

CRW2602 EXAM PACK



PAST PAPERS
&
SOLUTIONS

Multiple Choice

Question 1

- a) An accessory after the fact is a participant who furthers the commission of the crime.
- b) If X kills Y (his wife) and then asks Z (his brother) to help him dispose Y's body into the river. Z can be charged with murder because he is an accomplice.
- c) The distinction between a direct and an indirect perpetrator is of no significance for purposes of determining liability

- 1) Only statement (a) is correct
- 2) Only statements (a) and (c) is correct
- 3) Only statements (b) and (a) is correct
- 4) **Only statements (c) is correct**
- 5) None of the statements are correct

Question 2

- a) In *Thebus*, liability based on active association was declared constitutional.
- b) In *Molimi* it was decided that if the conduct differs from the conduct in the initial mandate, liability, may not be imputed unless each of the latter knew or foresaw the possibility that it might be committed and reconciled themselves to that possibility.
- c) For disassociation or withdrawal from common purpose to take place, the withdrawal must not take place before the events have reached the commencement of the execution.

- 1) Only statements (a) and (c) are correct
- 2) Only statement (b) is correct
- 3) **Only statements (a) and (b) are correct**
- 4) Only statements (c) are correct
- 5) All the above statements are correct

Question 3

- a) The participation of a joiner-in must hasten X's death.
 - b) An Accessory after the crime does not further the commission of the crime
 - c) Where X does everything to complete the attempt but the crime is not completed
-
- 1) None of the statements above are correct
 - 2) Only statements (c) and (b) are correct
 - 3) Only statements (a) is correct
 - 4) Only statements (c) is correct
 - 5) **Only the above statements are correct**

Question 4

- a) A subjective test is applied to determine liability in the attempt to commit the impossible.
 - b) Voluntary withdrawal is where X's actions have already reached the stage when they qualify as acts of execution when X of his own accord, abandons his criminal plan of action.
 - c) A putative crime, is a crime which does not exist but punishable if you are mistaken about the fact of the law.
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- 1) **Only statements (b) and (c) are correct**
 - 2) Only statements (a) and (c) are correct
 - 3) Only statement (a) is correct
 - 4) Only statement (c) is correct
 - 5) All the above statements are correct

Question 5

- a) Robbery can be committed even if there is no actual violence against Y
- b) The prejudice required for a conviction of fraud must be of a patrimonial nature

c) For a conviction of the crime of malicious injury to property. It is required that the perpetrator's conduct be accompanied by an evil or malicious motive

- 1) **Only statements (a) is correct**
- 2) Only statements (b) is correct
- 3) Only statements (c) is correct
- 4) All of the statements are correct
- 5) None of the statements is correct

Question 6

- a) X cleans his revolver but does not know that there is a bullet in one of the chambers, Thinking that there are no bullets in the revolver, he points the gun at Y and pulls the trigger. The gun goes off and Y is killed by the gunshot. X will be convicted of murder because he was negligent
- b) X may only be convicted of assault with the intent to grievous bodily harm if the victim had in fact been seriously injured
- c) It is a crime to unlawfully and intentionally point an unloaded firearm at a person without good reason to do so.

- 1) All the statements are correct
- 2) None of the statements is correct
- 3) **Only statement (c) is correct**
- 4) Only statement (a) and (b) are correct
- 5) Only statement (b) and (c) are correct

Question 7

- a) In Mei 1982 (1) SA 301 (A) the court held that the mere placing of stones in a road at a spot where a group of people assemble, does amount to violence, and therefore does constitute public violence
- b) For statutory perjury at least one of the two statements must be made in the course of a legal proceeding

c) The crime of common-law perjury is only committed if the false declaration is made in the course of a legal proceeding

- 1) Only statement (a) is correct
- 2) Only statement (b) is correct
- 3) **Only statement (c) is correct**
- 4) Only statement (a) and (b) is correct
- 5) Only statements (a) and (c) are correct

Question 8

- a) Arson can only be committed in respect of immovable property. If a movable thing is set on fire, it amounts to malicious injury to property.
- b) Intention, and more, particularly, intention to damage the property by setting fire to it, thereby causing patrimonial harm to somebody, is not really required for the crime of arson
- c) Before theft of the property concerned, fraud is not always involved in theft by false pretence.

- 1) All statements are incorrect.
- 2) Only statements (a) and (b) are correct
- 3) Only statements (c) is correct
- 4) **Only statements (a) is correct**
- 5) Only statements (a) and (c) are correct

Question 9

- a) In the case of *Heyne* 1956 (3) SA 604 (A), the Appellate Division decided that attempted fraud cannot be committed even if the misrepresentation has not yet come to the complainant's attention.
- b) In fraud, X's intent must relate to both the misrepresentation and the requirement of prejudice.

c) In theft in the form of embezzlement, it is not necessary for X first to remove the property from another's possession, since she is already in possession of it.

- 1) Only statements (c) is correct
- 2) All statements are correct
- 3) Only statements (a) and (c) are correct
- 4) Only statements (b) and (c) are correct**
- 5) Only statements (a) and (b) are correct

Question 10

- a) It is not possible for a perpetrator (X) to commit theft even in respect of property belonging to her.
- b) According to Chretien 1981 (1) SA 1097 (A), intoxication may lead to X lacking the intention to assault, in which case X must be found not guilty
- c) Inspiring fear or a belief in Y that force is immediately to be applied to her also constitutes an act of assault even if there is no physical contact with, or impact on, Y's body.

- 1) Only statements (a) and (c) are correct.
- 2) Only statement (a) is correct.
- 3) Only statements (b) and (c) are correct.**
- 4) Only statement (c) is correct.
- 5) All statements are correct.

Section B

Question 1

Discuss the type of attempt known as attempt to commit the impossible as well as the circumstances under which attempt to commit the impossible is not punishable (in other words the exception/s to the rule that attempt to

commit the impossible is punishable). (10)

Attempt to commit the impossible

Subjective and objective approaches: before 1956 there was no certainty if this type of attempt was punishable or not. It was also uncertain whether deciding X's conduct amounted to a punishable attempt, employ an objective or subjective test.

Objective test consider the facts only from the outside, that is without considering the subjective aims which X has in mind when he performs the act. If one follows this approach, X would never be guilty of attempt because what he is trying to do cannot physically result in the commission of an offence.

Example: X tries to sell uncut diamonds to Y. He offers a stone to Y which X thinks is an uncut diamond but it is actually a piece of worthless glass. If one applies the objective test, X cannot be convicted of an attempt to sell an uncut diamond because the sale of a piece of glass is entirely different to the sale of an uncut diamond.

Subjective test if you apply the subjective test however, X can be convicted of attempt because according to this test what is decisive is X's subjective state of mind, that is his belief that what he was doing was selling an uncut diamond and not a piece of glass.

The decision in Davies:

Court had to decide whether X was guilty of an attempt to commit the former crime of abortion if the foetus which he had caused to be aborted was already dead, although he had believed the foetus to be still alive. The Appeal Court adopted the subjective test and held that X was guilty of attempt. It held that X would have been guilty of attempt even if the woman had not been pregnant provided, of course, that X had believed that she was pregnant and had

performed some act intending to bring about an abortion.

Question 2

A is the leader of a drugs syndicate. Y, a member, decides to sever his ties with the syndicate, and to join another syndicate. Avenging the defection, A cuts Y's throat. Mortally wounded, Y collapses. B, who previously had supplied drugs to Y, appears on the scene and, furious because Y owes him money, shoots Y in the stomach, (B had not agreed beforehand with A to kill Y.) The bullet wound does not hasten Y's death. Y dies as a result of the wound to his throat. A needs help to get rid of the corpse. For this purpose he calls in the aid of C, who had agreed before the murder to help A to get rid of the corpse, and D who had no such agreement with A. Together they drag the body to a deserted spot in the bush. Briefly discuss:

a) The criminal liability of B, referring to authority (4)

B is guilty of attempted murder and can be referred to as a “joiner-in” since he associated himself with others’ common purpose at a stage when Y’s lethal wound had already been inflicted, although Y was then still alive.

The “joiner-in” is a person

- Whose attack on Y did not hasten Y’s death.
- Whose blow was administered at a time when Y was still alive.
- Who did not act with a common purpose together with the other persons who also inflicted wounds on Y.

