

Answers to exam questions

Chapter 12

Problem question

Aiden is a university student who sets up a business making methylamphetamine (known as 'crystal meth'). He perfects the manufacturing process in his bedroom in the university halls of residence and often stays up late into the night making the methylamphetamine. Beryl, a postgraduate student who is the warden of the halls of residence, hears rumours that Aiden is using the university halls of residence for something illegal. Late one night, she goes down to Aiden's room to investigate and she notices a strange smell coming from the room. Not wishing to get involved, she decides not to report the rumours or her own observations to anybody.

Carol is a cleaner who works at the university. She cleans the bedrooms in the hall of residence three times a week. She cleans Aiden's room and disposes of the chemical waste produced by the manufacturing process. She hears a rumour that Aiden is involved in some criminal activity but she does not report the nature of the waste that she finds in Aiden's room to anybody. One day, Carol notices a box by the waste containers in Aiden's room. She picks up the box and puts it in her car. The box contains a large quantity of methylamphetamine. Carol is arrested by the police after they search her car and find the box containing the methylamphetamine. She claims that she was suspicious that Aiden was 'up to no good' and that she was taking the box to the police station to hand it in.

Aiden supplies a quantity of the methylamphetamine to Damian in order that Damian can distribute the drug to drug users. When Damian is caught by the police with the drugs in his car, he tells the police that he thought that the drug was amphetamine sulphate (or 'speed').

Aiden asks Edgar if he is interested in making some money distributing methylamphetamine. When Edgar tells Aiden that he is not interested in doing anything illegal, Aiden plants a quantity of methylamphetamine in Edgar's backpack. Edgar is arrested after the police stop and search him in the street.

Discuss the criminal liability of the parties.

Bullets

- This question requires students to identify the relevant offences from the Misuse of Drugs Act 1971 that have been committed by each of the parties in the question along with any defences that they might rely on, and to apply these to the question. Students should take event in turn.

- The first event is Aiden manufacturing methylamphetamine in his room in halls. The most relevant offence here is the production of a controlled drug in contravention of s.4(1), Misuse of Drugs Act 1971, contrary to s.4(2), Misuse of Drugs Act 1971. 'Produce' is defined under s.37(1) as 'producing it by manufacture, cultivation or any other method'. As the question tells us that Aiden has manufactured the drug, he can be said to have 'produced' it for the purposes of the Act..
- Section 37(1), Misuse of Drugs Act 1971 states that "controlled drug" has the meaning assigned by section 2 of this Act'. Section 2 of the Act states that a 'controlled drug' is a drug on the list in Schedule 2 of the Act or in a Temporary Class Drug Order. Schedule 2 of the Act provides a list of controlled drugs. Methylamphetamine was reclassified from a Class B drug to a Class A drug in 2007 (by article 2(1) of the Misuse of Drugs Act 1971 (Amendment) Order 2006/3331), so Aiden will likely be charged with production of a Class A drug under s.4(2).
- This offence is subject to the defences under s.28, but none of these defences appear to apply to Aiden on the facts.
- By failing to stop the drug production or report it despite her suspicions, Beryl could open herself up to a charge of being an occupier or someone concerned in the management of premises and knowingly permitting or suffering the premises to be used for the production of a controlled drug, contrary to s.8, Misuse of Drugs Act 1971.
- As the warden of the halls of residence, could it be said that Beryl is an 'occupier' for the purposes of the Act? Students should discuss the case of *Tao* (1977) here. Students should also consider whether Beryl might be said to be someone who is concerned in the management of the premises, and *Joseph; Christie* (1977). It has already been established that methylamphetamine is a Class A drug – this will apply throughout the rest of the answer.
- Carol, the cleaner, cleans up the chemical waste – could she be 'concerned in' the production of a controlled drug, contrary to s.4(2)(b), Misuse of Drugs Act 1971? This would require proof that she participated in the enterprise: *R v Akinsete and Prempah* (2012). Students should refer to the case of *Dunn* (2008) as this is a factually similar case. If it can be proved that Carol knew what was going on, she may be guilty of this offence.
- When she is found in possession of the box containing methylamphetamine, Carol could be charged with possession of a Class A drug, contrary to s.5(2), Misuse of Drugs Act 1971. Students should consider the meaning of possession and the level of knowledge that Carol had: *Warner v Metropolitan Police Commissioner* (1969). Students should

also consider whether Carol might have a defence under s.5(4)(b) on the basis that she claimed that she wanted to deliver the box to the police.

