

**CRW2601 EXAM PACK**

**QUESTION PAPERS**

**AND**

**SOLUTIONS**

## Criminal law

### CRW 2601

#### Question 1

**Answer the following question by choosing the correct answer**

- a) According to the absolute theory, punishment is an end in itself, while according to the relative theories, punishment is a means to a secondary end.
- b) The effectiveness of the theory of general deterrence depends only on the severity of the punishment that is imposed on an offender.
- c) The “triad in Zinn” (the crime, the criminal and interests of society) enables a court to consider all the theories of punishment when imposing sentence. **(3)**

(1) All the statements are correct.

(2) Only statement (a) is correct.

**(3) Only statements (a) and (c) are correct.**

(4) Only statement (c) is correct.

(5) Only statement (b) is correct.

#### Question 2

- (a) The correct sequence of investigation into the elements of criminal liability is conduct, compliance with definitional elements, culpability and unlawfulness.
- (b) Crimes are directed against public interests, while delicts are directed against private interests.
- (c) A statutory provision will best comply with the principle of legality if it contains a criminal norm only. **(3)**

**(1) Only statement (b) is correct.**

(2) Only statements (b) and (c) are correct.

(3) None of the statements is correct.

(4) Only statement (a) is correct.

(5) Only statement (c) is correct

### **Question 3**

(a) In concluding that the extended definition of the crime of rape should not apply retrospectively to the accused, the Constitutional Court in *Masiya v DPP* 2007 (2) SACR 435 (CC) respected the *ius praevium* rule.

(b) The rules embodying the principle of legality (*ius acceptum, ius praevium, ius certum* and *ius strictum*) are applicable to both the crime and the punishment to be imposed.

(c) The Constitution contains a provision which expressly sets out the *ius acceptum* rule. **(3)**

(1) All the statements are correct.

**(2) Only statements (a) and (b) are correct.**

(3) Only statement (a) is correct.

(4) Only statements (b) and (c) are correct.

(5) Only statement (b) is correct.

### **Question 4**

(a) Conduct is voluntary if it is willed.

(b) Relative force excludes X's ability to subject his bodily movements to his will or intellect.

(c) Sane automatism refers to cases in which X relies on the defence of mental illness. **(3)**

(1) Only statement (b) is correct.

(2) Only statements (b) and (c) are correct.

(3) Only statements (a) and (c) are correct.

**(4) None of the statements is correct.**

(5) Only statement (a) is correct

### **Question 5**

(a) Antecedent liability is a qualification of the rule that bodily movements performed in a condition of automatism do not result in criminal liability.

(b) There is a legal duty upon X to act positively if the legal convictions of the community require him to do so.

(c) In *Leeuw* 1975 (1) SA 439 (O) it was held that mere inconvenience in complying with a legal duty did not constitute impossibility. **(3)**

(1) Only statement (b) is correct.

(2) Only statements (b) and (c) are correct.

(3) Only statements (a) and (b) are correct.

**(4) All the statements are correct.**

(5) Only statement (c) is correct.

## **Question 6**

(a) In formally defined crimes, the definitional elements proscribe a certain type of conduct irrespective of what the result of the conduct is.

(b) An act is a *conditio sine qua non* for a situation if the act can be thought away without the situation disappearing at the same time.

(c) In Tembani 2007 (1) SACR 355 (SCA), the court held that negligent medical treatment would not be regarded as a *novus actus interveniens* in a situation where X deliberately inflicted an intrinsically fatal wound. **(3)**

(1) Only statement (a) is correct.

(2) Only statement (b) is correct.

(3) All the statements are correct.

(4) Only statements (b) and (c) are correct.

**(5) Only statements (a) and (c) are correct.**

## **Question 7**

(a) Mental illness is a ground of justification which excludes the unlawfulness of conduct.

(b) X can rely on private defence if he defends himself against an attack by an animal.

(c) There is an irrebuttable presumption that a child who is below the age of seven lacks criminal capacity. **(3)**

(1) None of the statements is correct.

(2) Only statements (b) and (c) are correct.

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

(4) Only statements (a) and (b) are correct.

(5) Only statement (a) is correct.

### **Question 8**

(a) The test for negligence is described as objective because it is not concerned with what X actually thought or knew or foresaw, but only with what a reasonable person in the same circumstances would have foreseen.

(b) The mere fact that somebody has committed an error of judgment does not necessarily mean that he was negligent.

(c) If X is charged with culpable homicide, but the evidence brings to light that X acted intentionally, he may still be convicted of culpable homicide provided his conduct did not measure up to the standard of the reasonable person. **(3)**

**(1) All the statements are correct.**

(2) Only statements (a) and (c) are correct.

(3) Only statement (a) is correct.

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

(5) Only statement (b) is correct.

### **Question 9**

(a) The principle of contemporaneity means that there must have been culpability on the part of

X at the very moment when the unlawful act was committed.

(b) Mistake relating to the chain of causation may exclude intention provided that the actual chain of events differed materially from that envisaged by the perpetrator. **(3)**

(c) A good motive always excludes intention.

(1) All the statements are correct.

**(2) Only statements (a) and (b) are correct.**

(3) Only statement (a) is correct.

(4) Only statement (b) is correct.

(5) Only statements (a) and (c) are correct.

### **Question 10**

(a) Provocation can never serve as a ground for the mitigation of punishment.

(b) Strict liability is found in statutory crimes only.

(c) A corporate body such as a company cannot be convicted of a crime. **(3)**

(1) None of the statements is correct.

**(2) Only statement (b) is correct.**

(3) Only statement (c) is correct.

(4) Only statements (b) and (c) are correct.

(5) Only statements (a) and (c) are correct. **[30]**

## **Section B**

### **Question 1**

**Distinguish between a crime and a delict. (5)**

<b>Crime</b>	<b>Delict</b>
Directed against public interests	<b>Directed against private interests.</b>
Form part of public law.	<b>Form part of private law.</b>
State prosecutes.	<b>Private party institutes action.</b>
Result in the imposition of punishment by the state	<b>Result in the guilty party being ordered to pay damages to the injured party.</b>
State prosecutes perpetrator irrespective of the desires of private individual	<b>Injured party can choose whether he wishes to claim damages or not.</b>
Trial governed by rules of criminal procedure.	<b>Trial governed by rules of civil procedure.</b>

## **Question 2**

**Name the four requirements for criminal liability in the correct sequence. (5)**

- Conduct - -Conduct can lead to liability only if it is voluntary ie. capable of subjecting his bodily or muscular movements to his will or intellect. An omission can lead to liability only if the law imposed a duty on X to act positively and he failed to do so.
- Which complies with the definitional elements of the crime - Definitional elements is the concise definition of the type of conduct and the circumstances in which that conduct must take place in order to constitute an offence
- Which is unlawful - Conduct that is contrary to the totality of the rules of law, including rules which in certain circumstances allow a person to commit an act which is contrary to the letter of legal prohibition or norm.
- and culpable - ie. grounds upon which X may personally be blamed.

