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Family Name					
Given Name/s					
Student Number					
Teaching Period	Semester 1, 2018				

LWZ114 – Criminal Law	DURATION	
	Reading Time:	20 minutes
	Writing Time:	120 minutes

INSTRUCTIONS TO CANDIDATES

Total marks for this examination: 60

Section A:	Complete the table: Complete all missing information in the table provided.
Suggested Time: 24 mins	Marks as indicated on paper (Total marks = 12)
Section B:	Scenario-based Questions: Answer ALL questions.
Suggested Time: 80 mins	Marks as indicated on paper. (Total marks = 40)
Section C:	Short Essay Question: Answer any ONE question.
Suggested Time: 16 mins	Marks as indicated on paper. (Total marks = 8)

EXAM CONDITIONS

You may begin writing from the commencement of the examination session. The reading time indicated above is provided as a guide only.

This is an OPEN BOOK examination

No calculators are permitted

Any handwritten material is permitted

Any hard copy, English dictionary is permitted (annotated allowed)	
ADDITIONAL AUTHORISED MATERIALS	EXAMINATION MATERIALS TO BE SUPPLIED
Any printed material with the exception of CDU Library books	2 x 16 Page Book 1 x Scrap Paper

**THIS EXAMINATION IS PRINTED
DOUBLE-SIDED.**

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LEFT BLANK.**

Section A
Complete the Table
Total No of Marks for this Section: 12

This section should be answered on this Exam Paper. Please ensure that your name and student number have been written on this Exam Paper and that this Exam Paper is placed in the completed Answer Booklet at the end of the examination.

Suggested time allocation for Section A: 24 mins

Complete the table below by stating whether each of these offences under the *Criminal Code* (NT) is a Part II or Part IIAA offence, and list all the physical and fault elements for each offence. For each fault element, indicate which physical element it attaches to.

Offence	Part II or Part IIAA	Physical element/s	Fault element/s
s181			
s174FB(1)			
s160			
s241(2)			

Section B
Scenario-based Questions
Total No of Marks for this Section: 40

This section should be answered in the Answer Booklet provided.

You must answer all questions in this section. Clearly indicate the question number in the Answer Booklet.

Marks for each question are indicated. Suggested time allocation for Section B: 80 mins

Question 1

X is 19 years old. He has just been arrested and charged with sexual intercourse without consent against Y.

In the victim's complaint to the police she states;

1. My name is [Y]. I am 17 years old.
2. On 1 March 2018 I went to the Tropical Tree nightclub in Darwin with friends. I consumed a substantial quantity of alcohol.
3. Around 1am I could not find my friends, and so I decided to go home.
4. I called a taxi and went outside to wait.
5. I saw [X] outside the club. I recognised him from school. He was one year ahead of me.
6. We talked for a while.
7. He took my hand and pulled me into the alley way.
8. He kissed me. I tried to push him away but he was too strong and was holding my wrists. I tried to call out, but couldn't because he was kissing me.
9. He pulled my skirt and underwear down and had sex with me by putting his penis in my vagina. I was in shock and didn't say anything.
10. When he finished he asked for my number, and I told him I didn't have a phone.
11. He left, and then I caught a taxi home.
12. I told my friend [R] what happened the next day around lunch. [R] took me to the police station.
13. I never consented or gave permission to [X] to have sex with me.

X does not participate in a police interview, but he tells his story to you, his lawyer. He says "I was at the Tropical Tree nightclub with a bunch of school friends. I'd had around 8-9 beers and was feeling pretty drunk, but not completely drunk. I went outside for some fresh air and noticed Y, who I knew from school. I stopped to chat with her and we hit it off. She was laughing at a lot of my jokes. I asked her if she wanted a joint and she agreed. I took her hand and led her around into the alley. We shared a joint together. She started talking about how she likes strong men and can't stand wimpy guys who always apologise for everything and don't know what they want. We started kissing. She seemed like she was really into it. I was holding onto her arms because I wanted her to think I was one of those tough guys. I didn't ask about having sex or pulling down her skirt because she had just told me she didn't like guys like that. We had sex. It never even occurred to me that she didn't want to – I think she's probably making this part up; At school I heard her parents are pretty strict and might be wild at her if they knew she was hooking up at a night club while she's underage. I heard she does this kind of thing all the time.

After we had sex, I asked for her number and I was a bit hurt and confused when she brushed me off, so I left.”

Advise X about his potential criminal liability for the offence of sexual intercourse without consent, and your assessment of whether he is likely to be found guilty or not guilty by a jury. Are there any limitations on what things Y can be cross-examined about? What are the implications of the fact that Y didn't directly report the matter to police?

(Marks: 15)

Question 2

Max stops by at his sister Ruth's birthday party, which is being held in a park. There are around 30 people milling around, enjoying the food and drinks on offer. Not long after, Tom stops by the party. Tom and Max play together on the same social AFL team. Tom has a bit of a reputation as a bully and someone with a short temper. Max sees Tom arrive and becomes concerned because he knows that Tom has been angry at Ruth ever since Ruth refused to go out with Tom. Max walks over to intercept Tom, who says to Max "Don't worry mate, I'm just here to show that stupid sister of yours what she's missing out on." Max puts his hand on Tom's shoulder in an attempt to steer him in a different direction, saying, "No need to see Ruth, just come grab a drink." Max can smell a strong smell of alcohol on Tom.

