Topic 1: Overview of the Criminal Justice System in Singapore

Aims
1. The stages and the main players in the criminal process in Singapore
2. Models of criminal justice: crime control model vs due process model
3. The Singapore context: statutory presumptions, burden on the accused to prove a defence, detention without trial, abolition of jury trials, mandatory sentences

Materials
1. YMC 2nd Ed, chap 2.

Study questions
1. What is the difference between criminal law and civil law (i.e. contract and tort law)?
2. What are the pitfalls, if any, of the practice of compounding of offences, and of plea negotiations?
3. Identify the instances when ‘discretion’ plays a role in the criminal justice system. Is such discretion an inevitable part of any criminal justice system? What are the dangers presented by the exercise of such discretion, and how might they be circumvented?
4. State, giving reasons, whether you prefer the Singaporean position of placing the legal burden of proving a defence on the accused, or the English system of placing only an evidential burden on him or her.
5. What concerns do civil libertarians have in relation to legislation such as the Criminal Law (Temporary Provisions) Act and the Misuse of Drugs Act?
6. Is it possible to reconcile the various aims (or theories) of punishment?
7. Which, among the aims of punishment, do you think most holds sway in the Singaporean context? Is this defensible?
8. Discuss the following comment by then Attorney-General Chan Sek Keong in a public lecture delivered in 1996:

   “There is a case for arguing that the fundamental tenet of the criminal justice system of Singapore should simply be that the factually guilty accused should suffer punishment according to law and that therefore the criminal process should primarily be directed to this end. ... What is perhaps more important is the integrity of the people who operate the system, ie, the investigative and the prosecutorial agencies, and the ultimate supervisor of the criminal process, the judiciary. In other words, it is people who make a system fair and just, and not the reverse.”

9. Should the bulk of the decision as to guilt or innocence be taken at the trial, or is it defensible for it to be taken at the pre-trial stages?
10. In your own opinion, what are the greatest challenges facing the Singapore criminal justice system today?
SYLLABUS

**Topic 2: The Penal Code**

**Aims**
1. Advantages and disadvantages of codification of the criminal law
2. The proper approach to interpreting provisions of the Penal Code

**Materials**
1. YMC 2nd Ed, chaps 1 and 38.
2. *PP v Kwan Kwong Weng* [1997] 1 SLR(R) 316 [note: this part of the Penal Code has since been amended by the Penal Code (Amendment) Act 2007]
3. *Interpretation Act*, s 7A

**Study questions**
1. What does it mean to have a codified system of law?
2. Explain what are the advantages and disadvantages to a codified system of criminal law compared to the common law system.
3. Draw up a list of case authorities in order of precedence, commencing with binding, to highly persuasive, to persuasive.
4. Have a quick look at the provisions of the Penal Code and identify some provisions that need to be revised. Explain why there is a need to amend these provisions and how they should be amended.
5. “It is high time that our Penal Code, a nineteenth century European innovation, be replaced by an entirely new Code which accurately reflects the thinking, values and notions of criminal justice of present day Singaporeans.” Discuss.
Topic 3: Homicide and the Fault Requirements

Aims
1. The principal fault elements of crimes: intention, knowledge, rashness, negligence
2. The fault elements for homicide offences

Materials
1. *Penal Code*, ss. 299-304A
2. *Penal Code (Amendment) Act 2012*
3. *Road Traffic Act*, s 66
4. YMC 2nd Ed, chaps 4, 8, 9, 10
15. *PP v Teo Poh Leng* [1991] 2 SLR(R) 541, YMC 2nd Ed casebook p. 146
17. *Lim Hong Eng v PP* [2009] 3 SLR(R) 682, YMC 2nd Ed casebook p. 154
21. *Ng Keng Yong v PP* [2004] 4 SLR(R) 89, YMC 2nd Ed casebook p. 22

Study questions
1. What do you understand by the observation that “the fault elements of s 299, 300 and 304A” of the Penal Code constitute a schematic approach towards criminal responsibility”?
2. Are the distinctions between the various clauses of ss 299 and 300 too fine?
3. Describe the fault requirement for s. 300(c) Penal Code. Does this fit well with other provisions of s. 300?
4. Have the problems in the interpretation of s. 300(c) Penal Code been solved by making the death penalty discretionary for this form of murder?
5. According to the case law, what is the difference between a “rash” and a “negligent” act? Do you agree with the way this distinction is drawn?
6. Do you agree with the present approach of the Singapore courts towards the interpretation of criminal negligence?