## **Question 3**

**X, a sixty-three-year-old public prosecutor who suffers from diabetes, is charged with the crime of corruption. The state's evidence reveals that X received R30 000 from Y in exchange for destroying a police docket which implicated Y in several fraudulent activities. X is convicted of corruption. X**

has no criminal record. The state prosecutor argues that the appropriate sentence for X's crime is imprisonment for a period of five years because persons in public office should be deterred from abusing their powers. X's legal advisor disagrees with these submissions. She argues that imprisonment for a period of five years is too harsh a sentence, considering the age, health and clean record of the accused. In her view, a sentence of imprisonment would place too much emphasis on general deterrence, and disregards the principle of proportionality embodied in the theory of retribution. With reference to the decision in *Zinn 1969 (2) SA 537 (A)*, discuss the merits of these arguments. In your answer you must explain the difference between the absolute and relative theories of punishment. (7)

- In *Zinn* the court held that three factors must be taken into account when a court sentences an offender. These factors are:
  - the crime,
  - the criminal, and
  - the interests of society.
- By "crime" is meant that regard must be taken concerning the degree of harm or the seriousness of the violation. This consideration is important in terms of the theory of retribution. The theory of retribution is an absolute theory of punishment which means that punishment is an end in itself and not a means to a second end. Punishment is justified because it is the offender's just desert. Retribution requires the restoring of the legal balance which has been disturbed by the commission of the crime. The theory therefore requires that the extent of the punishment must be proportionate to the extent of the harm done. In deciding upon an appropriate punishment, application of the theory of retribution is imperative, because it is the only theory of punishment which requires a proportional relationship between the harm done and the punishment imposed.
- The consideration of the "interests of society" requires, amongst other things, that society must be protected from criminals. This consideration forms the basis of the preventive theory of punishment. Furthermore, the community must be deterred from crime (the theory of general deterrence).

- It is clear that the so-called “triad in Zinn” requires a combination theory of punishment that accommodates the ideas of retribution, deterrence, prevention and reformation.

#### **Question 4**

**According to the retributive theory, punishment is justified because it is X’s just desert. Explain the philosophy underlying retribution (or “just desert”).**

**(4)**

- According to the retributive theory, punishment is justified because it is X’s just desert. The underlying idea can be explained as follows: the legal order offers every member of society certain advantages, while at the same time burdening him/her with certain obligations. The advantages are that the law protects him because it prohibits other people from infringing upon his basic rights or interests, such as his life, physical integrity and property. However, these advantages can only exist if each member of society fulfils his obligations, namely refrains from infringing upon other members’ rights. If a person commits an act whereby he/she gets an unjustifiable advantage above other members of society, he/she disturbs the legal balance in society. He/she must be punished to restore the legal balance in society. Therefore, punishment can be described as the paying of a debt which the offender owes society as a result of his/her crime
- Equal proportion between degree of punishment and degree of crime
  - The extent of the punishment must be proportionate to the extent of the harm done or of the violation of the law.
  - This is illustrated by the fact that the punishment imposed for an attempt to commit a crime is as a rule, less severe than for the commission of the crime
- Retribution explains culpability requirement
  - Pre-eminently able to explain the need for the general requirement of liability known as culpability. (*mens rea*)
  - Presupposes that man has a free will.
  - Can be held responsible or blamed for choices made.

## **Question 5**

**Distinguish between the absolute and relative theories of punishment. (6)**

- There is only one absolute theory and that is the theory of retribution.
- According to this theory, the aim of punishment is to restore the legal balance which has been disturbed by the commission of the crime.
- The punishment is an end in itself. According to the retributive theory, the extent of the punishment must be proportionate to the extent of the harm done.
- There are three relative theories of punishment.
- These are the preventative, deterrent, and reformatory theories.
- According to these theories, the aim of punishment is a means to a secondary end rather than an end in itself (as in the case of the retributive theory).
- The relative theories emphasise a future purpose, namely prevention, deterrence or reformation. In order to achieve these aims, the punishment imposed need not be proportionate to the extent of the harm done.
- The theory of retribution, on the other hand, is purely retrospective and focuses only on the crime that was committed in the past.

## **Question 6**

**Accused X1, X2 and X3 are appearing before you on charges of theft. You find all of them guilty of this crime. You now have to sentence them. The evidence before you is the following: X1 has stolen one chicken and has no previous convictions. X2 has also stolen one chicken but he has two previous convictions ^ one of theft of a radio and the other of theft of a watch. X3 has stolen a 4X4 motor vehicle worth about R150 000. The evidence also reveals that chicken theft is very prevalent in the district. Apply the theories of retribution, prevention and general deterrence to these facts. (5)**

The theory of retribution requires that the extent of the punishment be proportionate to the extent of the damage caused. Because the values of the stolen things are different, it follows that punishment for theft of the motor vehicle should be far more severe than punishment for chicken theft.

However, if only the retributive theory is applied, the same punishment must be imposed on all the chicken thieves - the value of the objects stolen is the same.

The theory of prevention requires that a more severe punishment be imposed on X2 than on X1. Because he (X2) already has two previous convictions for theft, he must be prevented, as far as possible, from continuing to contravene the law.

According to the theory of general deterrence, punishment need not necessarily be proportionate to the damage caused. The fact that chicken theft is so prevalent in the district is a ground for imposing heavier sentences on X1 and X2 for stealing chickens than the sentences that would be imposed if someone were to steal a chicken in an area where such theft is not prevalent.

