

**CRW2601**

( 498346) October/November 2013

**GENERAL PRINCIPLES OF CRIMINAL LAW**

Duration 2 Hours

100 Marks

**EXAMINERS :**

FIRST

DR N MOLLEMA

MR RD RAMOSA

SECOND

PROF C VAN DER BIJL

Closed book examination

This examination question paper remains the property of the University of South Africa and may not be removed from the examination venue.

**THIS PAPER CONSISTS OF SEVEN (7) PAGES PLUS INSTRUCTIONS FOR COMPLETION OF A MARK READING SHEET.**

**THE QUESTIONS IN THIS PAPER COUNT A HUNDRED (100) MARKS. THE PAPER CONSISTS OF TWO PARTS, MARKED A AND B. YOU MUST ANSWER BOTH PARTS A AND B. PART A CONSISTS OF TEN (10) MULTIPLE CHOICE QUESTIONS. EACH QUESTION COUNTS THREE (3) MARKS, WHICH MEANS THAT THE QUESTIONS IN PART A COUNT A TOTAL OF THIRTY (30) MARKS. IN PART B, THE ANSWERS TO THE QUESTIONS MUST BE WRITTEN IN THE EXAMINATION ANSWER BOOK ITSELF. THE QUESTIONS IN PART B COUNT SEVENTY (70) MARKS.**

**PART A (MULTIPLE CHOICE QUESTIONS)**

**IMPORTANT NOTICE. THE QUESTIONS IN THIS PART HAVE TO BE ANSWERED ON THE MARK READING SHEET, WHICH WILL BE ISSUED WITH YOUR EXAMINATION ANSWER BOOK. YOU HAVE TO READ THE INSTRUCTIONS IN CONNECTION WITH THE USE OF THE MARK READING SHEET CAREFULLY. FAILURE TO DO SO MAY MEAN THAT YOUR ANSWERS CANNOT BE MARKED BY THE COMPUTER.**

**Ten questions (marked 1 - 10) follow. Each question contains three statements (marked (a)-(c)). Some of the statements are correct and some are incorrect. You must decide which of these statements is/are correct. The three statements are followed by five allegations (marked (1)-(5)). Each of them alleges that a certain statement or combination of statements is correct. You must decide which allegation accurately reflects the conclusions to which you have come.**

**[TURN OVER]**

**Question 1**

- (a) The *ius certum* rule, which forms part of the principle of legality, implies that nobody ought to be convicted of a crime unless the kind of act performed by him/her had **already** been recognised by the law as a crime **at the time of its commission**
- (b) Before one can assume that a provision in an Act created a crime, it must be clear that the provision contains a criminal norm.
- (c) The *ius strictum* principle requires that where doubt exists concerning the interpretation of a criminal provision, the provision should be interpreted in favour of the accused.
- (1) Only statement (a) is correct  
(2) Only statement (c) is correct  
(3) Only statements (b) and (c) are correct  
(4) Only statement (b) is correct  
(5) None of these statements is correct.

**Question 2**

- (a) **Relative** force renders X's conduct involuntary
- (b) If X keeps a dangerous bullterrier dog in his unfenced yard in an urban area and the dog bites and kills a child in the street, X may be held liable for culpable homicide on the basis of an omission
- (c) X can succeed with a defence of impossibility even if he himself was responsible for causing the situation of impossibility.
- (1) Only statement (b) is correct  
(2) Only statement (c) is correct  
(3) All these statements are correct.  
(4) None of these statements is correct.  
(5) Only statements (b) and (c) are correct

**Question 3**

- (a) The maxim *nulla poena sine lege* implies that the principle of legality also applies to the imposition of punishment
- (b) The case of *Francis* 1994 (1) SACR 350 (C) addressed the application of the *ius acceptum* rule to the creation of a statutory crime
- (c) The *ius praeivium* rule was applied by the Constitutional Court in *Masiya v Director of Public Prosecutions* 2007 (2) SACR 435 (CC).
- (1) Only statements (a) and (b) are correct  
(2) Only statements (b) and (c) are correct.  
(3) Only statement (c) is correct.  
(4) Only statements (a) and (c) are correct.  
(5) All these statements are correct

**[TURN OVER]**

**Question 4**

- (a) In *Dhlamini* 1955 (1) SA 120 (T), the accused was not convicted of any crime because he successfully relied on the defence of insane automatism.
  - (b) In cases of sane automatism the onus is on the state to prove that the act was voluntary
  - (c) The defence of impossibility can be pleaded only in cases where the infringed legal provision placed a positive duty on X to act.
- (1) Only statements (a) and (b) are correct.
  - (2) Only statement (a) is correct
  - (3) Only statements (b) and (c) are correct.
  - (4) Only statements (a) and (c) are correct.
  - (5) All these statements are correct.

