



The University of the South Pacific
Emalus Campus

Examinations
Semester 2 2006

SCHOOL OF LAW

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

COURSE NO: **LA 206**

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

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

NUMBER OF PAGES: **SIX (6) (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: **13/9/06**

PART A

This question is **COMPULSORY**. It is worth 20 marks.

Question 1

(a) Billy and Johnny are angry with their uncle because he has sold off some of their family's land to developers. One evening they are sitting with their friend Max drinking a few beers and they start to discuss the problem. Max says to them "If I was you, I wouldn't just take this silently – I would do something!" Billy leaps up and says "I agree with you Max, let's get revenge on him!" Johnny shouts "Yes, let's go and burn down that mean old man's house – that will show him how we feel." Max and Billy say "That is a great idea, when shall we do it?" Johnny says "No time like the present". They then discuss the things they need to do to burn down the house and Billy goes to get some kerosene and Johnny goes to get matches. Finally they set off to the uncle's house but are met on the way by Billy and Johnny's mother who orders them to go and clean the church for the next day and so they temporarily discontinue their arson project.

Imagine that you are the Public Prosecutor in Pacifica. You must consider which offences the three men could be charged with and what are the chances of them being found guilty.

(Please note that you can use the excerpts from the Pacifica Penal Code at the end of the exam to assist you in answering this question. Assume that you have proof of all of the conversations between the three men and their subsequent actions.)

(12 marks)

(b) Assume that Billy and Johnny's mother did not stop them as in (a) above and instead all three went along the road to the uncle's house. About half way to the uncle's house, Billy says to the other two "I am going to go home and wait for you guys there – here is the kerosene." He then left them. When Johnny and Max reached the uncle's garden, Max said to Johnny "I will wait here and keep a look-out – you call out to me if you need me." Johnny then went and put kerosene around the house and lit it with the matches. The house started to burn and he and Max ran away. Later Johnny was caught by the police and charged with arson under section 87 of the Pacifica Penal Code.

Imagine that you are the Public Prosecutor of Pacifica. You must consider:

- (i) Which crime, if any, can Billy be charged with?
- (ii) Which crime, if any, can Max be charged with?

(Please note that the crimes should be different to those you discussed in part (a) and that you can use the excerpts from the Pacifica Penal Code at the end of the exam to assist you in answering this question.)

(8 marks)

PART B

You must answer FIVE questions from this part. Each question is worth 3 marks, making a total of 15 marks in total.

Question two

What is the test for the defence of necessity of circumstances?

Question three

Discuss whether the standard of proof in criminal cases reflects a crime control or a due process model of criminal justice system.

Question four

Explain what happens if a confession is obtained from a suspect in breach of (a) their constitutional rights and (b) statutory provisions.

Question five

Explain the circumstances in which a police officer may lawfully detain and question a suspect.

Question six

Discuss the differences in the burden and standard of proof for the defences of insanity, duress and self defence.

Question seven

What is the purpose of committal proceedings and what is the main question that has to be decided at a committal?

Question eight

Explain the concept of relevance in relation to the law of evidence.

Question nine

What are three considerations the court will take into account when considering an appropriate sentence?

Question ten

Can customary obligations to commit a crime form the basis of a defence or as a mitigating feature in sentencing in any criminal justice system in the South Pacific? Discuss with reference to cases if possible.

PART C

You must answer ONE question from this part. Each question is worth 15 marks.

Question eleven

Does your jurisdiction's criminal justice system more closely resemble a crime control model or a due process model of criminal justice system? Discuss the ways in which elements of each model are present or not in your jurisdiction, providing specific examples where possible. Which model of criminal justice system do you prefer and why?

Question twelve

Discuss the advantages and disadvantages of the different types of adjudication panels that are used in the South Pacific region today. Which type of adjudication panel do you think would be best for your country and why?

Question thirteen

Discuss some of the advantages and disadvantages of restorative justice and identify the ways in which restorative justice concepts could be used to improve the criminal justice system in your country.

Pacifica Penal Code

Parties to an offence

23. (1) Every one is a party to and guilty of an offence who-

- (a) Actually commits the offence; or
- (b) Does or omits an act for the purpose of aiding any person to commit the offence; or
- (c) Abets any person in the commission of the offence; or
- (d) Incites, counsels, or procures any person to commit the offence.

(2) Where 2 or more persons form a common intention to prosecute any unlawful purpose, and to assist each other therein, each of them is a party to every offence committed by any one of them in the prosecution of the common purpose if the commission of that offence was or ought to have been known to be a probable consequence of the prosecution of the common purpose.

Arson

87. Any person who wilfully and unlawfully sets fire to-

- (a) any building or structure whatsoever, whether completed or not.. or
- (b) any vessel, whether completed or not; or
- (c) any stack of cultivated vegetable produce, or of mineral or vegetable fuel; or
- (d) a mine, or the workings, fittings or appliances of a mine,

is guilty of a felony, and is liable to imprisonment for life.

Attempts to commit arson

88. Any person who-

- (a) attempts unlawfully to set fire to any such thing as is mentioned in section 87; or
- (b) wilfully and unlawfully sets fire to anything which is so situated that any such thing as is mentioned in section 87 is likely to catch fire from it,

is guilty of a felony, and is liable to imprisonment for fourteen years.

Conspiracy to commit felony

96. Any person who conspires with another to commit any felony, or to do any act in any part of the world which if done in Fiji would be a felony, and which is an offence under the laws in force in the place where it is proposed to be done, is guilty of a felony, and is liable, if no other punishment is provided, to imprisonment for seven years, or, if the greater punishment to which a person convicted of the felony in question is liable is less than imprisonment for seven years, then to such lesser punishment.

Attempt defined

102. When a person, intending to commit an offence, begins to put his intention into execution by means adapted to its fulfilment, and manifests his intention by some overt act, but does not fulfil his intention to such an extent as to commit the offence, he is deemed to attempt to commit the offence.

It is immaterial, except so far as regards punishment, whether the offender does all that is necessary on his part for completing the commission of the offence, or whether the complete fulfilment of his intention is prevented by circumstances independent of his will, or whether he desists of his own motion from the further prosecution of his intention.

It is immaterial that by reason of circumstances not known to the offender it is impossible in fact to commit the offence.

Attempts to commit offences

103. Any person who attempts to commit a felony or misdemeanour is guilty of an offence, which, unless otherwise stated, is a misdemeanour.