## 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 unfence 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 statement (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 *Francia 1994 (1) SACR 350 (C)* addressed the application of the *ius acceptum* rule to the creation of a statutory crime
- c) The *ius praevium* rule was applied by the Constitutional Court in *Masiya v Director 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 statements (c) is correct
- 4) **Only statements (a) and (c) are correct**
- 5) All these statements are correct

### 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 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 statements (a) is correct
- 3) **Only statement (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 maternally-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 mean of corporal punishment

- 1) All these statements are correct
- 2) Only statements ( 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 statements (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 take 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 action *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

### **Section B**

## **Question 1**

- a) In *Zinn 1969 (2) SA 537 (A)* the court emphasised that three (3) factors must be taken into account when imposing a sentence
- i) **Name the three factors (3)**
- 1.the crime;
  - 2.the offender; and
  - 3.the interests of society
- 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)**
- Crime – degree of harm/seriousness of violation (retributive theory);
  - Criminal – personal circumstances of offender (reformative theory); and
  - Interests of society – society must be protected (preventive), community must be deterred (general deterrence), righteous indignation of society must be given expression (retributive)
- iii)
- b) **Name the four requirements for criminal liability in the sequence in which they should be investigated (5)**
- Criminal Liability =
  - (1) Act +
  - (2) Compliance with definitional elements +
  - (3) Unlawfulness +
  - (4) Culpability
- c) **The concept of voluntary act should not be confused with the concept of willed act. Define, in one sentence, what each concept means and identify the requirement of criminal liability relevant to each (4)**
- To determine whether there was an act in the criminal-law sense of the word, the question is merely whether the act was voluntary, Conduct which is not willed, such as acts which a person commits negligently, may however also be punishable.
- 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)**

- The judges refused to accept that in our law, criminal liability is necessarily based on "proximate cause" (which is perhaps the best-known of the individualisation theories).
- They also pointed out that the novus actus criterion does not differ essentially from the theory of adequate causation, also emphasising that a distinction should be drawn between consequences normally to be expected from the type of conduct in which X has engaged and consequences which one would not normally expect to flow from such conduct.

**ii) Mokgethi 1990 (1) SA 32 (A) (4)**

- in Mokgethi supra the Appellate Division held that it is wrong for a court to regard only one specific theory (eg "proximate cause") as the correct one to be applied in every situation,
- thereby excluding from future consideration all the other specific theories of legal causation.
- A court may even base a finding of legal causation on considerations outside these specific theories.

**iii) Tembani 2007 (1) SACR 355 (SCA) (4)**

- In Tembani, X's act can also be seen to be the legal cause of Y's death.
- X deliberately inflicted an intrinsically dangerous wound to Y, which without medical intervention would probably cause to die. It is irrelevant whether it would have been easy
- to treat the wound, and even whether the medical treatment given later was substandard or negligent.
- X would still be liable for Y's death.
- The only exception would be if at the time of the negligent treatment had recovered to such an extent that the original injury no longer posed a danger to her life.

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## 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 unlawful (1)
  - ii) In *Goliath* 1972 (3) SA 1 (A) it held that necessity could constitute a complete defence to a charge of murder. (1)
  - iii) In order to exclude intention, a mistake must be a material mistake(1)
  - iv) In judging *aberration ictus* situations, the Appeal Court in *Mtshiza* 1970 (3) SA 747 (A) favoured the concrete-figure approach over the transferred culpability approach. (2)
  - v)
  - vi) In case of De Blom (just the name) it was held that cliché “ignorance of the law is not an excuse” has no foundation in our law. (1)
- b) Discuss the principle of contemporaneity, referring to relevant case law (5)
- The culpability and the unlawful act must be contemporaneous.
  - This means that, in order for a crime to have been committed, there must have been culpability on the part of X at the very moment when the unlawful act was committed.
  - No crime is committed if culpability only existed prior to the commission of the unlawful act, but not at the moment the act was committed, or if it came into being only after the commission of the unlawful act.
  - The principle of contemporaneity is closely related to the rule that a mistaken belief concerning the causal chain of events does not exclude intention.
  - The decision in *Masilela* constitutes an apparent exception to the general rule in relation to contemporaneity
- 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)**

- No, X's defences would not succeed against these charges,
- There are three defences that exclude criminal capacity and they are:

- Youth
- Mental illness (Insanity)
- non-pathological criminal incapacity

**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)**

- X will be found guilty according to section 1 of the Act which says that: Any person who consumes or uses any substance which impairs his or her faculties to appreciate the wrongfulness of his or her acts or to act in
- The effect of intoxication on liability accordance with that appreciation, while knowing that such substance has that effect, and who while such faculties are thus impaired commits any act prohibited by law under any penalty, but is not criminally liable because his or her faculties were impaired as aforesaid, shall be guilty of an offence and shall be liable on conviction to the penalty which may be imposed in respect of the commission of that act.

### **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 charge of murder, X relies on private defence. Consider briefly whether X can succeed with 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 requirements(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)

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**

- The point of departure is an assumption or presumption that it was not the intention of the legislature to exclude culpability, unless there are clear and convincing indications to the contrary. Such indications can be found in
  - the language and context of the provision
  - the object and scope of the prohibition
  - the nature and extent of the punishment prescribed for contravening the prohibition
  - the ease with which the provision can be evaded if culpability is required
  - the reasonableness or otherwise in holding that culpability is not an ingredient of the offence

**OR**

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

There are two psychological legs of the test which are: Ability to appreciate wrongfulness (cognitive) and Ability to act accordance with such an appreciation (conative)

- Cognitive:
  - Emphasis on insight and understanding
  - Insight
  - Ability to differentiate
- Conative:
  - Self control
  - Ability to conduct oneself in accordance with what is right and wrong
  - Power of resistance

**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)**

- In Ngubane the court held that intention and negligence are conceptually different and that these two concepts never overlap.
- On the other hand, the court held that it is incorrect to assume that proof of intention excludes the possibility of a finding of negligence.
- The facts of a particular case may reveal that, although X acted intentionally, he also acted negligently in that his conduct did not measure up to the standard of the reasonable person.

