

Criminal Law - Problem Questions

Jo and Rob are footballers. One day, outside the football club, they were involved in a fierce argument. Jo said to Rob, "You are a real bastard". Rob raised his fist at Jo and said, "Come any closer and I'll punch you." Would your answer be different if Rob had said, "If we weren't outside the club house I would punch you on the nose"?

Introduction

Rob could be charged with common assault.

Common law offence s61 Crimes Act (NSW) 1900 → liable for 2 yrs imprisonment

Common assault can be divided into two categories: battery assault and psychic assault. In this instance, the assault is psychic; therefore the elements of psychic assault need to be considered.

Deal with the 2 scenarios separately:

1. "Come any closer and I'll punch you"
2. "If we weren't outside the club house I would punch you on the nose"

Scenario 1: "Come any closer and I'll punch you"

Actus Reus (Psychic Assault)

D acts so as to induce fear in V that V is about to be physically harmed by D or by another who is to act under D's orders.

- Positive Act
 - Omissions can't be regarded as a positive act: *Fagan* [1969]
 - The courts have a broad definition of what constitutes a positive act and the use of words has been held to constitute a positive act: *Barton v Armstrong* [1969], *Tout* (1987) and *Knight* (1988)

Rob said, "Come any closer and I'll punch you". This would constitute a positive act as this threat can be said to be sufficient to ground fear of imminent violence in Jo's mind (*Barton v Armstrong*)

- State of mind of the victim
 - V must actually have been put in fear of imminent unlawful contact: *Barton v Armstrong* [1969] and *MacPherson v Brown* (1975)
 - V must be aware of the threat of imminent unlawful contact: *Ryan v Kuhl* [1979]

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Table of Contents Sample Law Questions And Answers

1. Understanding the eBook Sample Law Questions And Answers
 - The Rise of Digital Reading Sample Law Questions And Answers
 - Advantages of eBooks Over Traditional Books
2. Identifying Sample Law Questions And Answers
 - Exploring Different Genres
 - Considering Fiction vs. Non-Fiction
 - Determining Your Reading Goals
3. Choosing the Right eBook Platform
 - Popular eBook Platforms
 - Features to Look for in an Sample Law Questions And Answers
 - User-Friendly Interface
4. Exploring eBook Recommendations from Sample Law Questions And Answers
 - Personalized Recommendations
 - Sample Law Questions And Answers User Reviews and Ratings
 - Sample Law Questions And Answers and Bestseller Lists

5. Accessing Sample Law Questions And Answers Free and Paid eBooks
 - Sample Law Questions And Answers Public Domain eBooks
 - Sample Law Questions And Answers eBook Subscription Services
 - Sample Law Questions And Answers Budget-Friendly Options
6. Navigating Sample Law Questions And Answers eBook Formats
 - ePub, PDF, MOBI, and More
 - Sample Law Questions And Answers Compatibility with Devices
 - Sample Law Questions And Answers Enhanced eBook Features
7. Enhancing Your Reading Experience
 - Adjustable Fonts and Text Sizes of Sample Law Questions And Answers
 - Highlighting and Note-Taking Sample Law Questions And Answers
 - Interactive Elements Sample Law Questions And Answers
8. Staying Engaged with Sample Law Questions And Answers
 - Joining Online Reading Communities
 - Participating in Virtual Book Clubs
 - Following Authors and Publishers Sample Law Questions And Answers
9. Balancing eBooks and Physical Books Sample Law Questions And Answers
 - Benefits of a Digital Library
 - Creating a Diverse Reading Collection Sample Law Questions And Answers
10. Overcoming Reading Challenges
 - Dealing with Digital Eye Strain
 - Minimizing Distractions
 - Managing Screen Time
11. Cultivating a Reading Routine Sample Law Questions And Answers
 - Setting Reading Goals Sample Law Questions And Answers
 - Carving Out Dedicated Reading Time
12. Sourcing Reliable Information of Sample Law Questions And Answers
 - Fact-Checking eBook Content of Sample Law Questions And Answers
 - Distinguishing Credible Sources
13. Promoting Lifelong Learning

- Utilizing eBooks for Skill Development
- Exploring Educational eBooks

14. Embracing eBook Trends

- Integration of Multimedia Elements
- Interactive and Gamified eBooks

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