



THE HONORABLE SOCIETY OF KING'S INNS

ENTRANCE EXAMINATION

AUGUST 2004

Examination: Criminal Law

Date: Thursday 26 August 2004

Time: 10.00 a.m. – 1.00 p.m.

Internal Examiner: Mr Tom O'Malley

External Examiner: Mr Michael O'Higgins SC

Instructions:

Answer any THREE questions.

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1. Write an essay on the defence of insanity, including in your answer an account of the distinction made between insanity and automatism, as well as any reforms you would recommend in the present law governing the insanity defence.
2. Suppose the Council of Europe is undertaking a comparative investigation of the law relating to murder in each of its member states. You have been asked to furnish the Council with a critical memorandum on the mental element of murder in Ireland. Draft such a memorandum, including an assessment of any drawbacks or deficiencies, as you see them, in the present Irish law on this topic.
3. Peter, a business executive, has been married to Jennifer for five years. As part of his work, Peter has occasionally to travel abroad, usually for a few days or a week at a time. In early July of this year, Peter told Jennifer that he had to go to Spain for a week on business, and that a holiday they had planned for around that time would have to be postponed. Peter duly went to Spain where he spent a week. A few days after his return, Jennifer discovered that he had not in fact been there on business but was there on holiday with a colleague with whom he was having an affair (although this was the first that Jennifer knew of it). As soon as Jennifer heard this, she rushed home knowing that Peter would be there. Before entering the house, she got a hammer from the garage. She then ran into the house and attacked Peter with it. As it happened there was a neighbour present who was able to restrain Jennifer. Peter was taken to hospital and although he sustained serious head injuries, he has now made a good recovery. When the Gardai arrived shortly after Peter was taken to hospital, Jennifer told them: "I just lost it and I wanted to teach him a lesson that he would not forget." The Director of Public Prosecutions has sought your advice as to the appropriate charge(s) to bring against Jennifer and as to whether she is likely to have any defence to those charges. Advise the Director.

4. Answer (a) AND (b)

(a) Give a critical account of the *mens rea* for rape, indicating any arguments you would make for or against altering the *mens rea* for that offence.

(b) John is separated from his wife and is in a relationship with Maura who has a daughter, Emily, who was born on 16th May 1988. John himself has a daughter, Jane, who was born on 9th January 1986. In June 2004, all four went on holiday to Kerry for two weeks. However, Maura had to return home unexpectedly after one week, as her father had become seriously ill. John remained in Kerry with Emily and Jane. One night, during that second week, the three of them went to a party where they all had a great deal to drink. In the early hours of the morning they returned to the chalet where they were staying. The two young women shared a room while John had another. After Emily and Jane had gone to bed, John went into their room. Both were asleep. John began to have sexual intercourse with Emily. She woke up and started to scream as did Jane. Jane ran out of the chalet shouting for help. John ran after her, dragged her back to the chalet and had intercourse with her against her will. The Gardai have sent a file on the matter to the Director of Public Prosecutions who has sought your advice as to the charges he can bring against John. Advise him.

5. In the early hours of the morning of 29th July 2004, Darren and Trevor drove to a large country mansion in County Wicklow. They knew that the owners of the house and their family were away at the Galway Races, and they also knew that there were many valuable paintings in the house. They broke into the house through a window, opened the front door from the inside and quickly took several valuable paintings from the walls and put them into a van which they had parked outside. They then drove off. As they were going down the driveway, a caretaker who lived in a gate lodge attached to the house ran up the driveway towards them and shouted at them to stop. They swerved to avoid him, but did not succeed in doing so. He was knocked down by the van and left lying on the driveway. He sustained a broken leg and some broken ribs but survived. Next morning, Darren phoned an elderly gentleman, Edward, who lived in a Dublin suburb and who was known to be a keen art collector. He told Edward that he (Darren) was an art dealer and that he had some interesting paintings for sale. Edward expressed an interest in seeing them. That afternoon, Darren brought three of the paintings to Edward and offered to sell them at €5,000 each. In fact, none of the paintings was worth less than €60,000. Edward bought the three paintings from Darren for a total of €15,000. Having investigated the matter, the Gardai have sent a file to the Director of Public Prosecutions. Advise the Director as to the appropriate charges, if any, to be brought against Darren, Trevor and Edward.
