

CRW2602

(475772)

May/June 2015

CRIMINAL LAW: SPECIFIC CRIMES

Duration 2 Hours

100 Marks

EXAMINERS**FIRST**PROF L JORDAAN
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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.

[TURN OVER]

Question 1

- (a) For a conviction of public violence, it is sufficient if the crime is committed by an individual as long as it assumes serious proportions
 - (b) Public violence can only be committed in a public place
 - (c) In common law perjury, the crime is only committed if the false declaration is made in the course of either criminal or civil proceedings
- (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 (a) and (b) are correct

Question 2

- (a) In common law perjury, the false declaration must be in writing
 - (b) A witness who intentionally makes a false statement commits perjury even if his statement is not under oath or in a form substituted for an oath
 - (c) If X makes a false report to the police to the effect that he had kidnapped another person he will be found guilty of the crime of defeating or obstruction the course of justice because it amounts to the wasting of the police officers' time
- (1) Only statement (a) is correct
 - (2) Only statement (b) is correct
 - (3) Only statements (a) and (b) are correct
 - (4) Only statements (b) and (c) are correct
 - (5) None of these statements is correct

Question 3

- (a) An interest protected in the crime of contempt of court is the dignity of an individual judicial officer
 - (b) Culpability in the form of negligence is sufficient to establish contempt of court in cases where the editor of a newspaper is charged with this crime
 - (c) In defeating or obstructing the course of justice it is a requirement that a case must be pending
- (1) Only statements (a) and (b) are correct
 - (2) Only statements (b) and (c) are correct
 - (3) Only statement (a) is correct
 - (4) Only statement (b) is correct
 - (5) Only statement (c) is correct

[TURN OVER]

Question 4

- (a) The form of culpability required when there is a failure by a person in a position of authority, who knows, or ought reasonably to have known, that certain crimes named in the Prevention and Combating of Corrupt Activities Act 12 of 2004 have been committed, to report such offence to a police officer is either intention or negligence
 - (b) In the crime of corruption, the requirement of an act for the crime committed by the recipient involves the giving of gratification
 - (c) The crime of extortion always overlaps with the crime of robbery
- (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) In the crime of the use and possession of drugs, *possessio civilis* is when X exercises control over an article with the intention of keeping it for someone else
 - (b) Culpability in the form of intention is required for the offence of use and possession of drugs
 - (c) If X commits an act which consists merely in her obtaining the drug for her own personal use, she can only be convicted of possession or use of the drug and not dealing in the drug
- (1) Only statements (a) and (b) are correct
 - (2) Only statements (a) and (c) are correct
 - (3) Only statements (b) and (c) are correct
 - (4) Only statement (b) is correct
 - (5) Only statement (c) is correct

[TURN OVER]

Question 6

- (a) Where X falsely represents to Y that he is a multimillionaire and Y agrees to sexual penetration by X because she thinks he is rich, X can be guilty of rape
 - (b) If X compels a third person (Y) without Y's consent to commit an act of sexual penetration with Z (the complainant) without Z's consent, X may **not** be convicted as a perpetrator of compelled rape since he did not perform any act of sexual penetration with the complainant
 - (c) The legal interests protected by the crime of abduction are those of the child and not of the parents or guardian of the minor
- (1) Only statements (a) and (b) are correct
 - (2) Only statements (b) and (c) are correct
 - (3) Only statement (a) is correct
 - (4) Only statement (c) is correct
 - (5) None of the statements is correct

Question 7

- (a) In *Mshumpa* 2008 (1) SA 126 (E), the court refused to extend the definition of murder to include the causing of the death of an unborn child
 - (b) X may commit the crime of assault if he or she forces Y to drink his own urine
 - (c) X **will not be guilty** of the crime of pointing of a firearm if he or she points a firearm towards Y without the intention to kill or injure Y
- (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) All these statements are correct

Question 8

- (a) For the crime of criminal defamation, there need only be two parties, namely the person who makes the defamatory statement and the complainant
 - (b) It is a requirement of kidnapping that the perpetrator must intend to deprive Y **permanently** of his freedom of movement
 - (c) The crime of *crimen iniuria* protects both a person's dignity and privacy
- (1) Only statements (a) and (b) are correct
 - (2) Only statements (b) and (c) are correct
 - (3) Only statement (a) is correct
 - (4) Only statement (b) is correct
 - (5) Only statement (c) is correct

[TURN OVER]

Question 9

- (a) Where X eats Y's food without Y's consent (consumes the property of Y), he commits theft in the form of arrogation of possession
 - (b) The crime of robbery is committed when X snatches Y's handbag, which Y is clasping under her arm and runs away with it
 - (c) The crime of receiving stolen property overlaps with the crime of theft
- (1) Only statements (a) and (b) are correct
 - (2) Only statements (b) and (c) are correct
 - (3) Only statement (a) is correct
 - (4) Only statement (b) is correct
 - (5) Only statement (c) is correct

