

CRW2602

(470956)

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CRIMINAL LAW: SPECIFIC CRIMES

Duration 2 Hours

100 Marks

EXAMINERS

FIRST

SECOND

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Closed book examination

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THIS PAPER CONSISTS OF SEVEN (7) 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.

Question 1

- (a) A **conviction** may be imputed to an accomplice by virtue of the principles relating to the doctrine of common purpose
 - (b) The liability of an accessory after the fact and an accomplice is accessory in character
 - (c) It was held in *Williams* 1980 (1) SA 60 (A) that a passive spectator to a deed of murder may be held liable as a co-perpetrator
- (1) None of these statements is correct
 - (2) Only statement (a) is correct
 - (3) Only statement (b) is correct
 - (4) Only statement (c) is correct
 - (5) Only statements (b) and (c) are correct

Question 2

- (a) In *Thebus* 2003 (2) SACR 319 (CC), it was held that where no prior agreement to commit an offence is proved, common-purpose liability may arise from an active association and participation in a common criminal design
 - (b) In *Molimi* 2006 (2) SACR 8 (SCA), the Supreme Court of Appeal held that conduct by a member of a group of persons which differs from the original mandate **may not** be **imputed** to the other members unless each member had intention in respect of the prohibited result caused by the act
 - (c) Disassociation or withdrawal from the common purpose will be a defence if it takes place before the events have reached the commencement of the execution stage
- (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 (a) is correct
 - (5) All the statements are correct

[TURN OVER]

Question 3

- (a) According to *Motaung* 1990 (4) SA 485 (A) a joiner-in is a person who associates himself with the common purpose at a stage when the victim has already sustained the mortal injury, but is still alive and whose assault upon the victim does not precipitate the victim's death
 - (b) An attempt to commit the impossible may qualify as a putative crime
 - (c) A charge of conspiracy is utilized only if there is no proof that the envisaged crime was committed
- (1) Only statements (a) and (b) are correct
 - (2) Only statements (a) and (c) are correct
 - (3) Only statements (b) and (c) are correct
 - (4) Only statement (a) is correct
 - (5) All these statements are correct

Question 4

- (a) The mere fact that X and Y have the same intention, means that there is a conspiracy between them
 - (b) If an incitement does not come to Y's knowledge as in the case of an inflammatory letter to Y which is written by X but which never reaches Y, X may only be found guilty of attempted incitement
 - (c) In common-law perjury the falsehood may be committed by innuendo
- (1) Only statement (a) is correct
 - (2) Only statement (b) is correct
 - (3) Only statements (a) and (c) are correct
 - (4) Only statements (b) and (c) are correct
 - (5) All the statements are correct

Question 5

- (a) Commentary on pending cases constitutes contempt of court if it is calculated to influence the outcome of the case
 - (b) Contempt of court *in facie curiae* may be committed if one grabs and tears a court document to pieces during court proceedings
 - (c) A newspaper journalist may be convicted of the crime of contempt of court irrespective of whether he acted intentionally or negligently
- (1) Only statements (a) and (c) are correct
 - (2) Only statements (a) and (b) are correct
 - (3) Only statements (b) and (c) are correct
 - (4) Only statement (b) is correct
 - (5) Only statement (c) is correct

[TURN OVER]

Question 6

- (a) In the crime of corruption it is required that a party suffers actual prejudice as a result of X's conduct
 - (b) The 'giving of gratification' in the crime of corruption includes an **offer** to give gratification
 - (c) In terms of the Prevention and Combating of Corrupt Activities Act 12 of 2004, a person who accepts money in order to undermine the integrity of a sporting event may be found guilty of corruption
- (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 7

- (a) X may be found guilty of the crime of the use or possession of drugs if he merely keeps drugs for somebody else
 - (b) If X is unaware that he has drugs in his possession, X may still be found guilty of the crime of the use or possession of drugs as negligence is a sufficient form of culpability
 - (c) A person may be found guilty of dealing in drugs if he engages in activities whereby he **only acquires** drugs
- (1) Only statement (a) is correct
 - (2) Only statement (b) is correct
 - (3) Only statements (a) and (c) are correct
 - (4) Only statements (b) and (c) are correct
 - (5) All these statements are correct

Question 8

- (a) X may be found guilty of a crime if she engages the sexual services of an 18-year-old male prostitute, Y, for financial or other reward, even if Y consents to the act
 - (b) Culpability in sexual offences against children may be in the form of either intention or negligence
 - (c) A passive spectator who witnesses a sexual offence against an 18-year-old female and who fails to report the crime, may be found guilty of an offence in terms of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007
- (1) Only statement (a) is correct
 - (2) Only statement (b) is correct
 - (3) Only statements (a) and (c) are correct
 - (4) Only statements (b) and (c) are correct
 - (5) All these statements are correct

[TURN OVER]

Question 9

- (a) Where X forces Y to drink his own urine, X may be found guilty of the crimes of assault and *crimen iniuria*
 - (b) In order to be convicted of assault with the intent to cause grievous bodily harm, actual serious bodily harm must be caused to the victim
 - (c) Criminal defamation is committed if X publishes defamatory comments about Y in a letter, personally hands it to Y and only Y opens the letter and reads it
- (1) Only statement (a) is correct
 - (2) Only statement (b) is correct
 - (3) Only statement (c) is correct
 - (4) Only statements (a) and (b) are correct
 - (5) Only statements (b) and (c) are correct

