

CRW2602

(470249)

May/June 2014

CRIMINAL LAW: SPECIFIC CRIMES

Duration 2 Hours

100 Marks

EXAMINERS

FIRST

SECOND

PROF L JORDAAN
PROF C VAN DER BIJL

DR N MOLLEMA

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 (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) A person is a perpetrator **only** if his conduct, the circumstances in which it takes place, and the culpability with which it is carried out are such that he satisfies all the requirements for liability contained in the definition of the crime.
 - (b) Liability for an interrupted attempt is determined by the courts with the aid of an objective test that distinguishes between acts of preparation and acts of execution
 - (c) The crime of incitement to commit an offence is punishable at common law
- (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) Public violence can be committed even if there is no actual disturbance of the public peace and order, or no actual infringement of the rights of another
 - (b) A legal representative who, in the course of argument, makes a false declaration to the court can be charged with common law perjury.
 - (c) An accessory after the fact to a crime can be charged with the crime of defeating or obstructing the course of justice
- (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) In *Safatsa* 1988 (1) SA 868 (A) the Appeal Court held that where a common purpose to kill had been proved, it was not necessary to establish a causal connection between each individual's conduct and Y's death
- (b) Proof of intention to conspire is sufficient to satisfy the intention requirement for the crime of conspiracy to commit a crime.
- (c) In *Nkosiya* 1966 (4) SA 655 (A) it was held that X will only qualify as an inciter if he seeks to influence the mind of another to the commission of the crime, **and** the other person (Y) is **persuaded** to commit the crime.
- (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) *Williams* 1980 (1) SA 60 (A) is authority for the point of view that a person may be convicted as an accomplice to the crime of murder
- (b) If charged with corruption, X will have a defence in terms of the *Prevention and Combating of Corrupt Activities Act* 12 of 2004 if it is proved that Y **did not in fact have the power to** do what she was induced to do
- (c) In common-law perjury the falsehood may be made either expressly or impliedly
- (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) The definitional ambit of the **act requirement** for the general crime of corruption in terms of section 3 of the *Prevention and Combating of Corrupt Activities Act* 12 of 2004, is **broad enough to include a mere offer by X to give gratification to Y** for acting outside his powers.
- (b) Failure to comply with a court order is a form of contempt of court *ex facie curiae*
- (c) Proof of negligence is sufficient form of culpability to hold a newspaper journalist liable for contempt of court in the form of commentary on a pending case
- (1) Only statements (a) and (c) are correct
(2) Only statements (a) and (b) are correct

[TURN OVER]

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

Question 6

- (a) In terms of section 34 of the *Prevention and Combating of Corrupt Activities Act* 12 of 2004, a person who holds a position of authority can be held liable for failing to report to a police official certain crimes named in the Act that he **ought reasonably to have known** to have been committed by somebody else
 - (b) Y will be held liable of corruption in terms of the *Prevention and Combating of Corrupt Activities Act* 12 of 2004 if she agrees to receive gratification as part of a police trap to lure X into committing corruption
 - (c) In terms of the *Drugs and Drug Trafficking Act* 140 of 1992, activities relating to the **furnishing** of drugs are punished as "dealing in" drugs
- (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 will be held liable for use or possession of drugs in terms of the *Drugs and Drug Trafficking Act* 140 of 1992 where he exercises control over cocaine on behalf of 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) The *Firearms Control Act* 60 of 2000 prohibits the intentional discharge of a firearm in a built-up area or a public place
- (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) The crime of compelled rape in section 3 of the *Criminal Law (Sexual Offences and Related Matters) Amendment Act* 32 of 2007 involves 3 (three) persons
- (b) The crime of sexual assault in section 5 of the *Criminal Law (Sexual Offences and Related Matters) Amendment Act* 32 of 2007 does not deal with sexual penetration, but with sexual contact

[TURN OVER]

- (c) If X, a 21-year-old male, has sexual intercourse with an 18-year old prostitute for reward, he (X) commits 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

Question 9

- (a) It is a requirement of common-law abduction that the perpetrator (X) must remove the unmarried minor in a forceful manner
 - (b) The court in *Mshumpa* 2008 (1) SACR 126 (E) held that the killing of an unborn foetus amounts to the killing of another human being as required by the crime of murder
 - (c) In *Sibiya* 1955 (4) SA 274 (A), the Appellate Division held that the temporary use of another's property without their consent does **not** amount to the crime of theft in South African law
- (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) Arson can only be committed against immovable property
 - (b) It is a requirement for robbery that the property should be on the victim's person or in his presence at the time of the taking
 - (c) It is a requirement of the crime of malicious injury to property that X must act with an evil or malicious motive
- (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) NOTE THE CHOICE YOU HAVE IN THIS QUESTION**

Discuss the criminal liability of a "joiner-in"

