General Comments

This semester the exam was an open book exam, after having been a closed book exam for a number of semesters. Overall, I was pleased with the quality of the answers; which reflected in a relatively low failure rate.

Where the quality of exams differed was the level of detailed analysis of the application of each element of the relevant offences and defences to the facts in the problems. Most students were able to identify most of the relevant offences and defences, but students who gave a more detailed analysis of the application of the elements to the facts obtained a higher mark. Many students in their answer to a particular question gave a detailed analysis of some of the relevant offences and defences but failed to discuss others at all.

The most important issues to be discussed were follows:

**QUESTION 1**

**Mike**
- Psychic Assault
- Intoxication
- Self Defence

**Ronald**
- Larceny
- Aggravated Assault (or Attempt, if causation not established)

**Comments**

Most students covered the issues in adequate detail. Some students failed to discuss self-defence, and only discussed Larceny in respect of Ronald. Most students identified that it was likely the prosecution would not be able to prove the mental elements of intention to permanently deprive and dishonesty when discussing the potential liability of Ronald for larceny.

**QUESTION 2**

- Involuntary Manslaughter
- Insanity (including the issue of the disease of the mind being triggered by intoxication)

**Comments**
Some students only discussed Murder and there was no discussion of involuntary manslaughter. However, it is unlikely that Fiona had an intention to kill; or an intention to permanently deprive; or reckless indifference to human life. The relevant offence that required detailed discussion was involuntary manslaughter (manslaughter by criminal negligence). Some student failed to identify and discuss in detail that in respect of the physical element of omission to act, there needed to be the type of relationship between Fiona and the victim that gave rise to a duty to act; and that the failure to act was a substantial cause of the death of the victim.

Many students identified the relevant offence as manslaughter by criminal negligence, but then went on to only discuss the defence of diminished responsibility (s 23A Crimes Act 1900 (NSW)), without realising that the defence under s 23A only applies to murder, not to involuntary manslaughter.

QUESTION 3

- Aggravated Break Enter and Steal (Stuart and Peter)
- Murder (Peter)
- Complicity-Joint Criminal Enterprise and Doctrine of Common Purpose (Stuart)

Comments

Some students did not discuss breach enter and steal, and only discussed larceny and aggravated assault. Of the students who discussed aggravated break, enter and steal, some students failed to discuss the issue of honest believe of claim of right.

A number of students failed to discuss complicity at all, or only briefly discussed complicity in the context of aiding and abetting, rather than in the context of joint criminal enterprise and the doctrine of common purpose.

QUESTION 4

- Aggravated Steal from Person
- Duress

Comments

Some students discussed robbery, but there was no violence or threat of violence causing property to pass. The relevant issue to discuss was aggravated steal from person (s 95 Crimes Act 1900 (NSW) or, in the alternative, larceny and aggravated assault as separate offences.

In respect of defences, a number of students discussed necessity rather than duress. However, the relevant defence was duress, as Phillip was reacting to a threat to cause very serious injury to his family.

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