
UNIVERSITI SAINS MALAYSIA

Peperiksaan Semester Kedua
Sidang Akademik 2007/2008

April 2008

**HBT 203 - BAHASA, UNDANG-UNDANG DAN
PENTERJEMAHAN II**

Masa : 3 jam

Sila pastikan bahawa kertas peperiksaan ini mengandungi TUJUH muka surat yang bercetak sebelum anda memulakan peperiksaan ini.

ARAHAN KEPADA CALON:

1. Jawab TUJUH soalan sahaja.
2. Soalan 1, 2 dan 3 di Bahagian A WAJIB dijawab.
3. Jawab DUA soalan daripada Bahagian B.
4. Jawab DUA soalan daripada Bahagian C.
5. Tulis nombor soalan yang telah anda jawab pada muka hadapan buku jawapan anda.

Bahagian A

Jawab SEMUA soalan.

1. Terangkan sebab-sebab terdapatnya unsur 'penghukuman' dalam undang-undang jenayah.

[10 markah]

2. Berikan padanan istilah-istilah berikut ke dalam bahasa Malaysia.

- [a] *manslaughter*
- [b] *battery*
- [c] *diminished responsibility*
- [d] *assault*
- [e] *recklessness*

[10 markah]

3. Berikan definisi jenayah 'mencuri' dan terangkan elemen-elemen *mens rea* dan *actus rea* dalam jenayah ini.

[10 markah]

Bahagian B

Jawab DUA soalan sahaja daripada bahagian ini.

4. Jawab [a] dan [b].

[a] Sila nyatakan lima [5] Kecualian Am bagi jenayah 'membunuh'.

[5 markah]

[b] Jelaskan dengan ringkas TIGA jenis keterangan dalam Undang-undang Keterangan.

[10 markah]

5. Jawab [a], [b] dan [c].

[a] Berikan padanan dalam bahasa Inggeris bagi istilah-istilah berikut:

[i] niat pasti

[ii] niat melulu

[iii] pergaduhan mengejut

[iv] kata dengar

[v] keterangan hal keadaan

[5 markah]

[b] Bezakan antara 'mematikan orang dengan salah secara sukarela' (*voluntary manslaughter*) dengan 'mematikan orang dengan salah secara tidak sukarela' (*involuntary manslaughter*).

[5 markah]

[c] Terangkan maksud *euthanasia*.

[5 markah]

6. Jawab [a] hingga [d].

[a] Berikan padanan dalam bahasa Inggeris bagi istilah-istilah berikut:

- [i] cedera parah badan
- [ii] Kanun Jenayah
- [iii] kecualian am
- [iv] kepenyalahan undang-undang
- [v] tanggungjawab berhati-hati

[5 markah]

[b] Jelaskan perbezaan antara 'jenayah' dengan 'kesalahan'.

[2 markah]

[c] Huraikan maksud 'kesalahan inkoat'.

[2 markah]

[d] Berikan TIGA keadaan yang menunjukkan seseorang telah melakukan 'subahat'.

[6 markah]

Bahagian C

Jawab DUA soalan sahaja daripada bahagian ini.

7. Terjemahkan **TEKS 1** ke bahasa Malaysia.

TEKS 1

The court will have little difficulty in establishing *mens rea* if there is actual evidence – for instance, if the accused made an admissible admission. This would satisfy a *subjective* test. But a significant proportion of those accused of crimes make no such admissions. Hence, some degree of objectivity must be brought to bear as the basis upon which to impute the necessary component(s). It is always reasonable to assume that people of ordinary intelligence are aware of their physical surroundings and of the ordinary laws of cause and effect. Thus, when a person plans what to do and what not to do, he will understand the range of likely outcomes from given behaviour on a sliding scale from "inevitable" to "probable" to "possible" to "improbable". The more an outcome shades towards the "inevitable" end of the scale, the more likely it is that the accused both foresaw and desired it, and, therefore, the safer it is to impute intention. If there is clear subjective evidence that the accused did *not* have foresight, but a reasonable person would have, the hybrid test may find criminal negligence. In terms of the burden of proof, the requirement is that a jury must have a high degree of certainty before convicting. It is this reasoning that justifies the defences of infancy, and of lack of mental capacity under the M'Naghten Rules, and the various statutes defining mental illness as an excuse. Self-evidently, if there is an irrebuttable presumption of doli incapax - that is, that the accused did not have sufficient understanding of the nature and quality of his actions -- then the requisite *mens rea* is absent no matter what degree of probability might otherwise have been present. For these purposes, therefore, where the relevant statutes are silent and it is for the common law to form the basis of potential liability, the reasonable person must be endowed with the same intellectual and physical qualities as the accused, and the test must be whether an accused with these specific attributes would have had the requisite foresight and desire.

