

CRW2601

(480516) October/November 2015

GENERAL PRINCIPLES OF CRIMINAL LAW

Duration 2 Hours

100 Marks

EXAMINERS
FIRSTPROF L JORDAAN
PROF C VAN DER BIJL
DR N MOLLEMA

MR RD RAMOSA

SECOND

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 eight (8) pages plus the instruction for the completion of a mark-reading sheet.

THE QUESTIONS IN THIS PAPER COUNT HUNDRED (100) MARKS. THE PAPER CONSISTS OF TWO PARTS, MARKED A AND B. YOU MUST ANSWER BOTH PART A AND PART B. PART A CONSISTS OF TEN (10) MULTIPLE CHOICE QUESTIONS. YOU MUST FILL IN THE ANSWERS TO THESE QUESTIONS ON THE MARK-READING SHEET. THE CORRECT ANSWER FOR EACH OF THESE QUESTIONS 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. 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 (3) statements (marked (a)-(c)). Some of the statements are correct and some are incorrect. You must decide which statement/s is/are correct. The three (3) statements are followed by five (5) allegations (marked (1)-(5)). Each of them alleges that a certain statement or combination of statements is correct or not correct. You must decide which allegation correctly reflects the conclusions to which you have come.

[TURN OVER]

Question 1

- (a) The four requirements of criminal liability are the following conduct (act or omission), compliance with the definitional elements of the offence, unlawfulness and culpability
- (b) In terms of the *ius acceptum* principle a court may only find a person guilty of an offence if the kind of act performed is recognized by the law as a crime
- (c) The *ius praeivium* principle requires that a court may only find a person guilty of an offence if the kind of act performed was recognized as a crime **at the time of its commission.**
- (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) A South African court is allowed to create new crimes if the court is of the opinion that the particular conduct is against the good morals of society
- (b) A provision which reads as follows "Nobody may criticise the government and anybody who contravenes this provision is guilty of a crime" complies with the *ius certum* rule of the principle of legality
- (c) In *Masiya v Director of Public Prosecutions 2007 (2) SACR 435 (CC)* the Constitutional Court extended the definition of the crime of rape in order to give effect to the rights of women to dignity, privacy and sexual autonomy
- (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) The rules of the principle of legality need not be complied with in the context of punishment
- (b) X performs a voluntary act if he can subject his bodily movements to his will or intellect
- (c) If a person acted negligently, it means that he did not perform a voluntary act
- (1) None of the statements is correct
- (2) Only statements (a) and (b) are correct
- (3) Only statement (a) is correct
- (4) Only statements (a) and (c) are correct
- (5) Only statement (b) is correct

[TURN OVER]

Question 4

- (a) If Y tells X that he will kill him unless he (X) kills Z and as a result of this threat X kills Z, then he (X) acts in a situation of **absolute force**
- (b) **Sane automatism** means that a person did not act voluntarily as a result of **mental illness**
- (c) In *Henry 1999* (1) SACR 13 (SCA) the accused, who had shot his wife in a fit of rage relied upon the defence of **insane automatism**
- (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 the statements is correct**
 (5) Only statement (a) is correct

Question 5

- (a) An omission is punishable only if there is a legal duty upon X to act positively
- (b) The defence of impossibility may be raised if it is **objectively** impossible for X to comply with a criminal norm which places a positive duty upon him to act
- (c) Causation is a requirement in all **materially-defined** crimes
- (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) Teachers may not impose corporal punishment on children
- (b) If X sees that Y is attacked by Z and helps to defend Y, he (X) cannot rely on private defence since he does not defend his own life or property
- (c) Killing an innocent person in a situation of necessity can **never** be a defence but only a mitigating circumstance
- (1) Only statement (a) is correct
 (2) Only statement (b) is correct
 (3) None of the statements is correct
 (4) Only statements (b) and (c) are correct
 (5) **Only statements (a) and (b) are correct**

Question 7

- (a) In a crime requiring intention, the intention requirement is satisfied irrespective of whether X had intention in the form of direct intention, indirect intention or *dolus eventualis*
 - (b) If X wants to kill his enemy Z, but realizes that in order to kill Z, he will **necessarily** have to break into his (Z's) house, he has **indirect intention** with regard to the crime of housebreaking with the intent to commit a crime
 - (c) In order to have intention, X's knowledge must refer to all the elements of the offence, excluding the element of culpability
- (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) All these statements are correct

Question 8

- (a) If X fires a shot at an object believing it to be an animal and it turns out to be a human being, X can, on a charge of murder, rely on the defence of **mistake**
 - (b) Whether X had intention to commit an offence necessarily involves an investigation into his **motive** for committing the offence
 - (c) *Aberratio ictus* is a form of mistake which affords X a defence provided it was a material mistake
- (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 9

- (a) If X fires a shot at his enemy, Y, and the bullet hits a wall, ricochets and fatally injures Z who suddenly appears behind Y, the **transferred-culpability** approach requires that X be convicted of murder in respect of Z
- (b) An accessory after the fact is regarded as a **participant** in a crime
- (c) A "joiner in" is a person who joins in an attack at a stage when the victim **had already died** as a result of the wounds inflicted by other persons who acted in a common purpose.
- (1) All the statements are correct
 (2) Only statements (a) and (b) are correct
 (3) Only statement (a) is correct
 (4) Only statements (a) and (c) are correct
 (5) Only statement (b) is correct

Question 10

- (a) An interrupted attempt at a crime can still amount to a punishable attempt provided X's actions qualify as acts of execution
- (b) If X thinks that it is a crime to commit adultery and then commits adultery, he may be convicted of an attempt to commit the impossible
- (c) If X fires a shot at Y while he (Y) is driving a vehicle with bullet-proof windows and Y is not injured, X may be convicted of attempted murder provided the state can prove that X had the intention to kill Y
- (1) None of these statements is correct
 (2) Only statements (a) and (c) are correct
 (3) Only statement (c) is correct
 (4) Only statements (b) and (c) are correct
 (5) Only statement (b) is correct

Sub-total: [30]**[TURN OVER]**

PART B

THIS PART CONSISTS OF THREE (3) QUESTIONS, NUMBERED 1, 2 AND 3. YOU MUST ANSWER ALL THREE (3) QUESTIONS (WITH THEIR SUBDIVISIONS). NOTE THAT SOME OF THE QUESTIONS CONTAIN A CHOICE. SUBSTANTIATE YOUR ANSWERS AND REFER TO DECIDED CASES WHERE RELEVANT. IN DETERMINING THE LENGTH OF YOUR ANSWERS YOU SHOULD BE GUIDED BY THE MARKS ALLOCATED TO EACH QUESTION.

Question 1

- (a) Y, a 22-year-old woman is obese and very keen to lose weight. She has tried all kinds of diets but in vain. She sees an advertisement placed in a magazine by a hypnotist, X, who claims that his clients lose weight as a result of his hypnosis. Y makes an appointment with X and agrees to hypnosis. While Y is under hypnosis, X has sex with Y. Y lays a charge of rape against X. X relies on the defence of consent. He argues that since Y consented to treatment through hypnosis to lose weight, she implicitly consented to *any* treatment that would cure her of obesity, including sexual intercourse.

- (i) Name the requirements for successful reliance on the defence of **consent**. (6)
- (ii) Indicate by a "yes" or "no" whether X can succeed with the defence and give reasons for your answer. (2)

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

For successful reliance on the ground of justification known as **private defence**, it is required, amongst other things that the **defensive action must stand in a reasonable relationship to the attack.**

- (i) The Supreme Court of Appeal in *Steyn* 2010 1 SACR 411 (SCA) 417 identified **certain factors** as relevant in determining whether this requirement is complied with. However, the court also stated that the list is not exhaustive and that each case should be determined in the light of its own circumstances. **Name four of the factors identified by the court.** (4)
- (ii) Discuss the decision in *Steyn* 2010 1 SACR 411 (SCA) with reference to the facts, the finding of the court and the reasons for the finding. (6)

OR

Discuss the ground of justification known as "obedience to orders" (10)

- (c) **Merely name** seven (7) specific instances in which a legal duty to act positively has been recognised by our courts. (7)

[25]

[TURN OVER]

Question 2

- (a) X is a drug dealer and supplies drugs to Y. Y does not pay him and X decides to take revenge. He approaches Z, who is known as a so-called "contract killer" and makes a deal with him (Z) to kill Y. The exact execution of the killing is not discussed. Z agrees, and fires a shot at Y while he (Y) is driving his car. Y, who is shot in the neck, loses control over the car and collides into an oncoming car, killing the driver of that car, A, instantly. Y is taken to hospital by ambulance and treated for his injury. He is dismissed from hospital after two months, having recovered from the injury. However, he is paralysed and unable to return to work. His doctor tells him (Y) that there is a possibility that he may develop bed sores if he does not change his position every four hours. He is also advised to visit the doctor immediately if he should develop bed sores. Y does not listen to his doctor and develops bed sores from which he eventually dies. Both X and Z are charged with murder in respect of A and Y.
- (i) Indicate whether both X and Z can be classified as **direct perpetrators** in relation to Y's death. Give a reason for your answer. (2)
 - (ii) Can the conduct of **both X and Z** be regarded as the **cause** of Y's death? Discuss with reference to the **tests for factual and legal causation**. Refer also to **relevant case law**. (8)
 - (iii) Assume that the court finds that Z's conduct of firing a shot at Y while he was driving a car was also the **cause** of A's death. Can it be argued that Z should be convicted of murder in respect of A because he had **intention in the form of *dolus eventualis***? In your answer you must give a definition of *dolus eventualis*. (4)
- (b) Explain briefly with reference to an example, what you understand by a mistake with regard to the presence of a ground of justification. Also state in one sentence which requirement of criminal liability is excluded if the defence is raised successfully. (3)
- (c) X1, X2 and X3 are members of a criminal gang. Their main activity is to manufacture drugs in the house of X1. Y, the girlfriend of X3, knows about this. One day while having a fight with X3 she (Y) threatens X3 to report their criminal activities to the police. X3 tells X1 and X2 about Y's threat. They all decide to kill her. Their plan is that X2 will take Y for a late-evening walk in a deserted street, that X3 and X4 will wait for them there and then attack and kill Y by stabbing her with knives. Everything goes according to plan and Y is killed by X1 and X2. Answer the following questions.
- (i) Define the doctrine of common purpose. (2)
 - (ii) Discuss whether X1, X2 and X3 may all be convicted of murder in terms of this doctrine. (6)
- [25]**