Question 10

- (a) In *Heyne* 1956 (3) SA 604 (A), the Appellate Division held that there can be no such crime as attempted fraud if the misrepresentation has not yet come to the complainant's attention
 - (b) Malicious injury to property can **only** be committed in respect of property belonging to another person
 - (c) If a movable thing is set on fire, the crime of arson is committed
- (1) Only statement (a) is correct
 - (2) Only statement (b) is correct
 - (3) Only statements (a) and (b) are correct
 - (4) None of the statements is correct
 - (5) 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 crime of murder (2)
- (b) Name the six (6) elements of the crime of extortion (6)
- (c) X, a university student has a crush on Y, a fellow student X has made advances on Y who has constantly rebuffed his advances X and Y attend a mutual friend's birthday party While at the party Y rejects X X becomes irritated with the constant rejection and decides to teach Y a lesson He waits for Y to become intoxicated and he approaches her as she is sleeping in one of the friend's bedrooms and inserts a finger into her (Y's) anus Consider whether X can be convicted of the following crimes Please give reasons for your answers
 - (i) Rape in terms of the Criminal Law (*Sexual Offences and Related Matters*) Amendment Act 32 of 2007 (6)
 - (ii) Identify and discuss the crime with which X may be charged assuming X merely inspired a belief in Y that she will be sexually assaulted (4)
- (d) **NOTE THE CHOICE THAT YOU HAVE IN THIS QUESTION**

Discuss the case of either

S v Mshumpa 2008(1) SACR 126 (E)

OR

Ex parte Minister of Justice in re R v Gesa, R v De Jongh 1959 (1) SA 234

(7)
[25]

[TURN OVER]

Question 2

- (a) Define the crime of theft (5)
 - (b) Name and discuss the requirements that property must comply with in order to qualify as property that is capable of being stolen (8)
 - (c) Y gives X a ring to keep for her whilst she (Y) is away on holiday X likes the ring very much and gives it to his girlfriend Z as a present X is then charged with the crime of theft Y's attorney argues that X cannot be convicted of theft because he does not satisfy the requirement that he had intention to keep the property for himself Answer the following questions
 - (i) Discuss the intention required for the crime of theft and consider whether X's conduct complies with this requirement (4)
 - (ii) Would it make a difference if X kept the ring for himself? (2)
 - (d) Briefly explain the meaning of "potential prejudice" in the crime of fraud (5)
 - (e) Prejudice suffered in the case of fraud may be either proprietary or non-proprietary in nature Give three examples of fraud involving non-proprietary prejudice (3)
 - (f) Name the six elements of the crime of theft by false pretences (3)
- [30]**

Question 3

- (a) X is experiencing financial difficulties and has a lot of debts to pay Y, a friend of X, informs him (X) that he can get money by setting his house and car on fire and claiming the value from his insurer X sets his house and car on fire with the intention of claiming the value of the property from his insurer X in fact gets paid by the insurer for the "damage" that he has suffered to both his house and car Can X be convicted of the following crimes?
 - (i) Arson (2)
 - (ii) Malicious damage to property (3)
- (b) Indicate whether the following instances qualify as to breaking in and entering by stating TRUE or FALSE and provide a reason for your answer
 - (i) X in her effort to gain entry into a house through an open window, merely shifts a flower pot which is placed on the window sill to one side (2)
 - (ii) Stretching one's arm through an open hole in a wall of a building (2)
 - (iii) Merely pushing open a closed door (2)
 - (iv) X pushes a curtain at an open window to one side in order to gain entry (2)
 - (v) X walks through an open door into a building, and while inside the wind blows the door shut and X has to open the door or break it down in order to get out of the building (2)

[15]

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

PART 1 (GENERAL/ALGEMEEN) DEEL 1

STUDY ONLY (e.g. PSY100-X)
STUDIE-ENKELE (e.g. PSY100-X)

1

INITIALS AND SURNAME
VOORLETTERS EN VAN

3

DATE OF EXAMINATION
DATUM VAN EKSAMEN

4

EXAMINATION CENTRE (E.G. PRETORIA)
EKSAMENSENTRUM (B.V. PRETORIA)

5

PAPER NUMBER
VRAESTELNOMMER

2

STUDENT NUMBER
STUDENTENOMMER

6

UNIQUE PAPER NO.
UNIEKE VRAESTEL NR.

8

7

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 VOLTOOL
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

10

11

12

13

Specimen only