

GUJARAT NATIONAL LAW UNIVERSITY
GANDHINAGAR
 Course: Law of Crimes
 Semester-III (Batch: 2013-18)



End Term Examination: Oct-Nov. 2014

Date: 21st October, 2014

Duration: 3 hours

Max. Marks: 50

Instructions:

- Read the questions properly and write the answers in the given answer book.
- The respective marks for each question are indicated in-line.
- Do not write anything on the question paper.
- Indicate correct question numbers in front of the answers.
- No questions or clarifications can be sought during the exam period, answer as it is, giving reason, if any.
- **Bare Act is not allowed.**

Part-A

Answer **all** the questions

Marks

(4x7.5

=30)

- Q.1 On Pathological intoxication there are rare cases of surprise that can be established. However, a disproportionate, atypical reaction to a small amount of alcohol can occur because of bodily infirmity. The reaction may well be quite violent as in the following example:

“A twenty-year-old man, living alone with his mother, stabbed her to death with a kitchen knife, inflicting many wounds on her body. In the five days preceding the murder he had worked hard and had irregular meals. Also, there had been some quarrel with his mother over money. In the morning of the day of the murder he struck her, a very unusual act for which he apologized. He ate poorly on that day. He had his last carbohydrate meal at noon. Between 9:00 P.M. and 10:30 P.M. he drank four pints of mild ale. At 11 P.M. there was again a quarrel with his mother over money and she pushed him out of her room. At this moment he suddenly felt thirsty, went to the kitchen to get a bottle opener, saw a knife, and then something came to his mind: ‘I was like a homicidal maniac.’ He stabbed his mother to death, then realized what he had done, wiped the knife for fingerprints, washed and dressed, and left the house. There is a gap in his memory for seven hours following the crime. The next day, he surrendered himself to the police and made a full statement.

After the patient’s arrest, his family physician notified the defense that two years prior to the crime a sugar tolerance curve had shown a tendency to hypoglycemia. Two physicians performed a number of tests which showed that the prisoner was definitely suffering from hypoglycemia. They expressed the opinion that his blood sugar at the time of the crime must have been below 100 milligram. And his brain at that time was functioning abnormally, and his judgment was impaired at that time. The jury found him guilty but insane.”

The present law contains no provision for such a case of “Pathological” intoxication, although in some instances perhaps the rules respecting insanity might come into play.

- (a) Whether the violent reaction was brought about by “mental disease”? Give your arguments on either side in support of your answer.
- (b) Whether “Pathological” intoxication be made a defence if by reason of the intoxication the actor is deprived of mental capacity to the degree necessary for establishing insanity? Discuss.

Q.2 The Federal Court of Justice of Germany (German: Bundesgerichtshof - BGH) has recently confirmed that D can only be held liable for intentional offences against an unintended victim V2, if the risk of harming V2 was known to D and he willingly took that risk, i.e. he had so-called *dolus eventualis*, which is not identical to the English law of recklessness. The German law does not accept a transfer of defences. German law does not know of a defence of provocation as in English law. The facts of the case are:

“D, his wife V1 and his best friend V2 had been drinking heavily one night. On the next morning, D awoke to find V2, with his trousers down, lying on top of V1, who was only clothed with a bathrobe that was open. D assumed that V1 and V2 were having intercourse. D knew that there had been sexual encounters between V1 and V2 before but he was incensed at their gross abuse of his hospitality in his own home. He got a hatchet with which he aimed at the back of V2’s head. However, he missed and hit V1 on the head. He hit her so hard that the hatchet’s handle broke and its metal head flew through the room. V1 died from her wounds. D was aware at the time when he aimed at V2 that he could hit V1 as well because V2 was lying on top of her.”

- (a) Whether the doctrine of transfer of malice under the Indian Penal Code can be invoked in the instant case and D could be convicted for murder? Discuss.
- (b) Whether the conviction for murder can be affirmed on appeal by the BGH because D had *dolus eventualis*, or the killing of the wife could be classified as negligent homicide, together with an attempted murder of V2? Is there any possibility of a view that D was found to be acting under diminished responsibility? Explain.