**Question 5**

- (a) An act is a *conditio sine qua non* for a situation if the act cannot be thought away without the situation disappearing at the same time.
  - (b) Possession of dagga is a materially-defined crime
  - (c) Consent is no defence in the case of euthanasia where X (a doctor) kills Y (a cancer patient who is experiencing excruciating pain) on the latter's request
- (1) Only statement (a) is correct
  - (2) Only statement (b) is correct
  - (3) Only statement (c) is correct
  - (4) Only statements (a) and (c) are correct.
  - (5) Only statements (b) and (c) are correct.

**Question 6**

- (a) The limits of the grounds of justification are determined by the legal convictions of society
  - (b) One of the distinctions between private defence and necessity relates to the object at which the act of defence is directed.
  - (c) Parents may never chastise their children by means of corporal punishment
- (1) All these statements are correct.
  - (2) Only statement (c) is correct
  - (3) Only statements (a) and (b) are correct.
  - (4) Only statements (b) and (c) are correct.
  - (5) Only statements (a) and (c) are correct.

**Question 7**

- (a) Although a child between the ages of ten and fourteen years is presumed to lack criminal capacity, the state is free to rebut this presumption.
  - (b) Intention in the form of *dolus eventualis* is present if the causing of the forbidden result is not X's main aim, but he subjectively foresees the possibility that his conduct may cause the forbidden result and reconciles himself with this possibility
  - (c) A mistake need not be reasonable to exclude intention
- (1) Only statements (a) and (b) are correct
  - (2) Only statements (b) and (c) are correct.
  - (3) Only statement (c) is correct.
  - (4) Only statements (a) and (c) are correct.
  - (5) All these statements are correct.

**Question 8**

- (a) A mistake relating to the chain of causation can only occur in the context of materially-defined crimes.
  - (b) In order to have intention, X must have knowledge of all the elements of the crime including the requirement of culpability itself.
  - (c) The fact that X happens to have knowledge, which is superior to the knowledge of the reasonable person, is not taken into account by the court when determining his negligence
- (1) All these statements are correct.
  - (2) Only statements (a) and (b) are correct.
  - (3) Only statements (b) and (c) are correct
  - (4) Only statements (a) and (c) are correct.
  - (5) Only statement (a) is correct.

**Question 9**

- (a) Someone who commits an error of judgment is necessarily negligent, since the fictitious reasonable person is not subject to the limitations of human nature.
  - (b) Involuntary intoxication is a complete defence.
  - (c) The *actio libera in causa* is a form of involuntary intoxication which serves as a complete defence
- (1) Only statement (a) is correct.
  - (2) Only statement (b) is correct.
  - (3) Only statement (c) is correct.
  - (4) None of these statements is correct
  - (5) Only statements (a) and (b) are correct.

**Question 10**

- (a) The *versari* doctrine holds that if a person engages in unlawful conduct, he is criminally liable for all the consequences flowing from such conduct, irrespective of whether there was in fact any culpability on his part in respect of such consequences
- (b) If X is charged with common assault, the evidence of provocation may result in X being completely acquitted
- (c) In South Africa corporate bodies may be convicted of crimes
- (1) Only statements (a) and (b) are correct  
 (2) Only statements (b) and (c) are correct.  
 (3) Only statement (c) is correct.  
 (4) Only statements (a) and (c) are correct.  
 (5) None of these statements is correct

**SUB-TOTAL [30]****PART B**

**THIS PART CONSISTS OF THREE (3) QUESTIONS. EACH QUESTION IS SUBDIVIDED INTO A NUMBER OF SUB-QUESTIONS. YOU MUST ANSWER ALL THREE (3) QUESTIONS. NOTE THAT YOU HAVE A CHOICE IN CERTAIN OF THE SUB-QUESTIONS. SUBSTANTIATE YOUR ANSWERS AND REFER TO DECIDED CASES WHERE NECESSARY. IN DECIDING UPON THE LENGTH OF YOUR ANSWERS YOU SHOULD BE GUIDED BY THE MARKS ALLOCATED TO EACH QUESTION.**

**Question 1**

- (a) In *Zinn* 1969 (2) SA 537 (A) the court emphasised that three (3) factors must be taken into account when imposing sentence.
- (i) Name the three factors. (3)  
 (ii) Explain what each of these factors means. In your answer, also identify the theory (or theories) of punishment that is (are) applicable to each factor. (5)
- (b) Name the four requirements for criminal liability in the sequence in which they should be investigated. (5)
- (c) The concept of a **voluntary act** should not be confused with the concept of a **willed act**. Define, in one sentence, what each concept means and identify the requirement of criminal liability relevant to each (4)
- (d) **NOTE THE CHOICE THAT YOU HAVE IN THIS QUESTION**
- In deciding the question of **legal causation**, our courts are guided by **policy considerations**. Discuss this approach in **TWO** of the following cases:
- (i) *Daniels* 1983 (3) SA 275 (A) (4)  
 (ii) *Mokgethi* 1990 (1) SA 32 (A) (4)  
 (iii) *Tembani* 2007 (1) SACR 355 (SCA) (4)

