

THE OPEN UNIVERSITY OF SRI LANKA  
FACULTY OF HUMANITIES AND SOCIAL SCIENCES  
DEPARTMENT OF LEGAL STUDIES  
LLB DEGREE PROGRAMME - LEVEL 04  
FINAL EXAMINATION 2022/2023  
LLU4806 - CRIMINAL LAW



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Date: 04<sup>th</sup> April 2024

Time: 1.30 p.m. – 4.30 p.m.

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Total number of questions: 08

Answer **FIVE (05)** questions only.

Candidates will be penalized for illegible handwriting.

1. Edward is a businessman who owns several houses in the suburbs of Colombo city. One of those houses was situated closer to a private educational institute that offered various diploma and degree programmes in information technology. Edward used to rent this house to those students every year. In January 2023, he rented the house to Dilshan who is a student of this institute. As per the letting contract the house could be shared with maximum six other students. Five friends of Dilshan agreed to share the rooms and they occupied the house in February 2023.

One month later, some of the neighbours made a complaint to the police that those students who occupied the house were alcoholics and drug addicts. They further complained that the students' behavior caused nuisance and disturbed the tranquility of the neighbourhood. Later, the police arrested Edward over the complaint made by the neighbours.

Edward stated that he was completely unaware of such behavior of his tenants and therefore he was not liable for any offence. The relevant law dealing with renting of houses expressly provides that the absence of *mens rea* is a defence under the said law.

Discuss the culpability of Edward. Support your answer with the relevant statutory provisions of the Penal Code and case law.

(20 marks)

2. ".....The opinions expressed by the judges in McNaughton's case are considered most authoritative expositions of law on the question as to how insanity is a valid defence in a criminal case..."

*Deorao Vs Emperor, 1946 AIR 321 at p 330* (as cited in Dr. Hari Singh Gour's Indian Penal Code, 16<sup>th</sup> Edition 2023 at p 241)

In light of the above statement critically discuss the origin and subsequent developments of the defence of insanity in Sri Lankan criminal law.

**(20 marks)**

3. Sira and Jothi who were gangsters of two underworld gangs were sent independently to shoot and kill a popular local politician in a rally at a public square. Neither Sira nor Jothi knew that the other also have been sent to fulfill the same task. On the day of the rally Sira positioned himself behind a tower overlooking the public square and Jothi positioned himself on the balcony of a deserted building near the public square. When the politician started to address the gathering, both Sira and Jothi fired at him within a split second of each other and both assumed that they have achieved their target. No one in the gathering heard the firing since both Sira and Jothi used silencers. The politician fell down with severe gunshot injuries on his chest. He was taken to hospital immediately and an emergency surgery was performed. However, he succumbed to injuries a few hours after the surgery. At the postmortem it was revealed that only one gunshot had hit him. Both Sira and Jothi were tracked down with the aid of CCTV recordings and were charged with the offence of murder.

Discuss the culpability of Sira and Jothi.

Support your answer with the relevant statutory provisions of the Penal Code and case law.

**(20 marks)**

4. Justin is a labourer attached to the Pure Gas Company Limited, a company engaged in selling LP gas. Justin's main duty is to unload empty gas cylinders from distributing trucks and stack them in the respective store. One Friday, Justin completed his day's work and went off as usual. On the following morning, the foreman in charge of the stores found out that one gas cylinder bearing the serial number 1005 was missing. One of the truck drivers,

who were on duty that day, informed that he saw Justin riding a bicycle with a gas cylinder on the luggage. Later the empty Gas Cylinder 1005 was found in a nearby scrap metal collecting yard belonging to Justin's brother Martin.

Now Pure Gas Company Limited seeks your advice as to whether the charge of theft could be brought against Justin and Martin. Discuss.

**(20 marks)**

5. "There is no need to show that the defendant intended to have sexual intercourse in circumstances where the victim was not consenting, it is only necessary to show that the act of penetration was intentional and that he was negligent as to whether or not the victim was consenting..."

William, Glanville, *Textbook of Criminal Law*, South Asian Edition 2017, p 462.

Does the above statement reflect the correct legal position in Sri Lanka relating to the offence of rape? Critically discuss with reference to the relevant statutory provisions and appropriate case law.

**(20 marks)**

6. Discuss the rationale behind the defence of necessity as a defence against criminal liability citing relevant statutory provisions, case law and appropriate practical examples.

**(20 marks)**

7. Vishwa is a salesman who provided his services to a private company that supplied cosmetics and skincare products to several shops in Colombo. His responsibility is to handover the products ordered by the respective shops and collect money as per the invoiced value. He is required to deposit the collected money in the company's bank account every Friday. However, at the end of December 2023, Vishwa deposited all the money he collected during the month in his own account instead. When the company questioned as to why he deposited the money in his personal account Vishwa stated that he did so due to an unexpected urgent financial requirement of his family and he intended to deposit the money back in the company's account in January 2024.

Discuss in light of the relevant provisions of the Penal Code of Sir Lanka and decided cases the offences, if any, that has been committed in the above circumstance.

**(20 marks)**

8. Write a comprehensive note on any of the following.

- i). The mitigatory plea of grave and sudden provocation.
- ii). The offence of kidnapping from lawful guardianship.

**(20 marks)**

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