Thus, here, the person comes onto the scene AFTER the mortal wound has been inflicted on Y, but while Y is still alive and the wound inflicted on Y does NOT hasten his death PLUS this “joiner-in” has NO prior agreement with the persons who inflicted the mortal wound on Y.

b) The criminal liability of C(2)

C may be a perpetrator or an accomplice , if his conduct, culpability and personal qualities accord with the definition of murder, he will be a co -

perpetrator. He may also be an accomplice because he furthered the commission of the crime.

c) The criminal liability of D (2)

D is an accessory after the fact. A person is an accessory after the fact to the commission of a crime if, after the commission of the crime, he unlawfully and intentionally engages in conduct intended to enable the perpetrator or or accomplice to the crime to evade liability for the crime, or to facilitate such a person's evasion of liability. Helping a perpetrator to dispose of the body of a person he has killed is an example of conduct that makes a person an accessory after the fact.

Question 3

Briefly discuss the liability of a newspaper editor for the crime of contempt of court in the form of commentary on pending cases, and refer to the culpability requirement in particular. (4)

- Definition

Contempt of court consists in the unlawful and intentional

Violation of the dignity, repute or authority of a judicial body or a judicial officer in his judicial capacity, or

The publication of information or comment concerning a pending judicial proceeding, which has the tendency to influence the outcome of the proceeding or to interfere with the administration of justice in that proceeding

- Intent

In general intention is an essential element of the crime except in cases where the editor of a newspaper is charged with this crime on the ground of the publication in his newspaper of information concerning a pending case, which

tends to influence the outcome of the case. Culpability in the form of negligence will be sufficient to establish contempt of court in such circumstances. However, remarks in a newspaper article, for example, must be read in context to establish the presence of intent. Liability of a newspaper editor: in *Harber* the Appellate Division held that it is not necessary to prove intention in these cases, since, in cases such as these the culpability may consist of either intention or negligence. The editor would be negligent if the reasonable person in his position could foresee that the information which he publishes might deal with a pending case or that it might scandalize the court.

SECTION A

Multiple Choice

Question 1

- a) In Dodo 2001 (1) SACR 594 (CC), the Constitutional Court rejected the contention that the provisions of section 51 are unconstitutional.
- b) The mere temporary removal of a girl from her home in order to have sexual intercourse with her is not yet abduction.
- c) According to the ordinary principles relating to intention, X's intention must incorporate knowledge of unlawfulness.

- 1) None of the statements above are correct
- 2) Only statements (a) and (b) are correct
- 3) Only statement (c) is correct
- 4) Only statement (a) and (c) are correct
- 5) All of the statements above are correct.**

Question 2

- a) Proof of sexual intercourse is required for a conviction of bigamy.
- b) In the crime of abduction, if the removal is for an innocent purpose, and X only decides thereafter to have sexual intercourse, the crime is not committed.
- c) The definitions of the statutory offences of rape are not gender-neutral

- 1) Only statements (a) and (c) are correct
- 2) Only statements (b) and (c) are correct
- 3) None of the statements above are correct
- 4) Only statement (c) is correct
- 5) Only statement (b) is correct**

Question 3

- a) The mere encouraging, incitement, instigation and other preparatory actions amount to the offence of involvement in trafficking in persons for sexual purposes (s 71(2)) of The Sexual Offences Act 32 of 2007.
- b) Contempt of court is punished to protect the dignity of an individual judicial officer.
- c) An obligation is placed on any person to report knowledge, reasonable belief or suspicion that a sexual offence has been committed against a person who is mentally disabled, and a person with such knowledge fails to do so is guilty of an offence.

- 1) Only statement (a) is correct
- 2) Only statement (b) is correct.
- 3) All the above statements are correct.
- 4) **Only statements (a) and (c) are correct**
- 5) Only statements (a) and (b)

Question 4

- a) Contempt can be committed by the publication of information or comments on a pending case.
- b) There is no rule in our law stipulating that, where more than one person jointly commit a crime, there can only be a single perpetrator.
- c) A person is not guilty of attempting to commit a crime if the commission of the crime is impossible.

- 1) **Statements (a) and (b) are correct.**
- 2) Only statements (a) and (c) are correct
- 3) Only statement (c) is correct.
- 4) None of the statements above are correct.
- 5) Only statement

Question 5

- a) In the crime of Interrupted attempt ,X's actions must have reached a stage when they are no longer preparatory, but are acts of execution.
- b) A direct perpetrator is a perpetrator who does not commit the crime with his body, but makes use of somebody else to commit the crime
- c) In common law perjury, the declaration must be made in the course of a legal proceeding.

- 1) Only statement (a) is correct
- 2) **Only statement (a) and (c) are correct**
- 3) Only statements (b) and (c) are correct
- 4) All the above statements are correct
- 5) Only statement (b) is correct

Question 6

- a) A party to a civil case against whom the court has issued an order, and who deliberately fails to obey the court order cannot be found guilty of contempt of court.
- b) In Davies 1965 the court further held that it is immaterial whether the impossibility of achieving the desired end was attributable to the wrong means employed by X.
- c) Corruption is not committed by merely offering to accept.

- 1) None of the statements above are correct
- 2) Statements (a) and (b) are correct
- 3) **Only statements (b) is correct**
- 4) Only statements (a) is correct
- 5) Only statements (b) and (c) are correct.

Question 7

- a) In South Africa conspiracy to commit a crime is not a common-law crime, but a statutory crime.
 - b) *Possession naturalis* is where X does not exercise control over the drugs as an owner; she nevertheless kept it for or on behalf of somebody else.
 - c) A "putative crime" can be punishable.
- 1) Only statement (a) is correct
 - 2) Only statement (c) is correct
 - 3) **Only statements (a) and (b) are correct.**
 - 4) Only statements (b) and (c) are correct.
 - 5) All of the statements above are correct.

Question 8

- a) if X bribes Z to murder Y and Z in fact murders Y. X is known as an indirect perpetrator
 - b) The doctrine of common purpose states that where two or more people, having a common purpose to commit a crime, act together in order to achieve that purpose, the liability of one of them is imputed to the others
 - c) In Motaung 1990 (4) SA 485 (A) it was held that the "joiner-in" could be convicted of murder.
- 1) **Only statement (a) is correct**
 - 2) Only statement (b) is correct
 - 3) Only statement (c) is correct
 - 4) Only statement (b) and (c) are correct
 - 5) None of the statement is correct

Question 9

- a) The crime of *crimen iniuria* protects a person's physical integrity

- b) It is not possible for a parent to be convicted of kidnapping of his/her own child
- c) A person can never commit theft in respect of his/her own thing

- 1) **Only statement (a) is correct**
- 2) Only statement (b) is correct
- 3) Only statement (c) is correct
- 4) Only statement (a) and (b) are correct
- 5) Only statement (b) and (c) are correct

Question 10

- a) In Thebus, liability based on active association was declared constitutional.
- b) In Molimi it was decided that if the conduct differs from the conduct in the initial mandate, liability, may not be imputed unless each of the latter knew or foresaw the possibility that it might be committed and reconciled themselves to that possibility.
- c) For disassociation or withdrawal from common purpose to take place, the withdrawal must not take place before the events have reached the commencement of the execution.

- 1) Only statements (a) and (c) are correct
- 2) Only statement (b) is correct
- 3) **Only statements (a) and (b) are correct**
- 4) Only statements (c) are correct
- 5) All the above statements are correct

SECTION B

Question 1

What is the difference between direct and indirect perpetrator irrelevant and discuss in detail making reference to cases (10)

- A **direct perpetrator** is a perpetrator who commits the crime with his own hands or body.
- An **indirect perpetrator** does not commit the crime with his body, but makes use of somebody else to commit the crime

The distinction between a direct and an indirect perpetrator is of no significance for purposes of determining liability. For the purposes of liability as a perpetrator in commission of crime e.g. murder:

- someone stands guard while his partner shoots Y dead (*Mashami 1967*)
- drives his partner to and from scene of crime (*Bradbury 1967*)
- tells him where he can find Y,
- or stands next to him while he assaults Y, ready to help him if it is required of him (conduct assistance and encouragement to principal offender) (*Mbande 1933; Du Randt 1954*)
- obtains his services to shoot Y (*Nkombani 1963*).

Their conduct and culpability comply with requirements for liability set out in definition of crime - their acts also amount to a causing of Y's death. But for their acts a *conditio sine qua non*, Y would not have died - a passive spectator to a deed of murder cannot be held liable as a co-perpetrator (compare the position of accused no 4 in *Williams 1980*).