**Question 1**

- a) The only justification for the imposition of punishment is the deter the community from committing crimes
- b) In Zinn 1969 (2) SA 537 (A) it was held that courts may impose sentence which are grossly disproportionate to the harm caused if the particular crime with which the accused had been charged is prevalent in society.
- c) The theory of retribution always plays a role in the imposition of punishment since it is the only theory that requires a proportional relationship between the punishment imposed and the moral blameworthiness of the offender

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

**Question 2**

- a) The investigation into the presence of the four elements of liability must follow a prescribe sequence
- b) Unlawfulness is one of the elements of an offence
- c) The culpability requirement means that there must be grounds upon which X can be blamed for his conduct

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

### Question 3

- a) A statutory provision which provides as follows “A person may not travel on a bus without ticket’ creates an offence
- b) The principles of legality as set out in section 35(3)(l) of the Constitution of the Republic of South Africa, 1996 only provides that every accused has a right not be convicted of an offence in respect of an act that was not an offence at the time it was committed in other words, it does not cover omissions as well
- c) In *S v Masiya* 2007 (2) SACR 435 (CC) the Constitutional Court held that to convict the appellant of rape would be in violation of his right as set out in section 35(3)(l) of the Constitution

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

### Question 4

- (a) Because culpability is required for all common-law crimes, strict liability is found in statutory crimes only.
- (b) In South Africa corporate bodies (for instance, companies) cannot be convicted of crimes.
- (c) If the legislature, in creating an offence, is silent on the question whether culpability is a requirement for the offence, a court is still free to interpret the provision creating the offence in such a way that culpability is indeed required for a conviction.

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

4. Not one of these statements is correct.

5. Only statement (c) is correct.

### **Question 5**

- a) **Factual causation is determined by investigating whether X's act was the most operative cause of Y's death**
- b) **If X gives Y a loaded gun to kill herself and Y pulls the trigger herself and dies, X's act can never be viewed as the legal cause of Y's death**
- c) **In *Ex parte die Minister van Justisie in re S v Van Wyk 1967 (1) SA 488 (A)* the court held that on a charge of murder, X may only succeed with a defence of private defence if he had killed the attacker in protection of his own life, or the life of another person.**

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

### **Question 6**

- a) **Teachers may not impose corporal punishment on children**
- b) **X can rely on necessity if he defends himself against an attack by an animal**
- c) **Mental illness is a defence which excludes the element of unlawfulness**

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

### **Question 7**

- a) Criminal capacity relates to a person's mental abilities, whereas intention relates to the presence or absence of a blameworthy state of mind
- b) In order to succeed with a defence of mental illness expert evidence must be provided that the mental illness that X had suffered from at the time of the commission of the offence was of a permanent nature
- c) In terms of the *Child Justice Act 75 of 2008* a child who commits an offence while under the age of 10 years does not have criminal capacity and cannot be prosecuted for the offence.

1) **None of the statements is correct**

2) Only statements (b) and (c) are correct

3) Only statement (c) is correct

4) Only statements (a) and (c) are correct

5) Only statement (a) is correct

### **Question 8**

- a) Whether *error in objecto* is a defence depends on the definition of the offence with which X is charged
- b) In *Goosen 1989 (4) SA 1013 (A)* the court held that a mistake relating to the chain of causation may exclude intention provided that the actual chain of events differed substantially from that envisaged by the perpetrator
- c) A good motive always excludes intention

1) All the statements are correct

2) **Only statements (a) and (b) are correct**

3) Only statement (a) is correct

4) Only statement (b) is correct

5) Only (a) and (c) are correct

### **Question 9**

**(a) Vicarious liability is not limited to statutory crimes, but may be found also in common-law crimes.**

**(b) Involuntarily intoxication may afford an accused a complete defence.**

**(c) One of the findings of the court in the decision of Chretien was that the specific intent theory in connection with intoxication must be rejected.**

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

**5. Only statements (b) and (c) are correct.**

### **Question 10**

(a) Evidence of provocation may sometimes serve to confirm the existence of intention to commit the crime with which X is charged.

(b) If X is charged with assault to do grievous bodily harm and it appears from the evidence that he was provoked, the provocation may have the effect that X will not be found guilty of assault with intent to do grievous bodily harm but of common assault only.

(c) In the decision of Ngubane the court held that it is wrong to assume that proof that X acted intentionally excludes the possibility of a finding that he acted negligently.

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

**5. All three statements are correct.**

## **Section B**

### **Question 1**

**a) Discuss the question whether a person may kill another person in a situation of necessity**

- this question arises only if the threatened person finds herself in mortal danger.
- This mortal danger may stem from compulsion, for example where Y threatens to kill X if X does not kill Z, or from an event not occasioned by human intervention.
- Until 1972, our courts usually held that the killing of a person could not be justified by necessity.
- In Goliath 1972 (3) SA 1 (A), however, the Appeal Court conclusively decided that necessity can be raised as a defence against a charge of murdering an innocent person in a case of extreme compulsion.
- the extent of the threat may be taken into account as a mitigating factor when punishment is imposed.

**b) X leaves a party in a very drunken state. He gets into his car and drives home. On his way he is stopped by a police officer who requests him to get out of his car X knows that he is very drunk and is afraid that he will be arrested and charged with drunken driving. He drives away as fast as he can, the police officer pursues him in the police van but because X has a very fast car, he manages to get away from the police officer. In his rush to get away he suddenly turns left into an alley and collides into a pedestrian who was crossing the street. The pedestrian is injured and X is charged with attempted murder, His defence is that, although he still had criminal capacity, he was so drunk that he lacked the intention to kill. Consider these facts and answer the following question.**

**i) Can X be convicted of a contravention of section 1 of Act 1 of 1988 if the court finds that he had criminal capacity but lacked**

**only intention? In your answer you must discuss the elements of the section 1 offence and motivate your conclusion (8)**

- X will be found guilty according to section 1 of the Act which says that: Any person who consumes or uses any substance which impairs his or her faculties to appreciate the wrongfulness of his or her acts or to act in
- The effect of intoxication on liability accordance with that appreciation, while knowing that such substance has that effect, and who while such faculties are thus impaired commits any act prohibited by law under any penalty, but is not criminally liable because his or her faculties were impaired as aforesaid, shall be guilty of an offence and shall be liable on conviction to the penalty which may be imposed in respect of the commission of that act.
- If in any prosecution for any offence it is found that the accused is not criminally liable for the offence charged on account of the fact that his faculties referred to in subsection (1) were impaired by the consumption or use of any substance, such accused may be found guilty of a contravention of subsection (1), if the evidence proves the commission of such contravention.

