

Law of Crime 2004, Q1
[High Distinction – 90%]

John's (J's) liability for assault against Security Guard (S)
It is an offence to commit an assault (CLCA s.20)

Physical Elements

J must be shown to have applied force to S without consent (CLCA s.20(1)(a)). This is clear on the facts.

Fault Element

J must have intended to apply force (CLCA s.20(1)). As J's purpose was to get past S by knocking him out, J clearly intended to apply force.

Aggravating

Assault can be aggravated (CLCA s.20(3)). This will occur if J committed the assault while possessing an offensive weapon (CLCA s.5AA(1)(b)). Explosives are clearly an offensive weapon as they are an article/substance made for causing personal injury (CLCA s.5). This aggravation is further aggravated as J uses the explosives to assault J (CLCA s.20(4)).

Therefore J is guilty of an aggravated assault.

J's liability for causing harm against S under CLCA s.24

Physical Element

J must be shown to have caused harm to another (CLCA s.24). Being knocked unconscious is physical harm (CLCA s.21). Clearly J is the sole cause of this (CLCA s.21).

Fault Element

J must be shown to have intended to cause harm (CLCA s.24(1)). As his purpose was to get past S, J clearly intended to knock S unconscious.

Aggravating

As per above – aggravated under CLCA s.5AA(1)(b) but not for CLCA s.20(4).

Therefore, J is guilty of causing aggravated harm.

J's liability for causing serious harm against S under CLCA s.23

As there is no evidence that S's life is endangered etc., J is not guilty of this offence (CLCA s.23; CLCA s.21).

J's liability for murder of Burt

It is an offence to commit murder (CLCA s.11) with the offence being defined by the common law.

Physical Element

J must be found, beyond reasonable doubt, to have voluntarily caused the death of another person.

As Burt died instantly from the explosion, clearly the act of J 'substantially contributed' to death and thus 'caused' death (*Arulthilakan v The Queen*; *Mkoka v The Queen*).

Fault Element

J must be shown to have intentionally or recklessly caused death or grievous bodily harm (*R v Crabbe*; *Pemble v The Queen*). J could not have intended to kill Burt as he did not know that he was on board. But clearly he did intend to kill Gwyneth and Dean. As J intends this, even though he does not intend to kill Burt, J is still liable for the death through the doctrine of transferred intention (*R v Scunders and Archer*; *R v Michael*).

Therefore, J is guilty of Burt's murder.

J's liability for Bob's murder

Physical Elements

Clearly, the act of J 'substantially contributes' to Bob's head injuries. As these head injuries are still continuing at the time of death, it is open for the jury to conclude that J 'substantially contributed' to death (*Hallett*). The defence will try to argue that a novus actus interveniens has occurred due to the negligent medical treatment. However, a novus actus only occurs if the treatment produced a secondary injury/illness unrelated to the original wound, and this secondary injury/illness is the cause of death (*Jordan*). In this case, it was merely an omission by the doctor to identify the injury, and thus a novus actus does not occur (*Smith*).

Fault Element

As per charge of the murder of Burt.

Therefore, J is guilty of Bob's murder.

J's liability for attempted murder of Gwyneth (G) and Dean (D)

It is an offence to attempt to commit murder (CLCA s.270A)

Fault Element

The required fault element for attempt is intention and thus must be proved for every element of the offence (*Britten v Alpoput*; *Knight v The Queen*). On the facts, it is clear that J intended to cause the death of G and D.

Physical Element

The act of J must be shown to be 'sufficiently proximate' and not 'merely preparatory' to the commission of the completed offence (*Britten v Alpogut*). While this is a jury question (*DPP v Stonehouse*), as J has undertaken his last act he possible could and it was due to an insufficiency of means that G & D did not die, it is clear that his acts were 'sufficiently proximate'. There can be no argument of physical impossibility under *Haughton v Smith* (approved in SA in *R v Collingridge & R v Kristo*) as the murders failed due to insufficient means and not by reason of circumstances independent of J's actions.

Provocation in relation to attempted murder of G

Provocation is a partial defence and is available to attempted murder (CLCA s.270AB). However, no argument can be made in favour of J as a marital breakup is not objectively provocative (*R v Yasso* (2002) 136 A Crim R 1 at 5/6 per Coldrey J).

Therefore, J is guilty of the attempted murder of G and D.

J's liability under the Crimes (Aviation) Act (Cth) s.17

As the aircraft is not destroyed, J cannot be guilty of the completed offence, It is an offence to attempt to commit a s.17 offence (Cth Criminal Code s.11.1(1)). However, the defence will have a weak argument that due to s.22, it was the intention of parliament to exclude the possibility of a conviction for attempt of the s.17 offence (Prior). Assuming this argument does not succeed...

Fault Element

Intention or knowledge are the required fault element for each physical element (Cth Criminal Code s.11.1(3)). To 'destroy' something is an act and thus is 'conduct', therefore is a physical element (Cth Criminal Code s.4.1(2)). A 'Division 3 aircraft' is clearly a circumstance (Cth Criminal Code s.4.1(1)). Fault for attempt is independent of fault for the completed offence and thus s.17(2) is irrelevant. Clearly, J intended to destroy an aircraft that is used for 'a flight between a part of Australia and a place outside Australia'.

Physical Element

J's conduct must be more than mere preparatory to the commission of the offence (Cth Criminal Code s.11.1(2)). As he has undertaken his 'last' act, clearly it is. J can be found guilty even though committing the offence was impossible (Cth Criminal Code s.11.1(4)).

Therefore, J is guilty of attempting a s.17 offence.

J's liability under the Crimes (Aviation) Act (Cth) s.22

Physical Element

J was on board a Division 3 aircraft. Clearly, exploding a bomb is an 'act that will endanger the safety of the aircraft'.

Fault Element

There is no required fault element in respect to the aircraft being a Division 3 aircraft (s.22(2)). As the offence does not specify a fault element for the 'conduct' of 'endangering the safety of the aircraft', intention is the required fault element (Cth Criminal Code s.5.6). Clearly this is satisfied.

Therefore, in the alternative to attempting a s.17 offence, J is guilty of a s.22 offence.