

OCT / NOV 2015

## PART A (MULTIPLE-CHOICE QUESTIONS)

### Question 1

- (a) This statement is correct. See SG 1.2.2 (vi).
- (b) This statement is incorrect. See SG 1.2.7. *Dolus eventualis* is a sufficient form of intention.
- (c) This statement is correct. See SG 1.2.6.

You should, therefore, have chosen option (4) since only statements (a) and (c) are correct.

### Question 2

- (a) This statement is correct. See SG 1.3.4.
- (b) This statement is correct. See SG 1.3.4.
- (c) This statement is correct. See SG 1.3.4.

You should, therefore, have chosen option (5) since all the statements are correct.

### Question 3

- (a) This statement is incorrect. See SG 10.1.7. The Appellate division in **Heyne** 1956 (3) SA 604 (A) has held that attempted fraud is in fact possible where a misrepresentation has been made by X, but which has not yet come to Y's attention as in the case where a letter containing a misrepresentation has been lost in the post.
- (b) This statement is incorrect. See SG 10.1.3 (3). The misrepresentation in the crime of fraud can also be committed by an omission where there is a legal duty on X to disclose a fact.
- (c) This statement is correct. See SG 2.4.6.

You should, therefore, have chosen option (4) since only statement (c) is correct.

#### Question 4

- (a) This statement is correct. See SG 7.4.6.
- (b) This statement is incorrect. See SG 7.4.8. For the crime of abduction to be completed, it is not required that the marriage or sexual intercourse should have taken place, as all that is required is the intention on the part of X to commit either one of these acts..
- (c) This statement is incorrect. See SG 5.2.1 and the *Mshumpa*-case in *Casebook* 264. The legal definition speaks to the unlawful and intentional causing of the death of another **human being** and a foetus is excluded from this definition.

You should, therefore, have chosen option (1) since only statement (a) is correct.

#### Question 5

- (a) This statement is incorrect. See SG 5.2.1 and SG 6.2.7. X would be convicted of the crime of culpable homicide if he is negligent as the crime of murder requires the element of intention.
- (b) This statement is incorrect. See SG 3.6.2.4. The speed limit on a public road outside an urban area is 100km/h.
- (c) This statement is correct. See SG 3.6.6.

You should, therefore, have chosen option (3) since only statement (c) is correct.

#### Question 6

- (a) This statement is correct. See SG 3.6.3.
- (b) This statement is incorrect. See SG 3.6.2.5 and SG 3.6.3.3 (Activity and feedback). A police officer who responds to an emergency and causes a motor vehicle collision while crossing a red traffic light, can be convicted of negligent driving if he does not drive with 'due regard' for the safety of other road users. See also *S v Groep* 2002 (1) SACR 538 (E).

(c) This statement is incorrect. See SG 3.6.4.3 and 3.6.4.5. This crime can be committed negligently but other road-users had to be present on the road at the time in order for this offence to have been committed.

You should, therefore, have chosen option (1) since only statement (a) is correct.

### Question 7

(a) This statement is incorrect. See SG 8.6.1.2; 8.6.1.3 and *Casebook* 251-252. The mere assumption of control over property which belongs to someone else is insufficient for completed theft, but it is sufficient to amount to the crime of attempted theft.

(b) This statement is incorrect. See SG 5.2.1. X complies with the definition of murder which is the unlawful and intentional causing of the death of another person.

(c) This statement is incorrect. See SG 12.4 and Summary (5). The structure may be any movable or immovable property that is or might ordinarily be used for human habitation, or any immovable structure which is, or might be used for storage or housing of property.

You should, therefore, have chosen option (5) since none of these statements is correct.

### Question 8

(a) This statement is incorrect. See SG 7.2.4. *Crimen iniuria* involves only two parties whereas the crime of defamation involves three parties.

(b) This statement is correct. See SG 7.2.7.3.(5)

(c) This statement is incorrect. See SG 6.1.9. The crime of assault is an intentional crime and can take the form of direct intention, indirect intention or *dolus eventualis*.

You should, therefore, have chosen option (2) since only statement (b) is correct.