[TURN OVER]

Question 3

- (a) X is a taxi-driver. He drives too fast in an urban area, loses control over his taxi and kills a pedestrian, Y, who was crossing the road. Y is killed on impact. X is charged with culpable homicide. Consider whether X may be convicted of this offence. In your answer you must define the test for negligence. (6)

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

Discuss **ONE** of the following cases

- (i) *Eadie* 2002 1 SACR 663 (SCA)
(ii) *Thebus* 2003 2 SACR 319 (CC) (6)

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

- (i) If X is charged with murder and the court find that X **lacked criminal capacity as a result of intoxication** at the time of the commission of the act which caused Y's death, X cannot be convicted of murder or culpable homicide but may be convicted of *contravening section 1 of Act 1 of 1988* (1)
- (ii) If X is charged of murder and the court finds that although he was intoxicated at the time of causing Y's death, X **had criminal capacity** but lacked intention, he may nevertheless be convicted of *culpable homicide* (1)
- (iii) An **accomplice** is a person who *further*s the commission of a crime committed by someone else (1)
- (iv) The concept of **criminal capacity** comprises two psychological components firstly, X's ability to *① appreciate the wrongfulness* of his act or omission, and secondly, his ability to *② conduct himself in accordance with such an appreciation of the wrongfulness* of his act or omission (2)
- (v) Intention, in whatever form, consists of two elements, namely a cognitive and a conative element. The cognitive element refers to X's *① knowledge or awareness*, while the conative element refers to his *will*. (2)
- (vi) Whether *error in objecto* excludes intention and is, therefore, a defence depends upon the *definitional elements* of the particular crime (1) [20]

Sub-total: [70]

TOTAL: [100]

PART 1 (GENERAL/ALGEMEEN) DEEL 1

STUDY UNIT e.g. PSY100X
 STUDE-EENHEID by PSY100 X

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PAPER NUMBER
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STUDENT NUMBER
 STUDENTNUMMER

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INITIALS AND SURNAME
 VOORLETTERS EN VAN

3

DATE OF EXAMINATION
 DATUM VAN EKSAMEN

4

EXAMINATION CENTRE (E.G. PRETORIA)
 EKSAMENSENTRUM (BY PRETORIA)

5

UNIQUE PAPER NO
 UNIEKE VRAESTEL NR

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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
 - CHECK THAT YOUR STUDENT NUMBER HAS BEEN FILLED IN CORRECTLY
 - CHECK THAT THE UNIQUE NUMBER HAS BEEN FILLED IN CORRECTLY
 - CHECK THAT ONLY ONE ANSWER PER QUESTION HAS BEEN MARKED
 - DO NOT FOLD
- BELANGRIK**
- GEBRUIK SLEGS 'N HB PDLLOOD OM HIERDIE BLAD TE VOLTOOI
 - MERK AS VOLG →
 - KONTROLEER DAT U VOORLETTERS EN VAN R+G INGFWUL IS
 - VUL U STUDENTENOMMER VAN LINKS NA REGS IN
 - KONTROLEER DAT U DIE KORREKTE STUDENTENOMMER VERSTREK HET
 - KONTROLEER DAT DIE UNIEKE NOMMER RFG INGFWUL IS
 - MAAK SEKER DAT NET EEN ALTERNATIEF PER VRAAG GEMERK IS
 - VOENIE VOL NIE

PART 2 (ANSWERS/ANTWOORDE) DEEL 2

1	11	21	31	41	51	61	71	81	91	101	111	121	131	141	151
2	12	22	32	42	52	62	72	82	92	102	112	122	132	142	152
3	13	23	33	43	53	63	73	83	93	103	113	123	133	143	153
4	14	24	34	44	54	64	74	84	94	104	114	124	134	144	154
5	15	25	35	45	55	65	75	85	95	105	115	125	135	145	155
6	16	26	36	46	56	66	76	86	96	106	116	126	136	146	156
7	17	27	37	47	57	67	77	87	97	107	117	127	137	147	157
8	18	28	38	48	58	68	78	88	98	108	118	128	138	148	158
9	19	29	39	49	59	69	79	89	99	109	119	129	139	149	159
10	20	30	40	50	60	70	80	90	100	110	120	130	140	150	160
11	21	31	41	51	61	71	81	91	101	111	121	131	141	151	161
12	22	32	42	52	62	72	82	92	102	112	122	132	142	152	162
13	23	33	43	53	63	73	83	93	103	113	123	133	143	153	163
14	24	34	44	54	64	74	84	94	104	114	124	134	144	154	164
15	25	35	45	55	65	75	85	95	105	115	125	135	145	155	165
16	26	36	46	56	66	76	86	96	106	116	126	136	146	156	166
17	27	37	47	57	67	77	87	97	107	117	127	137	147	157	167
18	28	38	48	58	68	78	88	98	108	118	128	138	148	158	168
19	29	39	49	59	69	79	89	99	109	119	129	139	149	159	169
20	30	40	50	60	70	80	90	100	110	120	130	140	150	160	170
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23	33	43	53	63	73	83	93	103	113	123	133	143	153	163	173
24	34	44	54	64	74	84	94	104	114	124	134	144	154	164	174
25	35	45	55	65	75	85	95	105	115	125	135	145	155	165	175
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28	38	48	58	68	78	88	98	108	118	128	138	148	158	168	178
29	39	49	59	69	79	89	99	109	119	129	139	149	159	169	179
30	40	50	60	70	80	90	100	110	120	130	140	150	160	170	180
31	41	51	61	71	81	91	101	111	121	131	141	151	161	171	181
32	42	52	62	72	82	92	102	112	122	132	142	152	162	172	182
33	43	53	63	73	83	93	103	113	123	133	143	153	163	173	183
34	44	54	64	74	84	94	104	114	124	134	144	154	164	174	184
35	45	55	65	75	85	95	105	115	125	135	145	155	165	175	185

Specimen only

CRW2601

(476054)

May/June 2015

GENERAL PRINCIPLES OF CRIMINAL LAW

Duration 2 Hours

100 Marks

EXAMINERS**FIRST**

PROF L JORDAAN

DR N MOLLEMA

MISS CP MUSEKA

MR RD RAMOSA

SECOND

PROF C VAN DER BIJL

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[TURN OVER]

Question 1

- (a) A legal norm in an Act is a provision which makes it clear that certain conduct constitutes a crime
 - (b) The principle of legality is one of the elements of a crime that an accused, by his conduct and subjective attributes, must comply with to be criminally liable
 - (c) The correct sequence of investigation into the elements of criminal liability is conduct, compliance with definitional elements, culpability and unlawfulness
- (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) The idea underlying the *ius strictum* rule is that where doubt exists concerning the interpretation of a criminal provision, the accused should be given the benefit of the doubt
 - (b) There is a legal duty upon X to act positively if the **legal convictions** of the community require him to do so
 - (c) The Constitution of the Republic of South Africa, 1996 contains an **express** provision regarding the *ius certum* rule
- (1) Only statements (a) and (b) are 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 *ius praeivium* rule prohibits the creation of a crime with retrospective effect
 - (b) The Constitutional Court in *Masiya v DPP* 2007 (2) SACR 435 (CC) held that one of the central tenets underlying the understanding of legality is that of **foreseeability**
 - (c) Absolute force is one of the factors that excludes the voluntariness of an act
- (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 4

- (a) If X encourages his dog to attack Y and Y is injured as a result of such attack, X cannot be convicted of assault or any other offence because he did not perform an act in the legal sense of the word
- (b) Where X relies on automatism as a defence he must provide a basis for his defence by calling medical or other expert evidence which may create a doubt regarding the voluntariness of his conduct
- (c) One of the requirements for successfully raising the defence of impossibility is that the legal provision that is infringed must place a **positive duty** on X to perform an 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) The difference between formally defined crimes and materially defined crimes is that, with formally defined crimes the definitional elements proscribe a **certain type of conduct** whereas the definitional elements of materially defined crimes proscribe **any conduct that causes a specific condition**.
- (b) The definitional elements of a crime contain a reference to the requirements of unlawfulness and culpability
- (c) The *novus actus interveniens* theory of legal causation is formulated as follows An act is a *novus actus interveniens* if, according to human experience, in the normal course of events, the act has a tendency to bring about a certain situation
- (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) Defences that exclude the element of unlawfulness are referred to as grounds of justification
- (b) If X strikes his attacker Y, but Y has no criminal capacity because of a mental illness, X **cannot** rely on private defence because the attack on him (X) was **not unlawful**.
- (c) In *Mogohlwane* 1982 (2) SA 587 (T), the court held that X exceeded the bounds of private defence because the attack by Y had already been completed when he (X) acted
- (1) All these statements are correct
 (2) Only statement (a) 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) One of the differences between private defence and necessity relates to the **object** at which the act of defence is directed
- (b) If doctor X tells his patient Y that he must sexually penetrate her in order to determine whether she has an ulcer and she agrees to his act under the **wrong impression** that his act is necessary in order to make a diagnosis, she (Y) does **not give real consent** to his act
- (c) Teachers have a right to administer moderate and reasonable corporal punishment on school children in order to maintain authority and discipline
- (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) In criminal law the concept "culpability" refers to a blameworthy state of mind in which a person performs an unlawful act
- (b) The defence of mental illness has two legs a pathological and a psychological leg
- (c) In *Eadie* 2002 (1) SACR 663 (SCA), 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 hand
- (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) The decision in *Mostert* 2006 (1) SACR 560 (N) confirms the principle laid down in the Constitution (s 199(6)) that the defence of obedience to orders will be successful, provided the orders were **not manifestly unlawful**
 - (b) Mistake must be reasonable in order to exclude intention
 - (c) According to the *Child Justice Act* 75 of 2008, a 10-year old child is irrebuttably presumed to lack criminal capacity
- (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 (c) are correct

