



The University of the South Pacific

Emalus Campus

Examinations

Semester 2 2005

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**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: **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 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**

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MATERIALS PERMITTED IN EXAMINATION ROOM: NONE

Approved by Head of School: ..... Date:.....

**PART A**

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

**Question 1**

Imagine you are the Public Prosecutor in Pacifica. You are given a brief with the following facts:

On 25 April 2005 Max, who is an eighteen year old father of two, was walking along the main road into town on his way to do some shopping. When he was half way to town an uncle of his, who had been in and out of jail all his life and was known to be quite dangerous, drove past Max on the road and called out to him "get in and I will give you a lift". Max jumped in the car and his uncle drove along, stopping in front of the Bank of Pacifica. The uncle got out of the car and walked into the bank. Once inside the bank he put a balaclava over his head and took out a gun and demanded that a cashier give him a bag full of money. Once she had given it to him he fired into the air and then ran out to the car. He yelled at Max "get into the driver's seat and drive"! Max said to him "what on earth are you doing?" Then the uncle pointed his gun at Max and said "do what I said"! Max then jumped into the driver's seat and drove off. Once they were moving the uncle threw the gun out of the window. When they reached the countryside the uncle turned to Max and said "thank you my boy, I am sorry to have given you such a fright. I never would have hurt you though as we are the same blood". He then gave Max several hundred Pacifica dollars and told him not to say a word to anyone. Max then caught the next bus into town and was buying himself a new surfboard when a police officer tapped him on the shoulder and told him he was under arrest. He was taken to the nearest police station and was thrown into a holding cell for ten hours, during which time he was only given water to drink. He was then taken out of the cell and brought into the police interview room where he was charged with aiding and abetting armed robbery. The police then questioned him about the incident. Max was intimidated by the police officers and confessed everything. He was not cautioned before he was interviewed.

You have the following legislative provisions to consider. These may or may not be relevant.

**Penal Code**

*16. A person is not criminally responsible for an offence if it is committed by two or more offenders, and if the act is done or omitted only because during the whole of the time in which it is being done or omitted the person is compelled to do or omit to do*

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*the act by threats on the part of the other offender or offenders instantly to kill him or do him grievous bodily harm if he refuses; but threats of future injury do not excuse any offence.*

### **Criminal Procedure Code**

12. (1) *Any police officer may, without an order from a judicial officer, or warrant, arrest any person whom he suspects upon reasonable grounds of having committed a cognisable offence.*

18. (1) *Subject to subsection (2) when any person has been taken into custody without a warrant for an offence other than intentional homicide or any offence against the external security of the Republic, the officer in charge of the police station to which such person shall be brought may in any case and shall, if it does not appear practicable to bring such person before an appropriate court within 24 hours after he has been so taken into custody, inquire into the case. Unless the offence appears to the officer to be of a serious nature the officer shall release the person on his signing a written undertaking to appear before a court at a time and place to be named in the undertaking; but where any person is kept in custody he shall be brought before a court as soon as practicable.*

You must consider the following questions:

- (a) What factors would influence your decision about whether or not to prosecute this case?; (2 marks)
- (b) What defence could the accused argue (you should assume that all the elements of the offence can be proved by the prosecution)? What evidence would he rely upon to support this defence? (5 marks)
- (c) How could the prosecution negate the defence? What evidence would the prosecution rely upon to negate the defence?; (5 marks)
- (d) Who has the burden of proof with regard to the defence? What is the standard of proof? (3 marks)
- (e) Can Max's confession be used as evidence in court? Why? Why not? (5 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**

Discuss the difficulties involved in prosecuting companies for criminal offences. (3 marks)

#### **Question three**

Discuss how potential conflicts between civil liberties and the offence of unlawful assembly may arise. How are such conflicts resolved by the courts? (3 marks)

**Question four**

What is the test the courts use in determining whether a defendant can rely on the defence of lawful use of force? (3 marks)

**Question five**

What is the test the courts use in determining whether a defendant can rely on the defence of insanity? (3 marks)

**Question six**

What are two categories of relationship that can give rise to the defence of compulsion? (3 marks)

**Question seven**

Discuss a number of different categorisations of types of evidence. (3 marks)

**Question eight**

Is there a right to legal counsel in the region? Briefly describe some of the limitations on the right if it exists. (3 marks)

**Question nine**

In what situations can someone rely on the fact that they made a mistake as a defence to a criminal charge? (3 marks)

**Question ten**

Describe three situations in which a lawful arrest can be made and the remedy available if an unlawful arrest is made. (3 marks)

## **PART C**

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

### **Question eleven**

Discuss the role of custom in the criminal justice systems of the South Pacific. In your answer you should consider the role of custom in sentencing and whether or not it can be used as a defence to a criminal charge. You should also discuss whether you think that custom should play more or less of a role in the criminal justice systems in the region.

### **Question twelve**

What are some of the problems with the way juvenile offenders are currently treated in the criminal justice systems in the region? Discuss some reforms that could be made to alleviate some of these problems.

### **Question thirteen**

Discuss the nature of the right to a fair trial. In your answer consider the following:

- (a) What are the "sub rights" to the right to a fair trial?
- (b) What is the justification/ reason behind these rights?
- (c) Would such a right exist in a society that followed the crime control model of criminal justice? Why? Why not?
- (d) How do courts deal with questions of infringement of this right? If possible, support your answer with an example.