Sample Short Answer Questions

1. Explain the doctrine of temporal coincidence.

2. Explain the doctrine of doli incapax.

3. Define the different types of mens rea. How do you know which type of mens rea is required for any particular offence?

4. What is meant by the terms “strict liability” and “absolute liability”?

5. Explain the concept of “reckless indifference to human life”.

6. What elements are required to establish the offence of larceny?

7. What elements of proof are necessary to establish the defence of insanity?
8. What is the difference between sane automatism and insane automatism?

9. Consider the Crimes Act 1900 (NSW) s52A(1)-(2),(7) below.
   a. What are the elements of the offence of aggravated dangerous driving occasioning death?

---

### 52A Dangerous driving: Substantive Matters

#### (1) Dangerous driving occasioning death

A person is guilty of the offence of dangerous driving occasioning death if the vehicle driven by the person is involved in an impact occasioning the death of another person and the driver was, at the time of the impact, driving the vehicle:

(a) under the influence of intoxicating liquor or of a drug, or
(b) at a speed dangerous to another person or persons, or
(c) in a manner dangerous to another person or persons.

A person convicted of an offence under this subsection is liable to imprisonment for 10 years.

#### (2) Aggravated dangerous driving occasioning death

A person is guilty of the offence of aggravated dangerous driving occasioning death if the person commits the offence of dangerous driving occasioning death in circumstances of aggravation. A person convicted of an offence under this subsection is liable to imprisonment for 14 years.

#### (7) Circumstances of aggravation

In this section, "circumstances of aggravation" means any circumstances at the time of the impact occasioning death or grievous bodily harm in which:

(a) the prescribed concentration of alcohol was present in the accused's breath or blood, or
(b) the accused was driving the vehicle concerned on a road at a speed that exceeded, by more than 45 kilometres per hour, the speed limit (if any) applicable to that length of road, or
(c) the accused was driving the vehicle to escape pursuit by a police officer, or
(d) the accused's ability to drive was very substantially impaired by the fact that the accused was under the influence of a drug (other than intoxicating liquor) or a combination of drugs (whether or not intoxicating liquor was part of that combination).
Sample essay style questions

1. What is meant by the term “honest and reasonable mistake of fact”? In your view, is the scope of this defence reasonable?

2. Select a criminal offence which has evolved over time. Explain (i) the factors which influence whether behaviour is defined as a criminal offence, and (ii) how offences can change over time.

3. When can an omission constitute a crime? Use legislation and case law examples to explain your answer.

4. What are the public policy reasons for prosecuting offences in NSW? Explain any criticisms of the factors taken into account when prosecuting offences. Refer to relevant cases in your answer.

5. Explain the offences of manslaughter by criminal negligence, manslaughter by dangerous and unlawful act, and assault occasioning death. In your view, was the introduction of the offence of assault occasioning death necessary? Use legislation and case law to support your answer.
Sample Problem Questions

1. Bob works in a furniture warehouse with Tim. Bob and Tim have a habit of playing practical jokes on each other. One day Bob brings a realistic looking toy gun to work and brandishes it at Tim, pretending he has gone crazy and is going to shoot Tim. The security guard in the furniture warehouse pulls out his real gun and attempts to shoot Bob, but misses and shoots Jane instead. Discuss the criminal liability of both Bob and the security guard.

2. Matty and Elora are in a relationship and love each other very much. They decide to make a suicide pact, having decided they’re both ‘too good for this world’. They purchase drugs referred to as X and Y which, when taken on their own, cause no major effects but when taken together, are fatal.

After dinner at their favourite restaurant, they return home to their 10th floor apartment and Matty dissolves drug X in Elora’s coffee and gives it to her not knowing whether she has already taken drug Y.

Elora drinks it, retreats to bed and dies a couple of hours later from drug poisoning. Meanwhile, Matty consumes a 700ml bottle of whiskey in order to get the Dutch courage to kill himself. Just as he is about to drink his own cocktail of X and Y drugs, he sees Michelle. Michelle is the next-door neighbour’s 10 year old daughter and has crawled along the narrow ledge outside Matty and Elora’s home. Matty rushes towards Michelle, fearing she would fall and Michelle panics, loses her balance and falls to her death.