OR

Discuss the decision in *Davies* 1956 (3) SA 52 (A) (6)

(b) Define an accomplice (3)

(c) Merely state, without any discussion, the legal interest(s) protected by each of the following crimes

(i) Defeating or obstructing the course of justice (1)

(ii) Common-law abduction (1)

(iii) Criminal defamation (1)

(iv) Kidnapping (2)

(d) Discuss briefly whether the grabbing of a cell phone out of another person's hand amounts to the crime of robbery or only to theft (4)

(e) Theft can only be committed in respect of a certain type of property. Discuss the requirements with which such property has to comply in order to qualify as property capable of being stolen. In some instances there are exceptions to the specific requirement(s). You must also mention these exceptions (7)

[25]

[TURN OVER]

Question 2

X is a pastor of a church. He is married and has two (2) children with his wife, W. Y, a 14-year-old orphan is adopted by X and W. X installs a hidden camera in the bathroom that Y regularly uses, and records images of her whenever she showers. In contrast to his treatment of his two biological children, X regularly buys Y gifts. Enjoying the attention she receives from X, the relationship between Y and X grows more intimate. Y only becomes aware of the hidden camera in the bathroom when she receives naked photos of herself from X on her cell phone. However, she regards it as a joke and does not take it seriously.

X begins to frequently touch Y inappropriately, including kissing her and touching her breasts. Y feels uncomfortable and scared but does not tell W anything. During the school holidays, X grants Y certain privileges – such as attending night clubs with friends and returning home after curfews – in exchange that she “repays” him by being sexually intimate with him. To keep these privileges Y succumbs to X’s frequent requests to get into bed with him and to perform oral sex and acts of sexual intercourse with him. Y becomes increasingly uncomfortable with these arrangements but is too ashamed to tell W, thinking that W would take the side of her husband, a respected pastor in the community. X takes Y to different guesthouses where he shows pornographic movies to her with the intention to encourage Y to have sexual intercourse with him.

Discuss whether X may be convicted of the following offences.

(a) *Crimen Iniuria*, in relation to

- (i) The recording of naked photos of Y through the hidden camera in the bathroom (4)
- (ii) The sending to Y’s cell phone of photos of her naked self (4)

(b) Rape in terms of section 3 of the *Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007* (4)

(c) Extortion (4)

(d) The offence of sexual grooming of children under the age of 18 years, in terms of Section 18(2) of the *Criminal Law (Sexual offences and Related Matters) Amendment Act 32 of 2007* (4)

[20]

Question 3

- (a) X makes a telephone call to Y, the owner of a shop, in which he threatens to kill Y **the next day** if he does not give him money when he (X) arrives at the shop. The next day X arrives at Y’s shop and points a toy gun at Y, claiming the money. Y thinks it is a real gun and hands over the money.

Answer the following questions.

- (i) Can X be convicted of the crime of assault purely on the ground of the threat made over the telephone? (4)

[TURN OVER]

- (ii) Can X be convicted of the crime of robbery relating to the event that occurred at the shop? (3)
- (iii) Can X be convicted of fraud relating to the event at the shop? (3)
- (iv) Can X be convicted of the statutory crime of "pointing of a firearm" in terms of section 120(6) of the *Firearms Control Act* 60 of 2000 Give reasons for your answer (3)
- (b) Define the crime of theft by false pretences (4)
- (c) Write down the missing words or phrases in your answer book
- (i) In *Thebus* 2003 (2) SACR 319 (CC), it was held that where no (2 words) to commit an offence is proved, common-purpose liability may arise from an (2 words) with and participation in a common criminal design (2)
- (ii) In *Jonathan* 1987 (1) SA 633 (A), the Appellate Division held that the "rule in *Gani's* case" may be regarded as an exception to the general rule that one cannot be an (4 words) in respect of a crime committed by oneself (1)
- (iii) Where X removes her own property which is in the lawful possession of another and appropriates it, she commits the form of theft known as (3 words) (1)
- (iv) In the crime of fraud, the requirement of intention to defraud means that X's intent must relate to both the and the (2)
- (v) The intention required for the crime of housebreaking with intent to commit a crime comprises of an intention to unlawfully (two words) and entering the house or structure, as well as an intention of committing some other inside the house or structure (2)

[25]

SUB-TOTAL: [70]
TOTAL: 100

PART 1 (GENERAL/ALGEMEEN) DEEL 1

STUDY UNIT: PSY100 X
STUDIE-EENHEID: PSY100-X

INITIALS AND SURNAME
VOORLETTERS EN VAN

DATE OF EXAMINATION
DATUM VAN EKSAMEN

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

PAPER NUMBER
VRAESTELNOMMER

STUDENT NUMBER
STUDENTENOMMER

UNIQUE PAPER NO.
UNIEKE VRAESTEL NR.

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

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