Question 10

- (a) The test for culpability in the form of intention includes an investigation regarding the motive of the accused for committing the offence
 - (b) Intention must be directed at the circumstances included in the definitional elements of the offence
 - (c) **Putative private defence** is a defence which excludes the element of culpability and **not** the element of unlawfulness
- (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]**[TURN OVER]**

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) Define criminal capacity, and name the defences that may possibly exclude this requirement of criminal liability (6)
- (b) Explain the difference between the transferred-culpability approach and the concrete-figure approach applied in determining whether X had culpability in an *aberratio ictus* situation. Also indicate in one sentence which approach is followed in South African law and refer to relevant case law (8)
- (c) **NOTE THE CHOICE THAT YOU HAVE IN THIS QUESTION**

In your study guide, a summary of the legal points decided by the Appellate Division (Rumpff CJ) in *Chretien* 1981 (1) SA 1097 (A) is provided in a shaded ("screened") block. Set out this summary of these legal points. You are not required to set out the facts in *Chretien*, but only the most important legal points decided in this case.

OR

Explain and discuss the principle of contemporaneity, referring to relevant case law (5)

- (d) Distinguish between *dolus directus*, *dolus indirectus* and *dolus eventualis* by giving a definition of each (6)
- [25]**

Question 2

- (a) On his way home from a business meeting, X begins to feel drowsy. He fails to stop at a certain stop sign and moves into an intersection where he collides with a light delivery-van. The driver of the delivery-van is killed on impact. Evidence in court reveals that a day before the accident X had been diagnosed as suffering from diabetes, but that the doctor had not warned him that he might become drowsy as a result of this, and that this might affect his ability to drive. X is charged with murder, alternatively culpable homicide.
- (i) Which defence can X advance, and why? (2)
- (ii) Which party bears the onus of proof in a situation where this defence is raised? (1)
- (iii) Explain how you, as X's lawyer, would conduct his case (2)
- (iv) Determine X's liability on the charge of murder (2)
- (v) Would your answer in (iv) above be different if the charge is one of culpable homicide? Briefly give reasons for your answer (2)
- (vi) On a charge of culpable homicide, would your answer in (v) above be different if X had been warned by his doctor that he might become drowsy and that this might affect his ability to drive? Explain, with reference to case law (4)

[TURN OVER]

- (b) X has a heated argument with his girlfriend, Y. He shoots her (Y) twice in the abdomen. The wounds would be fatal if Y is not treated within two days. Y is admitted to hospital within one hour after sustaining the injuries. The medical personnel clean her wounds and put her on antibiotic medication. However, they fail to remove the bullets and leave her unattended for 24 hours. By the time the doctor arrives, Y has already started bleeding internally and her life cannot be saved. She dies a few minutes later. On a charge of murder, X argues that he cannot be held liable because the **causal connection** between his act and Y's death is too remote.

Assuming that all the other requirements for liability are present, discuss with reference to case law whether X **caused** Y's death (8)

- (c) Name **three** possible effects that provocation may have on criminal liability (3)
[24]

Question 3

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

Distinguish between *aberratio ictus* and *error in objecto*, and provide one example of each. Explain also under which circumstances *error in objecto* will exclude intention.

OR

Name the requirements for successful reliance upon private defence (7)

- (b) Discuss **ONE** of the following cases

- (i) *De Oliveira* 1993 (2) SACR 59 (A)
 (ii) *Goliath* 1972 (3) SA 1 (A)
 (iii) *De Blom* 1977 (3) SA 513 (A) (6)

- (c) Define the test for negligence (5)

- (d) Name the subjective factors that are exceptionally taken into account when applying the test for negligence (3)
[21]

SUB-TOTAL: [70]

TOTAL: [100]

PART 1 (GENERAL/ALGEMEEN) DEEL 1

STUDY UNIT (E.G. PSY100-X)
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EXAMINATION CENTRE (E.G. PRETORIA)
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For use by examination invigilator
 Vir gebruik deur eksamenopsiener

IMPORTANT

- 1 USE ONLY AN HB PENCIL TO COMPLETE THIS SHEET
- 2 MARK LIKE THIS
- 3 CHECK THAT YOUR INITIALS AND SURNAME HAS BEEN FILLED IN CORRECTLY
- 4 ENTER YOUR STUDENT NUMBER FROM LEFT TO RIGHT
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- 7 MAAK SEKER DAT NET EEN ALTERNATIEF PER VRAAG GEMERK IS
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PART 2 (ANSWERS/ANTWOORDE) DEEL 2

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CRW2601

(483034)

October/November 2014

GENERAL PRINCIPLES OF CRIMINAL LAW

Duration 2 Hours

100 Marks

EXAMINERS

FIRST

PROF L JORDAAN

DR N MOLLEMA

MISS CP MUSEKA

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 eight (8) pages plus the instruction for the completion of a mark-reading sheet.

THE QUESTIONS IN THIS PAPER COUNT HUNDRED (100) MARKS. THE PAPER CONSISTS OF TWO PARTS, MARKED A AND B YOU MUST ANSWER BOTH PART A AND PART B. PART A CONSISTS OF TEN (10) MULTIPLE CHOICE QUESTIONS. YOU MUST FILL IN THE ANSWERS TO THESE QUESTIONS ON THE MARK-READING SHEET. THE CORRECT ANSWER FOR EACH OF THESE QUESTIONS 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 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 statement/s 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 reflects the conclusions to which you have come.

[TURN OVER]

Question 1

- (a) The only justification for the imposition of punishment is to deter the community from committing crimes
 - (b) In *Zinn* 1969 (2) SA 537 (A) it was held that courts may impose sentences 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 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 investigation into the presence of the four elements of liability must follow a prescribed 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 a ticket" creates an offence
- (b) The principle of legality as set out in section 35(3)(f) 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)(f) of the Constitution
- (1) None of these statements is correct
(2) Only statements (a) and (b) are correct
(3) Only statement (a) is correct
(4) Only statements (a) and (c) are correct
(5) Only statement (c) is correct

Question 4

- (a) If X slapped another person through the face while he (X) was sleepwalking, he cannot be held liable for assault on the ground that his act was **not unlawful**
- (b) If X loses control over his micro-light plane and crashes into X's car, he cannot be convicted of malicious damage to property because he was acting in a situation of **relative force**
- (c) In *Henry* 1999 (1) SACR 13 (SCA) the accused, who had shot his wife in a fit of rage successfully relied upon the defence of **sane automatism**
- (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 the statements is correct
(5) Only statement (a) 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 that 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

[TURN OVER]

Question 8

- (a) Whether *error in objecto* is a defence depends on the particular 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 statements (a) and (c) are correct

Question 9

- (a) If X fires a shot at his enemy, Y, and the bullet hits a wall, ricochets and fatally injures Z who suddenly appeared behind Y, the transferred-culpability approach requires that X be convicted of murder in respect of Z
 - (b) The mere fact that somebody has committed an error of judgment does not necessarily mean that he was negligent
 - (c) If a person engages in unlawful conduct he is held criminally liable for all the consequences flowing from such conduct
- (1) All these statements are correct
 - (2) Only statements (a) and (b) are correct
 - (3) Only statement (a) is correct
 - (4) Only statements (a) and (c) are correct
 - (5) Only statement (b) is correct

Question 10

- (a) If X, at the time of the commission of an offence, was unaware that his conduct amounted to an offence he can rely on the defence known as mistake of law
 - (b) In South Africa corporate bodies may be convicted of common-law as well as statutory crimes
 - (c) Strict liability is possible only in statutory offences
- (1) All these statements are correct
 - (2) Only statements (a) and (c) are correct
 - (3) Only statement (c) is correct
 - (4) Only statements (b) and (c) are correct
 - (5) Only statement (b) is correct

[30]

[TURN OVER]

PART B

THIS PART CONSISTS OF THREE QUESTIONS, NUMBERED 1, 2 AND 3. EACH QUESTION IS SUBDIVIDED INTO A NUMBER OF SUBDIVISIONS YOU MUST ANSWER ALL THREE QUESTIONS (WITH THEIR SUBDIVISIONS). NOTE THAT SOME OF THE QUESTIONS CONTAIN A CHOICE BETWEEN TWO ALTERNATIVES. SUBSTANTIATE YOUR ANSWERS AND REFER TO DECIDED CASES WHERE RELEVANT. IN DETERMINING THE LENGTH OF YOUR ANSWERS YOU SHOULD BE GUIDED BY THE MARKS ALLOCATED TO EACH QUESTION.

