

Scots Criminal Law

Thursday 20 February 2025

13.00 – 16.00

(three hours)

Candidates should attempt any **THREE** 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.

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

Section A

Question 1

Explain fully the principles of the offence of rape under section 1 of the Sexual Offences (Scotland) Act 2009 and discuss the ways in which this offence is different to the offence of rape at common law in Scotland.

Question 2

Set out in full, citing authority as appropriate, the principles in Scots law of the crimes of:

a) causing reckless injury

and

b) reckless endangerment.

Question 3

Explain fully the circumstances in Scots law in which an omission to act may constitute the actus reus of a criminal offence. In your opinion, are there any other forms of omission which should be criminalised?

Question 4

Identify and explain fully, citing authority as appropriate, all the defences (complete and partial) which Scots law allows where the accused was unable to understand, rationalise, or appreciate fully the quality of, their criminal act.

END OF SECTION A

Section B

Candidates **must** answer **at least one** question from Section B.

Question 5

Hamish is convinced that his colleague Dougald has been spreading rumours about him in their workplace. One afternoon he goes upstairs to Dougald's office and confronts him, but Dougald denies having spread any rumours. This enrages Hamish, who grabs the glass paperweight that is sitting on Dougald's desk and smashes it over Dougald's head. Dougald suffers a severe laceration across his forehead and falls to the ground unconscious. As Dougald is lying on the floor injured, Hamish notices that Dougald's wallet has fallen out of his trouser pocket and is lying next to him on the floor. Hamish picks it up to take the cash from inside it, muttering "serves you right – I'll take some compensation for the damage you've caused my reputation". However, the wallet is empty, and he discards it on the floor.

After Hamish leaves Dougald's office, he heads back downstairs. He meets another colleague, Tom, on the landing of the stairwell a floor down. Tom starts chatting to Hamish and mentions he is on his way upstairs for a meeting with Dougald. Hamish realises Tom will see what has happened and decides he needs to leave the office building urgently. He places his hand on Tom's shoulder and forcefully pushes past him, shouting "Out my way – I'm in a rush" as he races downstairs. Meanwhile Tom, who has a heart condition, falls backwards onto the floor, and suffers a stress-induced heart attack.

Both Dougald and Tom are discovered about half an hour later by another colleague, who calls an ambulance. Once at the hospital Dougald is treated for his serious head injury, which is considered by the consultant on duty to be serious but not life threatening. He is then left in the care of Lennox, a junior doctor. Lennox, who is tired from working overtime, does not read the consultant's notes properly, and gives Dougald an injection which contains a painkiller that the notes state Dougald is severely allergic to. Dougald dies immediately afterwards. Tom is also treated at the hospital, where he is placed on a life support machine. A week later, there is no improvement, and the life support machine is switched off. Tom is pronounced dead. According to the consultant who treated Tom, if he had been found sooner after his heart attack, he might not have died.

Which crimes in Scots criminal law may have been committed by Hamish? Give full reasons for your answer, citing authority as appropriate.

Question 6

Soliman, Harry and Sarah live in a block of flats which has a communal garden. All three of them are annoyed with their neighbour Claudia, who has, in their view, taken over the shared garden with her extensive collection of pink flamingo garden ornaments. She seems to add a new flamingo to the collection each week. Soliman, Harry and Sarah resolve to put a stop to the “invasion” of garden flamingos. They agree to meet in the garden at midnight that evening to destroy the flamingos. They agree that Soliman will bring a cricket bat, Harry will then smash the flamingos, and Sarah will act as look-out to warn them if anyone is coming.

Later that evening, Sarah decides that she no longer wants to participate in the plan. She goes to bed early, after sending both Soliman and Harry a text message which reads: “Thought better of the plan. Hope you both do too.” Neither Soliman or Harry read the text message, and they do, in fact, meet up in the garden at midnight as arranged. Harry starts to smash the flamingos with the bat that Soliman has brought. This makes a fair amount of noise, and Claudia suddenly appears in the garden. Seeing Claudia, Soliman pulls a small pen knife out from his bag and stabs Claudia in the arm. As he stabs Claudia, he shouts: “I hope this hurts! This should stop you bringing any more flamingos into the garden!” Soliman then runs away. Harry is utterly horrified by what has happened. He had only wanted to get rid of the flamingo ornaments, which he considers to be an eye sore. He calls an ambulance, waits with Claudia until it arrives and puts pressure on the wound on her arm to try to stem the flow of blood. Claudia is taken to the hospital, where her injury is treated, and she is released home the next day.

Which offences in Scots law may have been committed by Soliman, Harry and Sarah and what is the likelihood of conviction of each? Give full reasons for your answer, citing authority as appropriate.

END OF SECTION B

END OF PAPER