



ANU LAW
STUDENTS'
SOCIETY

LAWS1206
Criminal Law and Procedure
2nd Semester 2009

How to Use this Script:

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Question 1

77/100

Question A1

The interviewing officers did not caution Jenny (“J”). Under s 139(1)(c) of the *Evidence Act 1995* (NSW) (“EA”), investigating officials have to caution the interviewee. This caution was not given. Hence, the interviewing officers were in contravention of s 139(1)(c) of the EA. Furthermore, the statement which J made was prior to the arrest. Therefore, J’s statement is unlikely to be admissible, as no caution was given prior to the arrest.

Mark: 3 out of 3

Question A2

Under s 116(2)(d) of the *Law Enforcement (Powers and Responsibilities) Act 2002* (NSW), officers conducting the interview should stop the investigation of the interviewee is unwilling to answer. Here, Jenny said, “I have said enough to you lot, and have too much to do to be stuck here!” This is a clear indication that Jenny was unwilling. In addition, the interview officers did not adhere to the CRIME Guidelines, where interviewers has to explain the consequences if the interviewee refuses to answer. Therefore, the police should not have asked Jenny the further 15 minutes.

Mark: 3 out of 3

Question A3

The answer is B. Under s 8(2)(a)(ii) of the *Bail Act 1978* (NSW) (“BA”), a person is not entitled to bail if „the person is, in the opinion of the authorised officer of court, incapacitated by intoxication, injury or use of a drug is otherwise in danger of physical injury or in need of physical protection“. Here, the custody manager refused to grant Jenny bail as he suspected that Jenny was using Ice and she had self-inflicted wounds. Therefore, the refusal on this ground is supported by s 8(2)(a)(ii) of the BA.

Section 61 charge?

Mark: 2 out of 3

Question A4

The eyewitness testimony should not have been admitted at trial because there were compelling reasons for this part of the brief of evidence to be served. The witness was not in danger [s 187(1)(a) of the *Criminal Procedure Act 1986* (NSW) (“CPA”)], and it could have „reasonably be served“ to Jenny [s 187(1)(a)] as Jenny had a lawyer. Therefore under s 188(1) of the CPA, the Court can exclude this evidence as it does not comply with Chapter 4 Part 2 Division 2 of the CPA.

Mark: 3 out of 3

Question A5

The Prosecution can argue that among the „other matter[s]“ [s 10(3) of the *Crimes (Sentencing Procedure) Act 1999* (NSW), the court should take into account that Jenny was a drug user. Furthermore Jenny committed two offences. In *Thorneloe v Filipowski*, the court held that the accused’s degree of blame-worthiness will be taken into consideration, when determining if a

criminal record conviction should be made. Therefore, since Jenny genuinely committed the two offences, she is sufficiently blameworthy, to the extent that a criminal conviction should be made.
Mark: 3 out of 3

Question B1(a)

Alice's Liability for \$100 note

1. Introduction

References to various sections, are sections under the *Criminal Code 2002* (ACT) ("Code"), unless otherwise stated.

The Prosecution ("P") can charge Alice ("A") under s 321 for theft of the \$100 note, as it has a „replacement value of \$2000 or less“. [□]

2. Was \$100 note property?

Here, clearly the \$100 note is a property as it is personal property [part 1 of the *Legislation Act 2001* (ACT)]. [□]

3. Did the \$100 note belong to someone else?

If consent by the owner was given for a transfer of property, s 305(5) and s 305(6) may deem that the property has not passed. The following conditions have to be satisfied under s 305(5):

I: A fundamental mistake was made.

II: The new owner was „under a legal obligation to make restoration“. [□□]

I:

Here, Mary gave consent to transfer the coat to A. But a fundamental mistake was made. The definition of „fundamental mistake“ is set out in s 305(6). It can only mean one of the three meanings found in the section, as it has a closed definition. Here, under s 305(6)(b), „a mistake about the essential nature of the property“ was made as Mary and the original owner, Ingrid, were unaware that the coat contained the \$100 note and the pearl earrings. [□]

II:

The Criminal Code does not define the phrase „under a legal obligation to make restoration“ and there is a special and technical meaning involved. Hence, the common law has to be looked at to work out the definition (per Kirby J in *Barlow*). [□□] In *Attorney-General's Reference (No 1 of 1983)*, the court held that the word “restoration” is similar to restitution. Therefore A is obliged to restore Ingrid if there was „a mistake as to a material fact on the part of the giver“, which gives rise to an unjust enrichment“. Here, Jenny [?] only paid \$120 for the coat. She was unjustly enriched as she received the \$100 note and the pearl-earrings plus the coat. [□]

4. Did A intend not to return the \$100 note?

A did not intend to make restoration as she decided to “heed” Adam's advice and kept the \$100 note in her wallet. Further, in the police interview, A said that anyone would have kept it as it was considered good luck. [□]

Therefore, A most likely did not intend to return the \$100 note. Hence, under s 305(5)(b), an intention not to make restoration is an intention to permanently deprive Ingrid of the \$100 note [s 305(5)(b)(i)] and [□□] „an appropriation of the“ \$100 note without Ingrid's consent [s 305(5)(b)(ii)], and \$100 note belongs to Ingrid. Therefore, the remaining element to prove is dishonesty (fault element).

