



## 70114 CRIMINAL LAW AND PROCEDURE SPRING 2021

### LEGAL PROBLEM ADVICE ASSIGNMENT

#### INSTRUCTIONS

##### Scope of assignment

Set out below is a hypothetical problem that raises a number of issues for applying the rules of criminal liability.

You are only required to deal with the law covered in the topics from **Classes 2A (Crime, Punishment and Prosecution) to 5B inclusive, as well as any self-learning modules.**

*Do not* consider any other law from the syllabus, regardless of its relevance. Do not consider police powers set out in legislation or common law. Reference to any offence or defence not covered within topics 2A-5B will be disregarded in the assessment of your assignment. The only exception is identifying offences which may comprise an *element* of a homicide offence.

##### Criteria

Papers will be assessed in accordance with the criteria set out in the Subject Outline.

##### Value

40 marks (40% of your overall Criminal Law and Procedure marks)

##### Word Limit

The word limit is 2500 words (with a 10% leeway). Simple citations in the footnotes are excluded.

Please avoid placing explanations, commentary, or quotes from primary sources in footnotes. If you do include substantive text in footnotes, it will be included in the word count.

You will lose 5 marks (from 40) if your assignment exceeds 2750 words.

##### Due date

Friday 10 September – no later than 6pm

Please note the Faculty [policy](#) on extensions and penalties for late submission.

It is your responsibility to ensure that your assignment has been uploaded onto Canvas by the due time and date. To avoid any technical issues that may arise, it is advised that students submit the assignment well before the due date and time.

Please note that submission receipts are NOT emailed to students. It is important to save the digital receipt straight from your assignment inbox. It is your responsibility as a student to download and save a copy of the digital receipt as proof that you submitted your work.

## Submission

You must submit your assignment in **electronic form on Canvas**.

Your electronic submission must be a **Word document (.doc or docx)** or compatible word processing format. It ***must not be in .pdf***.

## Writing style

Writing style should accord with the Law Faculty's [Guide to Written Communication](#). It should also adhere to the distinct criminal law problem-solving structure taught in this subject.

Do *not* include a bibliography.

## Citations

You must include footnotes that cite applicable case law and legislative provisions as authorities. You should also cite in full any sources upon which you rely, including textbooks, journal articles and web-based sources. You should avoid reference to these secondary sources where there is a primary source available. Footnote citations should conform with the [Australian Guide to Legal Citation](#) (4th ed).

## Individual work

The assignment must be written individually. The analysis should be in your own words. You should not replicate text from answer guides from previous years, or from the work of any other student, as this may amount to plagiarism, collusion or another form of [academic misconduct](#).

**The problem question is on the following page**

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#### QUESTION

After a long day at work, Lara was wheezy and felt an asthma attack coming on. Lara's asthma is often exacerbated when she is on her feet all day working at Yuralla child care centre in Mount Druitt. She has managed her condition effectively by taking Ventolin for over two decades. However, on that day, Lara forgot to bring her Ventolin with her.

Lara went straight to the pharmacy to purchase Ventolin but was struggling to walk. A police officer, Constable Smith, approached Lara, believing she was drunk. Constable Smith told Lara to accompany him to the police station so she could sober-up. Lara refused to go with the police officer, but could not clearly communicate due to her laboured breathing. Constable Smith grabbed her wrists firmly and tightly pulled her hands behind her back to put them in handcuffs.

While in the back of the paddy wagon, Lara was calling out for help. She was crying, "I can't breathe". Constable Smith heard Lara's cries but ignored her, believing her to be faking it. By the time Lara arrived at the police station, her breathing had become so difficult that she could not walk. Constable Smith dragged her into the cell and left her there. After an hour, Lara's asthma attack caused Lara to become unconscious as she was lying in the cell.

Despite police protocols requiring police officers to conduct half-hourly welfare checks on at-risk persons in police custody, Constable Smith did not check on Lara's welfare until he noticed Lara's unconscious state on CCTV two hours after she had been placed into the cell. Constable Smith entered the cell and, out of frustration, forcefully shoved Lara to wake her. Lara fell head-first from her bed to the concrete floor. The impact of her head with the floor caused a fracture in Lara's skull. Constable Smith immediately called emergency services.

The ambulance arrived within 10 minutes. However, by the time it arrived at 8.15pm, Lara had died. An autopsy later revealed that Lara had died at approximately 8.00pm, the cause of death being a lack of oxygen to her lungs due to the asthma attack.

**Discuss the liability of the police officer for involuntary manslaughter offences, discussing all elements of the offences.**

**Do not address the offence of assault causing death. In addition, do not assess issues relating to statutory or common law police powers.**