Question 1**NOTE THE CHOICE THAT YOU HAVE IN THIS QUESTION**

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

OR

Discuss the ground of justification known as obedience to orders (7)

- (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 had lacked the intention to kill. Consider these facts and answer the following questions

- (i) If the court accepts X's defence and he is acquitted of attempted murder, can he nevertheless be convicted of the lesser crime of assault? In your answer you must discuss the relevant case law (7)

- (ii) 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)

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

[25]**[TURN OVER]**

Question 2

(a) Define the following legal concepts

- (i) *Novus actus interveniens* (3)
- (ii) Indirect intention (2)
- (iii) *Dolus eventualis* (3)

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

- (i) *Tembari* 2007 (1) SACR 355 (SCA)
- (ii) *Eadie* 2002 (1) SACR 663 (SCA)

(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 had escaped from a 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)
- (ii) Suppose X is acquitted of murder on the ground that she had acted in a situation of private defence. Can she still be convicted of culpable homicide? Give a reason for your answer in one sentence (2)
- (iii) 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 and 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)

(6)
[30]

[TURN OVER]

Question 3**NOTE THE CHOICE THAT YOU HAVE IN THIS QUESTION**

- (a) Name the requirements for a valid plea of consent

OR

Fully define the test for negligence (6)

- (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)

- (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 (1)

(iv) If X contravenes the speed limit because she takes a person who has just had a heart attack to hospital, she may, if charged with a traffic offence, rely on the defence of _____ (1)

[15]

SUB-TOTAL: [70]

TOTAL: 100

PART 1 (GENERAL/ALGEMEEN) DEEL 1

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DATE OF EXAMINATION
DATUM VAN EKSAMEN

EXAMINATION CENTRE (E.G. PRETORIA)
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(4)	(5)	(6)	(7)	(8)	(9)	(0)	(1)
(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
(3)	(4)	(5)	(6)	(7)	(8)	(9)	(0)
(5)	(6)	(7)	(8)	(9)	(0)	(1)	(2)
(7)	(8)	(9)	(0)	(1)	(2)	(3)	(4)
(8)	(9)	(0)	(1)	(2)	(3)	(4)	(5)
(9)	(0)	(1)	(2)	(3)	(4)	(5)	(6)

For use by examination invigilator
Vir gebruik deur eksamenopsiener

IMPORTANT

1. USE ONLY AN HB PENCIL TO COMPLETE THIS SHEET
2. MARK LIKE THIS
3. CHECK THAT YOUR INITIALS AND SURNAME HAS BEEN FILLED IN CORRECTLY
4. ENTER YOUR STUDENT NUMBER FROM LEFT TO RIGHT
6. CHECK THAT YOUR STUDENT NUMBER HAS BEEN FILLED IN CORRECTLY
6. CHECK THAT THE UNIQUE NUMBER HAS BEEN FILLED IN CORRECTLY
7. CHECK THAT ONLY ONE ANSWER PER QUESTION HAS BEEN MARKED
8. DO NOT FOLD

BELANGRIK

1. GEBUIK SLEGS N HB POTLOOD OM HIERDIE BLAD TE VOLTOOI
2. MERK AS VOLG
3. KONTROLEER DAT U VOORLETTERS EN VAN REG INGEVUL IS
4. VUL U STUDENTENOMMER VAN LINKS NA REGS IN
5. KONTROLEER DAT U DIE KORREKTE STUDENTENOMMER VERSTREK HET
6. KONTROLEER DAT DIE UNIEKE NOMMER REG INGEVUL IS
7. MAAK SEKER DAT NET EEN ALTERNATIEF PER VRAAG GEMERK IS
8. MOENIE VOU NIE

PART 2 (ANSWERS/ANTWOORDE) DEEL 2

1	(1) (2) (3) (4) (5)	36	(1) (2) (3) (4) (5)	71	(1) (2) (3) (4) (5)	106	(1) (2) (3) (4) (5)
2	(1) (2) (3) (4) (5)	37	(1) (2) (3) (4) (5)	72	(1) (2) (3) (4) (5)	107	(1) (2) (3) (4) (5)
3	(1) (2) (3) (4) (5)	38	(1) (2) (3) (4) (5)	73	(1) (2) (3) (4) (5)	108	(1) (2) (3) (4) (5)
4	(1) (2) (3) (4) (5)	39	(1) (2) (3) (4) (5)	74	(1) (2) (3) (4) (5)	109	(1) (2) (3) (4) (5)
5	(1) (2) (3) (4) (5)	40	(1) (2) (3) (4) (5)	75	(1) (2) (3) (4) (5)	110	(1) (2) (3) (4) (5)
6	(1) (2) (3) (4) (5)	41	(1) (2) (3) (4) (5)	76	(1) (2) (3) (4) (5)	111	(1) (2) (3) (4) (5)
7	(1) (2) (3) (4) (5)	42	(1) (2) (3) (4) (5)	77	(1) (2) (3) (4) (5)	112	(1) (2) (3) (4) (5)
8	(1) (2) (3) (4) (5)	43	(1) (2) (3) (4) (5)	78	(1) (2) (3) (4) (5)	113	(1) (2) (3) (4) (5)
9	(1) (2) (3) (4) (5)	44	(1) (2) (3) (4) (5)	79	(1) (2) (3) (4) (5)	114	(1) (2) (3) (4) (5)
10	(1) (2) (3) (4) (5)	45	(1) (2) (3) (4) (5)	80	(1) (2) (3) (4) (5)	115	(1) (2) (3) (4) (5)
11	(1) (2) (3) (4) (5)	46	(1) (2) (3) (4) (5)	81	(1) (2) (3) (4) (5)	116	(1) (2) (3) (4) (5)
12	(1) (2) (3) (4) (5)	47	(1) (2) (3) (4) (5)	82	(1) (2) (3) (4) (5)	117	(1) (2) (3) (4) (5)
13	(1) (2) (3) (4) (5)	48	(1) (2) (3) (4) (5)	83	(1) (2) (3) (4) (5)	118	(1) (2) (3) (4) (5)
14	(1) (2) (3) (4) (5)	49	(1) (2) (3) (4) (5)	84	(1) (2) (3) (4) (5)	119	(1) (2) (3) (4) (5)
15	(1) (2) (3) (4) (5)	50	(1) (2) (3) (4) (5)	85	(1) (2) (3) (4) (5)	120	(1) (2) (3) (4) (5)
16	(1) (2) (3) (4) (5)	51	(1) (2) (3) (4) (5)	86	(1) (2) (3) (4) (5)	121	(1) (2) (3) (4) (5)
17	(1) (2) (3) (4) (5)	52	(1) (2) (3) (4) (5)	87	(1) (2) (3) (4) (5)	122	(1) (2) (3) (4) (5)
18	(1) (2) (3) (4) (5)	53	(1) (2) (3) (4) (5)	88	(1) (2) (3) (4) (5)	123	(1) (2) (3) (4) (5)
19	(1) (2) (3) (4) (5)	54	(1) (2) (3) (4) (5)	89	(1) (2) (3) (4) (5)	124	(1) (2) (3) (4) (5)
20	(1) (2) (3) (4) (5)	55	(1) (2) (3) (4) (5)	90	(1) (2) (3) (4) (5)	125	(1) (2) (3) (4) (5)
21	(1) (2) (3) (4) (5)	56	(1) (2) (3) (4) (5)	91	(1) (2) (3) (4) (5)	126	(1) (2) (3) (4) (5)
22	(1) (2) (3) (4) (5)	57	(1) (2) (3) (4) (5)	92	(1) (2) (3) (4) (5)	127	(1) (2) (3) (4) (5)
23	(1) (2) (3) (4) (5)	58	(1) (2) (3) (4) (5)	93	(1) (2) (3) (4) (5)	128	(1) (2) (3) (4) (5)
24	(1) (2) (3) (4) (5)	59	(1) (2) (3) (4) (5)	94	(1) (2) (3) (4) (5)	129	(1) (2) (3) (4) (5)
25	(1) (2) (3) (4) (5)	60	(1) (2) (3) (4) (5)	95	(1) (2) (3) (4) (5)	130	(1) (2) (3) (4) (5)
26	(1) (2) (3) (4) (5)	61	(1) (2) (3) (4) (5)	96	(1) (2) (3) (4) (5)	131	(1) (2) (3) (4) (5)
27	(1) (2) (3) (4) (5)	62	(1) (2) (3) (4) (5)	97	(1) (2) (3) (4) (5)	132	(1) (2) (3) (4) (5)
28	(1) (2) (3) (4) (5)	63	(1) (2) (3) (4) (5)	98	(1) (2) (3) (4) (5)	133	(1) (2) (3) (4) (5)
29	(1) (2) (3) (4) (5)	64	(1) (2) (3) (4) (5)	99	(1) (2) (3) (4) (5)	134	(1) (2) (3) (4) (5)
30	(1) (2) (3) (4) (5)	65	(1) (2) (3) (4) (5)	100	(1) (2) (3) (4) (5)	135	(1) (2) (3) (4) (5)
31	(1) (2) (3) (4) (5)	66	(1) (2) (3) (4) (5)	101	(1) (2) (3) (4) (5)	136	(1) (2) (3) (4) (5)
32	(1) (2) (3) (4) (5)	67	(1) (2) (3) (4) (5)	102	(1) (2) (3) (4) (5)	137	(1) (2) (3) (4) (5)
33	(1) (2) (3) (4) (5)	68	(1) (2) (3) (4) (5)	103	(1) (2) (3) (4) (5)	138	(1) (2) (3) (4) (5)
34	(1) (2) (3) (4) (5)	69	(1) (2) (3) (4) (5)	104	(1) (2) (3) (4) (5)	139	(1) (2) (3) (4) (5)
35	(1) (2) (3) (4) (5)	70	(1) (2) (3) (4) (5)	105	(1) (2) (3) (4) (5)	140	(1) (2) (3) (4) (5)

Specimen only

CRW2601

(471136)

May/June 2014

GENERAL PRINCIPLES OF CRIMINAL LAW

Duration . 2 Hours

100 Marks

EXAMINERS :

FIRST :

SECOND

DR N MOLLEMA
PROF C VAN DER BIJL

MR RD RAMOSA

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 the instruction for the completion of the mark reading sheet.