7. English law has developed the concept of gross negligence as the basis for criminal liability. Is this workable?

8. What is the difference between “negligence”, “rash”, “reckless”, and “dangerous”?

9. Does PP v Poh Teck Huat [2003] 2 SLR(R) 299 contradict itself where it was said that “criminal rashness and criminal negligence involve two different states of mind”, but that “negligence does not end nicely where rashness begins and there is a certain measure of overlap”?

10. Explain the difference between “rashness” in s 304A and (i) knowledge that an act is so imminently dangerous that it must in all probably cause death (s 300(d); and (ii) knowledge that an act is likely to cause death (cl 3 of s 299).

11. Consider the range of penalties in s 300(d) of the Penal Code, s 299 limb 3 of the Penal Code, s 304A of the Penal Code, and s 66 of the Road Traffic Act. Is this justified?
SYLLABUS

**Topic 4: Causation**

**Aims**
1. The tests for causation under the Penal Code
2. Comparison with the tests for causation under common law

**Materials**
1. Penal Code, s 299 Explanations 1 and 2
2. YMC 2nd Ed, chap 5
5. *R v Blaue* [1975] 3 All ER 446
6. *Ng Keng Yong v PP* [2004] 4 SLR(R) 89, YMC 2nd Ed casebook p. 25

**Study questions**
1. Critically evaluate YMC’s use of foreign case authorities to help clarify the principles of causation under the Indian Penal Code.
2. State, giving reasons, whether or not you agree with YMC’s contention that the foresight test is superior to the substantial cause test to resolve issues of intervening causes in the criminal law.
3. How should Explanations 1 and 2 to s 299 of the Penal Code be understood?
4. Should the test of causation in cases of culpable homicide/murder differ from cases of causing death by a rash or negligent act?
SYLLABUS

Topic 5: Concurrence of Physical and Fault Elements

Aim
1. The requirement of concurrence and its exceptions

Materials
1. YMC 2nd Ed, chap 6

Study questions
1. Evaluate the soundness of the Thabo Meli approach. Might the court have manipulated legal principles to reach the desired result?
2. Can the problem of concurrence be solved by making a distinction between deaths which are intended or known and deaths which are not intended or unknown? Consider s. 301 of the Penal Code.
3. How might you persuade our courts to adopt the proposed moral congruence approach to problems of concurrence?
4. Do you agree with YMC that concurrence could be made out even where there was no preconceived plan, and so long as one of the prescribed fault elements of the offence in question was proven?
Topic 6: Strict Liability

Aims
1. “Public welfare” offences vs individual blameworthiness
2. Meaning of strict liability vs absolute liability
3. Different judicial approaches: presumption of mens rea, due diligence and chap IV approaches
4. Comparison of English common law vs Singaporean law

Materials
1. Penal Code, ss. 40(2), 52 and 79
2. YMC 2nd Ed, chap 7
3. PP v Teo Kwang Kiang [1991] 2 SLR(R) 560, YMC 2nd Ed casebook p. 70
5. Tan Khee Wan Iris v PP [1995] 1 SLR(R) 723, YMC 2nd Ed casebook p. 77
7. Lim Chin Aik v The Queen [1963] AC 160