**c) Merely name six instances in which legal duty to act positively has been recognised by our courts (3)**

**A duty may arise from:**

- a previous positive act, such as where X lights a fire in an area where there is dry grass, and then walks away without putting out the fire to prevent it from spreading.
- where a person stands in a protective relationship to somebody else, for example, a parent or guardian
- from an agreement
- Where a person accepts responsibility for the control of a dangerous or potentially dangerous object, a duty arises to control it properly.
- may sometimes arise by virtue of the fact that a person is the incumbent of a certain office.

- may also arise by virtue of an order of court.

## **Question 2**

### **a) Define the following legal concepts**

#### **i) *Novus actus interveniens* (3)**

- This expression means "new intervening event", and is used to indicate that between X's initial act and the ultimate death of Y, another event which has broken the chain of causation has taken place, preventing us from regarding X's act as the cause of Y's death.

#### **ii) *Indirect intention* (2)**

- A person acts with indirect intention if the causing of the forbidden result is not his main aim or goal, but he realises that, in achieving his main aim, his conduct will necessarily cause the result in question.

#### **iii) *Dolus eventualis* (3)**

- A person acts with dolus eventualis if the causing of the forbidden result is not his main aim, but
- he subjectively foresees the possibility that, in striving towards his main aim, his conduct may cause the forbidden result and
- he reconciles himself with this possibility.

### **b) Discuss ONE of the following cases in detail (6)**

#### **i) *Tembani 2007 (1) SACR 355 (SCA)***

- In Tembani, X's act can also be seen to be the legal cause of Y's death.
- X deliberately inflicted an intrinsically dangerous wound to Y, which without medical intervention would probably cause to die. It is irrelevant whether it would have been easy to treat the wound, and even whether the medical treatment given later was substandard or negligent.

X would still be liable for Y's death.

The only exception would be if at the time of the negligent treatment had recovered to such an extent that the original injury no longer posed a danger to her life.

**ii) Eadie 2002 (1) SACR 663 (SCA)**

- In Eadie 2002 (1) SACR 663 (SCA), the Supreme Court of Appeal delivered a judgment which raises doubts about whether there is still such a defence in our law.
- The court held that there is no distinction between non pathological criminal incapacity owing to emotional stress and provocation, on the one hand, and the defence of sane automatism, on the other
- The court held that there is no difference between the second (conative) leg of the test for criminal capacity and the requirement which applies to the conduct element of liability that X's bodily movements must be voluntary.
- The court does not hold that the defence of non-pathological criminal incapacity
- no longer exists, and in fact makes a number of statements which imply that the defence does still exist.

**c) X, an 89-year-old widow, lives all on her own on a farm. A number of farmers in the vicinity have been victims of burglaries and even serious crimes of violence such as assault and murder. X locks herself in her bedroom every night and keeps a pistol under her bed in case she is also attacked. One night she wakes up due to sounds of footsteps in her house. She hears somebody walking down the passage, the next moment somebody tries to open her bedroom door and because it is locked, the person then tries to break down the door with some instrument. X is petrified and before calling the police, fires a number of shots through the door, One of these shots hits the intruder, Y. Y dies half an hour later as a result of the shot wound, it turns out that Y was an adult male of about 30 years old and a well-known convicted criminal who has escaped from nearby prison X is charged with murder, Her defence is that she was acting in a situation of private defence in order to protect her life and physical integrity.**

**i) Discuss the requirements for this defence and consider whether X may succeed with this defence (8)**

For one to succeed with the private defence , certain requirements have to be met,

Requirements of attack

The attack

- must be unlawful
- must be against interests which ought to be protected
- must be threatening but not yet completed
- Requirements of defence

The defensive action

- must be directed against the attacker
- must be necessary
- must stand in a reasonable relationship to the attack
- must be taken while the defender is aware that he is acting in private defence
- X may succeed with the defence since the intruder being in her house was an offence, and although the intruder was still trying to get in, it is evidence that his conduct although not complete was threatening.
- Protecting her life was necessary since she kept the pistol in her bedroom.

**ii) Suppose there was no intruder and that the person who had tried to enter X's room was her son (Z), who was worried about his old mother tried to break down the door because he was under the impression that she had died in her bed. If charged with murder, is there any defence that X can rely upon? Name this defence and refer to relevant case law in which such defence was raised (6)**

- X can rely on mistake, of which mistake nullifies intention.
- Whether there really was a mistake which exclude intention is a question of fact.
- What must be determined is X's true state of mind and conception of the relevant events and circumstances.
- A mistake can exclude intention and therefore liability only if it is a mistake concerning an element or requirement of

the crime other than the culpability requirement itself.

Theserequirements are:

- the requirement of an act
- a requirement contained in the definitional elements, or
- the unlawfulness requirement

### **Question 3**

**NOTE THE CHOICE THAT YOU HAVE IN THE QUESTION**

**a) Name the requirements for a valid plea of consent**

The consent must be

- given voluntarily
- given by a person who has certain minimum mental abilities
- based upon knowledge of the true and material facts
- given either expressly or tacitly
- given before the commission of the act
- given by the complainant herself

**OR**

**Fully define the test for negligence (6)**

A person's conduct is negligent if

- a reasonable person in the same circumstances would have foreseen the possibility
  - that the particular circumstance might exist, or
  - that his conduct might bring about the particular result;
- a reasonable person would have taken steps to guard against such a possibility; and
- the conduct of the person whose negligence has to be determined differed

from the conduct expected of the reasonable person

**b) The test for criminal incapacity is set out in section 78(1) of the Criminal Procedure Act 51 of 1977. Define the test as set out in this provision (4)**

- A person who commits an act or makes an omission which constitutes an offence and who at the time of such commission or omission suffers from a mental illness or mental defect which makes him or her incapable
  - of appreciating the wrongfulness of his or her act or omission; or
  - of acting in accordance with an appreciation of the wrongfulness of his or her act or omission,
- shall not be criminally responsible for such act or omission.