**[25]****[TURN OVER]**

**Question 2**

- (a) **Fill in the missing words/phrases. Write in your answer script the number of the question followed by the words/phrases:**
- (i) An act which complies with the definitional elements of an offence is not necessarily  
.. . (1)
- (ii) In *Goliath* 1972 (3) SA 1 (A) it was held that ..... could constitute a complete  
defence to a charge of murder. (1)
- (iii) In order to exclude intention, a mistake must be ..... (1)
- (iv) In judging *aberratio ictus* situations, the Appeal Court in *Mtshiza* 1970 (3) SA 747 (A)  
favoured the ..... approach over the..... approach. (2)
- (v) In the case of. **(just the name)** it was held that the cliché “ignorance of the law is  
no excuse” has no foundation in our law. (1)
- (b) Discuss the principle of contemporaneity, referring to relevant case law (5)
- (c) X is driving home after being told that he did not get the promotion he thought he was entitled  
to. There are many road works along the way which cause delays. After driving for 2 hours on  
the highway, the lane in which X is driving suddenly ends Y does not want to allow X into the  
next available lane X takes his firearm which he always carries with him, fires a shot at Y and  
kills him X is charged with murder. Discuss whether X’s lawyer will succeed with any of the  
following defences on a charge of murder, and on the lesser charge of culpable homicide:
- (i) that X’s criminal capacity was excluded as a result of tension, stress, disappointment  
and anger, (5)
- (ii) that X had a few drinks before he left the office and was therefore intoxicated to the  
extent that he had criminal capacity but did not have intention (4)
- (iii) Discuss whether X can be convicted of contravening section 1 of Act 1 of 1988 if the  
court finds that he was intoxicated to the extent that he had criminal capacity but did  
not have intention (5)
- [25]**

**Question 3**

- (a) X, a strongly built male, is in a heated argument with Y, a young female. Y reacts by grabbing  
a long, sharp knife and attacking X with it. X grabs Y’s arm, dispossesses her of the knife and  
hits her with his fists three times on the head. Y is severely injured and dies later in hospital  
from brain damage Discuss X’s liability in each of the set of facts that follow You must  
evaluate each set of facts separately.
- (i) On a charge of murder, X relies on private defence. Consider briefly whether X can  
succeed with this defence [You need not give a complete definition, nor do you need to  
discuss all the requirements. Confine your answer to applying the most relevant  
requirement(s) of private defence to the facts ] (4)
- (ii) The court finds that X has exceeded the bounds of private defence. X argues that he did  
not kill Y **intentionally** because he **subjectively believed** that he was acting in private  
defence. Consider, with reference to case law, whether X can succeed with such a  
defence. (6)

**[TURN OVER]**

**(b) NOTE THE CHOICE THAT YOU HAVE IN THIS QUESTION**

Name the rules to be applied in determining whether the legislature intended culpability to be an ingredient of a statutory provision.

**OR**

Define the test for criminal capacity in terms of section 78(1) of the Criminal Procedure Act 51 of 1977 (6)

- (c) Can the concepts of intention and negligence overlap, and does proof of the former exclude the possibility of a finding on the latter? (4)**  
**[20]**

**SUB-TOTAL: [70]**

**TOTAL: [100]**

PART 1 (GENERAL/ALGEMEEN) DEEL 1

STUDY UNIT e.g. PSY100-X  
STUDIE EENHEID by PSY100-X

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INITIALS AND SURNAME  
VOORLETTERS EN VAN

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DATE OF EXAMINATION  
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EXAMINATION CENTRE (E.G. PRETORIA)  
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For use by examination invigilator  
Vir gebruik deur eksamenopsiener

◆

IMPORTANT

- USE ONLY AN HB PENCIL TO COMPLETE THIS SHEET
- MARK LIKE THIS ➡
- CHECK THAT YOUR INITIALS AND SURNAME HAS BEEN FILLED IN CORRECTLY
- ENTER YOUR STUDENT NUMBER FROM LEFT TO RIGHT
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- CHECK THAT ONLY ONE ANSWER PER QUESTION HAS BEEN MARKED
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BELANGRIK

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PART 2 (ANSWERS/ANTWOORDE) DEEL 2

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133	(1)	(2)	(3)	(4)	(5)
134	(1)	(2)	(3)	(4)	(5)
135	(1)	(2)	(3)	(4)	(5)
136	(1)	(2)	(3)	(4)	(5)
137	(1)	(2)	(3)	(4)	(5)
138	(1)	(2)	(3)	(4)	(5)
139	(1)	(2)	(3)	(4)	(5)
140	(1)	(2)	(3)	(4)	(5)

Specimen only