

HONORABLE SOCIETY OF KING'S INNS

ENTRANCE EXAMINATION 2003

CRIMINAL LAW

EXAMINERS

Mr Michael O'Higgins, S.C.
Mr. Thomas O'Malley

Time allowed: THREE hours
Answer any THREE questions

1. Michael is prone to sleepwalking and, until the episode leading to the charge now pending against him, this never caused any problem. One night, some weeks ago, he was staying in a hotel when he began to sleepwalk and wandered into the corridor outside his room. Another guest, Andrew, came along, realised what was happening and tried to assist Michael to return to his room. Michael, still asleep, imagined that Andrew was attacking him. He therefore knocked Andrew to the ground and kicked him several times in the head and chest, seriously injuring him. Once he woke up and realised what had happened he was deeply remorseful. He has now been charged with the offence of assault causing harm (to Andrew) contrary to section 3 of the Non-Fatal Offences Against the Person Act, 1997. This offence carries a maximum sentence of five years' imprisonment. Michael's solicitor has sought your advice as to any defence(s) available to his client in these circumstances. In particular, he has sought your opinion as to whether the defence of automatism might be available. With reference to the appropriate authorities, advise the solicitor as to the defences, if any, that might be available and include any other advice you consider appropriate as to the manner in which the case might be approached.
2. On being made redundant from his job as a carpenter about a year ago, Toddy was persuaded to join a criminal gang which is involved in the distribution of heroin in part of the inner city. Some weeks ago, Toddy, who was once a champion boxer, was ordered by the gang leader to go to a certain house and beat up the occupant, Joe Bloggs, who owed the gang a considerable amount of money for drugs which had been supplied to him. At first Toddy refused to do so and he pleaded with the gang leader not to force him to carry out the assault. However, the gang leader

was adamant and threatened Toddy that, if he refused to do as he was told, his wife and teenage daughter would be kidnapped and raped by other gang members. Toddy was aware that family members of disobedient gang members had been subject to such treatment in the past, and so he decided to obey. In the early hours of the morning, he broke into Joe Bloggs' house, beat him up severely and left him with two broken legs. Toddy has now been charged with the offence of causing serious harm contrary to section 4 of the Non-Fatal Offences Against the Person Act, 1997. With reference to the appropriate authorities, advise him of any defence available to him.

3. In February 2003, Myles Byrne's wife, Biddy, held an exhibition of her paintings in a Dublin art gallery. On February 15, 2003, a national newspaper carried a review of the exhibition by one its leading columnists, Michael Kelvin. The review was scathing. Mr Kelvin said that Mrs Byrne was clearly devoid of any artistic ability and that "a drunken tomcat, playing with a spool of thread on the kitchen floor, would create a more artistically pleasing image than any of the thrash that Mrs Byrne has had the gall to inflict upon the public". Myles Byrne, who is fiercely proud of his wife and her artistic accomplishments, was furious at this description of her work. On March 18, 2003, Myles was walking along a street in Dublin when he passed by a well-known and very expensive restaurant. He glanced in through the window and noticed Mr Kelvin having lunch with some friends. He immediately rushed into the restaurant, went over to the table where Mr Kelvin was sitting, grabbed a half-empty bottle of wine and hit Mr. Kelvin with it several times across the side of the face and neck. As a result of the blows, the bottle broke and severed an artery in Mr Kelvin's neck. An ambulance was called, but Mr Kelvin was dead on arrival at hospital. Following his arrest, Mr Byrne made a statement to the Gardai which included the following passage:

"When I saw Kelvin sitting there so smugly at the table, I just boiled over. There he was, wining and dining with his rich friends without a care in the world while my wife is still absolutely crushed, as am I, at the grossly insulting review he wrote of her work. I just could not restrain myself from attacking him. Of course, I never intended to kill him. I just wanted to leave my mark on him."

Mr Byrne has now been charged with the murder of Mr. Kelvin. With reference to the appropriate authorities, advise him if he has any defence(s) available to him in these circumstances.

4. Answer **any two** of the following questions. In each case give reasons for your answer and make reference to appropriate case law and/or statutory authorities.
 - (a) In July 2002, John, who was then living in Galway, rented a television set from Corrib Electrics. He continued to pay the agreed monthly rent of €25 until April 2003 when he moved to Dublin. He brought the television set to Dublin with him, but did not inform Corrib Electrics of his change of

address and ceased to pay the monthly rent. In June 2003, he gave the television set to his nephew as a wedding present and bought a new wide-screen television for himself. With what offence, if any, may John now be charged?

- (b) Marie was shopping for clothes in department store. As she was going to a changing room, she passed by the assistant manager's office which was empty. She noticed a roll of banknotes on a desk in the office. She went into the office, took the money (which amounted to €3,500), and put it into her handbag. On her way home, she visited her sister, Amanda, who lived nearby, handed her the roll of banknotes and said: "Don't ask any questions, but hold on to this for me for a week or two." Unfortunately for Marie, her actions in the department store were being recorded on a security video and later that evening she was arrested. With which offence(s) is she liable to be charged **and** with which offence, if any, is Amanda liable to be charged?
- (c) Magdalen inherited a house in Dublin which she then leased to Cindy for a three-year period beginning in July 2002. Cindy told her that she ran a non-profit making organisation which helped people with personal problems. Magdalen, who is a very religious woman, was very happy to learn that the property would be used for such a worthy cause, and actually reduced the rent that she had originally demanded. Recently, she was horrified to learn that Cindy was, in fact, using the house as a brothel. A few days later, she travelled to Dublin, waited until she was sure that the house was unoccupied and then set fire to it. The house was burned to the ground although nobody was injured. With what offence, if any, may Magdalen now be charged?

5. Answer **any two** of the following questions. In each case give reasons for your answer and make reference to the appropriate case law and/or statutory authorities.

- (a) Peter is a sports coach employed by a university. Some time ago, he married Samantha who has a 13-year-old daughter Judy who, in turn, is a very keen and ambitious athlete. Peter has given Judy some coaching. Last week, he told her that there was a "minor operation" which he could perform upon her which would help her to run faster in a forthcoming competition. In fact, the "minor operation" consisted of him having sexual intercourse with Judy who was 13 years and 6 months at the time. Samantha discovered this, and immediately reported the matter to the Gardai. The Director of Public Prosecutions has sought your advice as to the offence(s) with which Peter might now be charged. Advise the Director.

- (b) Simon met Veronica, the sister of his friend Larry, at a party and drove her home afterwards. Along the way, he stopped the car and asked her to have sexual intercourse with him. When she refused, Simon threatened that unless she complied with his demand, he would report Larry to the Gardai for having offered to sell him heroin. Veronica knew that Larry had in fact been quietly dealing in heroin, so she agreed to have intercourse with Simon. The next day she complained to the Gardai that she had been raped the previous night by Simon. Is Simon likely to be found guilty of rape in these circumstances?
- (c) Mary is a 25-year-old woman. She became friendly with a young neighbour, Cormac, who used to do occasional work for her, such as mowing the lawn and cleaning the windows. One evening last month, when Cormac was just over 14 years of age, she invited him into the house for tea and then invited him to have sexual intercourse with her. Although somewhat surprised at the invitation, he had intercourse with her then and on three later occasions. When his parents discovered what was happening, they reported the matter to the Gardai who have in turn forwarded a file on the matter to the Director of Public Prosecutions. The Director has sought your advice as to the charges, if any, that might be brought against Mary in these circumstances. Advise the Director.