Tom pushes past Max and angrily walks towards Ruth, who sees Tom and tells him to "get lost". Tom replies to Ruth saying, "why don't I wipe that stupid smile off your face?" Tom takes a step towards Ruth and appears to raise his arm. Max rushes in from the side and tackles Tom to the ground. Tom's head hits a rock, causing him to cry out in pain. Max pins Tom to the ground so that Tom can't get up. Andrew, another guest, had been watching what happened and picks up a chair and walks over to Tom, who is still pinned to the ground. Andrew says to Tom, "You're a disgrace" and then hits Tom over the head with the chair, which causes Tom to lose consciousness. Andrew says, "I didn't think that would knock him out."

Later, Police charge Andrew with aggravated assault, on the basis that Tom suffered harm and that Andrew used an offensive weapon. They also charge Max with aggravated assault, on the basis that Tom suffered harm. Discuss Andrew and Max's respective criminal liability for these charges.

(Marks: 10)

Question 3

Tony, Caine and Samantha are at an 18th party at a rented apartment in the city, where everyone is consuming a variety of alcohol to excess. Beer, pre-mix spirits and bottles of high proof spirits are being passed around, and poured directly into people's mouths, or being poured into 'beer bong'. Tony soon shows signs of heavy intoxication, repeatedly shouting "Let's get smashed! Give me the good stuff!" Caine and Samantha see an opportunity to embarrass their friend while he's intoxicated. "Let's grab some video for Facebook," suggests Samantha.

Tony is busy chugging a beer bong with his eyes closed and calls out to his friends, "add some more!" Instead of pouring in more beer, Caine pours in half a bottle of high alcohol content vodka, which Tony drinks. He quickly vomits, before passing out on a nearby sofa. "We got it!" says Samantha, who recorded the entire incident for Facebook. They leave the party soon afterwards.

The next morning Tony wakes up on the front lawn in front of the apartment in his underpants, with his wallet and phone missing. He has no recollection of what happened, so he reports the incident to police in the hopes of getting his phone and wallet back. The investigating officer speaks to Caine and Samantha, who know that they had nothing to do with the missing phone and wallet, and so they tell police the entire story of what happened and show police the Facebook video. Police then charge Caine with Drink Spiking under s176A(2)(a) of the NTCC.

You are Caine's lawyer. Advise Caine on whether he should plead guilty or not guilty to this offence by reference to the elements of the offence.

(Marks: 10)

Question 4

Joan has suffered from anger control issues since she was an early teenager. Now in her 40's, Joan's relationship with her mother has broken down, to the point that Joan's mother successfully applied for a Domestic Violence Order (DVO) to stop Joan from acting in a threatening or intimidating way towards her mother. After an argument on the phone with her mother, Joan calls her mother a 'bitch' before screaming into the phone and hanging up. Joan's mother reports this to the police, who arrest Joan soon after and charge her with breaching the DVO (s120(1) *Domestic and Family Violence Act* (NT)). Joan hasn't been in trouble with police for over 20 years, but in her troubled teen years she did receive a conviction for causing serious harm (s181 *Criminal Code* (NT)) after biting a classmate, which left a scar on her classmate's arm. What is the bail presumption for Joan? Briefly set out how you reached your conclusion, with reference to relevant sections of the *Bail Act* (NT).

(Marks: 2)

Question 5

Mick goes out drinking with friends and is heavily intoxicated. Walking home, his friends notice a kid's bike in the front yard of a house. They challenge Mick to ride the bike home, which he does. The next day he is arrested by police and charged with stealing (s210 *Criminal Code* (NT)). 12 months ago Mick pleaded guilty to a common assault after pushing someone during an argument at the pub. What is the bail presumption for Mick? Would the result be different if Mick's previous conviction was for aggravated assault? Briefly set out how you reached your conclusions, with reference to relevant sections of the *Bail Act* (NT).

(Marks: 3)

Section C
Short Essay Question
Total Number of Marks for this Section: 8

This section should be answered in the Answer Booklet provided.
Please Note that you should only answer ONE of the questions in this section.

Marks for each question are indicated. Suggested time allocation for Section C: 16 mins

Question 6

- A. The defence of provocation should be reinstated for offences of assault and causing serious harm. Why or why not? Give reasons for your answer.
 - B. The current fault element for the offence of murder 'intention to cause serious harm' should be removed. Discuss and provide reasons for your answer.
 - C. The *Evidence (National Uniform Legislation) Act* (NT) and/or *Police Administration Act* (NT) should be modified to include a presumption that any evidence of admissions is not admissible where police fail to properly assess the need for, and engage, an interpreter for suspects who speak English as a second language and whose level of English does not give them the ability to fully interact with police in the interview setting. Discuss and provide reasons for your answer.
 - D. Mandatory sentencing provisions are an effective form of general deterrence and for reducing levels of crime. Discuss and provide reasons for your answer.
 - E. Suggest two legislative or policy changes that you would make to improve policing of Aboriginal people in the NT. Set out reasons for your proposed changes.
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