THE QUESTIONS IN THIS PAPER COUNT A HUNDRED MARKS. THE PAPER CONSISTS OF TWO PARTS, MARKED A AND B. YOU MUST ANSWER BOTH PART A AND PART B. PART A CONSISTS OF TEN MULTIPLE CHOICE QUESTIONS. YOU MUST FILL IN THE ANSWERS TO THESE QUESTIONS ON THE MARK READING SHEET. THIS MEANS THAT THE QUESTIONS IN PART A COUNT A TOTAL OF 30 MARKS. IN PART B, THE ANSWERS TO THE QUESTIONS MUST BE WRITTEN IN THE EXAMINATION ANSWER BOOK. THE QUESTIONS IN PART B COUNT SEVENTY 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.

Question 1

- (a) The efficacy of the preventive theory depends on proof of a real possibility that the offender will again commit a crime
- (b) The theory of retribution is aimed at restoring the legal balance which has been disturbed by the commission of a crime.
- (c) In *Masiya 2007 (2) SACR 435 (CC)* the court confirmed that the **legislature**, and not the courts, has the major responsibility for law reform.

- (1) Only statement (a) 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 statements (a) and (c) are correct.

Question 2

- (a) A legal norm in an Act is a provision which makes it clear that certain conduct constitutes a crime
- (b) A person will always be held criminally liable where his or her act merely complies with the definitional elements of a crime.
- (c) The three factors emphasised in *Zinn 1969 (2) SA 537 (A)* which need to be taken into account when sentencing are the crime, the criminal and the interests of society.

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

Question 3

- (a) Absolute force, natural forces and automatism are all factors that exclude the **voluntariness** of an act.
- (b) In cases of sane automatism the onus is on the state to prove that the act was voluntary
- (c) 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**

- (1) Only statement (b) is 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) None of the statements is correct

Question 4

- (a) In the case of *Daniëls* 1983 (3) SA 275 (A) the Appellate Division stated that a court may be guided by **policy considerations** in determining whether a condition which is a factual cause of a situation can also be regarded as the legal cause of that situation.
- (b) Since putative private defence is not real private defence, it cannot exclude X's **culpability**.
- (c) X cannot succeed with a defence of impossibility if he himself is responsible for the situation of impossibility
- (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 (a) and (b) are correct.

Question 5

- (a) If Y, who has financial problems, requests his friend X to shoot and kill him and X complies with this request and is charged with murder, he, (X) can rely successfully on the defence of consent as the consent was voluntarily given
- (b) In *Mogohiwane* 1982 (2) SA 587 (T), the court held that X could not rely on private defence because Y's unlawful attack had already been completed when he acted in defence.
- (c) The decision in *Mostert* 2006 (1) SACR 560 (N) confirms the principle laid down in the Constitution (s 199(6)) that the defence of obedience to orders will be successful, provided the orders were not manifestly unlawful.
- (1) Only statement (a) is correct
(2) Only statements (a) and (b) are correct.
(3) Only statement (c) is correct.
(4) None of the statements is correct.
(5) Only statements (b) and (c) are correct

Question 6

- (a) The conative element of the term "criminal capacity" deals with a person's insight and understanding.
- (b) In the case of *Eadie* 2002 (1) SACR 663 (SCA) it was held that there is no difference between the defence of non-pathological criminal incapacity, resulting from emotional stress or provocation, and the defence of sane automatism.
- (c) *Goosen* 1989 (4) SA 1013 (A) is authority for the proposition that a mistake relating to the chain of causation may exclude intention
- (1) Only statements (a) and (b) are correct
 (2) Only statements (b) and (c) are correct.
 (3) All the statements are correct.
 (4) Only statement (c) is correct.
 (5) Only statements (a) and (c) are correct

Question 7

- (a) Knowledge of the unlawfulness of an act is an element of intention.
- (b) The principle of contemporaneity requires that there must have been culpability on the part of X at the very moment that he committed the unlawful act
- (c) For *dolus indirectus*, the accused must foresee the forbidden result as a necessary consequence of his act of pursuing his main aim or goal
- (1) Only statements (a) and (b) are correct.
 (2) Only statement (b) is correct
 (3) Only statement (c) is correct.
 (4) All of the statements are correct
 (5) Only statements (a) and (c) are correct

Question 8

- (a) If X steals from the rich in order to give to the poor, X cannot be found guilty of theft because he has a good motive and his intention is therefore excluded.
- (b) In the case of *Ngubane* 1985 (3) SA 677 (A) the Appeal Court held that intention and negligence are conceptually different and can therefore **never** overlap
- (c) *Dolus eventualis* is a Latin term, which is also known as the reasonable-man test and is used to refer to negligence
- (1) None of the statements is correct.
 (2) Only statements (a) and (b) are correct.
 (3) Only statements (b) and (c) are correct.
 (4) Only statement (a) is correct.
 (5) Only statement (b) is correct.

Question 9

- (a) The question to determine negligence is not whether the reasonable person would have foreseen the **likelihood** that the result may ensue, but whether he would have foreseen the **possibility** that it may ensue.
- (b) According to South African law, if X intends to shoot and kill Y but his bullet ricochets and kills Z instead, his intention to kill Y is transferred to his killing of Z
- (c) Intoxication does not offer X a defence if charged with an offence requiring only negligence
- (1) Only statement (a) is correct
(2) Only statements (a) and (c) are correct.
(3) Only statement (c) is correct.
(4) All of the statements are correct.
(5) None of the statements is correct.

Question 10

- (a) A person who is charged with a crime, and who was so intoxicated that he or she was incapable of committing a voluntary act, may be convicted of contravening section 1 of Act 1 of 1988.
- (b) In South African law, a company can be held liable for murder
- (c) **Vicarious** liability is possible only in statutory offences.
- (1) None of these statements is correct
(2) All of these statements are correct
(3) Only statements (a) and (c) are correct
(4) Only statement (a) is correct.
(5) Only statement (b) is correct.

SUBTOTAL: [30]**TURN OVER**

PART B

THIS PART CONSISTS OF THREE QUESTIONS. YOU MUST ANSWER ALL THREE QUESTIONS (WITH THEIR SUB-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) Name the four general requirements of criminal liability in the correct sequence in which they should be investigated (5)
- (b) X, a fourteen-year-old girl is a movie star. She is also a drug addict and after making a bonfire in her neighbour's driveway, she is placed into a rehabilitation centre by her parents for a month. Three days after being placed in rehabilitation, X escapes from the centre. Legislation dealing with the admission to rehabilitation centres provides that, "No minor person admitted to a rehabilitation centre may leave the centre without the doctor's consent." Answer the questions below.
- (i) Define the principle of legality. (3)
- (ii) Is X guilty of a crime? Discuss the *ius acceptum* principle with specific reference to this scenario and also refer to applicable case law. (7)
- (c) An omission is punishable only if there is a legal duty on a person to act positively
- (i) When is there a legal duty to act positively? (1)
- (ii) Name five specific instances where it is generally recognised that there is a legal duty on a person to act positively (5)
- (iii) Discuss briefly with reference to case law whether there rests a duty on the state to protect its citizens from violent crime (4)
- [25]

Question 2

- (a) X hijacks a motorcar. He overpowers Y, the owner of the car. He ties her up and throws her into the boot of the car. While he is crossing a green traffic light, a police vehicle reacting to an emergency crosses a red traffic light and drives into the car and Y dies in the accident. X is charged with the murder of Y. At his trial X's legal representative argues that X's conduct did not cause Y's death. Discuss the merits of this argument. (8)
- (b) Discuss the question of whether a threatened person is entitled to kill another person out of necessity in order to preserve his own life with reference to all legal authority. (8)
- (c) Name the requirements of the act of defence in private defence. (4)
- [20]

Question 3

(a) NOTE THE CHOICE YOU HAVE IN THIS QUESTION

Define the test for negligence .

OR

Name 5 (five) effects of provocation under current South African law (5)

(b) X, a part-time criminal law student, who has just written his exams in record time arrives back at the office of his own business which he runs with a male partner B. X's wife, Y, is the secretary. He goes to the office store-room to collect another pen. While there he can see the outline of a man and a woman kissing each other in the dark. X, who is under the impression that the woman is his wife Y, in a state of rage takes out his firearm and fires a shot at the woman. Discuss X's liability in each of the set of facts that follows. You must evaluate each set of facts separately.