Study questions
1. What are the supposed justifications for having strict liability offences, and are those justifications warranted?
2. Judicial consideration of claims of mistake of fact in relation to strict liability offences is a complicated one with several competing approaches devised without the courts explaining how the ultimate choice was made. Might the law be better off if s 79 of the Penal Code were invariably applied to all such cases? Such a solution will mean that, unless there is explicit statutory provision, there will no longer be offences of strict liability. Is this politically acceptable?
3. Describe the different approaches that a Singapore court can take when interpreting a statute which does not make it clear whether proof of fault is required for conviction.
4. What is the difference between a strict liability offence and an offence requiring proof of negligence?
SYLLABUS

**Topic 7: Introduction to Criminal Defences**

**Aims**
1. Distinction between denying an offence element and pleading a defence
2. The burden and standard of proof
3. General and special exceptions in the Penal Code

**Materials**
1. Evidence Act, ss. 103, 107
2. Chapter IV, Penal Code
3. Exceptions to s 300, Penal Code
4. YMC 2nd Ed, chap 16
5. YMC 2nd Ed, chapter 2, paras [2.23] – [2.27]

**Study questions**
1. Who has the burden of proving a defence in Singapore law?
2. Are there any convincing reasons why it is the prosecution who must prove the commission of a crime, but the accused who must prove a general or special exception under the Penal Code?
3. Why are defences which *ipso facto* involve casting doubt on an element of a crime not exempt from the rule that it is the accused who must prove a defence? Take for example, the defence of mistake of fact under s 79 of the Penal Code.
4. Might there be circumstances in which it would be desirable for a particular offence to exclude the operation of the “general exception” under the Penal Code? Take, for example, the Internal Security Act which stipulates that the defence of duress under s 94 of the Penal Code is inapplicable for the purposes of the offences under that legislation.
SYLLABUS

Topic 8: Unsoundness of Mind

Aims
1. Elements of the defence and the special consequences of a successful plea
2. Comparison with the defence of insanity in English common law

Materials
1. Penal Code, s. 84
2. Criminal Procedure Code, ss. 251-253, 255, 339
3. YMC 2nd Ed, chap 24

Study questions
1. Are juries more likely to believe the defence expert than judges? If so, why? (Trial by jury existed in Singapore until 1960s).
2. Is the s. 84 Penal Code formulation better or worse than Macaulay’s original version which reads:
   “Nothing is an offence which a person does in consequence of being mad or delirious at the time of doing it.”
   Specifically, if an accused had committed an alleged crime “in consequence of” unsoundness of mind, why does the accused have to show further that he or she suffered from one of the incapacities specified in s. 84?
3. What will happen to an accused on a successful plea of the defence of unsoundness of mind?
4. What constitutes “unsoundness of mind” in s. 84 of the Penal Code?
5. What is the disjunctive or conjunctive view concerning the phrase “wrong or contrary to law” in s. 84 of the Penal Code?


SYLLABUS

Topic 9: Diminished Responsibility

Aims
1. Elements of the special exception
2. Comparison with unsoundness of mind

Materials
1. YMC 2nd Ed, chap 27
2. Penal Code, Exception 7 to s. 300

Study questions
1. Explain the difference between unsoundness of mind and diminished responsibility as a defence in terms of:
   a. The mental condition of the accused
   b. The cause of the mental condition
   c. The severity of the mental condition
   d. The offences for which the defence applies
   e. The effect of a successful defence
2. Should diminished responsibility be a defence as well for other offences?
3. To what extent is it practicable for a court to distinguish between:
   a. substantial and insubstantial impairment of mental responsibility?
   b. a situation where the accused “did not” as opposed to “could not” resist his or her impulse?
4. Are there sound reasons for:
   a. recognising irresistible impulse for diminished responsibility but not for unsoundness of mind?
   b. a successful plea of diminished responsibility to result in imprisonment and of unsoundness of mind to result in indefinite detention?
Topic 10: Intoxication

Aims
1. Types of intoxication defences under the Penal Code
2. Elements of the defences and consequences of a successful plea
3. Comparison with defences of unsoundness of mind and diminished responsibility

