

# DEGREE OF BARRISTER-AT-LAW

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## ENTRANCE EXAMINATION

# CRIMINAL LAW

## August 2021

**DATE** | Wednesday, 11 August 2021

**TIME** | 3.5 hours

**EXAMINER** | Tom O'Malley SC (NUIG)

**EXTERNAL EXAMINER** | Micheál P O'Higgins SC

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### Instructions

A candidate must answer **Question 1** (50% of marks) and **TWO** other questions (each 25% of marks).

This paper is 5 pages long including the cover sheet.

# CRIMINAL LAW

## Q1 | COMPULSORY QUESTION

**50 MARKS**

On 7 June 2021 pubs and restaurants were allowed to re-open and serve customers outside. William, who lives in a Galway suburb, decided to celebrate the occasion by going into town for a few drinks. He met various friends outside different pubs and had a total of five pints of beer between 3.00 p.m. and 7.00 p.m. when he got a taxi and returned home. Shortly after arriving back at his house, he heard a banging noise outside. He looked out the window and saw Jimmy, a man who lived in the same locality and who seemed to be heavily intoxicated, hitting his (William's) new car with an iron bar. William, according to his own later statement to the Gardai, became enraged at Jimmy's conduct. He grabbed hold of a baseball bat which he had in the kitchen, ran out the house, followed Jimmy down the road and, when he caught up with him, hit him several blows on the head with the baseball bat. Jimmy collapsed as a result of the blows. An ambulance was called, and Jimmy was brought to hospital, but he was dead on arrival. William has now been charged with murder. Advise William as to whether, in these circumstances, he has any viable defence to that charge.

## Q2

**25 MARKS**

John and Mary met on a dating website and they exchanged several messages and phone calls before eventually meeting in person. During one of those phone calls, John informed Mary that he had had a vasectomy six months earlier. On the evening of 10 February 2020, they met and had a meal in a local restaurant. They then went back to Mary's apartment where they engaged in sexual intimacy culminating in sexual intercourse. Before they had intercourse, Mary asked John if he was telling her the truth when he said that he had a vasectomy and he assured her that he was. On the basis of that assurance, she agreed to have unprotected intercourse. However, when they met again a few days later, John confessed that he had been telling lies and that he never, in fact, had a vasectomy. Soon afterwards, Mary discovered she was pregnant and later that year gave birth to a baby. Once she discovered she was pregnant, Mary made a complaint to the Gardai, and John was eventually charged with having raped her on the evening of 10 February 2020. At the trial, the judge instructed the jury that rape was committed when a man had sexual intercourse with a woman

without her consent, while knowing that she was not consenting or being reckless in that regard. He further stated that a woman could not be said to consent to sexual intercourse when she had been misled by the man into believing that he was infertile. The jury convicted John of rape. He is now appealing against his conviction to the Court of Appeal. Imagine you are acting as counsel for **either** the defence or the prosecution (the choice is yours). Set out the arguments you would make to have John's conviction quashed (if you are acting for the defence) or upheld (if you are acting for the prosecution).

## Q3

**25 MARKS**

Michael, a keen sportsman, was walking along a street carrying a hurley which he had just bought. As he was approaching a mobile phone shop, he was astounded to see his 18-year-old nephew, Peter, running out of it and pursued by a man (now known to be Denis, the manager of the shop). He saw Denis catch up with Peter, grab hold of him and pin him up against a wall in a very rough manner. Peter was struggling to escape but Denis caught him in a headlock to prevent him doing so. Michael ran up to them and hit Denis a heavy blow across the head with his hurley in order to get him to let go of Peter. Denis fell to the ground and suffered serious head injuries as a result of the blow. When the matter was investigated, it transpired that, while in the shop, Peter had taken an expensive mobile phone, put it in his pocket and proceeded to leave the shop without paying for it. The only reason Denis was following him was to retrieve the mobile phone. Michael, who was not aware of any of this at the time, has now been charged with causing serious harm to Denis contrary to section 4 of the Non-Fatal Offences Against the Person Act 1997. Advise Michael as to whether, in these circumstances, he may seek to avoid being convicted on this charge by arguing that he was acting in defence of Peter when he hit Denis.

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## Q4

**25 MARKS**

Answer any **TWO** of the following:

- (a). Catherine was attending a play in a theatre. Before the performance began, she left her seat to go over and talk to a friend she noticed elsewhere in the audience, but she left her handbag behind on her seat. While she was gone, Monica came along, took Catherine's handbag, brought it over to her own seat, searched it and then, without taking anything from it, left it back on Catherine's seat. Her actions were captured on CCTV. When questioned by the Gardai, Monica admitted that she searched through the handbag to see if there was any money in it which she could take. If there had been, she would have taken the money and returned the bag to Catherine's seat. But since there wasn't any money, she returned the bag anyway. Advise the Director of Public Prosecutions as to the most appropriate charge, if any, to bring against Monica in these circumstances.
- (b). Linda has a portable wooden cabin which she transports during the summer months to a seaside location and from which she sells teas, coffees and snacks. One day, some weeks ago, David was passing by the cabin while it was open for business. He noticed that there was a €20 note on a ledge inside the opening of the cabin from which customers were served. When Linda's back was turned, David reached in through the opening, took the €20 note, put it in his pocket and walked away. However, he was apprehended almost immediately by a member of the Gardai who, unknown to him, was walking right behind him. You are asked to advise on the most appropriate charge to bring against David in these circumstances.
- (c). Aidan was walking along a street while speaking to somebody on his mobile phone. Suddenly, he was approached by Simon who tried to grab the mobile phone. Aidan resisted, but Simon succeeded in wresting the phone from his grasp and then started to run away with it. Aidan decided to pursue him, but Simon turned around and hit Aidan several times across the head with his closed fist, thereby causing him serious injury which required hospitalisation and ongoing pain-relieving medication. Advise as to the most appropriate charge(s) to bring against Simon in these circumstances.

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## Q5

**25 MARKS**

Brian is a 73-year-old homeless man who suffers from dementia. One evening, some weeks ago, he was wandering around a suburban area when it began to rain. He went into a garden shed at the rear of a house which was unoccupied at the time. While there, he lit a cigarette with a match, threw the lighted match on the ground, and left the shed. However, the match set fire to some paper that was on the floor of the shed and this, in turn, led to a container of petrol which was located nearby bursting into flames. The entire shed was destroyed as a result. Section 2(1) of the Criminal Damage Act 1991 provides: *“Any person who without lawful excuse damages any property belonging to another intending to damage any such property or being reckless as to whether any such property would be damaged shall be guilty of an offence.”* You are asked to advise, on the basis of the facts as given, if Brian may be charged with an offence under this section and, if so, if he might have any defence available to him.