(i) The woman dies as a result of the shot but afterwards it transpires that the woman was not Y, but Z, her married sister who has been secretly meeting with B. Can X be convicted of murder or any other crime in respect of Z? (5)

(ii) The bullet hits a fan in the storeroom, changes direction and kills A, the tea lady, who enters the room at that moment to investigate the cause of the noise. A dies immediately. Discuss X's possible criminal liability in respect of A. (5)

(c) NOTE THE CHOICE YOU HAVE IN THIS QUESTION

Choose ONE of the following decisions for discussion:

(1) *Van Wyk* 1967 (1) SA 488 (A)

(2) *Chretien* 1981 (1) SA 1097 (A) (6)

(d) Fill in the missing words or phrases next to the corresponding question in your answer book

(i) The application of the *ius praevium* rule to punishment is that if the punishment to be imposed for a certain crime is increased in an Act, it must not be applied to the ... of the accused who committed the crime before the punishment was increased (1)

(ii) Conduct is ... if it conflicts with the legal convictions of society (1)

(iii) A ... test is applied in order to determine intention (1)

(iv) 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)

[25]

SUB-TOTAL: [70]

TOTAL: 100

PART 1 (GENERAL/ALGEMEEN) DEEL 1

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

1	-
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PAPER NUMBER
VRAESTELNOMMER

2

STUDENT NUMBER
STUDENTENOMMER

6

7

INITIALS AND SURNAME
VOORLETTERS EN VAN

DATE OF EXAMINATION
DATUM VAN EKSAMEN


EXAMINATION CENTRE (E.G. PRETORIA)
EKSAMENSENTRUM (BV. PRETORIA)


UNIQUE PAPER NO
UNIEKE VRAESTEL NR

8

9

For use by examination invigilator
Vir gebruik deur eksamenopsiener

- IMPORTANT**
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 7. CHECK THAT ONLY ONE ANSWER PER QUESTION HAS BEEN MARKED.
 8. DO NOT FOLD

- BELANGRIK**
1. GEBUIK SLEGS N HB-POTLOOD OM HIERDIE BLAD TE VOLTOOI
 2. MERK AS VOLG 
 3. KONTROLEER DAT U VOORLETTERS EN VAN REG INGEVUL IS
 4. VUL U STUDENTENOMMER VAN LINKS NA REGS IN
 5. KONTROLEER DAT U DIE KORREKTE STUDENTENOMMER VERSTREK HET
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 7. MAAK SEKER DAT NET EEN ALTERNATIEF PER VRAAG GEMERK IS.
 8. MOENIE VOU NIE

PART 2 (ANSWERS/ANTWOORDE) DEEL 2

1	e1 e2 e3 e4 e5	36	e1 e2 e3 e4 e5	71	e1 e2 e3 e4 e5	106	e1 e2 e3 e4 e5
2	e1 e2 e3 e4 e5	37	e1 e2 e3 e4 e5	72	e1 e2 e3 e4 e5	107	e1 e2 e3 e4 e5
3	e1 e2 e3 e4 e5	38	e1 e2 e3 e4 e5	73	e1 e2 e3 e4 e5	108	e1 e2 e3 e4 e5
4	e1 e2 e3 e4 e5	39	e1 e2 e3 e4 e5	74	e1 e2 e3 e4 e5	109	e1 e2 e3 e4 e5
5	e1 e2 e3 e4 e5	40	e1 e2 e3 e4 e5	75	e1 e2 e3 e4 e5	110	e1 e2 e3 e4 e5
6	e1 e2 e3 e4 e5	41	e1 e2 e3 e4 e5	76	e1 e2 e3 e4 e5	111	e1 e2 e3 e4 e5
7	e1 e2 e3 e4 e5	42	e1 e2 e3 e4 e5	77	e1 e2 e3 e4 e5	112	e1 e2 e3 e4 e5
8	e1 e2 e3 e4 e5	43	e1 e2 e3 e4 e5	78	e1 e2 e3 e4 e5	113	e1 e2 e3 e4 e5
9	e1 e2 e3 e4 e5	44	e1 e2 e3 e4 e5	79	e1 e2 e3 e4 e5	114	e1 e2 e3 e4 e5
10	e1 e2 e3 e4 e5	45	e1 e2 e3 e4 e5	80	e1 e2 e3 e4 e5	115	e1 e2 e3 e4 e5
11	e1 e2 e3 e4 e5	46	e1 e2 e3 e4 e5	81	e1 e2 e3 e4 e5	116	e1 e2 e3 e4 e5
12	e1 e2 e3 e4 e5	47	e1 e2 e3 e4 e5	82	e1 e2 e3 e4 e5	117	e1 e2 e3 e4 e5
13	e1 e2 e3 e4 e5	48	e1 e2 e3 e4 e5	83	e1 e2 e3 e4 e5	118	e1 e2 e3 e4 e5
14	e1 e2 e3 e4 e5	49	e1 e2 e3 e4 e5	84	e1 e2 e3 e4 e5	119	e1 e2 e3 e4 e5
15	e1 e2 e3 e4 e5	50	e1 e2 e3 e4 e5	85	e1 e2 e3 e4 e5	120	e1 e2 e3 e4 e5
16	e1 e2 e3 e4 e5	51	e1 e2 e3 e4 e5	86	e1 e2 e3 e4 e5	121	e1 e2 e3 e4 e5
17	e1 e2 e3 e4 e5	52	e1 e2 e3 e4 e5	87	e1 e2 e3 e4 e5	122	e1 e2 e3 e4 e5
18	e1 e2 e3 e4 e5	53	e1 e2 e3 e4 e5	88	e1 e2 e3 e4 e5	123	e1 e2 e3 e4 e5
19	e1 e2 e3 e4 e5	54	e1 e2 e3 e4 e5	89	e1 e2 e3 e4 e5	124	e1 e2 e3 e4 e5
20	e1 e2 e3 e4 e5	55	e1 e2 e3 e4 e5	90	e1 e2 e3 e4 e5	125	e1 e2 e3 e4 e5
21	e1 e2 e3 e4 e5	56	e1 e2 e3 e4 e5	91	e1 e2 e3 e4 e5	126	e1 e2 e3 e4 e5
22	e1 e2 e3 e4 e5	57	e1 e2 e3 e4 e5	92	e1 e2 e3 e4 e5	127	e1 e2 e3 e4 e5
23	e1 e2 e3 e4 e5	58	e1 e2 e3 e4 e5	93	e1 e2 e3 e4 e5	128	e1 e2 e3 e4 e5
24	e1 e2 e3 e4 e5	59	e1 e2 e3 e4 e5	94	e1 e2 e3 e4 e5	129	e1 e2 e3 e4 e5
25	e1 e2 e3 e4 e5	60	e1 e2 e3 e4 e5	95	e1 e2 e3 e4 e5	130	e1 e2 e3 e4 e5
26	e1 e2 e3 e4 e5	61	e1 e2 e3 e4 e5	96	e1 e2 e3 e4 e5	131	e1 e2 e3 e4 e5
27	e1 e2 e3 e4 e5	62	e1 e2 e3 e4 e5	97	e1 e2 e3 e4 e5	132	e1 e2 e3 e4 e5
28	e1 e2 e3 e4 e5	63	e1 e2 e3 e4 e5	98	e1 e2 e3 e4 e5	133	e1 e2 e3 e4 e5
29	e1 e2 e3 e4 e5	64	e1 e2 e3 e4 e5	99	e1 e2 e3 e4 e5	134	e1 e2 e3 e4 e5
30	e1 e2 e3 e4 e5	65	e1 e2 e3 e4 e5	100	e1 e2 e3 e4 e5	135	e1 e2 e3 e4 e5
31	e1 e2 e3 e4 e5	66	e1 e2 e3 e4 e5	101	e1 e2 e3 e4 e5	136	e1 e2 e3 e4 e5
32	e1 e2 e3 e4 e5	67	e1 e2 e3 e4 e5	102	e1 e2 e3 e4 e5	137	e1 e2 e3 e4 e5
33	e1 e2 e3 e4 e5	68	e1 e2 e3 e4 e5	103	e1 e2 e3 e4 e5	138	e1 e2 e3 e4 e5
34	e1 e2 e3 e4 e5	69	e1 e2 e3 e4 e5	104	e1 e2 e3 e4 e5	139	e1 e2 e3 e4 e5
35	e1 e2 e3 e4 e5	70	e1 e2 e3 e4 e5	105	e1 e2 e3 e4 e5	140	e1 e2 e3 e4 e5

CRW2601

(498346)

October/November 2013

GENERAL PRINCIPLES OF CRIMINAL LAW

Duration 2 Hours

100 Marks

EXAMINERS :FIRST
SECONDDR N MOLLEMA
PROF C VAN DER BIJL

MR RD RAMOSA

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

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		INITIALS AND SURNAME VOORLETTERS EN VAN	
1		3	
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2		4	
STUDENT NUMBER STUDENTENOMMER		EXAMINATION CENTRE (E.G. PRETORIA) EKSAMENSENTRUM (BY PRETORIA)	
6		5	
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7		9	

For use by examination invigilator
Vir gebruik deur eksamenopsiener

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IMPORTANT

- 1 USE ONLY AN HB PENCIL TO COMPLETE THIS SHEET
- 2 MARK LIKE THIS ➡
- 3 CHECK THAT YOUR INITIALS AND SURNAME HAS BEEN FILLED IN CORRECTLY
- 4 ENTER YOUR STUDENT NUMBER FROM LEFT TO RIGHT
- 5 CHECK THAT YOUR STUDENT NUMBER HAS BEEN FILLED IN CORRECTLY
- 6 CHECK THAT THE UNIQUE NUMBER HAS BEEN FILLED IN CORRECTLY
- 7 CHECK THAT ONLY ONE ANSWER PER QUESTION HAS BEEN MARKED
- 8 DO NOT FOLD

BELANGRIK

- 1 GEBUIK SLEGS N HB POTLOOD OM HIERDIE BLAD TE VOLTOOI
- 2 MERK AS VOLG ➡
- 3 KONTROLEER DAT U VOORLETTERS EN VAN REG INGEVUL IS
- 4 VUL U STUDENTENOMMER VAN LINKS NA REGS IN
- 5 KONTROLEER DAT U DIE KORREKTE STUDENTENOMMER VERSTREK HET
- 6 KONTROLEER DAT DIE UNIEKE NOMMER REG INGEVUL IS
- 7 MAAK SEKER DAT NET EEN ALTERNATIEF PER VRAAG GEMERK IS
- 8 MOENIE VOU NIE

