

CRW2602

(477251)

May/June 2013

CRIMINAL LAW: SPECIFIC CRIMES

Duration 2 Hours

100 Marks

EXAMINERS

FIRST

MISS GC DA COSTA
MR RD RAMOSA
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PROF C VAN DER BIJL

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 SIX (6) 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) A person may only be convicted of the crime of murder if he/she committed the crime with his/her own hands or body
 - (b) The category of persons known as "participants" can be divided into two sub-categories, namely **perpetrators** and **accessories after the fact**
 - (c) A "joiner in" is a person who actively associated himself with the common purpose of others (to kill Y) at a time **before** the lethal wound had been inflicted upon Y
- (1) Only statements (a) and (b) are correct
 - (2) Only statements (b) and (c) are correct
 - (3) All the statements are incorrect
 - (4) Only statement (a) is correct
 - (5) None of the statements is correct

Question 2

- (a) In order to be guilty of being an accessory after the fact to the commission of a crime, it need not be proved that the protection or assistance rendered was indeed successful
 - (b) In *Davies* 1956 (3) SA 52 (A) the Appeal Court held that the commission of a so-called **putative crime** is nevertheless punishable as **attempt**
 - (c) In *Schoombie* 1945 AD 541, the Appeal Court confirmed X's conviction of (completed) arson on the basis that the accused had performed an act of execution
- (1) None of the statements is correct
 - (2) Only statements (a) and (c) are correct
 - (3) Only statement (a) is correct
 - (4) Only statement (c) is correct
 - (5) Only statements (b) and (c) are correct

Question 3

- (a) The act in the crime of **conspiracy** consists in the **entering into an agreement** to commit a crime or crimes
 - (b) If two or more persons join an organisation with the declared purpose of committing a crime or crimes they may be convicted of conspiracy
 - (c) Our courts have held that the charge of conspiracy should only be used if there is no proof that the intended crime was in fact committed
- (1) Only statements (a) and (b) are correct
 - (2) All the statements are correct
 - (3) Only statements (a) and (c) are correct
 - (4) Only statement (a) is correct
 - (5) Only statement (b) is correct

Question 4

- (a) X may be convicted of incitement **only** if he persuades the other party (the incitee) to commit a crime
 - (b) The purpose of the prohibition of incitement to commit a crime is to discourage people from seeking to influence others to commit crimes
 - (c) The crime of public violence can only be committed in a public place and not on private property
- (1) All the statements are correct
 - (2) Only statement (b) is correct
 - (3) Only statements (a) and (b) are correct
 - (4) Only statement (a) is correct
 - (5) Only statements (b) and (c) are correct

Question 5

- (a) The crime of common-law perjury is only committed if the false declaration is made in the course of a legal proceeding
 - (b) A legal representative, who, in the course of argument, makes a false declaration to the court, can be convicted of common-law perjury
 - (c) If X intentionally supplies false information to the police in order to mislead them in their search for Y, X will be guilty of common-law perjury
- (1) Only statements (a) and (c) are correct
 - (2) Only statement (a) is correct
 - (3) Only statements (a) and (b) are correct
 - (4) Only statement (c) is correct
 - (5) All the statements are correct

Question 6

- (a) Contempt of court in the form of scandalising the court can only be committed during the course of a legal proceeding
 - (b) X **cannot** be convicted of the offence of corruption created in section 3 of the *Prevention and Combating of Corrupt Activities Act 12 of 2004* if he/she had merely agreed to accept gratification unlawfully **in the future**
 - (c) The benefit in **extortion** is limited to **patrimonial** benefit
- (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 (c) is correct

Question 7

- (a) If X exercises control over Mandrax tablets on behalf of Y but has no intention of using the drugs personally, X **cannot** be convicted of the crime known as “use or possession of drugs” in terms of section 4 of the *Drugs and Drugs Trafficking Act 140 of 1992*
 - (b) In *Prince v President, Cape Law Society 2002 (2) SA 794 (CC)* the Constitutional Court ruled that section 4 of Act 140 of 1992 (which criminalises the possession of drugs) is unconstitutional because Rastafarians who use and possess dagga only for religious purposes, are also targeted in terms of this provision
 - (c) If X obtains drugs only for his/her own personal use, she/he cannot be convicted of the crime known as “dealing in drugs”
- (1) Only statement (b) is correct
 - (2) Only statements (a) and (b) are correct
 - (3) Only statement (c) is correct
 - (4) Only statements (a) and (c) are correct
 - (5) None of the statements is correct

Question 8

- (a) Failing to report to the police that one is aware that somebody else possesses a firearm illegally, amounts to a crime in terms of the *Firearms Control Act 60 of 2000*
 - (b) Assault may be committed even if there is no physical contact with or impact on the victim's body
 - (c) Negligence is a sufficient form of culpability for the crime of assault
- (1) Only statement (b) is correct
 - (2) Only statements (b) and (c) are correct
 - (3) None of the statements is correct
 - (4) Only statement (a) is correct
 - (5) Only statements (a) and (b) are correct