5. Was A dishonest?

Under s 300, A was dishonest if her conduct was „dishonest according to the standards of ordinary people“ in a particular circumstance [objective test [□]; definition of dishonest in s

300(a)], and A, knew that such conduct was „dishonest according to the standards of ordinary people“ in such a circumstance [subjective test; definition of dishonest in s 300(b)]. [□□]

Here, the P can argue that „ordinary people“ who find \$100 would return the money as \$100 is quite a large sum. The P will also argue that A knew that it was dishonest as she stated in the interview that “How was I supposed to know everything belonged to someone who was still living in Australia”. This suggests that A knew that it was dishonest, as it is plausible to infer that A would have returned the \$100 not if she knew the owner was in Australia. Therefore, A was dishonest. [□]

6. Conclusion

A will be liable for minor theft of the \$100 note under s 321.

Alice’s Liability for theft of earrings

Similar to A’s liability for \$100 note. But the P will charge A under s 308 of the Code as the earrings is worth more than \$2000. A cannot argue about the value as under s 321(2), s 321(1)(b) is an absolute liability provision [s 24(2)(b)]. [□□]

Alice’s Liability for obtaining \$500 by Deception

1. Introduction

The P can charge A under s 326 for obtaining \$500 by deception. [□]

2. Was the \$500 property?

„A thing in action is an intangible personal property right recognised and protected by law. Examples include debts, money held in a bank“ [Part 1 of the *Legislation Act 2001* (ACT)]. Therefore, the \$500 in A’s ANZ bank account is property. [□]

3. Did \$500 belong to Ingrid?

Here, Ingrid had a proprietary right in the \$500, as it was from her bank account [s 301]. Therefore, \$500 belonged to Ingrid.

4. Was A reckless as to whether the \$500 belonged to Ingrid?

As the fact whether “property belonging to someone else” (s 326) is a circumstance, by application of s 22(2), recklessness is the required fault element and is defined in s 20. [□] Here, A was reckless as A knew that the \$500 belonged to Ingrid as the EFTPOS card bears the name “Ingrid Olsen”. [+ she had PIN]

5. Was the \$500 obtained?

Here, A obtained the \$500 as A „obtains ownership“ of the property for herself [s 328(1)(a)] by transferring the money into her bank account. [□]

6. Did A obtain by deception?

2 conditions need to be proved.

I: A used deception

II: there has to be a causal [„operative deception“] link between deception and the obtaining of property (*Benli*).

I:

The word “deception” is defined in s 325. The word “intention” refers to a person, meaning to engage in deception to obtain property [s 18(1)]. Here A used deception as A caused the

ANZ auto teller „to make a response that“ A is not authorised to cause it to do [s 325(b)]. [A pretended to be Ingrid]

II:

A commonsense approach will be used to determine if there was a causal link (*Lambie*). Here, clearly A caused the ANZ auto teller into believing she was Ingrid, by using Ingrid's PIN, in order to obtain the \$500 by deception.

7. Did A intend to permanently deprive Ingrid?

Section 18(2) will apply in relation to “intention of permanently depriving” under s 306(4). Under s 18(2) and s 306(4), A intended to permanently deprive Ingrid in the ordinary course of events.

Refer to discussion about intention not to make restoration. There A intended to permanently deprive Ingrid.

8. Was A dishonest?

Refer to A's liability for \$100 note above. Therefore, A was dishonest as the facts seem to suggest that she did not intend to return the earrings when she was aware that it was dishonest not to do so.

9. Conclusion

A is most likely liable under s 326 for obtaining \$500 by deception. [□]

Question B1(b)

1. Introduction

References to various sections are sections under the *Crimes Act 1900* (NSW) unless otherwise stated. The P can charge Adam (“D”) under s 59 for assault occasioning actual bodily harm (“ABH”).

Here, D’s act involves leaning into Lucy’s face holding a shard of glass close to her face.

2. AR of s 59

2.1 Was D’s act a threat of force?

Threatening bodily movement is sufficient to constitute a threat of force. Here, D’s act was a bodily movement.

2.2 Was Lucy (“L”) in a state of apprehension?

The test involves determining if D’s act was capable of arousing apprehension in the mind of L. This is a subjective test. Here, L was apprehended as she was terrified and ran out of the bar. [□]

2.3 Did L apprehend immediate and unlawful personal violence?

Anticipation of a lawful personal violence is sufficient to establish that L apprehended immediate violence (*Ryan v Kuhl*). Here L most likely apprehended immediate personal violence. If not, she would not have ran out in such a haste.

[These paragraphs (under headings 2.2 and 2.3) could be condensed perhaps?]

2.4 Was D’s act a conditional threat?

D’s act was a conditional threat as he said “You do that one more time and I’ll cut you!” Conditional threats can constitute a threat of force if they are unlawful (*Rozsa v Samuels*). [□] Here, clearly D’s conditional threat was a threat of force as it was unlawful for him to assault L.

2.5 Intoxication

Self-induced intoxication will not be taken into account to determine if D’s act was voluntary [s 428G(1)], as D chose to intoxicate himself.

3. Was D’s threat of force intentional or reckless? (MR)

The MR involves recklessness, where D committed the act even though he foresaw the possibility that his conduct may cause some harm (*Coleman*). This is a subjective test. Here, intoxication cannot be taken into account as D’s intoxication was self-induced [s 428D(a)]. Hence, here D foresaw the possibility as he wanted to threaten L because of the harm she caused. Therefore, it was likely that he foresaw the possibility.

4. Conclusion

D will most likely be liable under s 59.

Mark: 77%

[Overall, your answer is excellent. You recognised the central legal issues and were not sidetracked by inherent provisions or concepts. Only real area for improvement would be in bulking up your factual analysis/references to your conclusion in order to be better supported.]