**c) Fill in the missing words or phrases next to the corresponding question in your answer book**

- i) If X knows that her husband assaults their three-year-old child and does nothing to prevent it, she may be convicted of..... on the basis of an ..... (2)
- ii) The defence of impossibility may only be raised successfully if it was impossible to comply with the rule, and not merely inconvenient..... (1)
- iii) If X knows that he may lose consciousness any time as a result of an illness and, while driving a car, loses consciousness and causes an accident, he may be found guilty of negligent driving..... This type of liability is known as .....liability
- iv) If X contravenes the speed limit because she takes a person who just had a heart attack to hospital, she may, if charged with a traffic offence, rely on the defence of..... (1)

### **Question 1**

**(a) The retributive theory is the only theory of punishment which insists on there being a direct proportion between the extent of the harm or damage caused and the extent of the punishment.**

**(b) In the decision of *Zinn* the court held that, in determining an appropriate sentence, the court must take into account only the interests of the society.**

**(c) The efficacy of the theory of general deterrence depends only upon the severity of the punishment that might be imposed, and not upon the degree of probability that the criminal will be caught and convicted.**

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

(2) Only statements (b) and (c) are correct.

(3) Only statements (a) and (c) are correct.

(4) Only statement (b) is correct.

(5) None of these statements is correct.

### **Question 2**

**(a) The mere fact that an act corresponds to the definitional elements of an offence means that the act is unlawful.**

**(b) A person may act in private defence in order to protect a third person even if there is no family or protective relationship between himself and the third person.**

**(c) The judgement in *Goliath* is authority for the statement that one may kill an innocent person in a case of a relative compulsion.**

(1) Only statement (a) is correct.

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

### **Question 3**

- (a) Putative private defence is not actual private defence and can therefore not exclude X's culpability.**
- (b) For X to succeed with a defence of private defence, his defensive act must have been directed at an attack that has already been completed.**
- (c) The test to determine necessity is an objective test.**

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

### **Question 4**

- (a) In Chretien 1981 (1) SA 1097 (A) the court rejected the "specific intent theory" with regard to intoxication.**
- (b) If X is charged with murder and the court finds that he was so intoxicated that he lacked the intention at the time of the commission of the crime, he cannot be convicted of any crime.**
- (c) One of the requirements for a conviction of a contravention of section 1 of Act 1 of 1988 is that X should have lacked criminal capacity at the time of the commission of the act.**

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

### **Question 5**

**(a) The cognitive component of criminal capacity is present if X has the ability to appreciate the wrongfulness of his act.**

**(b) In *Kavin 1978 (2) SA 731 (W)* the defence of mental illness was raised successfully.**

**(c) The test for mental illness comprises both a pathological and biological test.**

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

### **Question 6**

**(a) The *ius certum* principle, 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 had been recognised by the law as a crime already at the time of its commission.**

**(b) Before one can assume that a provision in a statute had created a crime, it must be clear that the provision contains a criminal norm.**

**(c) The *ius strictum* principle implies that a court is not authorised to extend an crime's field of application by analogy to the detriment of the accused.**

(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 the statements are correct.

### **Question 7**

**(a) Evidence of provocation may sometimes serve to confirm the existence of intention to commit the crime with which X is charged.**

**(b) If X is charged with assault with intent to do grievous bodily harm and it appears from the evidence that he was provoked, the provocation may have the effect that X will not be found guilty of assault with intent to do grievous bodily harm but only of common assault.**

**(c) In the decision of *Ngubane* the court held that it is wrong to assume that proof that X acted intentionally excludes the possibility of a finding that he acted negligently.**

(1) Only statements (a) and (b) are correct.

(2) Only statements (a) and (c) are correct.

(3) Only statements (b) and (c) are correct.

(4) Only statement (b) is correct

**(5) All these statements are correct.**

### **Section B**

#### **Question 1**

**Do you think the following statutory provision complies with the principle of legality? “Any person who commits an act that offends against the good morals of the nation, shall be punished.” Discuss.(8)**

The principle of legality also known as the *nullum crimen sine lege* principle means that an accused may not be convicted of a crime if the conduct with which he/she is charged

- has not been recognised by the law as a crime (*ius acceptum* principle)
- before the conduct took place (*ius praeivium* principle)
- in clear terms (*ius certum* principle)
- without broadly interpreting the words in the definition (*ius strictum* principle).
- A statutory provision purporting to create a crime best complies with the principle of legality if it states that the particular type of conduct is a crime, and also what punishment a court must impose after conviction
- It may be argued that the provision does not comply fully with the *ius acceptum* principle.
- Although it is stated that a person who commits the described act “shall be punished”, it is not stated explicitly that the conduct constitutes an offence. Therefore, there is no criminal norm present.
- The *ius praeivium* principle is not at issue here because there is no mention that the provision is created with retrospective effect.
- The provision clearly does not comply with the *ius certum* requirement. The prohibition of “an act that offends against good morals” is formulated in vague and unclear terms. It is impossible for the individual to know what particular conduct is prohibited. Therefore, the subject does not know what particular conduct to avoid.
- Lastly, no mention is made in the provision of the punishment that should be imposed in case of a contravention of the provision. Therefore there is no criminal sanction which amounts to a violation of the *nullum poena* principle.

## **Question 2**

**Assume the South African parliament passes a statute in 2004 which contains the following provision: “Any person who commits an act which could**

**possibly be prejudicial to sound relations between people, is guilty of a crime. This provision is deemed to have come into operation on 1 January 1995."No punishment is specified for the crime. Do you think that this provision complies with the principle of legality? (6)**

- It is clearly stated in the provision that the conduct prohibited is a "crime". This means that the provision contains a criminal norm.
- However, the maximum punishment that may be imposed is not prescribed in the provision. Therefore, the *ius acceptum* rule has not been fully complied with.
- The provision does not comply with the *ius praeivium* rule because the crime is created with retrospective effect.
- The provision also does not comply with the *ius certum* rule because it is formulated in vague and uncertain terms. The phrase 'possibly prejudicial to sound relations' is very wide and does not indicate exactly what type of conduct is prohibited. Does it refer to 'sound relations' in the family context, at the workplace, or to relations between people of different cultures or races?
- The *ius strictum* rule further requires that an act which is ambiguous be interpreted strictly. In practice this means that a court may not give a wide interpretation to the words or concepts contained in the definition of the crime. A provision which is very wide and vague should be interpreted in favour of the accused.
- It follows that the provision does not comply with the principle of legality.

### **Question 3**

**Give the Latin words describing each of the different rules embodied in the principle of legality. After each Latin expression, state its meaning.**

*Ius acceptum* rule:

- A court may find an accused guilty of a crime only if the kind of act performed is recognised by the law as a crime. This means that a court may not create a crime.