Matty is soon arrested by Police who find him howling uncontrollably. He was standing next to Michelle’s body and saying, ‘I didn’t mean to hurt Michelle, I am so sorry’.

Subsequent medical examination show that Matty had been acutely depressed for 7 months up to and including his arrest.

Discuss Matty’s criminal liability in relation to the deaths of Elora and Michelle.
3. Mike and Scott are entrepreneurs based in Sydney and have developed a software application that has recently been described as ‘likely to revolutionise project management’. It is attracting interest from investors around the world.

They are having a business lunch with a potential investor, Max at a restaurant in Pitt Street. After a few drinks, Max asks which of them will be the CEO. Mike and Scott get into an argument over which of them will lead the new company. Mike gets enraged and grabs Scott by the throat. Scott pushes him away says ‘you’ll be CEO over my dead body’. Scott then throws his mobile phone at Mike, hitting him in the forehead. Mike slumps back into his chair with his eyes closed.

Later that night in hospital, Mike dies from his injuries. During the autopsy, the pathologist finds that Mike happened to have a bone deficiency in the exact place he was struck by the phone. The next day, Scott’s step brother Will goes to police and makes a statement that two weeks ago Scott told him that he would ‘sort Mike out if he didn’t let him be the CEO’. When Scott is interviewed by police, he says that he meant to slam his mobile phone down on the table, but it slipped out of his hand and hit Mike.

Discuss Scott's criminal liability.
4. Jethro has been dumped by Maz, his girlfriend of two years. Maz has left him for Ronaldo. Jethro tells Harry if he sees Ronaldo at the bar he is going to cave his head in. Prior to going to the bar, Jethro drinks 2 bottles of wine and tells Harry he is drinking the wine to make sure he follows through with his decision to beat up Ronaldo. At the bar, Ronaldo pushes Jethro in the chest and tells him to leave as the bar is ‘no place for losers’. Jethro punches Ronaldo multiple times, causing Ronaldo to fall to the ground, hitting his head. Ronaldo dies as a result of his head hitting the ground. Jethro tells the police he has no recollection of the incident and claims he was too drunk to remember. He says he had no intention of harming Ronaldo and his comments to Harry were merely showing off.

Discuss Jethro’s criminal liability.

5. Brooke intends to rob a bank. She takes with her a loaded pistol, intending only to use the gun to threaten the staff in order to secure their compliance with her demands for money. If necessary, she intends to reinforce her demands by firing shots into the ceiling. She has no intention to use the gun to wound or kill anyone. She knows between 12:00pm and 1:00pm is the busiest time because she has walked past the bank for the last 2 weeks to check out how she will execute her plan. Bank staff have given Brooke the money after she fired 1 shot into the ceiling. As she turns and runs out of the bank she trips on the uneven footpath. As she makes contact with the ground the pistol she is holding accidentally discharges and kills a man jogging past.

Is Brooke guilty of murder?