Sumber: http://en.wikipedia.org/wiki/Mens_rea

[20 markah]

8. Terjemahkan TEKS 2 ke bahasa Malaysia.

TEKS 2

Torts and breaches of contract

A tort involves a breach of duty which is fixed by the law, while breach of contract is a breach of a duty which the party has voluntarily agreed to assume. For example, we are all under a duty not to trespass on other people's land, whether we like it or not, and breach of that duty is a tort. But if I refuse to dig your garden, I can only be in breach of contract if I had already agreed to do so.

In contract, duties are usually only owed to the other contracting party; whereas in tort, they are owed to people in general, and while the main aim of tort proceedings is to compensate for harm suffered, contract aims primarily to enforce promises. Again, there are areas where these distinctions blur. In some cases liability in tort is clarified by the presence of agreement – for example, the duty owed by an occupier of land to someone who visits the land is greater if the occupier has agreed to the visitor's presence. Equally many contractual duties are fixed by law, and not by agreement; the parties must have agreed to make a contract, but once that has been done, certain terms will be imposed on them by law.

A defendant can be liable in both contract and tort. For example, if a householder is injured by building work done on his or her home, it may be possible to sue in tort for negligence and for breach of a contractual term to take reasonable care.

Torts and breaches of tort

The major distinction here is that tort is governed by the common law, and trusts by equity.

➤ **The role of policy**

Like any other area of law, tort has its own set of principles on which cases should be decided, but clearly it is an area where policy can be seen to be behind many decisions. For example, in many tort cases, the parties will in practice, be two insurance companies – cases involving car accidents are an obvious example. The results of such cases may have implications for the cost and availability of insurance to others; if certain activities are seen as a bad risk, the price of insurance for those activities will go up, and in some cases insurance may even be refused.

[sumber: Catherine Elliott and Frances Quinn (1996) *Tort Law*. UK: Longman, hlm 2-3]

[20 markah]

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9. Terjemahkan TEKS 3 ke bahasa Malaysia

TEKS 3

WHY IS PROVOCATION A DEFENCE?

There has been much debate over whether the defence of provocation is best seen as a partial justification or an excuse. Those who see it as an excuse argue that the fact that the defendant had lost her self-control meant that the killing was not a true choice and the individual is not morally responsible for his or her acts. The problem with this theory is that it does not explain why there is a reasonableness requirement. If a person has unreasonably lost her self-control, has she not as little choice in reacting as a person who has reasonably lost her self-control? There may be three responses to this. It may be that the reasonableness requirement is really an evidential requirement, ensuring that the defendant really did lose her self-control; but that is not how it operates in the law. Secondly, it may be that, although theoretically the defence would be available to all that lose self-control, there are policy reasons for requiring reasonable self-control and encouraging self-restraint. Lord Hoffman, in Smith (2000) suggested that the objective requirement played the role of protecting the public from exceptionally ill-tempered people. Thirdly, the reasonableness requirement could be seen as an example of the defendant being denied an excuse if she is at fault bringing about the circumstances of the defence.

Others argue that provocation is a partial justification, in that the victim brought the attack upon himself by his provocative conduct. This is hard to accept now that third parties can provoke (Davies, 1975), and also in cases such as *Doughty* where the victim was a crying baby. An alternative argument for provocation being a justification is that when faced with grave insults it is right that a display of righteous indignation be made. If a man display any shock and anger would be immoral in a sense – some display of righteous anger is appropriate. It is true that the killing is an inappropriate display of righteous anger, but that is why it is only a partial defence.

This debate over the basis of the defence is reflected in the difficulties that the courts have had in deciding which characteristics of the accused should be considered. If the defence is seen as a partial justification then few (if any) of the defendant's characteristics should be considered. If seen as an excuse then it will be more appropriate to consider the defendant's characteristics when looking at the objective requirement.

[sumber: Herring, J (2007) *Criminal Law 5th Edition*. New York: Palgrave Macmillan, hlm 217-218]

[20 markah]