

















































































- 21 Can principals in the second degree or accessories before the fact be held criminally liable for a crime that is more serious than the crime(s) committed by the principal in the first degree? Why, or why not?
- 22 Can one joint principal in the first degree be liable for a more serious offence than another joint principal in the first degree? If so, under what circumstances, and why?
- 23 What is the difference between the 'legal' and 'evidential' burdens of proof?
- 24 In criminal prosecutions, who bears the legal burden of proof on all matters with the exception of the defences of insanity or diminished capacity?
- 25 In criminal prosecutions, who bears the evidential burden, and on what issues?
- 26 If the defence satisfies the evidential burden on the elements of a secondary (affirmative) defence, who then bears the legal burden on these elements? What is the test for determining whether the defence has satisfied the evidential burden in raising a secondary (affirmative) defence, other than one of diminished capacity or insanity?
- 27 Assume that there is a statutory offence which provides: 'A person who operates a motor vehicle on a public highway in excess of the prescribed speed limit is guilty of a summary offence, punishable by ...' Your client, John, has been issued a summons and charge sheet alleging that he exceeded the speed limit by 10 km. John advises you that although he doesn't doubt the allegation, he did so inadvertently because he was engaged in a heated conversation with a passenger in his car at the time. John asks you whether a person can be convicted of this offence despite being unaware that s/he was driving in excess of the prescribed speed limit. How would you advise him?
- 28 Tom, Dick, and Harry are mates and heroin addicts. In order to support their habit, they devise a plan to rob a local ANZ bank. According to the plan, Tom will loan his car to Dick who will drive to a parking lot just outside the bank with Harry, who will be armed with a fully loaded .38 calibre handgun. Although the plan is for Dick to wait in the getaway car with the motor running while Harry enters the bank to procure over \$10,000 from a cashier at gunpoint, both Tom and Dick have implored Harry to refrain from harming anyone. Although Harry assents to their request, the cashier sets off a silent alarm during the robbery and Harry is forced to confront police in order to effect his exit from the bank. During an exchange of fire with two police officers, a shot fired by one of the officers goes astray and kills one of the bank's patrons. When several more police arrive on the scene, Harry decides to surrender.
- Dick hears the gunshots and decides to flee before he too is detected and confronted by police. While driving back to Tom's home for refuge, Dick is feeling a bit depressed about the ill-fated attempt to rob the bank decides that burning down a local primary school might lift his spirits. Because Dick has a child who attends the school, he knows that the school is on mid-semester break and, therefore, assumes it is uninhabited. Unbeknown to Dick, a security guard is on duty, but has fallen asleep on the job. Dick sets the school alight with petrol and a match and the security guard dies of smoke inhalation before he can be rescued by the fire brigade.
-