6. Tula was involved in the business of trafficking drugs. He owed drug debts to 2 men, Scott and Peter, in the amount of about $50,000. Scott and Peter threatened him that if he didn’t pay them back, they would kill Tula’s partner, Julia. Scott and Peter threatened Tula that if he went to the police, they would kill Julia and Tula’s mother. Tula promised them that he would get them the money. Three months passed while Tula tried to get the money together. After three months, Scott and Peter told Tula that if he did a break and enter for them on another drug dealer’s house, they would wipe the debt. Tula committed the break and enter, and was apprehended shortly after. Consider whether Tula has the defence of duress available to him.
<table>
<thead>
<tr>
<th>Criteria</th>
<th>HD</th>
<th>D</th>
<th>C</th>
<th>P</th>
<th>FL</th>
</tr>
</thead>
<tbody>
<tr>
<td>Identification of the issues the problem scenario raises</td>
<td>All relevant issues (major and minor) are identified and articulated succinctly with precision. Issues are phrased, where possible, as a question.</td>
<td>All relevant major issues (and some minor) are identified and articulated with precision. Issues are phrased, where possible, as a question.</td>
<td>All relevant major issues are identified and articulated clearly. Issues are phrased, where possible, as a question.</td>
<td>At least 80% of all relevant major issues are identified and articulated clearly. Issues are phrased, where possible, as a question.</td>
<td>An inadequate number (less than 60%) of relevant major issues are identified or are expressed in a manner that lacks clarity. Issues are poorly phrased, or not phrased where possible as a question.</td>
</tr>
<tr>
<td>Identification and citation of the relevant legal rules applicable to the issues</td>
<td>A clear and complete statement of the law is given with respect to each issue raised. All relevant statutory provisions and common law rules/authorities are correctly identified and cited. Supporting and relevant case authority is comprehensively used and correctly cited.</td>
<td>A clear statement of the law is given with respect to all issues raised. At least 80% of relevant statutory provisions and common law rules/authorities are correctly identified and cited. Supporting and relevant case authority is used and correctly cited.</td>
<td>A clear statement of the law is given with respect to all issues raised. At least 70% of relevant statutory provisions and common law rules/authorities are correctly identified and cited or there are minor omissions. Supporting and relevant case authority is used to an acceptable extent and correctly cited.</td>
<td>A clear statement of the law is given with respect to all issues raised. At least 60% of relevant statutory provisions and common law rules/authorities are correctly identified and cited or there are minor omissions. Supporting and relevant case authority is used to an acceptable extent and correctly cited.</td>
<td>An unclear or incorrect statement of the law is given. Less than 60% of relevant statutory provisions and common law rules/authorities are correctly identified and cited or there are minor omissions. Supporting and relevant case authority is not used to an acceptable extent or correctly cited.</td>
</tr>
<tr>
<td>Application of the legal rules/principles to the problem scenario</td>
<td>The legal principles identified are accurately applied to the facts and issues without error. A clear and persuasive explanation of how the rules impact the issues is given with some sophistication.</td>
<td>The legal principles identified are accurately applied to the facts and issues without error. A clear explanation of how the rules impact the issues is given.</td>
<td>The legal principles identified are accurately applied to the facts and issues without error. A clear explanation of how the rules impact the issues is given.</td>
<td>The legal principles identified are accurately applied to the facts and issues without error or omission. A mostly clear explanation of how the rules impact the issues is given.</td>
<td>The legal principles identified are inaccurately applied to the facts and issues with error or omission. An unclear explanation of how the rules impact the issues is given.</td>
</tr>
<tr>
<td>Provision of a reasoned and clear conclusion that resolves the legal problem</td>
<td>A succinct and logical statement that addresses the issues raised by the problem completely. The response is well reasoned and clearly articulated.</td>
<td>A succinct and logical statement that addresses the issues raised by the problem completely. The response is clear.</td>
<td>A clear and logical statement that addresses at least 60% of the issues raised by the problem. The conclusion is, for the majority, clearly expressed.</td>
<td>A clear statement that does not address the issues raised by the problem. The conclusion is, for the majority, clearly expressed.</td>
<td>An unclear or incorrect statement that does not address the issues raised by the problem adequately.</td>
</tr>
<tr>
<td>Citation (legal referencing)</td>
<td>Work conforms to AGLC4 legal referencing in all citation.</td>
<td>Work conforms to AGLC4 legal referencing in all citation.</td>
<td>Work conforms to AGLC4 legal referencing in all citation.</td>
<td>Work conforms to AGLC4 legal referencing in all citation.</td>
<td>Work fails to conform to AGLC4 legal referencing in a significant proportion of citation.</td>
</tr>
<tr>
<td>IRAC Format</td>
<td>Content has been logically and succinctly structured into a format using the IRAC method.</td>
<td>Content has been logically structured into a format using the IRAC method.</td>
<td>Content has been structured into a format using the IRAC method, with some minor mistakes evident.</td>
<td>Content has been partially structured into a format using the IRAC method and/or does not demonstrate a full understanding of the use of the IRAC.</td>
<td>Content has not been structured into a suitable format using the IRAC method, and/or there are consistent formatting errors throughout.</td>
</tr>
<tr>
<td>Grammar and punctuation</td>
<td>Grammar and punctuation is completely accurate and correct.</td>
<td>Grammar and punctuation are mostly accurate and correct with very minor omissions.</td>
<td>Grammar and punctuation are at least 80% accurate and correct.</td>
<td>Grammar and punctuation is at least 70% accurate and correct.</td>
<td>Grammar and punctuation is inaccurate or incorrect.</td>
</tr>
</tbody>
</table>