**PART C: CASE ANALYSIS (T – 4, A – 16, C – 14)**

*Read the following case study and answer the questions in* ***FULL SENTENCES!!!***

During an NHL hockey game on February 21, 2000, between the Boston Bruins and Vancouver Canucks, Marty McSorley of the Bruins and Donald Brashear of the Canucks – both known as ‘enforcers’ – were involved in a series of altercations and fights. Early in the first period they fought after McSorley cross-checked Brashear from behind. Brashear appeared to get much the better of McSorley in the fist fight, which ended when Brashear delivered a painful body blow to McSorley and wrenched him to the ice. As Brashear skated past the Bruin’s bench to the penalty box he ‘dusted off’ his hands to signal to the Boston players that he had made short work of their teammate. These antics clearly antagonized the Boston bench.

Ten minutes later McSorley again cross-checked Brashear from behind, knocking him to the ice. McSorley swatted Brashear (no without a helmet) several times in the head as he was getting back to his feet. Rather than fight, Brashear skated off. When McSorley said, “Come on Don, you’ve gotta fight me again,” Brashear replied, “No Marty, I’m not fightin’ you. We’re beating you four to nothing.” As a result of this incident, McSorley was given back-to-back minor penalties for cross-checking and roughing, and a ten-minute major for inciting.

Although Brashear later received a penalty for goaltender interference for falling on the Bruins’ goalie, the game settled down until the middle of the third period when Brashear was slashed by a Canucks player, who was penalized for the infraction. Brashear returned to the bench where he sat performing a ‘Hulk Hogan’ pose for the benefit of the Boston players, who were again irate at this mocking behaviour.

In the last minute of the game both Brashear and McSorley were on the ice. Brashear took two or three power strides down the ice toward his own end, and then glided toward his own blue line. McSorley, on a parallel track, skated hard and caught up to Brashear at the blue line. As he approached Brashear, McSorley swung his stick like a baseball bat, striking the side of Brashear’s head with the blade and several inches of the shaft of the stick. Brashear’s legs immediately splayed and he lost his balance and fell back. His helmet having been dislodged, his head struck the ice. Brashear’s tensed neck muscles saved his head from full impact with the ice. Medical evidence indicated that the slash had contributed to the grade-three concussion Brashear suffered and the *grand mal* seizure he experienced before regaining consciousness. As a result, Brashear was unable to do any physical activity for the next month.

McSorley was charged with assault with a weapon. Sections 265 and 267 of the *Criminal Code* provide:

**Assault**

265. (1) A person commits and assault when

a) without the consent of another person, he applies force intentionally to that other person, directly or indirectly;

**Application**

Assault with a weapon or causing bodily harm includes:

267. Everyone who, in committing an assault,

a) carries, uses or threatens to use a weapon or an imitation thereof

b) causes bodily harm to the complainant,

is guilty of an **indictable offence** and liable to imprisonment for a term not exceeding ten years or an offence punishable on **summary conviction** and liable to imprisonment for a term not exceeding eighteen months.

**QUESTIONS:**

1) Identify the 4 *actus reus* elements within section 265 & 267 that would need to be identified/clarified in the R. v. McSorley incident. (A – 4, C – 2)

2) Identify the explicit/exact wording within section 265 & 267 that relates to *mens rea.*Explain the more common type of mens rea this relates to and how it would be determined. (A – 3, C – 2)

3) After having identified the actus reus & mens rea in the CODE, as a Crown Attorney apply sections 265 & 267 to this situation and determine if all criteria are met in order to prosecute. (A – 5, C – 4)

4a) Identify the 4 criteria involved in the provocation defense. (T – 4, C – 2)

b) As a Defense Attorney, explain the 2 reasons why McSorley could NOT legitimately use the provocation defense. (A – 4, C – 4)