### Question 9

- (a) This statement is correct. See SG 6.1.11.
- (b) This statement is incorrect. See SG 6.1.6 and 6.1.7. Assault can also take the form of indirect application of force or inspiring fear that force may immediately be applied upon another. An example of indirect force is where X sets his vicious dog on Y.
- (c) This statement is incorrect. See SG 9.2.1 *SUMMARY* (10) and *Criminal Law* 514. X need not necessarily touch the property when he receives it.

You should, therefore, have chosen option (1) since only statement (a) is correct.

### Question 10

- (a) This statement is incorrect. See SG 9.1.5. The threat of violence in the crime of robbery may be express or implied.
- (b) This statement is incorrect. See SG 9.2 *SUMMARY* (3). The crimes of assault and theft are committed. For robbery there must be a causal connection between the violence (or threats of violence) and the acquisition of the property.
- (c) This statement is incorrect. See SG 11.2.3. The property must be corporeal and may be movable or immovable.

You should, therefore, have chosen option (5) since none of these statements is correct.

## PART B

### **Important advice for answering problem-type questions:**

The purpose of asking problem-type questions in this module is to test your understanding of the various specific crimes. This requires knowledge and understanding of ***the definitions*** of these crimes.

The second step in answering a problem-type question is to **discuss the legal principles** that are relevant to providing the answer to the problem. Most of the legal

principles discussed in this module come from ***court decisions (case law)***. You must therefore make reference to a decided case(s) whenever a legal principle is stated.

You are reminded that even if you fail to remember the name of a case, you can simply state: “It has been decided” or “According to a decision” when stating the principle. Please note, however, that the discussion of an incorrect principle will not be credited, irrespective of whether the case reference (name) is appropriate. In other words, referring to the correct case name will not award you a mark if it is done to support an inappropriate legal principle. Students who do this merely indicate to the lecturer that they do not understand what the cited case actually decided.

The third step in answering a problem-type question is to **apply the relevant legal principles to the facts** of the problem. Students often combine the second and third steps when answering problem-type questions. In other words, they would discuss the principle(s) while applying it to the facts. There is nothing inappropriate about doing this. However, the chances of omitting a relevant principle (if there is more than one) are greater when adopting this approach. To minimise this possibility we would advise the separation of the second from the third step. Another advantage of discussing the legal principle(s) before applying them to the facts is that you can more easily identify the relevant facts at the stage of discussing the principle(s). This will enable you to address as many relevant facts as possible and prepare you for a more in-depth analysis at the stage of application.

The final step in answering a problem-type question is to **provide a conclusion** to the problem. Please ensure that you have addressed the question(s) that has (have) been asked. If, for example, the question requires you to determine the criminal liability of X on a charge of murder, then your conclusion should state either “X is criminally liable of murder”, or “X is not criminally liable on a charge of murder”. If the question requires you to determine whether X caused Y’s death, then your conclusion should state either “X caused Y’s death”, or “X did not cause Y’s death”, et cetera. Please note also that in order for your conclusion to have any basis it must be a deduction of your reasoning.

## **QUESTION 1**

(a)(i) **SG 9.1.2 and 9.1.7**

- Theft of property
- Use of actual violence or threats of violence
- Causal connection between the violence and acquisition of the property
- Unlawfulness
- Intention

Discussion: Yes - the court has held that the grabbing of a cell phone amounts to robbery in the *Salman*-case, as it is sufficient that any force is applied to the person of a victim, however slight, that amount to a physical intervention necessary for dispossession.

**OR**

(ii) **SG 1.2.7**

It is required that the act is performed with an intention, or an act which by **its nature and context, can reasonably be regarded as being intended, directly or indirectly** to

FIRST COMPONENT

- threaten the **unity and territorial integrity** of the Republic
- **intimidate or cause feelings of insecurity** within the public or a segment of the public, including economic security, or to **cause feelings of terror, fear or panic in a civilian population** or
- unduly compel, intimidate, force, coerce, induce or cause a person a government, the public or a segment of the public or a domestic or an international organization or intergovernmental organization **to do or to abstain or refrain from doing any act, or to adopt or abandon a particular standpoint, or to act in accordance with certain principles.**

and

## SECOND COMPONENT

It is required that the act be committed, directly or indirectly, in whole or in part, for the **purpose of the advancement of an individual or collective, political, religious, ideological or philosophical motive, objective, cause or undertaking.**

### (b) SG 3.6.5.3

Section 65(1) in actual fact prohibits two different acts:

- Driving of a vehicle while under the influence.
- Occupying a driver's seat with the engine of the vehicle running while under the influence.
- Even if a person is in a stationary vehicle they can be found guilty.
- It must be proved that the driver was affected by the intoxicating liquor or drug to such a degree that the **skill and judgment normally required of a driver was diminished or impaired as a result** (*Lloyd* 1929 EDL 270).
- **"Skill"** refers to the **driver's physical powers**, and is diminished or impaired when the driver's vision, judgment or muscular coordination is affected (*Donian* 1935 TPD 5).
- **"Judgment"** refers to the **driver's mental powers**, which are deemed to be impaired or diminished if the intoxicating liquor or drug causes him to be euphoric or over-optimistic.
- The driver must have been **under the influence at the time** of driving the vehicle (*Lombard* 1967 (4) SA 538 (A)).
- Alcohol usually refers to ethyl alcohol and the drug referred to should have a **narcotic effect and need not be a narcotic drug per se** (*Whitehead* 1970 (1) SA 25 (T)). Any substance or remedy which has an effect resembling that of a narcotic drug is included and not merely pharmaceutical narcotics.
- **Yes, X can be convicted of the offence.**

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

*S v Gardener and Another* 2011 (1) SACR 570 (SCA) - Casebook pp. 260-263.

Facts: Two chief executive officers of company A failed to disclose their interests in company B to the board of company A. Company A had bought shares in company B and as a result of this transaction X and Y secured substantial profits. They were charged with fraud and duly convicted.

Legal question: On appeal the questions before the court were whether they had the intention of defrauding company A and whether their failure to disclose their interests resulted in actual or potential prejudice to the company.

Reasons for the judgment:

The court upheld the conviction of fraud and found that the conduct of X and Y was potentially prejudicial to company A since, *inter alia*, it precluded company A from considering the advantages and disadvantages of the sale and induced company A to raise the finance and pay X and Y for their interest in company B. Moreover, their conduct was **deliberate since it was done to avoid proper consideration of the transaction by the board in the self-interest of X and Y** (para 57).

In considering the **intention to cause prejudice, the court deemed it unnecessary to be more specific as to the nature of that prejudice.**

The court stated (at para 58) that when company directors directly withhold information material to the affairs of their company from the board of directors there is, in the absence of an explanation for such conduct which may reasonably be true, a case of fraudulent non-disclosure. That is because the company can only make decisions through a board that is properly informed.

**OR**

*S v Sibiyi* 1955 (4) SA 247 (A) – Casebook 244 – 250.

Facts: X removed Y's car without his consent and took a joyride in it, intending to return it to Y. However the car overturned and landed in a donga. When the police arrived at the scene, X was still standing near the car (he did not abandon the car). X was convicted of theft.

Legal question: Does *furtum usus* (the mere temporary use of another's property without the intention of permanently depriving the owner) amount to theft in South African law?

Reasons for the judgment:



The Appellate Division held that Sibiya had not committed theft because he did not have the **intention to deprive Y permanently of the property**.

Following English law, our courts have held that the perpetrator must have the intention permanently to deprive the owner of his property.

However, if X intends to deprive Y only temporarily of his property, then he still respects and recognizes Y's right to the property throughout and does not have an intention to deprive Y permanently of the property – as required for theft.

An important qualification to the rule that *furtum usus* does not constitute theft is that where the perpetrator uses the thing of another with the intention to use it only temporarily but then abandons it, taking no measures to ensure its return to its owner, he commits theft.

(d) **SG 3.5.4**

- To be aware that somebody else possesses a firearm illegally and to **fail to report this to the police**.
- To cause **bodily injury** to a person or damage to property by **negligently using** a firearm.
- To handle a firearm while **under the influence** of a substance which has an **intoxicating** or narcotic effect.
- To **discharge** a firearm in a **built up area** or **public place**.
- To **lose** a firearm owing to a **failure to lock it away in a safe**, strong room or safe or owing to failure to keep the keys to the safe, strong room or device in safe custody.
- The pointing of a firearm (SG 6.2).