Q.3 The Massachusetts Supreme Judicial Court’s holdings in *Commonwealth v. Sherry* (1982) suggests that the victim had verbally protested as the three defendants escorted her away from a party to another house and again as they each, in turn, had sex with her. Absence of physical force required the application of the analysis whether the degree of resistance was a reasonable response to reasonable fear and if the victim’s resistance was reasonable given her reasonable fear, the defendants should reasonably have perceived her behaviour as lack of consent. The facts of the case are:

“The defendants Sherry, Hussain, and Lefkowitz, physicians at a Boston hospital, were attending a party held for certain staff of the hospital. During the party, the three physicians grabbed the victim (a nurse) and pulled her out of the apartment with the intent to go to another town. The victim protested but did not physically resist because she thought they were just “horsing around”. Once outside the apartment, Hussain carried the victim over his shoulder to Sherry’s car and held her in the front seat as the four drove to Rockport. She said she was not in fear at this time. When they arrived at Lefkowitz’s house in Rockport, the victim asked to be taken home. Instead, Hussain carried her inside where the three subsequently had independent sexual intercourse with the victim. The victim testified that she felt physically numbed and could not fight, humiliated and disgusted. On the way back to Boston, the physicians and the victim stopped to view a beach, to have breakfast, and get gas. The victim was taken back to

her car and then she drove herself home. The defendants used no physical force, however, thus making the coerciveness of the situation somewhat ambiguous. During trial, the three physicians' testimony substantially conflicted with that of the victim. The physicians testified that the victim had consented to the sexual intercourse."

- (a) Whether the defendants' behaviour could potentially be interpreted as showing intent to secure non-consensual sex? Discuss.
- (b) Whether the three physicians could be held guilty for the offence of kidnapping or could there be any conviction for rape? Explain.

Q.4 The proposition is doubtful where a person wrongfully takes an article and leaves it with someone, making sure that the owner is informed where his article is so that he can get it back. If the owner is given the information and is able to recover his property without having to pay for it, then the defendant seems to be considering the rights of the owner. He is not acting totally in disregard of the rights of the owner. If the defendant only intends a temporary deprivation and makes a genuine effort to ensure the owner will be able to recover the property without being unduly burdened, then it might be difficult for the prosecution to prove that he treated the property as his to dispose of.

"Suppose a Ph.D. student is vacating her hostel room to fly back to France but has forgotten to return five books belonging to the University library. It is 4:00 A.M. and she has a 5:00 A.M. flight, so is unable to return the books in person. She decides the best solution is to leave the books in the room that she is vacating with a note in the front of the books. But the note does not instruct the finder to return the books, but instead says, "A room without books is like a man without a soul." Suppose she knows the Ph.D. student who will be taking over her room and assumes that he will find the note amusing and also return the books to the University library.

She might also have assumed that the bedders would hand the books into the porters. She was also aware that her conduct would be considered dishonest by ordinary people. She has abandoned the books in a secure room within the university, so the books remain on university property. Notwithstanding the idealistic note, she arguably took reasonable steps to ensure that the books would be returned (or would be recoverable). After all, the books were taken out in her name and the university's computerized records would have prevented her from graduating until the books were returned."

- (a) Whether she is a thief? Has she been dishonest?
- (b) Has the Ph.D. student committed theft, even though she abandoned the property of which she had on loan?

Part-B

Answer **any one** question

(1x5=
05)

Q.5 The Westfield Shopping Centre in London has 265 stores, which technically are 265 separate buildings connected in an overarching building. Suppose D breaks into the centre out of business hours (let us say, at 1 A.M.) for the sole purpose of stealing diamonds from the De Beers store. Is he guilty of burglary as soon as he enters the Westfield Centre as a trespasser, or does he have to enter the De Beers store as a trespasser? If D enters into the stairwell or lobby area of a large block of flats. Is he guilty of burglary from a dwelling even if he does not go on to break into a particular dwelling?

- Q.6 In a case the appellant was convicted for criminal intimidation under section 506 of the Indian Penal Code on the ground that he took indecent photographs of a girl by pretending to love her, and threatened her father, in letters written to him, with the publication of the photographs with intent to extort money from him. Discuss whether the appellant's conviction could be upheld?

Part-C

Answer **any three** questions

(3x5=
15)

- Q.7 Discuss the amendment of section 154 of the Code of Criminal Procedure, 1973. State the remedy available to any person aggrieved by a refusal on the part of an officer in charge of a police station to record the information referred to in sub-section (1) of the section.
- Q.8 Discuss the provisions for public servant disobeying direction under law and the punishment for non-treatment of victim under the Criminal Law (Amendment) Act, 2013.
- Q.9 Nevill Geary in *The Law of Marriage and Family Relations* (1892) provides an interesting account of a case that exposes some of the ways in which civil marriage procedures were abused wherein a witness to a marriage was convicted for signing in a wrong name. Discuss in brief the facts of the case and reasons for the prisoners' conviction.
- Q.10 Explain the Law of Sedition under section 124-A of the Indian Penal Code. Discuss the meaning of the words, 'excite disaffection' and comment upon the constitutional validity of the section as explained by the Constitutional Bench in *Kedar Nath v. State of Bihar* (1962).