Question 2

Discuss the following:

Active association as proof of participation in a common purpose:

Existence of a common purpose a participant and other members of group may be based on finding that participant actively associated with actions of other members of group. In *Mgedezi 1989* Appellate Division held that, if there is no proof of a previous agreement between perpetrators, an accused whose individual act is not causally related to Y's death can only be convicted of murder on strength of the doctrine of common purpose if five requirements have been complied with:

- he must have been present at the scene of the crime
- he must have been aware of the assault on Y
- he must have intended to make common cause with those committing assault
- he must have manifested his sharing of a common purpose by himself performing some act of association with the conduct of the others
- he must have intention to kill Y or to contribute to his death

Somebody who was a passive spectator of events will not terms of this doctrine, be liable to conviction even though he may have been present at scene of action.

Other principles which emerge from the case law are the following:

- In murder cases active association can only result in liability if act of association took place whilst Y was still alive and at a stage before lethal wound had been inflicted by one or more other persons (*Motaung 1990*).
- Active association with common purpose should not be confused with ratification or approval of another's criminal deed which has already been completed. Criminal liability cannot be based on such ratification (*Williams 1970*).

OR

Liability on the basis of active association declared constitutional: (10)

In *Thebus 2003* - liability for murder on basis of active association with execution of a common purpose to kill was challenged on grounds that it unjustifiably limits constitutional right to dignity, to freedom and security of a person right of an accused person to a fair trial. Constitutional Court rejected

these arguments and declared constitutional the common-law principle which requires mere "active association" instead of causation as a basis of liability in collaborative criminal enterprises. One of the court's main arguments was the following:

- Doctrine of common purpose serves vital purposes in our criminal justice system. Principal object of doctrine is to criminalise collective criminal conduct and thus to satisfy need to control crime committed in course of joint enterprises. In crimes such as murder it is difficult to prove that act of each person or of a particular person in group contributed causally to criminal result. Insisting on a causal relationship would make prosecution of collective criminal enterprises ineffectual. Effective prosecution of crime is a legitimate, pressing social need. Thus, there was no objection to the norm of liability introduced by requirement of "active association" even though it bypassed the requirement of causation.

Question 3

Discuss Common purpose and *dolus eventualis* with reference to case law (12)

For X to have a common purpose with others to commit murder it is not necessary that his intention to kill be present in the form of *dolus directus* - *dolus eventualis* – he foresees the possibility that the acts of participants with whom he associates himself may result in Y's death, and reconciles himself to this possibility.

X is charged with murder - a number of persons, among them X, took part in a or housebreaking, and Z, one of members in the group, killed Y in course of action, question raised was whether X and Z had a common purpose to kill Y. Mere fact they all had intention to steal is not necessarily sufficient to warrant inference that all of them also had common purpose to kill. One can steal killing anybody. Whether X also had the intention to murder, must be decided on the facts of each individual case.

The case of *Mambo 2006* -practical illustration: Three awaiting-trial prisoners planned to escape from their court cells. Plan included forceful dispossession (robbery) of a court orderly's firearm. When orderly unlocked gate of the cell so that accused could enter, X1 gripped the orderly around his neck, X2 reached for orderly's lower legs and tugged at them, causing him to lose his balance and X3 reached for the orderly's firearm in his holster on his right hip and grabbed it with both hands. As orderly wrestled to free himself from clutches of X1 and X2, X1 uttered word shoot. X3 cocked firearm and fatally shot orderly. They were convicted in the High Court on charges of murder, robbery, and escape from lawful custody. The Supreme Court of Appeal upheld convictions of all three on robbery and escape charges because these were part of their prior agreement or mandate but held that killing of the orderly did not form part of this mandate.. It therefore had to determine whether initial mandate had extended to include murder of orderly. Court held that by his conduct and culpability, X3 satisfied requirements for liability on murder charge - for his conduct (killing - orderly) to be imputed to X1 and X2, the Court had to establish that each of them foresaw the killing of the orderly as a possibility arising from conduct of one of their number, and reconciled themselves to that possibility. The Court held that by uttering the word "shoot", X1 had proved that he shared a common purpose with X3 in relation to murder of the orderly. Court noted that all that X2 had done in the process of overpowering the orderly was to grab hold of his legs.

In *Molimi 2006*. Supreme Court of Appeal held that conduct by a member of a group of persons which differs from conduct envisaged in their initial mandate (common purpose) may not be imputed to the other members, unless each knew (*dolus directus*) that such conduct would be committed, or foresaw the possibility that it might be committed and reconciled themselves to that possibility (*dolus eventualis*).

Facts: X1,X2, and Z co –conspirators – planned to rob a store – store manager told X2 what time security co truck would come to get money. X1 told X2 to get 4 armed men to tackle security guard and get the money. Z and four men fled after getting money and gunfire was exchanged. An armed bystander exchanged gunfire with Z who had run into another store for refuge – one

employee of that store was shot and wounded the other employee whom Z had held hostage was shot and killed.

X1, X2 and Z were all convicted in the High Court on 7 counts. These were: robbery; the murder of the security guard of the store in which the robbery took place (Clicks); the murder of the security guard in the other store; the murder of the hostage held by Z in the other store; the attempted murder of the employee who was wounded in the other store and two counts of the unlawful possession of firearms.

X1 and X2 appealed to the Supreme Court of Appeal against their convictions. They conceded the existence and proof of a common purpose (between X1, X2 Z) to rob store, but argued the actions of bystander which resulted in kidnapping and death of hostage and injury to an employee in other store were not foreseeable by them (X1 & X2) as part of the execution of common purpose.

The court held that the attempted murder of the employee in the other store was foreseeable, for once all the participants in a common purpose foresaw the possibility that anybody in the immediate vicinity of the crossfire could be killed regardless of who actually shot the fatal bullet then *dolus eventualis* was present. However- kidnapping of hostage by Z and hostage's eventual murder were acts which were so unusual and so far removed from what was foreseeable in the execution of the common purpose that these acts could not be imputed to X1 and X2. They were acquitted on these charges.

SECTION A

Multiple Choice

Question 1

- a) In Thebus, liability based on active association was declared constitutional.
- b) In Molimi it was decided that if the conduct differs from the conduct in the initial mandate, liability, may not be imputed unless each of the

latter knew or foresaw the possibility that it might be committed and reconciled themselves to that possibility.

- c) For disassociation or withdrawal from common purpose to take place, the withdrawal must not take place before the events have reached the commencement of the execution.**

- 1) Only statements (a) and (c) are correct
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- b) Possession naturalis is where X does not exercise control over the drugs as an owner; she nevertheless kept it for or on behalf of somebody else.**
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- a) Contempt can be committed by the publication of information or comments on a pending case.
- b) There is no rule in our law stipulating that, where more than one person jointly commit a crime, there can only be a single perpetrator.
- c) A person is not guilty of attempting to commit a crime if the commission of the crime is impossible.

- 1) **Statements (a) and (b) are correct.**
- 2) Only statements (a) and (c) are correct
- 3) Only statement (c) is correct.
- 4) None of the statements above are correct.
- 5) Only statement (b) is correct

Question 4

- a) **Proof of sexual intercourse is required for a conviction of bigamy.**
 - b) **In the crime of abduction, if the removal is for an innocent purpose, and X only decides thereafter to have sexual intercourse, the crime is not committed.**
 - c) **The definitions of the statutory offences of rape are not gender-neutral**
- 1) Only statements (a) and (c) are correct
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 - 3) None of the statements above are correct
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 - 5) **Only statement (b) is correct**

Question 5

- a) **In Dodo 2001 (1) SACR 594 (CC), the Constitutional Court rejected the contention that the provisions of section 51 are unconstitutional.**
 - b) **The mere temporary removal of a girl from her home in order to have sexual intercourse with her is not yet abduction.**
 - c) **According to the ordinary principles relating to intention, X's intention must incorporate knowledge of unlawfulness.**
- 1) None of the statements above are correct
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- a) In the case of Heyne 1956 (3) SA 604 (A), the Appellate Division decided that attempted fraud cannot be committed even if the misrepresentation has not yet come to the complainant's attention.
- b) In fraud, X's intent must relate to both the misrepresentation and the requirement of prejudice.
- c) In theft in the form of embezzlement, it is not necessary for X first to remove the property from another's possession, since she is already in possession of it.

- 1) Only statements (c) is correct
- 2) All statements are correct
- 3) Only statements (a) and (c) are correct
- 4) Only statements (b) and (c) are correct
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- a) It is not possible for a perpetrator (X) to commit theft even in respect of property belonging to her.
- b) According to Chretien 1981 (1) SA 1097 (A), intoxication may lead to X lacking the intention to assault, in which case X must be found not guilty
- c) Inspiring fear or a belief in Y that force is immediately to be applied to her also constitutes an act of assault even if there is no physical contact with, or impact on, Y's body.