Materials
1. YMC 2nd Ed, chap 25
2. Penal Code, ss. 85, 86
4. Juma’at bin Samad v PP [1993] 2 SLR(R) 327, YMC 2nd Ed casebook p. 428

Study questions
1. When might intoxication be pleaded as a defence under the Penal Code?
2. Why should involuntary intoxication under s. 85(2)(a) of the Penal Code depend on the “malicious or negligent act” of another? Is the discarded definition of “without his knowledge or against his will” more to the point?
3. Does the formulation of involuntary intoxication under s. 85(2)(a) do justice to the intuitive moral distinction between involuntary intoxication (more deserving of sympathy) and voluntary intoxication (less deserving of sympathy)?
4. What is to be made of the recognition of voluntary intoxication under s. 86(2)?
5. What is the difference between insane intoxication (s. 85(2)(b)) and unsoundness of mind (s. 84)?
SYLLABUS

Topic 11: Provocation

Aims
1. Elements of the special exception
2. Comparison with English law

Materials
1. Penal Code, Exception 1 to s. 300
2. YMC 2nd Ed, chap 29
5. PP v Astro bin Jakaria [2010] 3 SLR 862, YMC 2nd Ed casebook p. 367

Study questions
1. What is the underlying rationale for the plea of provocation? Do the elements of the defence as specified in Exception 1 to s 300 of the Penal Code reflect this rationale?
2. Why is provocation not available as a defence to all types of crimes?
3. What exactly is the psychological state of an accused who had acted “whilst deprived of the power of self-control”?
4. What is meant by “sudden” provocation? Does this requirement of suddenness exclude the defence in cases where there was a time lapse between the provocation and the retaliation?
5. Might the reason why we recognise some personal characteristics of the accused but not others when applying the ordinary person test, be due to a moral assessment of whether that particular characteristic evoked our sympathy?
6. Has the proportionality between the provocation and the retaliation any part to play when deciding whether the defence of provocation should succeed? Is an accused who has lost self-control likely to retaliate proportionately or disproportionately?
7. The three provisos to Exception 1 stipulate that certain types of conduct can never be provocation for the purpose of the defence. Is there an under-girding rationale for these provisos?
SYLLABUS

**Topic 12: Sudden Fight**

**Aims**
1. Elements of the special exception
2. Comparison with the provocation

**Materials**
1. Penal Code, Exception 4 to s. 300
2. YMC 2nd Ed, chap 30

**Study questions**
1. What is the rationale of the special exception of sudden fight? Should it be extended to other offences eg causing grievous hurt? Or should it be abolished instead?

2. Consider the requirements that must be proved for the sudden fight exception:
   a. What kind of premeditated injury would disqualify a plea of sudden fight?
   b. What is the meaning of “fight”?
   c. Should a “sudden quarrel” be a separate requirement distinct from “sudden fight”?
   d. What is the relationship between “undue advantage” and “cruel and unusual manner”?
   e. What factors have the courts found useful in determining “undue advantage” and “cruel and unusual manner”? 
Topic 13: Private Defence and Exceeding Private Defence

Aims
1. Elements of the defence and special exception
2. Comparison of the defence and special exception
3. Comparison with other defences

Materials
1. YMC 2nd Ed, chaps 20 and 21
2. Penal Code, ss. 96-106, Exception 2 to s. 300
3. PP v Dato Balwant Singh (No 2) [2003] 3 MLJ 395, YMC 2nd Ed casebook p. 281
5. Soosay v PP [1993] 2 SLR(R) 670, YMC 2nd Ed casebook p. 341
6. Roshdi v PP [1994] 3 SLR(R) 1, YMC 2nd Ed casebook p. 344

Study questions
1. Consider s 99(3) of the Penal Code: can it be that, so long as the accused apprehended danger and could have had recourse to public authorities any time in the past, the right to private defence no longer arises?
2. Why is it not sufficient for an accused claiming the right of private defence to show that he or she actually apprehended the danger (whether such apprehension was reasonable or not), and genuinely believed that his or her response was necessary (whatever a court may later think)?
3. The plea of exceeding private defence is confined in its operation to a charge of murder. Should it, like the defence of provocation, operate as a defence to lesser charges such as causing hurt or grievous hurt?
4. If a judge is minded to do so, how might he or she interpret the private defence provisions of our Penal Code so as to take into account a battered female defendant’s experiences?
SYLLABUS