**QUESTION 2**

(a)(i) **SG 8.6.2**

For property to be capable of being stolen, it must be

- **movable**
- **corporeal**,

- be capable of forming **part of commerce** - meaning it should **not** be a *res communes* - things belonging to everybody, nor *res derelictae* - abandoned property, nor *res nullius* - things belonging to nobody
- the property must **belong to someone else** □ **except** in the case of the arrogation of possession.

(ii) **SG 8.6.2 (2) and Casebook 252-256** - *Ndebele* 2012 (1) SACR 245 (GSJ).

- Yes. X can be convicted for stealing electricity.
- In *Ndebele* it was held that the courts have moved away from the physical handling of the property to a more abstract requirement of appropriation such as the manipulation of credit.
- There need not be physical removal but rather the deprivation of a characteristic and depriving the owner of a characteristic.
- Energy by electricity consists of electrons and the characteristic attached to electrons is energy which is consumed and is capable of theft.
- In the *Mintoor*-case it was held that electricity cannot be stolen.

(iii) **SG 3.3.**

- Yes. X can be found guilty of the crime of extortion.
- Extortion is the unlawful and intentional acquisition of a benefit from some other person by applying pressure to that person which induces her to part with the benefit.
- Y applied pressure upon X, in the form of intimidation/threat of exposure, that he will not report him to the ABC company if X provides him with 20% of the proceeds from the vouchers X sells.
- There must be a **causal connection between the application of pressure and the acquisition of the thing**. It can be inferred that at the time when the scheme is exposed through an audit of all the issued vouchers, Y had already acquired 20% of the proceeds from the vouchers sold by X. Y acquired this benefit **as a result** of the intimidation/threat that he had placed upon X (ie. that Y would report him to the ABC company unless he complied with his request).
- See *Ex parte Minister of Justisie: In re S v J en S v Von Mollendorff* 1989 (4) SA 1028 (A).

- The benefit in this case is patrimonial and Y puts pressure on X in order to obtain this benefit. If Y already acquired the benefit he can be convicted of completed extortion.

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

**(i) SG 2.4.1.**

Contempt of court consists in the unlawful and intentional

(1) violation of the dignity, repute or authority of a judicial body or a judicial officer in his judicial capacity, or

(2) the publication of information or comment concerning a pending judicial proceeding which has the tendency to influence the outcome of the proceeding or to interfere with the administration of justice in that proceeding.

**OR**

**(ii) SG 3.2.4.**

Corruption is defined as:

Anyone that

- (a) accepts any gratification from any other person, or
- (b) gives any gratification to any other person

in order to act in a manner that amounts to the illegal exercise of any duties, is guilty of the offence of corruption.

- (c)(i) **SG 3.2.1** Corruption – trust in the authorities and authoritative organs/ or protects moral values / or preserves public welfare.

(ii) **SG 6.2.3** Pointing of a firearm – evils surrounding firearms/ the arousal of fear in the mind of Y of being struck by the bullet / physical integrity of a person.

(iii) **SG 7.5** Kidnapping - Freedom of movement and a parent's custody/ control over a child.

### QUESTION 3

(a)(i) **SG 4.2.2.1 and 4.2.2.2**

Yes, X will be guilty of the crime of rape.

A female can be the perpetrator and the male the victim as the definition provides that any person who unlawfully and intentionally commits an act of sexual penetration with a complainant without their consent is guilty of the crime of rape.

Consent means voluntary and uncoerced agreement.

Consent is invalid in this case as Y submits to the intercourse due to force, intimidation or threats or where the victim is in an altered state of consciousness such as being under the influence of drugs.

(ii) **SG 6.1.5; 6.1.6, 6.1.7 and 7.2.7.3(4)**

X is guilty of both *crimen iniuria* and assault.

Assault is committed as there is an unlawful and intentional **direct application of force to person of Y**. This occurred through the rape of Y.

There is also unlawful and intentional **indirect application of force by forcing Y to consume the drugs**.

*Marx* 1962 (1) SA 848 (N) – alcohol was given to children to drink and they became sick – the fact that it was internal rather than external was irrelevant.

A 1993 (1) SA 600 (A) – in this case a policeman forced Y to drink his own urine – it was held the forced drinking of any substance constitutes assault.

There is also the unlawful and intentional inspiring of fear (of a belief) upon Y that force is immediately to be applied to him. By wielding a gun in her hand and by threatening to kill Y if Y did not have sexual intercourse with her, there was a threat of **immediate** and **unlawful violence** upon **the person** of Y. Y **subjectively believed** that X intended to carry out her threat and submitted to every command out of fear.