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- a) The participation of a joiner-in must hasten X's death.
 - b) An Accessory after the crime does not further the commission of the crime
 - c) Where X does everything to complete the attempt but the crime is not completed
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Question 9

- a) Arson can only be committed in respect of immovable property. If a movable thing is set on fire, it amounts to malicious injury to property.
 - b) Intention, and more, particularly, intention to damage the property by setting fire to it, thereby causing patrimonial harm to somebody, is not really required for the crime of arson
 - c) Before theft of the property concerned, fraud is not always involved in theft by false pretence.
- 1) statements are incorrect.
 - 2) Only statements (a) and (b) are correct
 - 3) Only statements (c) is correct
 - 4) **Only statements (a) is correct**
 - 5) Only statements (a) and (c) are correct

Question 10

- a) A subjective test is applied to determine liability in the attempt to commit the impossible.
- b) Voluntary withdrawal is where X's actions have already reached the stage when they qualify as acts of execution when X of his own accord, abandons his criminal plan of action.
- c) A putative crime, is a crime which does not exist but punishable if you are mistaken about the fact of the law.

- 1) **Only statements (b) and (c) are correct**
- 2) Only statements (a) and (c) are correct
- 3) Only statement (a) is correct
- 4) Only statement (c) is correct
- 5) All the above statements are correct

SECTION B

Question 1

a) Define attempt (8)

- A person is guilty of attempting to commit a crime if,
- intending to commit that crime,
- he unlawfully engages in conduct that is not merely preparatory
- but has reached at least the commencement of the execution of the intended crime.
- A person is guilty of attempting to commit a crime even though the commission of the crime is impossible,
- if it would have been possible in the factual circumstances which he believes exist,
- or will exist at the relevant time circumstances which he believes exist or will exist at the relevant time.

b) Discuss the different types of attempt (8)

- Completed attempt - X does everything to commit the crime, but for some reason the crime is not completed, for example where X fires at Y but misses where X fires at Y and strikes Y, but Y's life is saved by timely medical intervention
- Interrupted attempt - X's actions have reached stage when they are no longer preparatory, but are acts of execution, when they are interrupted, so that the crime cannot be completed. For example X, intending to commit arson, pours petrol onto a wooden floor but is apprehended by a policeman just before he strikes a match. X, a prisoner intending to escape from prison, breaks and bends the bars in the window of his cell but is apprehended by a warden before he can succeed in pushing his body through the opening.
- Attempt to commit the impossible - it is impossible for X to commit or complete the crime, either because the means he uses cannot bring about the desired result, X intending to murder Y, administers vinegar to him in the firm but mistaken belief that the vinegar will act as a poison and kill Y, or because it is impossible to commit the crime in respect of the particular object of his actions, as where X, intending to murder Y while he is asleep in bed, shoots him through the head, but Y has in fact died of a heart attack an hour before.
- Voluntary withdrawal - X's actions have already reached the stage when they qualify as acts of execution, when X, of his own accord, abandons his criminal plan of action. For example where, after putting poison into Y's porridge but before giving it to Y, X has second thoughts and decides to throw the porridge away. There is a boundary which X must cross before he is guilty of attempt. Formulating this boundary is a problem in criminal law. It is necessary to differentiate between three different stages:

In the first stage X's conduct amounts mere acts of preparation e.g. intending to kill his enemy Y, he had merely bought a knife at a shop. If this act of preparation is the only act that can be proved against him, he cannot be convicted of any crime. In the second stage his acts have proceeded his acts qualify as acts of execution or consummation – e.g. after searching for Y, he had found him and had charged at him with the knife in his hand, although a policeman had prevented him from

stabbing Y. X is guilty of attempted murder. In the third stage X had completed his act and all the requirements for liability have been complied with – e.g. had stabbed and killed Y - case he is guilty of murder (the completed crime).

Question 3

Y drives in her motor car on the highway. A little distance ahead of her there is a foot-bridge crossing the highway. Y sees X on the foot-bridge. In his hands he is clutching a huge stone, ready to drop it on Y's motor car when she passes under the foot-bridge. X pretends that he is going to drop the stone, but does not do so. Y, who recently heard on the news about a little girl who had died when someone dropped a stone through the windscreen of a motor from a foot-bridge, gets such a fright that she loses control of the vehicle and careers off the highway. She is, however, not hurt in any way. X never really had the intention of dropping the stone. Does X commit any crime? Discuss with reference to the requirements applicable in such a case. (You do not have to discuss the question whether X commits attempted murder.) (10)

This is an example of voluntary withdrawal:

If a person voluntarily abandons his criminal plan of action at a preparatory stage, there is no punishable attempt. However, withdrawal at a stage after an act of execution” or at any stage of the “commencement of the consummation” affords the accused no defence. It may be argued that X’s conduct is punishable as an attempted murder because she performed an act of execution. The relevant authority is *Hlatwayo* and *Du Plessis*. In *Hlatwayo*, X was a servant who put caustic soda into her employer’s porridge, intending to poison them. She noticed that the caustic soda discoloured the porridge and threw the mixture away. She was nevertheless convicted of attempted murder. The court held that her acts had already reached the stage of consummation, and that her change of heart did not exclude her liability for attempt. In B, the Appeal Court accepted that it was held in *Hlatwayo* that voluntary withdrawal was not defence and that the decision was correct. In *Du Plessis*, the Court stated that if the change of mind occurred before the commencement of the consummation, then the person concerned cannot be

found guilty of an attempt, but if it occurred after the commencement, then there is an attempt and it does not avail the person concerned to say that he changed his mind and desisted from his purpose.

OR

In the crime of rape it is required that Y (the complainant) did not consent to the act of sexual penetration. Consent means 'voluntary and uncoerced agreement.' Discuss the various factors that result in the law not deeming consent to be valid for the crime of rape. (10)

The Act provides that any person (X) who unlawfully and intentionally commits an act of sexual penetration with a complainant (Y) without his/her consent is guilty of the offence of rape.

The elements of the crime are the following:

1. sexual penetration of another person
2. without the consent of the latter person
3. unlawfulness and
4. intention.

Circumstances in respect of which Y does not voluntarily or without coercion agree to an act of sexual penetration include the following:

Where Y submits or is subjected to such a sexual act as a result of:

(a) the use of force or intimidation by X against Y or Z (a third person) or W (another person) or against the property of Y, Z or W or a threat of harm by X against Y, Z or W or against the property of Y, Z or W.

(b) where there is an abuse of power or authority by X to the extent that Y is inhibited from indicating his or her unwillingness or resistance to the sexual act, or unwillingness to participate in such a sexual act;

(c) where the sexual act is committed under false pretences or by fraudulent means , including where Y is led to believe by X that Y is committing such a

sexual act with a particular person who is in fact a different person; or such a sexual act is something other than that act ; or

(d) where Y is incapable in law of appreciating the nature of the sexual act, including where Y is, at the time of the commission of such sexual act:

- asleep;
- unconscious;
- in an altered state of consciousness, including under the influence of any medicine, drug, alcohol or other substance, to the extent that Y's consciousness or judgment is adversely affected;
- a child under the age of 12 years; or
- a person who is mentally disabled.

For consent to succeed as a defence it must have been given consciously and voluntarily, either expressly or tacitly, by a person who has the mental ability to understand what he or she is consenting to, and the consent must be based on a true knowledge of the material facts relating to the act.

The accused may be convicted of indecent assault.

- Indecent assault is an act which consists at least in the touching of another's body, unlawfully with the intention, which includes an intention to act indecently. You had to discuss the Constitutional Court decision in *National Coalition for Gay and Lesbian Equality v Minister of Justice*. Before this case was decided, the conduct described in the set of fact was punishable as the common-law crime of sodomy. However, the crime of sodomy (which targeted non-consensual and intercourse) was declared unconstitutional in the abovementioned case on various grounds; inter alia that the existence of the crime is incompatible with the right to equality; the right to dignity and the right to privacy. However, as pointed out by the court, non-consensual anal intercourse may still be punished as indecent assault or assault with the intent to cause grievous bodily harm.

SECTION A

Multiple Choice

Question 1

- c) The mere refusal to co-operate with the police in obtaining evidence against oneself or another amounts to defeating or obstructing the course of justice
- d) Where an editor of a newspaper is charged with contempt of court on the ground of having published information in his newspaper concerning a pending case which tends to influence the outcome of the case, it is sufficient if the state proves culpability in the form of negligence
- e) If X absent-mindedly wears his pyjamas to court, he is not guilty contempt of court in facie curiae because intent is lacking.