**Topic 14: Mistake**

**Aim**

1. Elements of the defence

**Materials**

1. Penal Code, ss. 76, 79, 52, 377D
2. YMC 2nd Ed, chap 17
3. *PP v Teo Eng Chan* [1987] SLR(R) 567, YMC 2nd Ed casebook p. 310
6. *Chee Soon Juan v PP* [2012] 3 SLR 648

**Study questions**

1. Why should not a person be excused whose mistaken belief of facts was genuinely held even though such a belief may have been unreasonable to the objective observer?

2. Even if it is thought that a reasonable mistaken belief is required for a complete defence, should there not be a significant reduction in culpability and punishment for a person who had acted on the basis of an honest albeit unreasonable mistake of fact?

3. Why should an accused person who mistakenly believes that he or she was committing a different but far less serious offence (and therefore not “justified by law”) be deprived of a defence under s 79 of the Penal Code?

4. The view has been expressed that mistakes of fact (i.e. a positive belief) ought to be excused but not ignorance of facts (i.e. an absence of knowledge without any particular belief). Do you agree?

5. Note the new s. 377D of the Penal Code. Do you agree with its scope?
Topic 15: Duress

Aims
1. Elements of the defence
2. Comparison with the defence in English common law

Materials
1. Penal Code, s. 94
2. YMC 2nd Ed, chap 22
5. *PP v Nagaenthran a/l K Dharmalingam* [2011] 2 SLR 830

Study questions
1. Is there a sound rationale for excluding the defence of duress from murder?
2. Have the cases of *Ng Pen Tine* and *Nagaenthran* expanded the scope of the defence? Do you agree with these developments? Why or why not?
3. Is there a need to reform the law of duress in Singapore? If so, how should it be reformulated?
SYLLABUS

Topic 16: Attempt

Aims
1. Elements of criminal attempts
2. Comparison with the law and law reform proposals in other jurisdictions
3. Liability where the intended offence is impossible to carry out

Materials
1. Penal Code, ss. 121, 307, 308, 393, 511
2. YMC 2nd Ed, chap 36
3. Chua Kian Kok v PP [1999] 1 SLR(R) 826, YMC 2nd Ed casebook p. 475
5. Queen Empress v Mangesh Jiva’ji (1887) ILR 11 Bom 376
6. Asgarali Pradhania v Emperor (1933) ILR 61 Cal 54

Study questions
1. Should there be any distinction in the level of punishment between a person who attempts to commit an offence and one who succeeds?
2. Is it possible to attempt to commit an offence by an illegal omission?
3. Do the case authorities enunciate a test for deciding if the physical elements (i.e. actus reus) of a criminal attempt has been fulfilled? Or is it so vague that there is no guide at all?
4. Section 511 of the Penal Code plainly states that an attempt involves “any act towards the commission of the offence”. Is it correct to interpret this provision as excluding acts of preparation from attempts to commit an offence?
5. The test in State of Maharashtra v Mohd Yakub AIR 1980 SC 111 is very similar to the “unequivocality test” formerly used in English law where the accused would only be liable if his or her actions unequivocally indicated his or her purpose. In Mohd Yakub, the actions must “manifest a clear intention to commit the offence aimed”. Do you think it is right to introduce the accused’s state of mind in this way to assess if his or her conduct suffices for it to be considered an attempt to commit an offence?
6. Should we be less strict with the actus reus of an attempt to commit an offence if the intention of the doer is clear and the offence grave?
7. What is meant by to “embark on the crime proper”? Does it require the accused to actually engage in bringing about some actus reus element of the substantive offence?
8. Suppose that Dr X has been extremely negligent in his treatment of his patient. The patient would have died if not for a timely intervention by another doctor. Can Dr X be charged with attempted causing of death by a negligent act under s 304A read with s 511 of the Penal Code?
SYLLABUS