*Ius praeivium* rule:

- A court may find an accused guilty of a crime only if the kind of act performed was recognised as a crime at the time of the commission of the offence.

*Ius certum* rule:

- Crimes ought not to be formulated vaguely.

*Ius strictum* rule:

- A court must interpret the definition of a crime narrowly rather than broadly.

*Nulla poena sine lege* rule:

- The abovementioned principles must also be applied when a court imposes a sentence

## **CRW 2601**

### **Question 1**

**(a) Conduct can only be voluntary if it is willed.**

**(b) The general criterion to determine whether there is a legal duty on someone to act positively is the legal convictions of the community.**

**(c) The term “conduct” as used in criminal law does not include a voluntary human omission.**

(1) Only statement (a) is correct.

**(2) Only statement (b) is correct.**

(3) Only statements (a) and (b) are correct.

(4) None of the statements is correct.

(5) Only statement (c) is correct

## **Question 2**

**(a) In order to qualify as a *novus actus interveniens*, an occurrence must be unexpected, abnormal, or unusual.**

**(b) A mistake need not be reasonable or material to exclude intention.**

**(c) In the case of formally defined crimes, the definitional elements proscribe a certain type of conduct which causes a specific condition.**

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

(2) Only statement (b) is correct.

(3) Only statements (a) and (b) are correct.

(4) Only statement (c) is correct.

(5) None of these statements is correct

## **Question 3**

**(a) Antecedent liability rules out the defence of automatism.**

**(b) The mere fact that an act corresponds to the definitional elements of a crime means that the act is unlawful.**

**(c) One of the requirements for the existence of direct intention (*dolus directus*) is that X must have an evil motive to commit the relevant act or to cause the relevant result.**

(1) Only statement (c) is correct.

(2) Only statements (b) and (c) are correct.

(3) Only statements (a) and (c) are correct.

(4) Only statement (b) is correct.

**(5) Only statement (a) is correct.**

#### **Question 4**

**(a) As guardians of good morals (*custodes morum*) our courts are obliged to punish immoral and dangerous conduct.**

**(b) According to South African law, corporate bodies cannot be convicted of crimes.**

**(c) Because the possibility of death as a result of an assault is always reasonably foreseeable and the reasonable person would have guarded against this possibility, the person committing assault will always be convicted of culpable homicide if the victim died.**

(1) Only statement (c) is correct.

**(2) None of the statements is correct.**

(3) Only statements (b) and (c) are correct.

(4) Only statement (b) is correct.

(5) Only statement (a) is correct.

#### **Question 5**

**(a) In *Chretien* 1981 (1) SA 1097 (A) the court rejected the “specific intent theory” with regard to intoxication.**

**(b) If X encourages the severely depressed Y to commit suicide by giving her a loaded pistol to shoot and kill herself, he can never be convicted of Y’s murder if she voluntarily takes the pistol and kills herself.**

**(c) The “*triad in Zinn*” refers to the crime, the criminal, and the punishment.**

(1) Only statements (a) and (b) are correct.

(2) Only statement (c) is correct.

**(3) Only statement (a) is correct.**

(4) Only statement (b) is correct.

(5) Only statements (a) and (c) are correct.

### **Question 6**

**(a) Necessity always stems from an unlawful human act.**

**(b) The cognitive component of criminal capacity is present if X has the ability to conduct himself in accordance with his appreciation of the wrongfulness of his conduct.**

**(c) Vicarious liability applies only to statutory crimes.**

(1) Only statement (a) is correct.

(2) Only statement (b) is correct.

(3) Only statements (a) and (c) are correct.

(4) None of these statements is correct.

**(5) Only statement (c) is correct.**

### **Question 7**

**(a) An act in obedience to an unlawful order can only be justified if the order is not manifestly unlawful.**

**(b) The reasonable person is a figment of the imagination of the bonus paterfamilias.**

**(c) In materially defined crimes requiring negligence it must be proved that X was negligent in the causing of a result.**

(1) Only statement (a) is correct.

(2) Only statements (a) and (b) are correct.

(3) All the statements are correct.

**(4) Only statements (a) and (c) are correct.**

(5) Only statements (b) and (c) are correct.

### **Question 8**

**(a) Putative private defence is a defence excluding culpability and not a defence excluding the element of unlawfulness.**

**(b) In *Mtshiza* 1970 (3) SA 747 (A) the court approved the transferred intent approach in respect of cases involving *aberratio ictus*.**

**(c) The test for *dolus eventualis* is whether a person ought to have foreseen the possibility of a consequence ensuing.**

(1) Only statements (a) and (b) are correct.

(2) None of these statements is correct.

**(3) Only statement (a) is correct.**

(4) Only statement (b) is correct.

(5) Only statements (a) and (c) are correct.

### **Question 9**

**(a) The words “mental illness” in section 78(1) of the Criminal Procedure Act 51 of 1977 refer to a pathological disturbance of the mental faculties.**

**(b) In *Eadie* 2002 (1) SACR 663 (SCA) the court held that the defence of non-pathological criminal incapacity resulting from provocation or emotional stress amounts to the defence of sane automatism.**

**(c) Children younger than 14 years are irrebuttably presumed to lack criminal capacity.**

(1) Only statement (a) is correct.

(2) Only statement (b) is correct.

**(3) Only statements (a) and (b) are correct.**

(4) Only statements (a) and (c) are correct.

(5) Only statement (c) is correct.

### **Question 10**

**(a) In terms of the *ius strictum* principle crimes should be defined clearly and not vaguely.**

**(b) Where doubt exists concerning the interpretation of a widely formulated criminal provision in an act, the provision should be interpreted in favour of the accused.**

**(c) The preventive theory overlaps the deterrent and the reformative theories since all these theories aim to prevent the commission of crimes.**

(1) Only statement (a) is correct.

(2) Only statement (b) is correct.

(3) Only statements (a) and (c) are correct.

**(4) Only statements (b) and (c) are correct.**

(5) Only statement (c) is correct.

