balance of Vt50,000 in his account.

Discuss Peter’s criminal responsibility for any offence under the *Pacifica Penal Code*.

(10 Marks)

(Total 20 Marks)

Question 4 You must answer BOTH Part (a) AND Part (b)

Part (a)

A local doctor, Dr Smart, referred Amber, a 20 year old woman, to a prominent private radiography clinic for an external ultrasound examination to confirm his provisional diagnosis of a diseased spleen. High, a radiographer, is one of four male partners at the clinic. During the consultation, High asked Amber when she last had sexual intercourse. Amber told him that she was a prostitute and had sex with different men several times in the last 24 hours. After conducting the external ultrasound examination, High advised Amber that he needed to do an internal ultrasound examination, which involved inserting an ultrasound transducer into Amber's vagina. High explained that this would provide useful diagnostic information and would allow him to make a more informed decision about the accuracy of Dr Smart's diagnosis. Although she thought it a little odd Amber agreed to the procedure because she was concerned for her health. However, High's ultimate purpose for the internal ultrasound examination was simply his own sexual gratification.

Has High committed any offences under the *Pacifica Penal Code*?

(8 Marks)

Part (b)

High was very impressed with the results of the internal ultrasound examination of Amber and he became obsessed with her. High looked up Amber's address on her patient file and learned that she lived next door to him. High could not believe his luck. In an effort to gain her affection he invited her to dinner at his unit that evening. Amber accepted. High prepared a sumptuous meal.

On arrival, High gave Amber a glass of white wine and kept topping up her glass. After the main course was devoured, High had consumed several

shots of tequila. At midnight, Amber was senseless from drinking copious amounts of alcohol and High playfully tied her to the wine rack in the dining room. Whilst Amber was lying there High asked her if he could remove Amber's jeans and she did not reply. After removing Amber's jeans and underwear High asked her if he could have sexual intercourse with her. Again the senseless Amber did not reply. High then had sexual intercourse with Amber.

In the early hours of the morning Amber awoke and managed to free herself and, though a little dazed and sore, staggered out of the unit. On realizing that intercourse had occurred she went straight to Dr Smart and told him she had been attacked. Dr Smart said that she appeared distressed and on examination had soreness around the entrance to her vagina.

The police interviewed High who admitted that intercourse had occurred but said it was with Amber's Consent. He has been charged with rape.

Advise High as to his criminal responsibility under the *Pacifica Penal Code* addressing all issues and any relevant evidential aspects.

(12 Marks)

(Total 20 Marks)

Pacifica Penal Code

Manslaughter

Any person who by an unlawful act or omission causes the death of another person is guilty of the felony termed manslaughter.

Murder

Any person who with malice aforethought causes the death of another person by an unlawful act or omission is guilty of murder.

Malice Aforethought

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 Bodily Harm to any person*
- (b) knowledge that the act or omission causing death will probably cause the death of or Grievous Bodily Harm to some person, 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.*

Provocation

When a person who unlawfully kills another under circumstances which, but for this section, would constitute murder, does the act which causes death in the heat of passion caused by sudden provocation as hereinafter defined, and before there is time for his passion to cool, he is guilty of manslaughter only.

Provocation defined

The term "provocation" means any wrongful act or insult of such a nature as to be likely, when done to an ordinary person, to deprive him of the power of self control and induce him to commit an assault of the kind which the person charged committed upon the person who offered the provocation.

Rape

Any person who has unlawful sexual intercourse with a woman without her consent or with her consent if the consent is obtained by force or by means of threats or intimidation of any kind, or by fear of bodily harm, or by means of false representation as to the nature of the act, or in the case of a married woman by personating her husband is guilty of rape.

Indecent Assault

Any person who unlawfully and indecently assaults any woman is guilty of a felony.

Mistake of Fact

A person who does or omits to do any act under an honest and reasonable, but mistaken belief in the existence of any state of things is not criminally responsible for the act or omission to any greater extent than if the real state of things had been such as he believed to exist.

Grievous Harm

Any person who unlawfully and maliciously does grievous harm to another is guilty of a felony.

“grievous harm” means any harm which amounts to a maim or dangerous harm, or seriously or permanently injures health or which is likely to so injure health.

Common Assault

Any person who assaults another is guilty of a misdemeanour: 1 years imprisonment

If the assault occasions actual bodily harm: 5 years imprisonment.

Duty of persons in charge of dangerous things

It is the duty of every person who has in his charge or under his control anything of such a nature that in the absence of care or precaution in its use or management, the life, safety or health of any person may be endangered to use reasonable care and take reasonable precautions to avoid such danger and he shall be deemed to have caused any consequences which adversely affect the life or health or any person by reason of any of any omission to perform the duty.

Theft

A person commits theft who, without the consent of the owner, fraudulently and without 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 there of.

Misappropriation

A person commits misappropriation of property who destroys, wastes, or converts any property capable of being taken which has been entrusted to him for custody, return, accounting or any particular manner of dealing (not being a loan of money or of monies for consumption.

Malicious Damage to Property

No person shall willfully and unlawfully destroy or damage any property which to his knowledge belongs to another.

Bona Fide Claim of Right

A person is not criminally responsible in respect of an offence relating to property, if the act done or omitted to be done by him with respect to the property was done in the exercise of an honest claim of right and without intention to defraud.