PART 2 (ANSWERS/ANTWOORDE) DEEL 2

1 (1) (2) (3) (4) (5)	36 (1) (2) (3) (4) (5)	71 (1) (2) (3) (4) (5)	106 (1) (2) (3) (4) (5)
2 (1) (2) (3) (4) (5)	37 (1) (2) (3) (4) (5)	72 (1) (2) (3) (4) (5)	107 (1) (2) (3) (4) (5)
3 (1) (2) (3) (4) (5)	38 (1) (2) (3) (4) (5)	73 (1) (2) (3) (4) (5)	108 (1) (2) (3) (4) (5)
4 (1) (2) (3) (4) (5)	39 (1) (2) (3) (4) (5)	74 (1) (2) (3) (4) (5)	109 (1) (2) (3) (4) (5)
5 (1) (2) (3) (4) (5)	40 (1) (2) (3) (4) (5)	75 (1) (2) (3) (4) (5)	110 (1) (2) (3) (4) (5)
6 (1) (2) (3) (4) (5)	41 (1) (2) (3) (4) (5)	76 (1) (2) (3) (4) (5)	111 (1) (2) (3) (4) (5)
7 (1) (2) (3) (4) (5)	42 (1) (2) (3) (4) (5)	77 (1) (2) (3) (4) (5)	112 (1) (2) (3) (4) (5)
8 (1) (2) (3) (4) (5)	43 (1) (2) (3) (4) (5)	78 (1) (2) (3) (4) (5)	113 (1) (2) (3) (4) (5)
9 (1) (2) (3) (4) (5)	44 (1) (2) (3) (4) (5)	79 (1) (2) (3) (4) (5)	114 (1) (2) (3) (4) (5)
10 (1) (2) (3) (4) (5)	45 (1) (2) (3) (4) (5)	80 (1) (2) (3) (4) (5)	115 (1) (2) (3) (4) (5)
11 (1) (2) (3) (4) (5)	46 (1) (2) (3) (4) (5)	81 (1) (2) (3) (4) (5)	116 (1) (2) (3) (4) (5)
12 (1) (2) (3) (4) (5)	47 (1) (2) (3) (4) (5)	82 (1) (2) (3) (4) (5)	117 (1) (2) (3) (4) (5)
13 (1) (2) (3) (4) (5)	48 (1) (2) (3) (4) (5)	83 (1) (2) (3) (4) (5)	118 (1) (2) (3) (4) (5)
14 (1) (2) (3) (4) (5)	49 (1) (2) (3) (4) (5)	84 (1) (2) (3) (4) (5)	119 (1) (2) (3) (4) (5)
15 (1) (2) (3) (4) (5)	50 (1) (2) (3) (4) (5)	85 (1) (2) (3) (4) (5)	120 (1) (2) (3) (4) (5)
16 (1) (2) (3) (4) (5)	51 (1) (2) (3) (4) (5)	86 (1) (2) (3) (4) (5)	121 (1) (2) (3) (4) (5)
17 (1) (2) (3) (4) (5)	52 (1) (2) (3) (4) (5)	87 (1) (2) (3) (4) (5)	122 (1) (2) (3) (4) (5)
18 (1) (2) (3) (4) (5)	53 (1) (2) (3) (4) (5)	88 (1) (2) (3) (4) (5)	123 (1) (2) (3) (4) (5)
19 (1) (2) (3) (4) (5)	54 (1) (2) (3) (4) (5)	89 (1) (2) (3) (4) (5)	124 (1) (2) (3) (4) (5)
20 (1) (2) (3) (4) (5)	55 (1) (2) (3) (4) (5)	90 (1) (2) (3) (4) (5)	125 (1) (2) (3) (4) (5)
21 (1) (2) (3) (4) (5)	56 (1) (2) (3) (4) (5)	91 (1) (2) (3) (4) (5)	126 (1) (2) (3) (4) (5)
22 (1) (2) (3) (4) (5)	57 (1) (2) (3) (4) (5)	92 (1) (2) (3) (4) (5)	127 (1) (2) (3) (4) (5)
23 (1) (2) (3) (4) (5)	58 (1) (2) (3) (4) (5)	93 (1) (2) (3) (4) (5)	128 (1) (2) (3) (4) (5)
24 (1) (2) (3) (4) (5)	59 (1) (2) (3) (4) (5)	94 (1) (2) (3) (4) (5)	129 (1) (2) (3) (4) (5)
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26 (1) (2) (3) (4) (5)	61 (1) (2) (3) (4) (5)	96 (1) (2) (3) (4) (5)	131 (1) (2) (3) (4) (5)
27 (1) (2) (3) (4) (5)	62 (1) (2) (3) (4) (5)	97 (1) (2) (3) (4) (5)	132 (1) (2) (3) (4) (5)
28 (1) (2) (3) (4) (5)	63 (1) (2) (3) (4) (5)	98 (1) (2) (3) (4) (5)	133 (1) (2) (3) (4) (5)
29 (1) (2) (3) (4) (5)	64 (1) (2) (3) (4) (5)	99 (1) (2) (3) (4) (5)	134 (1) (2) (3) (4) (5)
30 (1) (2) (3) (4) (5)	65 (1) (2) (3) (4) (5)	100 (1) (2) (3) (4) (5)	135 (1) (2) (3) (4) (5)
31 (1) (2) (3) (4) (5)	66 (1) (2) (3) (4) (5)	101 (1) (2) (3) (4) (5)	136 (1) (2) (3) (4) (5)
32 (1) (2) (3) (4) (5)	67 (1) (2) (3) (4) (5)	102 (1) (2) (3) (4) (5)	137 (1) (2) (3) (4) (5)
33 (1) (2) (3) (4) (5)	68 (1) (2) (3) (4) (5)	103 (1) (2) (3) (4) (5)	138 (1) (2) (3) (4) (5)
34 (1) (2) (3) (4) (5)	69 (1) (2) (3) (4) (5)	104 (1) (2) (3) (4) (5)	139 (1) (2) (3) (4) (5)
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Specimen only

CRW2601

(480882)

May/June 2013

GENERAL PRINCIPLES OF CRIMINAL LAW

Duration 2 Hours

100 Marks

EXAMINERS
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PROF C VAN DER BIJL
PROF L JORDAAN

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SECOND

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 EIGHT (8) PAGES PLUS INSTRUCTIONS FOR COMPLETION OF A MARK READING SHEET.

THE QUESTIONS IN THIS PAPER COUNT 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) According to the absolute theory, punishment is only a means to a secondary end
 - (b) The nature of the relative theories relate to the future purpose which one would like to achieve by means of punishment
 - (c) The preventive theory requires a proportional relationship between harm and punishment
- (1) Only statement (b) is correct
 - (2) All of the statements are correct
 - (3) Only statements (a) and (c) are correct
 - (4) None of the statements is correct
 - (5) Only statement (c) is correct

Question 2

- (a) The four requirements for criminal liability follow a prescribed sequence act, unlawfulness, compliance with the definitional elements of the crime, and culpability
 - (b) Conduct is voluntary if X is capable of subjecting his bodily movements to his will or intellect
 - (c) X kidnaps Y's wife and threatens to kill her if Y does not murder his (X) arch-enemy Z
This situation is an example of relative force
- (1) Only statements (a) and (b) are correct
 - (2) Only statements (b) and (c) are correct
 - (3) Only statements (a) and (c) are correct
 - (4) Only statement (c) is correct
 - (5) All of the statements are correct

Question 3

- (a) If X relies on the defence of insane automatism, the onus of proof rests on X to prove his mental illness
 - (b) There is a legal duty on a parent who stands in a protective relationship to a child, to feed the child
 - (c) It was held in *Minister van Polisie v Ewels* 1975 (3) SA 590 (A) that a policeman who sees somebody else being unlawfully assaulted has a duty to come to the assistance of the person being assaulted
- (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 of the statements are correct

Question 4

- (a) If X is imprisoned for a certain period, he can invoke the defence of impossibility if he is charged with a failure to pay tax even if it had been possible for him to arrange for somebody else to pay it on his behalf
 - (b) The definitional elements of a crime consist of the definition as well as a reference to the requirements of unlawfulness and culpability
 - (c) The limits of the grounds of justification are determined by the legal convictions of society
- (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 5

- (a) Whether X thought that his conduct was lawful or unlawful is irrelevant when determining unlawfulness
 - (b) Culpability must exist contemporaneously with the unlawful act
 - (c) The cognitive and conative functions in the test for criminal capacity amount to insight and self-control respectively
- (1) All of the statements are correct
 - (2) Only statements (a) and (b) are correct
 - (3) Only statement (b) is correct
 - (4) Only statement (c) is correct
 - (5) Only statements (a) and (c) are correct

Question 6

- (a) In *Eadie* 2002 (1) SACR 663 (SCA) the court held that a plea of non-pathological criminal incapacity owing to emotional stress and provocation should be treated as the defence of sane automatism
 - (b) A person cannot rely on the defence of mental illness if his/her mental illness or mental defect was merely temporary at the time when the crime was committed
 - (c) *Delinum tremens* is a mental illness caused by the chronic abuse of alcohol
- (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) None of these statements is correct

Question 7

- (a) As an element of intention, knowledge of the unlawfulness of an act may be present in the form of *dolus eventualis*
 - (b) If X administers a fatal drug to his ailing mother to release her from a long, painful and incurable illness, X cannot be found guilty of murder because he has a good motive and his intention is therefore excluded
 - (c) In order for a mistake to exclude intention, such mistake need not be reasonable but must be material
- (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) All of the statements are correct
 - (5) Only statement (c) is correct

