



**THE LAW SOCIETY OF SCOTLAND
EXAMINATIONS**

SCOTS CRIMINAL LAW

Wednesday 9 August 2017

**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 fully, citing authority as appropriate, the principles, in Scots criminal law, of;

- criminal attempts
- incitement; **and**
- conspiracy

Each of these offences has the effect of criminalising behaviour at an early stage before any complete crime has been committed. In your opinion, is this appropriate?

2. Outline the tests for the defence of automatism as set down in the case of *Ross v HM Advocate* 1991 JC 210 and explain how the law developed through subsequent cases. In your opinion, is it appropriate that accused persons should be acquitted on this basis?

3. Explain fully the concept of recklessness currently employed in Scots law in non-fatal crimes of violence against the person. Your answer should make reference to, and explain fully the principles of TWO of the following crimes: causing reckless injury, culpably and recklessly endangering the lieges; and causing real injury. Cite authority as appropriate

4. Explain fully the principles of art and part liability in Scots criminal law both where the joint involvement in the crime is pre-arranged; and where the joint involvement

in the crime arises spontaneously, including any ways in which this form of liability can be avoided. Cite authority as appropriate

5. Explain fully the principles of malicious mischief and vandalism in Scots criminal law, citing authority as appropriate.

In your opinion, is the overlap between these two crimes excessive? Give full reasons for your answer.

6. Explain fully the principles of the crime of murder in Scots criminal law, citing authority as appropriate and outlining fully the mens rea of wicked recklessness and the mens rea of wicked intention to kill.

In your opinion, is it appropriate that an accused can be convicted of murder where there was no intention to kill but only wicked recklessness?

END OF SECTION A

SECTION B

7. Tom is anxious to get fit but cannot afford to spend any money for this purpose. He knows that his neighbour Alison has recently purchased an exercise bicycle. He has keys for Alison's house because she once asked him to feed her cat. Before he gave her back those keys, he had a copy set made. He waits till he knows that Alison is out at work and lets himself in with the copy keys. He locates the exercise bicycle and carries it back to his own house. He plans to use it intensively all day and then return it to Alison's before she comes home from work.

Tom is on his way back from returning the exercise bike when he sees Ellen walking towards him, pushing a bicycle. Tom decides that he wants the bike. He goes up to Ellen, grabs her by the collar of her shirt and waves his clenched fist in front of her. He says "give me the bike – or else." Ellen is absolutely terrified and hands over the bicycle. Tom cycles it home.

Next, Tom decides that he would benefit from having a personal trainer. He identifies one online and sends her an email in which he states that he is a journalist who is writing an article on getting fit. He says that, if she will give him a free session, he will provide some free publicity for her business in this article. In fact, this is all completely untrue but he is very convincing and the trainer provides the free session.

The following morning, another neighbour, Will comes to the door. Will seems very anxious and keeps looking up and down the street. He pulls out of his bag ten diamond necklaces, all of which look to Tom to be identical and all of which have large plastic shop security tags attached. Will asks Tom to hold on to these for him. Will says "it's just till the heat dies down and it will be worth it, if you know what I mean". He then taps the side of his nose and winks. Tom is suspicious but likes the idea that he could make money out of the arrangement. He agrees to keep the necklaces for a time.

What crimes in Scots law may have been committed by Tom? Give full reasons for your answer citing authority as appropriate.

8. Mark is in a relationship with Elsa. Without Elsa's knowledge, he sets up a camera to film him having sexual intercourse with her. Having made the film, he watches it many times because, as he expected, he finds it arousing. He thinks that Elsa will be pleased that he likes her so much that he wants to have a lasting record of their relationship but he doesn't ask her just in case she is not happy about it.

One evening, Mark phones Elsa. She says that she is tired and does not want to have sex with him that night. He goes round to her flat anyway. He brings out a bottle of wine which he has brought with him and Elsa agrees that he can come in and have a drink. He pours Elsa a large glass of the wine. She drinks it all though she does notice that he has hardly touched his own. She feels very strange and tells Mark to go home. She remembers nothing else until she awakens the next morning in her own bed with Mark beside her. They are both naked. She asks what happened and he says “we had the best sex ever – my penis in your vagina.” It turns out that he added a drug to the wine so that he could have sex with her.

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

END OF SECTION B

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