- 1) Only statement (a) is correct
- 2) Only statement (b) is correct
- 3) Only statement (c) is correct
- 4) **Only statement (a) and (b) is correct**
- 5) Only statement (b) and (c) are correct.

Question 2

- a) X cleans his revolver but does not know that there is a bullet in one of the chambers, Thinking that there are no bullets in the revolver, he points the gun at Y and pulls the trigger. The gun goes off and Y is killed by the gunshot. X will be convicted of murder because he was negligent
- b) X may only be convicted of assault with the intent to grievous bodily harm if the victim had in fact been seriously injured
- c) It is a crime to unlawfully and intentionally point an unloaded firearm at a person without good reason to do so.

- 1) All the statements are correct
- 2) None of the statements is correct
- 3) **Only statement (c) is correct**
- 4) Only statement (a) and (b) are correct

- 5) Only statement (b) and (c) are correct

Question 3

- a) a)The mere refusal to co-operate with the police in obtaining evidence against oneself or another amounts to defeating or obstructing the course of justice
- b) Where an editor of a newspaper is charged with contempt of court on the ground of having published information in his newspaper concerning a pending case which tends to influence the outcome of the case. It is sufficient if the state proves culpability in the form of negligence
- c) If X absent-mindedly wears his pyjamas to court, he is not guilty of contempt of court in facie curiae because intent is lacking

- 1) Only statements (a) is correct
- 2) Only statements (b) is correct
- 3) Only statements (c) is correct
- 4) Only statements (a) and (b) are correct
- 5) **Only statements (b) and (c) are is correct**

Question 4

- a) Robbery can be committed even if there is no actual violence against Y
- b) The prejudice required for a conviction of fraud must be of a patrimonial nature
- c) For a conviction of the crime of malicious injury to property. It is required that the perpetrator's conduct be accompanied by an evil or malicious motive

- 1) **Only statements (a) is correct**
- 2) Only statements (b) is correct
- 3) Only statements (c) is correct
- 4) All of the statements are correct
- 5) None of the statements is correct

Question 5

- a) if X bribes Z to murder Y and Z in fact murders Y. X is known as an indirect perpetrator**
- b) The doctrine of common purpose states that where two or more people, having a common purpose to commit a crime, act together in order to achieve that purpose, the liability of one of them is imputed to the others**
- c) In Motaung 1990 (4) SA 485 (A) it was held that the “joiner-in” could be convicted of murder.**

- 1) Only statement (a) is correct**
- 2) Only statement (b) is correct**
- 3) Only statement (c) is correct**
- 4) Only statement (b) and (c) are correct**
- 5) None of the statement is correct**

Question 6

- a) According to the Sexual Offences and Related Matters Amendment Act 32 of 2007, X may be convicted as a perpetrator of the offence of compelled rape even though X did not perform an act of sexual penetration.**
- b) The crime of rape created in the Sexual Offences and Related Matters Amendment Act 32 of 2007 is a formally defined crime**
- c) Common-law abduction is committed only if the intention to marry or to have sexual intercourse with the minor exists at the time of the removal of the minor**

- 1) Only statement (a) is correct**
- 2) Only statement (b) is correct**
- 3) Only statement (c) is correct**

- 4) Only statement (a) and (c) are correct
- 5) Only statement (b) and (c) are correct

Question 7

- a) X cleans his revolver but does not know that there is a bullet in one of the chambers, Thinking that there are no bullets in the revolver, he points the gun at Y and pulls the trigger. The gun goes off and Y is killed by the gunshot. X will be convicted of murder because he was negligent
 - b) X may only be convicted of assault with the intent to grievous bodily harm if the victim had in fact been seriously injured
 - c) It is a crime to unlawfully and intentionally point an unloaded firearm at a person without good reason to do so.
- 1) All the statements are correct
 - 2) None of the statements is correct
 - 3) Only statement (c) is correct
 - 4) Only statement (a) and (b) are correct
 - 5) Only statement (b) and (c) are correct

Question 8

- a) X cleans his revolver but does not know that there is a bullet in one of the chambers, Thinking that there are no bullets in the revolver, he points the gun at Y and pulls the trigger. The gun goes off and Y is killed by the gunshot. X will be convicted of murder because he was negligent
 - b) X may only be convicted of assault with the intent to grievous bodily harm if the victim had in fact been seriously injured
 - c) It is a crime to unlawfully and intentionally point an unloaded firearm at a person without good reason to do so.
- 1) All the statements are correct

- 2) None of the statements is correct
- 3) Only statement (c) is correct
- 4) Only statement (a) and (b) are correct
- 5) **Only statement (b) and (c) are correct**

Question 9

- a) In Mei 1982 (1) SA 301 (A) the court held that the mere placing of stones in a road at a spot where a group of people assemble, does amount to violence, and therefore does constitute public violence
 - b) For statutory perjury at least one of the two statements must be made in the course of a legal proceeding
 - c) The crime of common-law perjury is only committed if the false declaration is made in the course of a legal proceeding
- 1) Only statement (a) is correct
 - 2) Only statement (b) is correct
 - 3) **Only statement (c) is correct**
 - 4) Only statement (a) and (b) is correct
 - 5) Only statements (a) and (c) are correct

Question 10

- a) An accomplice is a person who unlawfully and intentionally furthers the commission of an offence
 - b) An accessory after is not a participant to a crime because his/her conduct does not further the commission of the crime.
 - c) A mere spectator to a deed of murder, who falls to report the murder to the police, may be convicted as an accomplice to the murder.
- 1) Only statement (a) is correct
 - 2) **Only statements (a) and (b) are correct**
 - 3) Only statements (c) is correct
 - 4) Only statements (a) and (c) are correct

5) All the statements are correct

SECTION B

Question 1

- a) Z and Y are on honeymoon in South Africa In the course of a severe quarrel between Z and Y, Y threatens to reveal that Z had committed fraud Z decides that the only way in which he can assure Y's silence, is to murder her He drives Y to a deserted beach with the intention of shooting and killing her On the way to the beach, the car is hijacked by X1 and X2 X1 shoots Y in the head while X2, who also has a gun in his hand, is standing next to X1, encouraging him to kill Y Z jumps out of his car with his pistol in his hand. X1 and X2 sees the pistol and the two of them run away together Z sees that Y is still alive, recognises an opportunity, and fires a shot at Y which hits her in the leg Y dies, but according to the post-mortem examination the shot fired by Z did not hasten Y's death. Discuss Z's possible criminal liability in respect of Y (10)

In Williams it was accepted that a person can be an accomplice to murder, but this aspect of the judgment has been criticised by *Snyman* as follows:

- An accomplice to murder would have to intentionally further somebody else's commission of crime without own conduct qualifying as co-cause of the death, otherwise he will be a co-perpetrator as his conduct falls within definition of murder.
- Is it possible to further a victims' death without simultaneously causing it? No
- X's act was a co-cause of Y's death, thus he's a co-perpetrator, not an accomplice. Court itself admitted there was causal connection between "accomplice's" act and the murder.
- If a person may indeed be convicted as an accomplice to murder, one would expect a court to do so where a person furthered death, but no causal connection could be proved between the act and the death (*Safatsa*). The judgment effectively excluded the possibility of being

convicted as an accomplice to murder if it is proved that X was a party to a common purpose to kill and death resulted from combined conduct of the group as all persons acting with the group to achieve the common purpose were all convicted as co-perpetrator: no accomplices.

Thus it is impossible to be accomplice to murder as:

- Y's death cannot be "furthered" without "causally furthering" it; and
- If a difference existed between "furthering the death causally" and "furthering the death without causing it" it would be slight and artificial as to lead to difficulties in application.

The "joiner-in" is a person -

- whose attack on Y did not hasten Y's death;
- whose blow was administered at a time when Y was still alive;
- who did not act with a common purpose together with the other persons who also inflicted wounds on Y.

Thus, here, the person comes onto the scene AFTER the mortal wound has been inflicted on Y, but while Y is still alive and the wound inflicted on Y does NOT hasten his death PLUS this "joiner-in" has NO prior agreement with the persons who inflicted the mortal wound on Y. (*Motaung*)

In this case however, it was the intention of Z to murder Y and would he be liable for murder had he not been interrupted by these unforeseen circumstances.

