The overall standard of the exam answers was consistent with recent semesters. In this regard, the introductory comments posted about the March 2018 examination remain appropriate as follows:

The exam answers were generally of a good standard, resulting in a moderate failure rate. It appeared that students had considered and adopted the comments by the lectures during lectures and the weekend school regarding the appropriate way to structure exam answers.

As with previous exams, a key factor distinguishing good answers from adequate (or inadequate) answers was the extent to which the student not only identified the elements of the relevant offence or defence but discussed the application of each element to the facts. The more detailed the discussion, the more marks awarded for the answer.

In respect of the September 2018 exam, the major issues requiring discussion were:

**QUESTION 1**

**David**
- Fraud
- Duress

**Steve**
- Psychic Assault or s 13 Crimes (Domestic and Personal Violence) Act 2007 (NSW)
- Aggravated Assault

The areas in which students often fell into error were:

- Discussing larceny rather than Fraud, or when discussing Fraud, referring to the offence as “larceny by fraud”. Fraud (s 192E Crimes Act 1900 (NSW) is a separate offence to larceny.
- Not discussing any defences in respect of David.
- Discussing the defence of necessity, rather than the defence of duress. Although there are similarities between the defences, it was the defence of duress that was applicable, as it arose from a direct threat by Steve to physically harm David’s family if he did not repay the money owed.

**QUESTION 2**

The major issues requiring discussion were:
Paul

- Murder
- Insanity; or diminished responsibility (s 23A Crimes Act 1900 (NSW) including discussion of intoxication

Wayne

- Assault (including discussion of intoxication)
- Complicity (joint criminal enterprise and doctrine of common purpose)

Sam

- Complicity (including issue of withdrawal)

This was a challenging question. The areas in which students often fell into error were:

- When discussing the defences of insanity and diminished responsibility, not making clear that self-induced intoxication can be taken into account as a trigger for an abnormality of mind becoming symptomatic (Derbin [2000] NSWCCA 361) but in respect of the defence under s 23A Crimes Act 1900 (NSW), the effects of self-induced intoxication are to be disregarded (s 23A (3) Crimes Act 1900 (NSW))
- Failure to discuss the issue of intoxication at all.
- Failing to discuss in sufficient detail the doctrine of common purpose in joint criminal enterprise (complicity) and whether Sam’s words were sufficient to satisfy the test of withdrawal (White v Ridley (1978) 140 CLR 342)

QUESTION 3

The major issues requiring discussion were:

- Murder (including issue of causation); or manslaughter by unlawful and dangerous act
- Extreme Provocation
- Self Defence

The areas in which students often fell into error were:

- Failing to discuss the defence of Extreme Provocation (s 23 Crimes Act 1900 (NSW)-including that the defence would fail by reason of the fact that the victim’s conduct did not constitute a serious indictable offence)
- Failing to discuss the defence of Self-Defence
- Discussing Extreme Provocation as a defence to manslaughter (it is only a defence that reduces murder to manslaughter).

QUESTION 4

The major issues requiring discussion were:

Alex

- Sexual Assault

Tom
- Aggravated assault
- Self-Defence (defence of another person)

Derek

- Complicity (intentionally assisting or encouraging)

The areas in which students often fell into error were:

- Failing to discuss sexual assault and only discussing indecent assault
- Failing to discuss self-defence
- Not discussing the issue of complicity in respect of Derek, or if complicity was identified, discussing joint criminal enterprise rather than Derek intentionally assisting or encouraging Alex to commit sexual assault, by reason of his words at half time.

G.J SARGINSON
EXAMINER
NOVEMBER 2018