Question 9

- (a) If X forces Y to drink his own urine, he (X) cannot be convicted of assault because urine is not poisonous
 - (b) It is a crime to unlawfully and intentionally point an unloaded firearm at a person without good reason to do so
 - (c) If X breaks the window of Y's house in order to commit the crime of theft inside, but is apprehended before he can enter the house, he may nevertheless be convicted of housebreaking with the intent to commit an offence
- (1) None of the statements is correct
 - (2) Only statement (b) is correct
 - (3) Only statements (a) and (c) are correct
 - (4) Only statement (a) is correct
 - (5) Only statement (c) is correct

Question 10

- (a) If X unlawfully and intentionally sets alight a movable, corporeal thing (object) belonging to Y, the conduct amounts to the crime of arson
- (b) In the crime of malicious injury to property, injury to property may be justified by statutory provisions giving X, for example, the right to destroy, wound or catch trespassing animals
- (c) Negligence is a sufficient form of culpability for a conviction of the crime of arson
- (1) None of the statements is correct
- (2) Only statement (c) is correct
- (3) Only statement (b) is correct
- (4) Only statement (a) is correct
- (5) Only statements (a) and (b) are correct

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

THIS PART CONSISTS OF THREE QUESTIONS EACH QUESTION IS SUBDIVIDED INTO A NUMBER OF SUB-QUESTIONS. YOU MUST ANSWER ALL THREE 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) A, B, C and D are members of a criminal gang that specialise in the hi-jacking of cash-in-transit vehicles. E works for a security company that transports cash for banks. He (E) is not a member of the gang but gives information to A (the leader of the gang) about the movements of the company's cash-in-transit vehicles. A and E have an agreement that E will receive 5% of the money that they manage to get in each successful robbery.

Acting on a tip by E, they (A, B, C and D) set out one morning early, with the intention of setting a trap for the driver of one of these cash-in-transit vehicles. They are dressed in police uniforms and armed. They set up a roadblock at a certain point on the road where the cash-in-transit vehicle is expected. As the vehicle approaches, the driver is stopped at the roadblock. A, B, C and D threaten to kill him if he does not open the backdoor of the vehicle and hand over all the money that is inside. The driver obeys but as he opens the backdoor, three armed guards jump out. D (one of the robbers) immediately fires a shot which kills one of the guards. At that moment, a police car arrives. A, B, C and D are arrested on the spot.

- (i) Discuss whether A, B, C and D may be convicted of **robbery** or only **attempted robbery**. In your answer you must set out the elements of the crime of robbery. (5)
- (ii) Discuss whether E may be convicted as an **accomplice** or as a **perpetrator** to the robbery or attempted robbery (whatever the case may be). (4)
- (iii) Discuss whether A, B, C, D and E may all be convicted of **murder** in respect of the killing by D of the security guard. In your answer, you must discuss the basis of their possible liability in detail and also refer to relevant case law. (8)

[TURN OVER]

- (iv) Discuss whether E may be convicted of the general crime of **corruption** in terms of section 3 of the *Prevention and Combating of Corrupt Activities Act 12 of 2004*. In your answer you must set out the basic elements of the offence (5)
- (b) Define the crime of public violence (3)
- [25]**

Question 2

- (a) X, a 19-year-old boy meets a girl, Y at a party. He is sexually attracted to her and asks her after the party to accompany him to his flat. Y tells X that she is a student at the university and in her second year of study. In fact, she is only 15 years old. X has sexual intercourse with Y with her consent.
- (i) Discuss the offence with which X may be charged (4)
- (ii) Can X possibly raise any defence? Explain (3)
- (b) In terms of section 1(2) of the *Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007* consent means "voluntary and uncoerced" agreement. Explain in detail in which circumstances consent will **not** be regarded (in terms of this Act) as voluntary or uncoerced consent (7)
- (c) Discuss **ONE** of the following decisions
- (i) *Nkosiya* 1966 (4) SA 655 (A)
- (ii) *Mshumpa* 2008 (1) SA 126 (E) (6)
- [20]**

Question 3

- (a) Determine the question which **crime or crimes**, if any, **X** commits in the following instances. In your answer, you must give the elements of the relevant offence(s)
- (i) X lays a false charge at the police station that her boyfriend (Y) assaulted her. The police find out that she lied and Y is not prosecuted for the alleged assault (4)
- (ii) X grabs a cell-phone from Y's hand and runs away (5)
- (iii) X looks after Y's house while he is away on holiday. He uses Y's car without his (Y's) consent to take out his girlfriend. They are involved in an accident and the car is a write-off. X arranges for the car to be removed to a scrap-yard. X also goes to the police and tells them that the car has been stolen from Y's property (8)
- (b) Define the crimes of *crimen iniuria* and criminal defamation. In your answer you must also state the different interests protected by each of these two offences (6)
- (c) Name the interests protected by the crime of kidnapping (2)
- [25]**

SUB-TOTAL: [70]**TOTAL: [100]**

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For use by examination invigilator
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IMPORTANT

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