Because he did join in, he will be only be convicted of attempted murder in this case.

b) Discuss the possible criminal liability of X2 in respect of Y in view of the fact that X2 did not himself fire the shot that caused Y's death. (5)

i) Doctrine of common purpose:

If two or more people, having a common purpose to commit a crime, act together in order to achieve that purpose, the acts of each of them in the execution of such a purpose are imputed to the others. Crucial requirement: If different accused had same purpose, acts of one is imputed on all who actively associated themselves with

achievement of such purpose, even though one can't construe a causal connection between such a party's act and the result.

Culpability isn't imputed and the other parties' liability is based upon his own culpability. If X throws a stone at Y, which misses, and Z also throws a stone, which struck Y on the head, the act of Z is imputed to X, who had a common purpose with Z to kill Y (*Malinga*).

ii) Proof of existence of common purpose:

Proved in the following ways: On basis of an express or implied prior agreement to commit an offence, which is difficult to prove as people conspire in secret; or if it cannot be proved,

An active association and participation in a common criminal design (*Thebus*).

Question 2

- a) **There are a number of different ways in which the crime of assault can be committed. Briefly name and discuss the different ways in which this crime can be committed. Your answer must cover all the different subdivisions of the act of assault (10)**

Definition: A person commits assault if he/she unlawfully and intentionally

- Applies force, directly or indirectly, to the person of another, or
- Inspires a belief in another person that force is immediately to be applied to her.

Ways in which the crime can be committed:

First it may consist in the application of force, Secondly it may consist in inspiring fear in Y, and more particularly a belief in Y, that a force is immediately to be applied to him. This is subdivided into direct and indirect application of force.

Inspiring fear of immediate force

This is an unusual way of committing of the crime – it departs from the lay persons' conception of what constitutes assault. To hold someone liable for assault in this form the following rules must apply:

- The threat must be one of violence to the person of Y. thus a threat by X to damage Y's property is not sufficient.
- The threat must be one of immediate violence. Thus a threat by X to cause Y some physical harm in the future would not be sufficient.
- The threat must be one of unlawful violence. If X is entitled by law to threaten Y with violence should Y not behave in a certain manner (such as to leave X's house), she does not commit assault. Thus X may always threaten Y to use force to defend herself or her property.
- Y (the complainant) must subjectively believe that X intends to carry out her threat and that she is able to do so. The essence of this type of assault is the intentional inculcation of fear into Y. If Y does not in fact fear the threat, no assault is committed.

Intention:

The intention may take form of either direct or indirect intention or *dolus eventualis*. An example of an assault in which X had intention in the form of *dolus eventualis* is the following: X throws a stone at birds. There are many children about. She foresees the possibility of something going wrong and reconciles with this fact and throws the stone and misses the bird, hitting a child.

In cases of assault which take place by means of the inspiring of fear (as opposed to the application of fear) X must know that her conduct will inspire fear in Y. this mean that X must believe that her threats will inspire fear in Y.

According to the ordinary principles relating to intention, X's intention must incorporate knowledge of unlawfulness. This mean that X must know that her conduct is not covered by a general ground of justification. Thus if X believes that she is entitled to act in private defence because she fears an imminent unlawful attack by Y upon herself, whereas she is in fact not entitled to private defence because Y does not intend to attack her, she lacks the necessary intention to assault.

According to Chretien 1981 (1) SA 1097 (A), intoxication may lead to X's lacking the intention to assault, in which case X must not be found guilty.

It seems doubtful whether our courts would be prepared to recognise provocation as a ground for excluding the intention requirement for ordinary assault. (They do recognise that provocation may exclude the "special intention" requirement for the qualified assaults, such as assault with intent to do grievous bodily harm.)

b) Merely state, without any discussion, the legal interest protected by each of the following crimes (4)

i) public violence

- Public peace and order

ii) criminal defamation

- Reputation of a person

iii) kidnapping

- Freedom of movement of a person.

iv) abduction

- Rights of a parent to consent to marriage of their minor children as well as to exercise control over where they stay.

Question 3

"The liability of an accessory after the fact, like that of an accomplice, is accessory in character " Briefly explain, with reference to case law where necessary, the meaning of the accessory character of the liability of an accessory after the fact (6)

A person is an accessory after the fact to the commission of a crime if, after the commission of the crime, she unlawfully and intentionally engages in conduct intended to enable the perpetrator or accomplice to the crime to evade liability for her crime, or to facilitate such a person's evasion of liability.

1) Liability

- Act or omission

Person must engage in conduct (act/omission) whereby he assists either perpetrator or accomplice to evade liability. Mere approval of the crime is not enough. It is possible for a person to be an accessory after the fact on the ground of an omission when there is a legal duty upon such a person to act positively.

- After the commission of the crime

The act/omission must take place after commission of the actual crime. If it takes place at a time when the crime is still in the process of being committed, he may qualify as a coperpetrator or accomplice. Agreement prior to the commission of the crime to render assistance may render him a perpetrator, if his conduct, culpability and personal qualities accord with the definition of the crime or he may be an accomplice (Maserow).

- Enabling perpetrator or accomplice to evade liability

The act must assist perpetrator or accomplice to evade liability for his crime or to facilitate such a person's evasion of liability. Success is not required.

- Unlawfulness

The act must be unlawful and there must be no justification for it.

- Intention

Assistance must be rendered intentionally and knowing that the person being helped has committed the crime. He must have the intention of assisting perpetrator (or accomplice) to evade liability or to facilitate the evasion of liability (Morgan).

- Accessory character of liability

Liability of an accessory after the fact is known as "accessory liability". Only possible if somebody else has committed the crime as perpetrator - one can't be an accessory after the fact to a crime committed by oneself. An exception to this general rule is to be found in Gani, which was confirmed in Jonathan: It couldn't be determined with certainty which of the accused committed the murder, but it was proved that all disposed of the body and thus all were convicted as accessories after the fact as a result. Even though

some were definitely guilty of murder, they were accessories after the fact to their own crimes as none could be proved guilty of committing the murder, but only of disposing the body.

2) Punishment

- Section 257 of the Criminal Procedure Act (“CPA”) stipulates that punishment imposed may not exceed that of the perpetrator's and, as the accessory after the fact didn't participate in the crime, the sentence is usually more lenient than that of the perpetrator.

3) Reason for existence questionable

- Being an accessory of the fact completely overlaps with the crime known as defeating or obstructing the course of justice and is, therefore, deemed unnecessary

OR

Define the crime of malicious injury to property and housebreaking malicious injury to property:

Malicious injury to property consists in unlawful and intentionally

- Damaging property belonging to another person or
- Damaging one's own insured property with the intention of claiming the value of the property from the insurer.

Housebreaking with intent to commit a crime consists in unlawfully and intentionally breaking into and entering a building or structure, with the intention of committing some crime in it. Intention

Two components:

- X must have the intention of unlawfully breaking into and entering the house or structure.
- X must also have the intention of committing some other crime inside, such as robbery for example.

Housebreaking without such an intention may, depending on the circumstances, be punishable as malicious injury to property.

All that is required for an act to amount to a breaking is the removal or displacement of an obstacle which bars entry to the building and which forms part of the building itself.

The following acts do not amount to a “breaking in”:

- walking through an open door into a building
- climbing through an open window into a building
- stretching one’s arm through an open hole in wall of a building

The most obvious act which qualifies as breaking in is physically breaking a door, window, wall or roof. The following also qualifies as breaking:

- merely pushing open a closed (even though not locked) door or window
- merely pushing open a partially closed door or window

It is not a requirement for liability for this crime that actual damage be inflicted to the building or structure.

SECTION A

Multiple Choice

Question 1

- a) if X bribes Z to murder Y and Z in fact murders Y. X is known as an indirect perpetrator
- b) The doctrine of common purpose states that where two or more people, having a common purpose to commit a crime, act together in order to achieve that purpose, the liability of one of them is imputed to the others
- c) In *Motaung* 1990 (4) SA 485 (A) it was held that the “joiner-in” could be convicted of murder.

- 1) **Only statement (a) is correct**
- 2) Only statement (b) is correct
- 3) Only statement (c) is correct
- 4) Only statement (b) and (c) are correct
- 5) None of the statement is correct

Question 2

- a) An accomplice is a person who unlawfully and intentionally furthers the commission of an offence
- b) An accessory after is not a participant to a crime because his/her conduct does not further the commission of the crime.
- c) A mere spectator to a deed of murder, who falls to report the murder to the police, may be convicted as an accomplice to the murder.

