



**THE LAW SOCIETY OF SCOTLAND  
EXAMINATIONS**

**SCOTS CRIMINAL LAW**

**Wednesday 10 MAY 2006**

**1330 – 1630  
(Three Hours)**

**Candidates should attempt any FIVE questions, with  
at least ONE question taken from Section B.**

**Answers should be fully reasoned and supported by  
adequate citation of authority in all cases.**

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**SECTION A**

1. Explain the basis of the doctrine of art and part liability in criminal law
2. What is the mens rea of theft in Scots law?
3. How satisfactory is the current Scots law in relation to the defence of automatism?
4. The Scottish Law Commission is currently considering reform of the law of rape. What changes are needed to the existing law of rape?
5. What does it mean when an offence is said to be one of strict liability? How does it contrast with vicarious liability?
6. What are the differences between the crimes of murder and culpable homicide?

**SECTION B**

7. Julian met Jane in a pub. They were immediately attracted to one another, went on to a nightclub for more drinks, then returned to Jane's flat. Julian spent the night with her, and sexual intercourse took place between them. Julian assured Jane that it was unnecessary for them to use condoms since he was "one hundred per cent healthy." In fact, Julian was well aware that he was HIV positive, but his assurance was accepted by Jane. No condoms were, therefore, used. Their brief affair was later abruptly terminated by Jane when she discovered that Julian was having regular treatment for his "condition." So far, Jane shows no signs of herself becoming HIV positive.

Jane wishes Julian to be prosecuted for rape since she would have refused sexual intercourse with him if she had been told the truth. Consider whether such a charge

could be sustained. Consider also whether any other common law charge would be more appropriate in the circumstances.

8. Mary and Sheila decide to play a trick on Andy, who sells hamburgers from a stall near their office, by staging a fake hold-up of his stall. They buy a toy gun and two masks and make their way to his stall. On the way there, Mary says to Sheila: "I bet Andy will get the fright of his life when he sees this lot." Sheila agrees, saying that "it will serve him right for selling such crummy burgers." They arrive at Andy's stall, wearing their masks and carrying the gun. Sheila points the gun at Andy and says: "This is a hold-up. Give us everything in the till." When Andy hesitates, Sheila shouts at him: "Hurry up, or we'll shoot you." Andy bursts out laughing, and tells them: "Come off it Sheila, you're not fooling me. You too, Mary." Mary and Sheila begin to take off their masks, but Jeremy, a customer standing at Andy's stall, does not realise that they are joking, and gets such a fright that he faints. As he falls he strikes his head on the counter of the hamburger stall and fractures his skull. He dies in hospital later that day.

Advise Mary and Sheila as to their criminal liability (if any).

**- END -**