Certain acts of assault also qualify as *crimen iniuria*. *Crimen iniuria* is also committed as there is the unlawful and intentional serious infringement of the **dignity** of another committed in the case of a rape or an assault (ie forced drinking of the drugs) and also such infringement of the **privacy of the victim** in the case of the rape.

- (b) (i) **SG 4.7.2.2** children; age (word “minor” not sufficient).
- (ii) **SG 4.3.2.1** sexually violates; consent
- (iv) **SG 4.4.1(iv)** 18 years
- (iv) **SG 4.7.4.1(a)** sexual exploitation
- (v) **SG 4.7.5** sexual grooming
- (vi) **SG 3.2.6 and SG 3.2.7** recipient/receiver/corruptee; giver/corruptor
- (viii) **SG 11.2.1** insured; insurer/insurance company/insurance

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## PART A (MULTIPLE-CHOICE QUESTIONS)

(Please note that questions 1-4 deal with topics that were covered in CRW2602 in 2014, but that no longer form part of this module. These topics now form part of the module for CRW2601. Therefore, you are not

referred to paragraph numbers in these particular answers to the questions.)

### Question 1

- (a) This statement is correct.
- (b) This statement is correct.
- (c) This statement is correct.

You should, therefore, have chosen option (3), since all these statements are correct.

### Question 2

- (a) This statement is incorrect. An **indirect perpetrator** is a person who does not commit a crime with his or her own hands.
- (b) This statement is correct.
- (c) This statement is incorrect.

You should, therefore, have chosen option (4), since only statement (b) is correct.

### Question 3

- (a) This statement is incorrect. X may be convicted of at least attempted assault or even attempted murder if he had the intention to kill Y. See *Case Book* 194.
- (b) This statement is correct.

- (c) This statement is correct.

You should, therefore, have chosen option **(3)**, since only statements (b) and (c) are correct.

#### **Question 4**

- (a) This statement is correct.
- (b) This statement is incorrect.
- (c) This statement is incorrect.

You should, therefore, have chosen option **(4)**, since only statement (a) is correct.

#### **Question 5**

- (a) This statement is correct. See SG 1.3.4.
- (b) This statement is incorrect. The statement must objectively be false. See SG 2.1.3.
- (c) This statement is correct. See SG 2.3 and *Criminal Law* 341.

You should, therefore, have chosen option **(1)**, since only statements (a) and (c) are correct.

#### **Question 6**

- (a) This statement is incorrect. See SG 2.4.8.
- (b) This statement is correct. See SG 2.4.9.
- (c) This statement is correct. See SG 2.4.9.3.

You should, therefore, have chosen option **(4)**, since only statements (b) and (c) are correct.

#### **Question 7**

(a) This statement is correct. See SG 3.2.6.5.

(b) This statement is correct. See SG 3.2.8.

(c) This statement is correct. See SG 3.5.3.

You should, therefore, have chosen option **(5)**, since all these statements are correct.

#### **Question 8**

(a) This statement is incorrect. See SG 4.2.2.2.

(b) This statement is correct. See SG 7.4.3.

(c) This statement is correct. See SG 6.1.9.

You should, therefore, have chosen option **(2)**, since only statements (b) and (c) are correct.

#### **Question 9**

(a) This statement is correct. See SG 6.1.7.

(b) This statement is incorrect. See SG 7.2.7.1.

(c) This statement is correct. See SG 7.2.8.

You should, therefore, have chosen option **(3)**, since only statements (a) and (c) are correct.



### Question 10

- (a) This statement is incorrect. See SG 8.6.1.3.
- (b) This statement is correct. See SG 9.1.6.
- (c) This statement is incorrect. See SG 9.1.6.

You should, therefore, have chosen option **(2)**, since only statement (b) is correct.

### PART B

#### Question 1:

- (a) **(Note that this topic no longer forms part of CRW2602. It now forms part of the module for CRW2601. Therefore, there are no paragraph references in these answers).**

Liability in terms of the general principles of liability and the doctrine of common purpose is relevant to this question.