Question 10

- (a) Robbery is committed where X steals a cellphone from Y's desk and then uses force to retain the property
 - (b) In *Ex parte Minister of Justice In re R v Gesa, R v De Jongh* 1959 (1) SA 234 (A), it was held that acquisition of property by means of a threat of violence is sufficient for a conviction of robbery
 - (c) X can be found guilty of housebreaking if he breaks into a caravan which is used to store goods
- (1) Only statement (a) is correct
 - (2) Only statement (b) is correct
 - (3) Only statements (a) and (b) are correct
 - (4) Only statement (c) is correct
 - (5) All these statements are correct

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

PART B

THIS PART CONSISTS OF THREE QUESTIONS, NUMBERED, 1, 2 AND 3. 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) Define the doctrine of common purpose and discuss its application in the case of *Safatsa* 1988 (1) SA 868 (A) (8)
 - (b) Define the crime of murder and explain whether it is possible to be an accomplice to murder with reference to case law (5)
 - (c) There is a boundary that must be crossed in order for an act to qualify as a punishable attempt. Name and discuss the two stages that are used to differentiate cases of this nature with reference to the case of *Schoombie* 1945 AD 541 (7)
 - (d) X, an outspoken political activist, makes a statement in public that a certain judge has been bribed by a certain accused in a criminal matter to decide the case in his favour. X is charged with contempt of court. Name the form of contempt of court which is relevant in this instance and briefly discuss the requirements for liability in terms of this offence (5)
- [25]**

Question 2

- (a) Y, a 40-year old man is the boss of a large designer-clothing company. X, an 18-year-old girl, is a secretary at the company and is also studying for her LLB degree. X plans on being promoted and decides to have sexual relations with Y. She has a hole in her office wall and secretly spies on him waiting for her opportunity. One night when he is intoxicated, she goes to Y's office, plants a small video camera on his desk and has sexual relations with Y. He passes out drunk. The next day X threatens Y that she will send the video to his wife if he does not promote her.

Discuss whether X may be convicted of the following offences

- (i) Rape in terms of section 3 of the *Criminal Law (Sexual offences and Related Matters) Amendment Act* 32 of 2007 (6)
- (ii) Extortion (4)
- (iii) If X lays a false charge of rape against Y at the police station, identify and discuss the crime with which X may be charged (4)

[TURN OVER]

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

Discuss the case of either

R v Sibiyi 1955 (4) SA 247 (A)

OR

S v Jonathan 1987 (A) SA 633 (A)

(7)

- (c) Section 90 of the Firearms Control Act 60 of 2000 provides for four (4) exceptions to the provision that no person may possess ammunition. Name them (4)

[25]

Question 3

- (a) Y is pregnant. X, her husband, is the father. One evening they have an argument and Y goes to the garage to get into her car and drive away. She locks the door between the garage and the house. Before she can get into the car, X fires random shots through the door and hits Y in the forehead and stomach. Y survives but the foetus is killed. Answer the following questions

- (i) Critically discuss whether X may be found guilty of the murder of the foetus with reference to case law (4)

- (ii) Explain whether X may be found guilty of malicious damage to property (3)

- (iii) If X had missed and Y was not hit by any bullets, could X be able to be found guilty of assault with the intent to cause grievous bodily harm? Discuss (3)

- (b) Discuss the meaning of 'potential prejudice' in the crime of fraud (5)

- (c) X, an attorney, undertakes to administer the financial matters of Y, a 10-year-old orphan who cannot look after herself. He acts as a trustee of her money and is under the obligation to receive all income due to her and to invest such income in a specific investment account. X, who experiences financial difficulties, decides to take some of this money to pay his own debtors. X draws the money from Y's investment account and pays his debtors. X's financial position is so bad that he realises that he will never be in a position to replace the money in Y's bank account. X is charged with theft. Discuss the following questions

- (i) Name the **form of theft** that is relevant to this set of facts (1)

- (ii) Discuss the **intention** required for the crime of theft and consider whether X's conduct complies with this requirement (4)

[20]

SUB-TOTAL: [70]

TOTAL: 100

- (iii) As X misgeskiet het en Y nie deur die koeëls getref is nie, sal X skuldig bevind kan word aan aanranding met die opset om ernstige liggaamlike leed te veroorsaak? Bespreek (3)
- (b) Bespreek die betekenis van 'potensiele nadeel' in die misdaad bedrog (5)
- (c) X, 'n prokureur, onderneem om die finansiële sake van Y, 'n 10-jarige weeskind wat nie in staat is om na haarself om te sien nie, te behartig. Hy tree op as trustee van haar geld en is onder die verpligting om alle inkomste wat aan haar verskuldig is, te ontvang en sodanige inkomste in 'n spesifieke beleggingsrekening in te betaal. X trek geld uit Y se beleggingsrekening en betaal sy skuldeisers. X se finansiële posisie is so swak dat hy besef dat hy nooit in die posisie sal wees om die geld weer in Y se bankrekening terug te plaas nie. X word van diefstal aangekla. Bespreek die volgende vrae:
- (i) Noem die **vorm van diefstal** wat relevant is tot hierdie feite (1)
- (ii) Bespreek die **opset** wat vir die misdaad diefstal vereis word en oorweeg of X se gedrag aan hierdie vereiste voldoen (4)
- [20]

SUB-TOTAAL: [70]
TOTAAL: 100

PART 1 (GENERAL/ALGEMEEN) DEEL 1

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

1

PAPER NUMBER
VRAESTELNOMMER

2

INITIALS AND SURNAME
VOORLETTERS EN VAN

3

DATE OF EXAMINATION
DATUM VAN EKSAMEN

4

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

5

STUDENT NUMBER
STUDENTENOMMER

6

7

UNIQUE PAPER NO
UNIEKE VRAESTEL NR

8

9

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
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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