9. Are ss 307 and 308 of the Penal Code consistent with the law on s. 511 of the Penal Code?

10. Can one be held liable for attempting an “impossible” offence in Singapore? Do you agree with this?
Topic 17: Abetment

Aims
1. Elements of abetment
2. Liability where the offence is impossible to be carried out
3. Liability where a different act is done or a different effect is caused

Materials
1. Penal Code, ss 107-109, 111, 113, 115, 116
2. YMC 2nd Ed, chap 34
4. Chua Kian Kok v PP [1999] 1 SLR(R) 826, YMC 2nd Ed casebook p. 466
6. PP v Hendricks Glen Conleth [2003] 1 SLR(R) 426
7. Lee Chez Kee v PP [2008] 3 SLR(R) 447, paras [238] –[242], [251]

Study questions
1. Can one instigate a person who does not understand what is being communicated to him because he does not understand the language or is deaf?
2. Abetment by conspiracy explicitly requires an overt act or illegal omission in furtherance of the conspiracy. Does the overt act have to be an act which forms part of the physical elements (i.e. actus reus) of the offence, or can it be any act from which a conspiracy at work may be inferred?
3. What must a person know of the substantive offence before he or she can be liable for abetment of that offence by intentional aiding?
4. Describe the fault (i.e. mens rea) needed for the offence of abetment. Does it differ depending on whether the abetment was by instigation, conspiracy or aiding?
5. D supplies X with a knife. D knows that the knife will be used for some illegal activity but does not know what exactly it is. X uses the knife to commit robbery. Would D be liable for abetment of robbery by intentional aiding? Should he be?
6. Should the fault for abetment be lowered in respect of certain crimes such as corruption or drug offences in view of the State’s strong interest in eliminating them? Conversely, should the fault for abetment be increased for offences carrying the mandatory death penalty in view of the seriousness of the penalty and the court’s inability to vary the sentence?
7. State, giving reasons, why you think the test for the “probable consequence” of the abetment under s 111 of the Penal Code should be objective or subjective.
8. Is there a difference between a “different act” in s 111 and a “different effect” in s 113 of the Penal Code? Should there be?
Topic 18: Criminal Conspiracy

Aims
1. Elements of criminal conspiracy
2. Comparison between abetment by conspiracy and criminal conspiracy

Materials
1. Penal Code, ss. 120A, 120B
2. YMC 2nd Ed, chap 34
3. Ang Ser Kuang v PP [1998] 3 SLR(R) 316, YMC 2nd Ed casebook p. 470
5. Emperor v Hiremath AIR 1940 Bom 365
6. DPP v Nock [1978] AC 979

Study questions
1. Given the offence of criminal conspiracy, is abetment by conspiracy under s 107 of the Penal Code still relevant?
2. Do you agree with the rationale for the wide scope of criminal conspiracy, namely, on account of the increased danger posed by people acting together?
3. Is it defensible to extend criminal conspiracy to tortious acts?
4. Might two persons be liable for criminal conspiracy for agreeing to breach a contract without just cause? Should they be?
5. The Law Commission of India in its 42nd report on the Indian Penal Code (1971) proposed limiting the offence of criminal conspiracy to more serious offences i.e. those attracting the death penalty or a term of two years’ imprisonment and upwards. Should this amendment be made to our Penal Code?
6. If one can be liable for conspiring to commit an offence which is impossible to accomplish, why should there not be liability where one of the two persons involved feigns agreement (see Kannan)?
SYLLABUS

Topic 19: Common Intention

Aims
1. Principles on common intention
2. Comparison between common intention and abetment

Materials
1. Penal Code, ss. 34
2. YMC 2nd Ed, chap 35, paras [35.1] – [35.48]

