



**THE LAW SOCIETY OF SCOTLAND
EXAMINATIONS**

SCOTS CRIMINAL LAW

Wednesday 4 FEBRUARY 2009

**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. "Attempted criminal acts cause no harm. Therefore the law of attempts should have no part in the criminal law."

Critically evaluate this statement.

2. What are the most problematic features of the current definition of rape in Scots law? To what extent does the Sexual Offences (Scotland) Bill satisfactorily address those problems?

3. It is a general rule of Scots criminal law that a person is not held liable for omitting to act. Discuss the exceptions to this general rule.

4. "There can be no theft unless there is an intention to deprive the owner permanently of the thing allegedly stolen." (GH Gordon, *The Criminal Law of Scotland* (1st edition, 1967).

How accurate is this view as a statement of the current law on the mens rea of theft?

5. In what ways does the defence of provocation in Scots criminal law require reform?

6. What does it mean when an offence is said to be one of strict liability? How does it contrast with vicarious liability?

SECTION B

7. Barry has invited some friends to his flat for a party. He decides to take some LSD, which he dissolves in his can of lager. The doorbell rings and Barry goes to answer, leaving his lager standing on the kitchen table. There is a neighbour, Tim, at the door who is angry at the amount of noise coming from Barry's flat. An argument starts and Barry pushes Tim. Tim then grabs Barry, bashes his head against a wall and throws him down a flight of stairs.

Meanwhile, Sarah has gone into the kitchen. Not knowing about the LSD, she drinks from Barry's can. She then begins to hallucinate that Simon, who is studying to become a priest, is a male stripper. She grabs Simon's crotch. Simon is terribly offended.

Some time later two police officers, Officers Punch and Judy, arrive and arrest Tim. Simon complains to the officers about Sarah's behaviour. When she is being questioned, Sarah begins to shout abuse at Officer Judy, calling her a "smelly pig." Officer Punch then puts Sarah in an arm lock and together they march out to the police car, along with Tim, who goes quietly.

Barry is taken to hospital with a broken back. He dies during surgery.

Which criminal offences, if any, have been committed by Tim, Sarah and the police officers?

8. Adam is at a party with his girlfriend Betty, who is pregnant. After Adam has had a few drinks Betty says that she is feeling very unwell. Adam then drives Betty to a hospital a few miles away. He is recorded on a police camera as driving erratically and at a very high speed. As he gets near the hospital Adam cannot find the hospital car park so he leaves his car at the premise of a nearby office block, which is owned and occupied by Charlie. At the premises there is a sign saying that any car parked without a permit will lead to the car being immobilised and will not be released until the car owner pays a 'civil penalty' of £100.

At the hospital it is decided that Betty should remain overnight to await the results of tests. Adam returns to his car but finds that it is clamped. Adam confronts Charlie who refuses to release the car until he receives £100. Adam becomes angry. He picks up a piece of wood and charges at Charlie. As Adam aims a blow, Charlie ducks and Adam hits instead Dave, who Adam did not know was standing behind Charlie.

Dave is taken to the hospital. His injuries are minor but he refuses for religious reasons to allow a necessary blood transfusion, and he later dies of complications to the original injury.

Discuss the criminal liability of Adam and Charlie.

END