## **Section B**

### **Question 1**

**X, a 62 year old man, works in a mine. His job is to operate the cocopans. These cocopans are used to transport hard rocks and gravel from the bottom of the mine to the surface. One day, while working, he suddenly experiences a black-out. In his state of unconsciousness, he falls on the lever which controls the movement of the cocopans. A cocopan crashes into another worker, Y. Y is killed instantly. X is charged with culpable homicide. The evidence before the court is as follows: X has been suffering from diabetes for the past year. His doctor had warned him that he may lose consciousness at any time if he fails to take his medication as instructed. On that particular day, X had failed to take his medication. The court finds that X had insufficient grounds for assuming that he would not suffer a blackout on that particular day. X's legal representative argues that X cannot be convicted of culpable homicide because, at the time of the commission of the offence, he was not performing a voluntary act. In other words, the defence raised is that of automatism. You are the state prosecutor. What would your response be to this argument?**

- In Victor, X was convicted of negligent driving despite the fact that the accident he had caused had been due to an epileptic fit: evidence revealed that he had already been suffering epileptic fits for the previous thirteen years, and that he had had insufficient reason to believe that he would not again suffer such a fit on that particular day.
- This is a case of antecedent liability. The voluntary act was performed at the stage when X, fully conscious, started operating the cocopans. What the law seeks to punish is the fact that he (X), while in complete command of his bodily movements, commenced his inherently dangerous tasks at the mine without having taken his medication. In so

doing, he committed a voluntary act which set in motion a series of events which culminated in the accident.

## **Question 2**

**An omission is punishable if X is under a legal duty to act positively. The general rule is that there is a legal duty to act positively if the legal convictions of the society require X to do so. In practice a number of specific instances are recognised in which there is a legal duty to act positively. Name and discuss these instances. (10)**

- A statute may impose a duty on somebody to act positively. Example: to complete an
  - a) annual income-tax return.
  - b) not to leave the scene of a car accident but to render assistance to the injured and to report the accident to the police
  - c) to report knowledge of the commission of corrupt activities
  - d) to report knowledge of the commission of certain financial crimes
- A legal duty may arise by virtue of the provisions of the common law. Example: a person who owes allegiance to the state, and who discovers that an act of high treason is being committed against the state, has a duty to reveal this fact to the police.
- A duty may arise from an agreement. Example: in the case of Pitwood, X and a railway concern had agreed that, for remuneration, X would close a gate every time a train went over a crossing. X omitted to do so and thus caused an accident for which he was held liable. if a person stands in a protective relationship to somebody else; In B, X, the biological mother of Y, was living with another man Z. Z repeatedly assaulted Y. X, who was aware of these assaults, did nothing to prevent them. As Y's natural mother, X had a legal duty to care for and protect Y from this. She was held liable for assault.

- Where a person accepts responsibility for the control of a dangerous or potentially dangerous object. Example: in the case of Fernandez, X kept a baboon and failed to repair its cage properly --- as a result, the animal escaped and bit a child who later died. The court held that X had failed to control the dangerous animal properly and he was convicted of culpable homicide.
- A duty may arise from a previous positive act (an *omissio per commissionem*). Example: X lights a fire in an area where there is dry grass and then walks away without putting out the fire, thus failing to prevent it from spreading.
- The fact that a person is an incumbent of a certain office. Example: in *Minister van Polisie v Ewels* the court held that a policeman who sees somebody else being unlawfully assaulted has a duty to come to the assistance of the victim of the assault. Another example here is the case of *Gaba* where a policeman had a duty by virtue of his office to disclose to his fellow investigators his knowledge of the identity of a wanted suspect known as “Godfather”, whom they were interrogating.
- A legal duty may also arise by virtue of an order of court. Example: X omits to pay maintenance to his ex-wife to support their children as required in terms of an order of court.

### **Question 3**

- a) **Discuss the defence of automatism. Your answer must include**
  - i) **examples from the case law of cases in which this defence succeeded;**
  - ii) **an explanation of the points of difference between so-called “sane” and “insane” automatism;**

iii) an explanation of what is meant by “antecedent liability”. (8)

b) Name and discuss the requirements for successfully relying on the defence of impossibility (6)

c) Name, without discussing, three factors exclude the voluntary nature of the act. (3)

a) AUTOMATISM :

- A person acts in a state of automatism if he acts in a mechanical fashion. Examples of such instances are reflex movements such as heart palpitations or a sneezing fit and a person who acts in a state of automatism does not act voluntarily

- i) *Dlamini's* case - X killed Y while under influence of the nightmare.  
*Mkize's* case - X killed Y while he was having an epileptic fit. *Du Plessis's* case - an experienced driver had a mental “blackout”.

ii)

sane automatism	Insane automatism
onus on state to prove the act was voluntary	onus is on X to prove that he suffered from a mental illness
if X's defence is successful, he leaves the court a free man	if defence is successful, X is dealt with in terms of section 78 (6) of the <i>Criminal Procedure Act</i> 51 of 1977

iii) Antecedent liability: X knows that he suffers from epileptic fits or that, because of some illness or infirmity he may suffer a "black out", but nevertheless proceeds to drive a motor-car, hoping that these conditions will not occur while he is sitting behind the steering wheel, but they nevertheless do occur. He can then not rely on the defence of automatism. He can be held liable for certain crimes requiring negligence, for example culpable homicide. His voluntary act is then performed when he proceeds to drive the car while still conscious. In *Victor* 1943 TPD 77, for example, X was convicted of negligent driving despite the fact that the accident he had caused had been due to an epileptic fit: evidence revealed that he had already been suffering epileptic fits for the previous thirteen years, and that

he had had insufficient reason to believe that he would not again suffer such a fit on that particular day.

- b) X's omission must be voluntary in order to result in criminal liability. An omission involuntary if it is possible for X to perform the positive act.
- The legal provision which is infringed must place a positive duty on X. The conduct which forms the basis of the charge must consist in an omission. The defence will succeed, for example, if X has failed to comply with a legal provision which placed a positive duty on him to attend a meeting or to report for military duty.
  - It must be objectively impossible for X to comply with the relevant legal provision. It must have been impossible for any person in X's position to comply with the law. It must have been absolutely (not merely relatively) impossible to comply with the law. The test is objective (in the opinion of reasonable people in society).
  - X must not himself be responsible for the situation of impossibility. X cannot rely on impossibility if he himself is responsible for the circumstances in which he finds himself
- c) X may rely on the defence that he did not perform a voluntary act. In fact, the voluntariness of his act was excluded by natural forces - namely, the gravity of the earth, which pulled the plane down onto the beach and into Y's boat.