Study questions
1. Must the parts played by different persons involved in the offence be identified for the purpose of joint liability under s. 34 of the Penal Code?
2. Is presence and/or participation by the secondary offender required in the collateral offence? How is participation in s. 34 of the Penal Code different from abetment?
3. State, giving reasons, whether you think the decision in *Daniel Vijay* requiring the secondary offender, along with the actual doer, to have intended to commit the collateral offence, is preferable to the decision in *Lee Chez Kee v PP* [2008] 3 SLR 447.
Topic 20: Other Forms of Constructive Liability

Aims
1. Requirements for constructive liability under common object, gang robbery with murder and the Arms Offences Act
2. Comparison between the different forms of constructive liability

Materials

**Common object**
1. Penal Code, ss. 40(3), 141, 142, 143, 146 and 149
2. YMC 2nd Ed, Chapter 35, paras [35.49] – [35.70]
4. *Osman bin Ramli v PP* [2002] 2 SLR(R) 959
5. *PP v Fazely bin Rahmat* [2003] 2 SLR(R) 184 and [2002] 2 SLR(R) 385

**Gang robbery with murder**
1. Penal Code, ss. 390, 391 and 396
2. YMC 2nd Ed, Chapter 35, paras [35.71] – [35.77]
3. *Lee Chez Kee v PP* [2008] 3 SLR(R) 447, para [252]
4. *Prasong Bunsom v PP* [1995] 3 SLR(R) 15

**Arms Offences**
1. Arms Offences Act, ss. 2, 4A and 5
2. YMC 2nd Ed, Chap 35, paras [35.78] – [35.87]

**Reform**
1. YMC 2nd Ed, Chap 35, paras [35.88] – [35.100]

Study questions
1. Is there a difference between “common intention” and “common object”? Why/why not?
2. In *Fazeley bin Rahmat* the words “in prosecution of the common object of that assembly” was interpreted as requiring proof of subjective knowledge by the accused of the gang’s common object to cause hurt by dangerous weapons before constructive liability could be imposed. Compare this with the approach towards constructive liability under s 34 of the Penal Code.
3. Is the requirement of subjective knowledge satisfied by proof that the accused knew that there was a *possibility* that the further offence may be committed by another member of the unlawful assembly? Or must there be knowledge of a *probability* that the further offence would be committed? Or must there be knowledge that the further offence would *definitely* be committed?
4. Must the further offence that is contemplated be the same offence that is actually committed? What if the offences, though different, are comparable in
nature, for example, persons in a fight plan to cause grievous hurt but a victim is killed?

5. When would a person be considered to be a member of an unlawful assembly?

6. In what circumstances would presence be regarded as sufficient to render a person a member of an unlawful assembly?

7. Should involuntary withdrawals from an unlawful assembly, such as being rendered unconscious by being hit on the head, be sufficient to render one no longer a member of an unlawful assembly?

8. As a matter of social policy, should the law allow a defence of withdrawal from constructive liability? What are the arguments for and against such a defence?

9. Should the reason for the withdrawal be relevant? Should a distinction be made between a person who experiences a genuine change of heart because he appreciates the moral wrongness of his conduct with the person who changes his mind because he encounters police at the scene of the crime?

10. Does s 396 of the Penal Code require that (i) the persons involved know that murder may be committed by one of their number during the gang robbery? (ii) the persons involved in the gang robbery be physically present at the commission of the murder?

11. Is the reach of liability under s 396 of the Penal Code unjustifiably broad, or can it be justified considering the number of persons involved and the fact that robbery comes with a degree of personal violence?

12. How should the term “accomplice” in s 5 of the Arms Offences Act be understood?

13. Can it be argued that it should be easier to impose constructive liability in situations involving firearms (where severe injuries are common) than in less dangerous situations covered by ss 34, 149 or 396 of the Penal Code?

14. Do you agree that the different approaches used towards constructive liability in the criminal law are unnecessarily confusing, resulting in unfairness to the accused? If so, how should the different approaches to constructive liability be replaced?