Question 8

- (a) The case of *Mtshiza* 1970 (3) SA 747 (A) concerns *aberratio ictus* and the concrete-figure approach
 - (b) In *De Blom* 1977 (3) SA 513 (A) the court held that mistake of law may exclude intention
 - (c) The Appeal Court held in *Ngubane* 1985 (3) SA 677 (A) that proof of intention completely excludes a finding that X was negligent
- (1) All of the statements are correct
 - (2) Only statement (a) is correct
 - (3) Only statement (b) is correct
 - (4) Only statement (c) is correct
 - (5) Only statements (a) and (c) are correct

Question 9

- (a) The reasonable person is a fictitious person which the law invents to personify the objective standards of reasonable conduct which the law sets in order to determine negligence
 - (b) The fact that X has subjective knowledge which is superior to the knowledge of the reasonable person is taken into account by the court when determining his negligence
 - (c) The question to determine negligence is not whether the reasonable person would have foreseen the **likelihood** that the result may ensue, but whether he would have foreseen the **possibility** that it may ensue
- (1) Only statement (b) is correct
 - (2) Only statements (a) and (b) are correct
 - (3) Only statement (c) is correct
 - (4) Only statements (b) and (c) are correct
 - (5) All of the statements are correct

Question 10

- (a) Strict liability is found in statutory crimes only
 - (b) Involuntary intoxication is a complete defence
 - (c) Since corporate bodies are regarded as abstract entities, they may not be convicted of crimes in South Africa
- (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

SUB-TOTAL [30]**[TURN OVER]**

PART B

THIS PART CONSISTS OF THREE (3) QUESTIONS. EACH QUESTION IS SUBDIVIDED INTO A NUMBER OF SUB-QUESTIONS. YOU MUST ANSWER ALL THREE QUESTIONS. NOTE THAT YOU HAVE A CHOICE IN CERTAIN OF THE SUB-SECTIONS. 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) Merely name the five rules embodied in the principle of legality Also give their Latin equivalents (5)
- (b) Distinguish between a legal norm, a criminal norm and a criminal sanction (3)
- (c) May a court extend the field of application of a crime? Identify the specific legal principle applicable and briefly discuss Also refer to the authoritative case in this regard (5)
- (d) X is a single mother of two small children She is very poor and consequently works long hours to feed her children She is extremely stressed, tired and despondent One night she gets up from her bed, walks to the children's room, and strangles her children
- (i) On a charge of murder, discuss whether X can rely on the defence of automatism (4)
- (ii) Can X be convicted of murder or any other crime if the evidence reveals that X suffers from schizophrenia, a well-known disease of the mind, and was labouring under hallucinations when she killed her children? She was hearing a voice instructing her to kill her children so that they could go to heaven (4)
- (e) Merely name the requirements of the act of defence in private defence (4)
- [25]**

Question 2

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

Discuss **ONE** of the following cases

- (i) C 1952 (4) SA 117 (O)
- (ii) *Van Wyk* 1967 (1) SA 488 (A) (4)

(b) X and Y are both mine workers at the same mine. They are both applying for the same position, which only one can get. X knows that Y will probably get the job as he is better qualified than him. X wants the promotion very badly as he is deeply in debt. X decides to get rid of Y. One night after their shift has finished, X stabs Y twice in the chest and the abdomen with the intention to kill him. Mortally wounded, Y crawls to the night watchman who takes Y to the nearest state hospital. However, Y receives inadequate and negligent care because the nursing staff are on a general strike. He dies two weeks later as a result of septicaemia, caused by the stab wounds. X is charged with murder. X's lawyer argues that the negligence and inadequate care in the hospital constituted a *novus actus interveniens* which broke the chain of causation between X's original act and the ultimate result. You are the state prosecutor. With reference to case law, discuss the arguments that you will present to prove that X's act is the cause of Y's death.

(c) **NOTE THE CHOICE YOU HAVE IN THIS QUESTION**

Define the test for negligence

OR

Define the test for criminal capacity in terms of section 78(1) of the Criminal Procedure Act 51 of 1977 (5)

(d) X is driving home from a party after having consumed six beers and knocks over a child, Y, who is killed. X is charged with murder. The court finds that, although X was not so intoxicated that he lacked criminal capacity, he was so intoxicated that he could not have had the intention to cause Y's death. Can X be convicted of a contravention of section 1 of Act 1 of 1988 and/or culpable homicide? Discuss with reference to all relevant legal authority (5)

[20]

Question 3

- (a) Fill in the missing words or phrases next to the corresponding question in your answer book
- (i) The application of the *ius praevium* rule to punishment is that if the punishment to be imposed for a certain crime is increased, it must not be applied to the _____ of the accused who committed the crime before the punishment was increased (1)
 - (ii) For a plea of necessity to succeed, it is immaterial whether the situation of emergency is the result of _____ or _____ (two words) (2)
 - (iii) The minimum requirement for *dolus eventualis* is that X must have _____ the causing of the result and _____ (2)

[TURN OVER]

- (iv) A test is applied in the case of intention (1)
- (v) Intention is to and to an act or a result (2)
- (vi) In *Goosen* 1989 (4) SA 1013 (A) the court decided that excludes intention if there is a (two words) between the actual and the foreseen manner of events (2)
- (b) Y works for a security company. His job is to patrol the streets of a certain suburb and to protect the people who live in the suburb. One evening he receives a message over his radio that he must immediately go to Z's house which has been broken into. He goes to the house and presses the bell at the gate but receives no response. He then climbs over the wall. As he approaches the house, he sees a figure coming out of the house and running to the back of the house. Y pursues the figure, who then jumps over the fence into the neighbour's property. Y follows the figure into the neighbour's property. The neighbour, X, who has a grudge against his neighbour (Z) and wishes to harm him, awakes from the noise, and sees Y (the security guard) running across his lawn. He (X) thinks that Y is his neighbour Z, and wants to teach him a lesson. X fires a shot at Y. Discuss X's liability in each of the set of facts that follows. You must evaluate each set of facts separately.
- (i) Y dies as a result of the shot. It transpires afterwards that Y was not his neighbour Z, but a security guard on patrol. Can X be convicted of murder or any other crime in respect of Y? (6)
- (ii) The bullet fired by X hits a lamp pole, changes direction and A, the gardener, who came to investigate the cause of the noise, is killed instantly. Discuss X's possible criminal liability in respect of A. (6)
- (c) Define the *versari* doctrine and indicate whether this doctrine still forms part of our law. (3)

SUB-TOTAL: [70]

TOTAL: 100

PART 1 (GENERAL/ALGEMEEN) DEEL 1

<p>STUDY UNIT e.g. PSY100 X STUDIE EENHEID bv. PSY100-X</p> <div style="border: 1px solid black; padding: 2px; text-align: center;"> 1 </div>	<p>INITIALS AND SURNAME VOORLETTERS EN VAN</p> <div style="border: 1px solid black; padding: 2px; text-align: center;"> 3 </div>	<p>DATE OF EXAMINATION DATUM VAN EKSAMEN</p> <div style="border: 1px solid black; padding: 2px; text-align: center;"> 4 </div>
<p>PAPER NUMBER VRAESTELNOMMER</p> <div style="border: 1px solid black; padding: 2px; text-align: center;"> 2 </div>	<p>EXAMINATION CENTRE (E.G. PRETORIA) EKSAMENSENTRUM (BV. PRETORIA)</p> <div style="border: 1px solid black; padding: 2px; text-align: center;"> 5 </div>	
<p>STUDENT NUMBER STUDENTENOMMER</p> <div style="border: 1px solid black; padding: 2px; text-align: center;"> 6 </div>	<p>UNIQUE PAPER NO UNIEKE VRAESTEL NR</p> <div style="border: 1px solid black; padding: 2px; text-align: center;"> 8 </div>	<div style="border: 1px solid black; padding: 10px;"> <p>For use by examination invigilator Vir gebruik deur eksamenopsiener</p> <div style="font-size: 24px; margin: 10px 0;">◆</div> </div>
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IMPORTANT

- 1 USE ONLY AN HB PENCIL TO COMPLETE THIS SHEET
- 2 MARK LIKE THIS
- 3 CHECK THAT YOUR INITIALS AND SURNAME HAS BEEN FILLED IN CORRECTLY
- 4 ENTER YOUR STUDENT NUMBER FROM LEFT TO RIGHT
- 5 CHECK THAT YOUR STUDENT NUMBER HAS BEEN FILLED IN CORRECTLY
- 6 CHECK THAT THE UNIQUE NUMBER HAS BEEN FILLED IN CORRECTLY
- 7 CHECK THAT ONLY ONE ANSWER PER QUESTION HAS BEEN MARKED
- 8 DO NOT FOLD

BELANGRIK

- 1 GEBUIK SLEGS N HB POTLOOD OM HIERDIE BLAD TE VOLTOOI
- 2 MERK AS VOLG
- 3 KONTROLEER DAT U VOORLETTERS EN VAN REG INGEVUL IS
- 4 VUL U STUDENTENOMMER VAN LINKS NA REGS IN
- 5 KONTROLEER DAT U DIE KORREKTE STUDENTENOMMER VERSTREK HET
- 6 KONTROLEER DAT DIE UNIEKE NOMMER REG INGEVUL IS
- 7 MAAK SEKER DAT NET EEN ALTERNATIEF PER VRAAG GEMERK IS
- 8 MOENIE VOU NIE

PART 2 (ANSWERS/ANTWOORDE) DEEL 2

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Specimen only