- When Aiden supplies the drug to Damian, Aiden might be charged with supply of a Class A drug, contrary to s.4(3)(a), Misuse of Drugs Act 1971. Both Aiden and Damian might also be charged with possession of a Class A drug with the intention to supply that drug to another, contrary to s.5(3), Misuse of Drugs Act 1971. Students should consider whether Damian's defence that he thought the drug was amphetamine sulphate (which is a Class B drug: see Schedule 2 of the Misuse of Drugs Act 1971) will fall under s.28 or not. This defence is unlikely to succeed: s.28(3).
- By offering to supply some methylamphetamine to Edgar, Aiden may be charged with offering to supply a Class A drug, contrary to s.4(3)(a), Misuse of Drugs Act 1971. Could actually placing the drug in Edgar's backpack also constitute supply?
- Finally, students should consider whether Edgar can be said to be in possession of a Class A drug, contrary to s.5(2), Misuse of Drugs Act 1971, and whether he might have a defence under s.28(2).

Essay question

Critically evaluate the meaning given to the term 'possession' by the House of Lords in *Warner v Metropolitan Police Commissioner* [1969] 2 AC 256.

Bullets

- This essay question requires students to consider the meaning of the term 'possession', and to critically evaluate this term. The question requires consideration of the leading House of Lords' decision in *Warner v Metropolitan Police Commissioner* (1969) in which the meaning of the term 'possession' was considered in the context of the offences under the Misuse of Drugs Act 1971.
- Students might begin by explaining that the meaning of the term 'possession' is important today for the offences of possession of a controlled drug and possession of a controlled drug with the intention to supply that drug, contrary to ss.5(2) and 5(3), Misuse of Drug Act 1971, and while the decision in *Warner v Metropolitan Police Commissioner* pre-dates the Misuse of Drugs Act 1971, the decision is still relevant and significant today since the term 'possession' was not defined within the 1971 Act: see *McNamara* (1988).
- Students might refer to the partial definition within s.37(3), which states that for the purposes of the Act: '...the things which a person has in his

possession shall be taken to include any thing subject to his control which is in the custody of another'. Students should offer some critique of this provision.

- Some brief reference to the facts of the case of *Warner v Metropolitan Police Commissioner* may be made, but these should be kept to a minimum and should be used in the context of any specific points made. Students should not provide a purely descriptive account of the facts of the case and the decision of the House, as the question is asking for a critical evaluation of the decision.
- The House of Lords held that there was a distinction between merely being in physical custody or control of an object and being in possession of an object, and imputed knowledge to the meaning of the term 'possession', such that knowledge is an essential element of possession.
- This essay question requires consideration of the policy implications of the decision – the case raises issues of social concern, namely the prevention of the misuse of drugs. Some thought should be given to the social and political consequences of the decision.
- Lord Pearce stated that: '...the term "possession" is satisfied by a knowledge only of the existence of the thing itself and not its qualities and that ignorance or mistake as to its qualities will not excuse' (at 305).
- Students should make reference to Lord Pearce's opinion and should offer a critique of the examples that Lord Pearce gives, such as whether a person who reasonably believes himself to be in possession of aspirin or sweets, but is actually in possession of heroin tablets, can be said to be guilty of possession of a Class A drug. Students should critically evaluate what Lord Pearce meant by 'It would be otherwise if I believed them to be something of a wholly different nature. At this point a question of degree arises as to when a difference in qualities amounts to a difference in kind' (at 305).
- Consideration should also be given to the issue of containers and the inference that if a man is in possession of a package, then he is in possession of its contents' (at 305), whether this can be rebutted by evidence that the man was mistaken as to its contents, and the issue of whether the defendant took the opportunity to inspect the goods.