- 1) Only statement (a) is correct
- 2) **Only statements (a) and (b) are correct**
- 3) Only statements (c) is correct
- 4) Only statements (a) and (c) are correct
- 5) All the statements are correct

Question 3

- a) In W 1966 (1) SA 1 (A) the court held that a person who has sexual intercourse with a dead woman, while believing she is alive and had not consented, may be convicted of attempted rape.
- b) Conspiracy is a statutory crime in South Africa law.
- c) If the incitement does not come to Y's knowledge. X cannot be convicted of incitement but may be found guilty of attempted incitement.

- 1) Only statement (a) is correct
- 2) Only statement (b) is correct
- 3) Only statement (c) is correct
- 4) All the statements are correct
- 5) **Only statements (a) and (b) are correct**

Question 4

- a) In Mei 1982 (1) SA 301 (A) the court held that the mere placing of stones in a road at a spot where a group of people assemble, does amount to violence, and therefore does constitute public violence

b) For statutory perjury at least one of the two statements must be made in the course of a legal proceeding

c) The crime of common-law perjury is only committed if the false declaration is made in the course of a legal proceeding

- 1) Only statement (a) is correct
- 2) Only statement (b) is correct
- 3) **Only statement (c) is correct**
- 4) Only statement (a) and (b) is correct
- 5) Only statements (a) and (c) are correct

Question 5

a) The mere refusal to co-operate with the police in obtaining evidence against oneself or another amounts to defeating or obstructing the course of justice

b) Where an editor of a newspaper is charged with contempt of court on the ground of having published information in his newspaper concerning a pending case which tends to influence the outcome of the case, it is sufficient if the state proves culpability in the form of negligence

c) If X absent-mindedly wears his pyjamas to court, he is not guilty contempt of court in facie curiae because intent is lacking.

- 1) Only statement (a) is correct
- 2) Only statement (b) is correct
- 3) Only statement (c) is correct
- 4) **Only statement (a) and (b) is correct**
- 5) Only statement (b) and (c) are correct.

Question 6

- a) The mere refusal to co-operate with the police in obtaining evidence against oneself or another amounts to defeating or obstructing the course of justice
- b) Where an editor of a newspaper is charged with contempt of court on the ground of having published information in his newspaper concerning a pending case which tends to influence the outcome of the case. It is sufficient if the state proves culpability in the form of negligence
- c) If X absent-mindedly wears his pyjamas to court, he is not guilty of contempt of court in facie curiae because intent is lacking
- 1) Only statements (a) is correct
- 2) Only statements (b) is correct
- 3) Only statements (c) is correct
- 4) Only statements (a) and (b) are correct
- 5) **Only statements (b) and (c) are is correct**

Question 7

- a) According to the Sexual Offences and Related Matters Amendment Act 32 of 2007, X may be convicted as a perpetrator of the offence of compelled rape even though X did not perform an act of sexual penetration.
- b) The crime of rape created in the Sexual Offences and Related Matters Amendment Act 32 of 2007 is a formally defined crime
- c) Common-law abduction is committed only if the intention to marry or to have sexual intercourse with the minor exists at the time of the removal of the minor
- 1) Only statement (a) is correct
- 2) Only statement (b) is correct
- 3) Only statement (c) is correct

4) **Only statement (a) and (c) are correct**

5) Only statement (b) and (c) are correct

Question 8

a) X cleans his revolver but does not know that there is a bullet in one of the chambers, Thinking that there are no bullets in the revolver, he points the gun at Y and pulls the trigger. The gun goes off and Y is killed by the gunshot. X will be convicted of murder because he was negligent

b) X may only be convicted of assault with the intent to grievous bodily harm if the victim had in fact been seriously injured

c) It is a crime to unlawfully and intentionally point an unloaded firearm at a person without good reason to do so.

1) All the statements are correct

2) None of the statements is correct

3) **Only statement (c) is correct**

4) Only statement (a) and (b) are correct

5) Only statement (b) and (c) are correct

Question 9

a) The crime of *crimen iniuria* protects a person's physical integrity

b) It is not possible for a parent to be convicted of kidnapping of his/her own child

c) A person can never commit theft in respect of his/her own thing

1) **Only statement (a) is correct**

2) Only statement (b) is correct

- 3) Only statement (c) is correct
- 4) Only statement (a) and (b) are correct
- 5) Only statement (b) and (c) are correct

Question 10

- a) Robbery can be committed even if there is no actual violence against Y
- b) The prejudice required for a conviction of fraud must be of a patrimonial nature
- c) For a conviction of the crime of malicious injury to property. It is required that the perpetrator's conduct be accompanied by an evil or malicious motive

- 1) **Only statements (a) is correct**
- 2) Only statements (b) is correct
- 3) Only statements (c) is correct
- 4) All of the statements are correct
- 5) None of the statements is correct

SECTION B

Question 1

a) Z and Y are on honeymoon in South Africa. In the course of a severe quarrel between Z and Y, Y threatens to reveal that Z had committed fraud. Z decides that the only way in which he can assure Y's silence, is to murder her. He drives Y to a deserted beach with the intention of shooting and killing her. On the way to the beach, the car is hijacked by X1 and X2, encouraging him to kill Y. Z jumps out of his car with his pistol in his hand. X1 and X2 see the pistol and two of the run-away together. Z sees that Y is still alive, recognises an opportunity, and fires a shot at Y which hits her in the leg. Y dies, but according to the post-mortem examination the shot fired by Z did not hasten Y's death

i) Discuss Z's possible criminal liability in respect of Y (5)

In Williams it was accepted that a person can be an accomplice to murder, but this aspect of the judgment has been criticised by Snyman as follows:

- An accomplice to murder would have to intentionally further somebody else's commission of crime without own conduct qualifying as co-cause of the death, otherwise he will be a co-perpetrator as his conduct falls within definition of murder.
- Is it possible to further a victim's death without simultaneously causing it? No
- X's act was a co-cause of Y's death, thus he's a co-perpetrator, not an accomplice. Court itself admitted there was causal connection between "accomplice's" act and the murder.
- If a person may indeed be convicted as an accomplice to murder, one would expect a court to do so where a person furthered death, but no causal connection could be proved between the act and the death (Safatsa). The judgment effectively excluded the possibility of being convicted as an accomplice to murder if it is proved that X was a party to a common purpose to kill and death resulted from combined conduct of the group as all persons

acting with the group to achieve the common purpose were all convicted as co-perpetrator: no accomplices.

Thus it is impossible to be accomplice to murder as:

- Y's death cannot be "furthered" without "causally furthering" it; and
- If a difference existed between "furthering the death causally" and "furthering the death without causing it" it would be slight and artificial as to lead to difficulties in application.

The "joiner-in" is a person -

- whose attack on Y did not hasten Y's death;
- whose blow was administered at a time when Y was still alive;
- who did not act with a common purpose together with the other persons who also inflicted wounds on Y.

Thus, here, the person comes onto the scene AFTER the mortal wound has been inflicted on Y, but while Y is still alive and the wound inflicted on Y does NOT hasten his death PLUS this "joiner-in" has NO prior agreement with the persons who inflicted the mortal wound on Y. (Motaung)

In this case however, it was the intention of Z to murder Y and would he be liable for murder had he not been interrupted by these unforeseen circumstances.

Because he did join in, he will be only be convicted of attempted murder in this case.

ii) **Discuss the possible criminal liability of X2 in respect of Y in view of the fact that X2 did not himself fire the shot that caused Y's death. (5)**

Doctrine of common purpose:

- If two or more people, having a common purpose to commit a crime, act together in order to achieve that purpose, the acts of each of them in the execution of such a purpose are imputed to the others. Crucial requirement: If different accused had same purpose, acts of one is imputed on all who actively associated themselves with achievement of such purpose, even though one

can't construe a causal connection between such a party's act and the result. Culpability isn't imputed and the other parties' liability is based upon his own culpability. If X throws a stone at Y, which misses, and Z also throws a stone, which struck Y on the head, the act of Z is imputed to X, who had a common purpose with Z to kill Y (Malinga).

Proof of existence of common purpose:

- Proved in the following ways: On basis of an express or implied prior agreement to commit an offence, which is difficult to prove as people conspire in secret; or if it cannot be proved,

An active association and participation in a common criminal design (Thebus).

b) Z possesses a quantity of mandrax tablets. She goes to her friend, X, and asks X whether she may leave the mandrax tablets in X's care while she (Z) goes overseas, because she is afraid that the police might find the tablets in her (Z's) house while she is overseas. X agrees. X and Z place the tablets in a box under the floorboards of X's house. While Z is overseas, the police search X's house and find the mandrax tablets. X is charged with having possessed the tablets. Her defence is that she never intended to use the tablets herself, but only allowed Z to store the tablets temporarily in her (X's) house. Can X be convicted of having possessed the tablets? (7)

X can be convicted of having possessed the tablets. The fact that she did not intend to use the tablets herself, but only looked after them temporarily on Z's behalf, does not afford her a defence. The term "possession" as used in the Act is not confined to *possessio civilis* (possession as an owner), but includes possession *naturalis*. The latter type of possession refers to possession or the exercising of control over the article on behalf of somebody else.

