



THE LAW SOCIETY OF SCOTLAND
EXAMINATIONS

SCOTS CRIMINAL LAW

Wednesday 9 AUGUST 2007

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. To what extent does the High Court of Justiciary possess a power to declare new crimes?
2. What is the mens rea of theft in Scots law?
3. How satisfactory is the law relating to the defences of insanity and diminished responsibility?
4. What are the main features of the Scots law on criminal attempts?
5. What is the scope of the crime of breach of the peace?
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, and 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. Alan and Brian are first year students at university. During a social event in freshers' week, Alan is given some tablets by a fellow student which he is assured will help him to "enjoy himself". Alan takes one, and drops another one into Brian's drink when Brian is not looking. The tablets are powerful hallucinogenic drugs. Shortly afterwards, Alan becomes convinced that various people in the room are in fact dragons who are about to attack him, and he "defends himself" against them with the use of a chair, injuring them.

At the same time, Brian is aware that Alan is attacking other people. He is seriously confused as a result of the drug he has unknowingly taken, and starts to panic. He decides that he has to leave the room as quickly as possible and that the most sensible way to do this is to grab another chair and smash a window at the back of the room and then escape through that window. He manages to smash the window but is restrained before he jumps through it.

Consider the criminal liability (if any) of Alan and Brian.