OR

There are a number of different ways in which the crime of assault can be committed. Briefly name and discuss the different ways in which this crime

can be committed. Your answer must cover all the different subdivisions of the act of assault (7)

Definition: A person commits assault if he/she unlawfully and intentionally

- Applies force, directly or indirectly, to the person of another, or
- Inspires a belief in another person that force is immediately to be applied to her.

Ways in which the crime can be committed:

First it may consist in the application of force, Secondly it may consist in inspiring fear in Y, and more particularly a belief in Y, that a force is immediately to be applied to him. This is subdivided into direct and indirect application of force.

Inspiring fear of immediate force

This is an unusual way of committing of the crime – it departs from the lay persons' conception of what constitutes assault. To hold someone liable for assault in this form the following rules must apply:

- The threat must be one of violence to the person of Y. thus a threat by X to damage Y's property is not sufficient.
- The threat must be one of immediate violence. Thus a threat by X to cause Y some physical harm in the future would not be sufficient.
- The threat must be one of unlawful violence. If X is entitled by law to threaten Y with violence should Y not behave in a certain manner (such as to leave X's house), she does not commit assault. Thus X may always threaten Y to use force to defend herself or her property.
- Y (the complainant) must subjectively believe that X intends to carry out her threat and that she is able to do so. The essence of this type of assault is the intentional inculcation of fear into Y. If Y does not in fact fear the threat, no assault is committed.

Intention:

The intention may take form of either direct or indirect intention or *dolus eventualis*. An example of an assault in which X had intention in the form of *dolus eventualis* is the following: X throws a stone at birds. There are many children about. She foresees the possibility of something going wrong and reconciles with this fact and throws the stone and misses the bird, hitting a child.

In cases of assault which take place by means of the inspiring of fear (as opposed to the application of fear) X must know that her conduct will inspire fear in Y. this mean that X must believe that her threats will inspire fear in Y.

According to the ordinary principles relating to intention, X's intention must incorporate knowledge of unlawfulness. This mean that X must know that her conduct is not covered by a general ground of justification. Thus if X believes that she is entitled to act in private defence because she fears an imminent unlawful attack by Y upon herself, whereas she is in fact not entitled to private defence because Y does not intend to attack her, she lacks the necessary intention to assault.

According to Chretien 1981 (1) SA 1097 (A), intoxication may lead to X's lacking the intention to assault, in which case X must not be found guilty.

It seems doubtful whether our courts would be prepared to recognise provocation as a ground for excluding the intention requirement for ordinary assault. (They do recognise that provocation may exclude the "special intention" requirement for the qualified assaults, such as assault with intent to do grievous bodily harm.)

c) Merely sate without any discussion, the legal interest protect by each of the following crimes (3)

i) Public violence

Public peace and order

ii) Criminal defamation

Reputation of a person

iii) Kidnapping

Freedom of movement of a person.

Question 2

- a) **Discuss whether X may be convicted of attempted murder in the following instances. In your answer you must indicate which form of attempt is applicable and whether it is punishable**
- i) **X intends to murder her husband Y, She puts ant poison in his food, Y eats the food, becomes sick but survives.**
Completed attempt - X does everything to commit the crime, but for some reason the crime is not completed.
- ii) **X intends to murder her husband Y, She puts arsenic in his food Z, the domestic servant has seen what X was doing. She warns Y that his food contains poison. As a result of the warning he refrains from eating it**
Interrupted attempt - X's actions have reached stage when they are no-longer preparatory, but are acts of execution, when they are interrupted, so that the crime cannot be completed.
- iii) **X intends to murder her husband Y. She mixes bicarbonate of soda in his food. She is under the (incorrect) impression that bicarbonate of soda is a lethally poisonous substance, similar to caustic soda, Y eats the food and his health is not impaired as a result**
Attempt to commit the impossible - it is impossible for X to commit or complete the crime, either because the means he uses cannot bring about the desired result, X intending to murder Y
- iv) **X intends to murder Y, she puts arsenic in his food, Minutes before serving his meal, she abandons her evil plan and throws away the poisoned food (4 x 3 = 12)**
Voluntary withdrawal - X's actions have already reached the stage when they qualify as acts of execution, when X, of his own accord, abandons his criminal plan of action
- b) **As far as the punishment for murder is concerned, legislation was passed in 1997 providing for life imprisonment to be imposed by a**

court in certain circumstances upon an accused found guilty of murder. Name the instances in which a court is obliged to impose such imprisonment. (in your answer you need not also discuss the circumstances in which a court is not obliged to impose such imprisonment) (6)

In Dodo (CC) the unconstitutionality of section 51 was rejected and the courts are now bound to convict a person found guilty of murder to imprisonment for life, in the following circumstances:

- If the murder was planned or premeditated
- If Y, the person murdered, was a law enforcement officer
- If Y was given evidence in a trial for a serious offence (as described in the criminal procedure act)
- If X, the murderer, in the course of committing rape
- If X committed the murder in the course of committing a robbery with aggravating circumstances
- If the murder was committed by a group of persons acting in the execution of a common purpose

c) Merely state in one sentence of which crime or crimes(if any), X may be convicted in the following instances

i) X, a 30 year old schoolteacher, has sexual intercourse with on his students, a 15 year old boy with his consent.

X may be convicted of a contravention of section 14(3) of the Sexual Offences Act

ii) X, a 50 year old male, has sexual intercourse with his 25 year old daughter with her consent

Incest

iii) X, a 30 year old male, wants to have sexual intercourse with Y, a 20 year old female but knows that she will not give her consent. He puts three sleeping tablets in Y's alcoholic drink. Y falls asleep, X take her (Y) to his room and has sexual intercourse with her while she is asleep. He videotapes their sexual activities to late show his 17 year friend

Rape

- iv) **X, a 50 year old male, unlawfully and intentionally shows his naked body to a 13 year old girl**

Crimen iniuria

- v) **X, 50 year old female, tells Y, a 20 year old male, that he will not get a promotion unless he has sexual intercourse with her. Y complies but does not get the promotion.**

No crime committed. In this set of facts consent was obtained by fraud. This type of consent, in certain circumstance, deemed by law to be invalid. Fraud which vitiates (invalidates) consent is fraud in respect of the identity of the man (where the woman is led to believe that the man is her husband) or in respect of the nature of the act to which she “agrees” (when is persuaded that the act is not sexual intercourse, but some medical operation). Misrepresentation of any other circumstances does not affect the validity of consent. Consent is deemed to be valid where the woman is misled, not about the nature of the act of sexual intercourse, but about the results which will follow on such intercourse. In this question, X is not guilty of rape since the woman’s consent is deemed by the law to be valid consent.

Question 3

- a) **Y's girlfriend Z is 7 months pregnant. After visiting the doctor, Y and Z are about to get into their car, when a stranger X points a gun at them and instructs them to get into their car. After driving 2km, X instructs Y to pull over to the side of the road. X shoots Z in the stomach and shoots Y in the leg with the purpose of taking Y and Z's cell phones, wallets, watches and car. He takes their possessions and car and drives away. Both Y and Z survive but the unborn child is declared dead at the hospital. (5)**

In Mshumpa it was held that X cannot be charged with murder of an unborn child but only of attempted murder of Y, the mother. The court

refused to broaden the definition of murder to include the killing of an unborn child in the mother's womb.

X can also be held liable for

- attempted murder of Y
- Unlawful possession of a firearm and ammunition
- Aggravated assault
- Robbery

b) Discuss the intention requirement in the crime of housebreaking with intent to commit a crime (5)

Housebreaking with intent to commit a crime consists in unlawfully and intentionally breaking into and entering a building or structure, with the intention of committing some crime in it.

Two components:

- X must have the intention of unlawfully breaking into and entering the house or structure.
- X must also have the intention of committing some other crime inside, such as robbery for example.

Housebreaking without such an intention may, depending on the circumstances, be punishable as malicious injury to property.

All that is required for an act to amount to a breaking is the removal or displacement of an obstacle which bars entry to the building and which forms part of the building itself.

The following acts do not amount to a "breaking in":

- walking through an open door into a building
- climbing through an open window into a building