The **liability of A and B** for the **murder** of the school principal can be explained as follows:

- A and B may be liable in terms of the **general principles of liability** as it can be argued that their conduct was the **cause** of the principal's death.
- Murder is the unlawful, intentional **causing** of the death of another person.
- They both had **intention**; if not direct intention to kill, at least in the form of ***dolus eventualis***.
- However, if it is not possible to establish whose shot actually killed the principal, the second basis of liability is by applying the **doctrine of common purpose**, which provides that
  - if two or more people having a common purpose to commit a crime act together in order to achieve that purpose, the **acts of each of them** in the execution of such a purpose are **imputed** to the others.
  - A and B were **present at the scene of the crime** and **performed acts of active association** with the execution of the common purpose to kill the school principal.

- If students argued that the common purpose to kill was established by the **prior agreement** to commit kidnapping, knowing or foreseeing the possibility that somebody might get killed, a mark was also allocated.
- A and B also had intention, at least in the form of **dolus eventualis**. They had foreseen the possibility that somebody might get killed during the robbery, and had reconciled themselves to this possibility.
- The relevant authority is the cases of *Safatsa*, *Mgedezi* and *Lungile*.
- Conclusion: A and B may be found guilty of murder in respect of the school principal.

**As far as the liability of C and D is concerned:**

- **C and D** shared a common purpose with A and B to commit kidnapping (previous agreement or active association), but the question is whether they had **withdrawn** themselves from the common purpose, or **disassociated** themselves from the common purpose.
- This should be determined in terms of guidelines in the case law:
- Did C and D have a **clear and unambiguous intention** to withdraw, or did they leave because they were afraid?
- Did C and D perform a **positive act of withdrawal**?
- **How far had the commission of the crime proceeded before C and D disassociated** themselves by leaving the scene; what was the **manner and time of their disengagement**; and what did they do to **try and prevent the crime from being committed**?
- Did the withdrawal take place **before the course of events had reached “the commencement of the execution”**? ☐ Was the **withdrawal voluntary**?
- Conclusion: Students could have answered “**yes**”, they had withdrawn or “**no**”, they had not. Marks were awarded depending on the argument of the student.

(b)(i) **SG 9.1.2.**

**Yes**, they may be convicted of robbery.

The elements of robbery are the following:

- (1) the **theft of the property**
- (2) by unlawfully and intentionally using **either actual violence or threats of violence**

- (3) a **causal connection** between the violence (or threats thereof) and the acquisition of the property

The crime is completed as soon as the principal hands the money (property) over to them and they acquire the money **as a result of** their violence or threats of violence. See the case of *Ex parte Minister of Justice: In re R v Gesa, R v De Jong* in *Case Book 257*.

- (ii) **SG 12.1.** Yes, they may be convicted of housebreaking. Housebreaking with intent to commit a crime consists in unlawfully and intentionally breaking into and entering a building or structure with the intention of committing some crime in it.

- (iii) **SG 7.4.**

They did not commit common-law abduction, as they wanted to remove the minors from their guardians for political reasons and not to have intercourse with them. Common-law abduction consists of unlawfully and intentionally

- removing an unmarried minor from the control of his or her parents or guardian, without their consent
- with the intention that one, or somebody else, may marry or have sexual intercourse with the minor.

- (iv) **See Study Unit 11 under “Summary”, points 5-7.**

Yes, they are guilty of arson as they set fire to the school building (an immovable property belonging to another).

Arson consists in unlawfully and intentionally setting fire to

- immovable property belonging to another or
- one's own immovable insured property, in order to claim the value of the property from the insurer.

Malicious injury to property consists in unlawfully and intentionally damaging

- property belonging to another person or
- one's own property with the intention of claiming the value of the property from the insurer.

Malicious injury to property differs from arson in that malicious injury to property is damage to any property (not only immovable property) belonging to another

person, or damaging one's own property with the intention of claiming the value of the property from the insurer.

(c)(i) *Motaung* 1990 (4) SA 485 (A) **(Note that this case and topic no longer form part of CRW2602. It now forms part of the CRW2601 module)**

### **Facts**

On appeal against a conviction for murder in terms of the doctrine of common purpose, it was argued that the appellants could not be convicted of murder since they acceded to the common purpose to kill the deceased at a stage when the deceased had already been fatally wounded by others, and that the wounds inflicted by the appellants did not hasten her death. The court found that the appellants were not part of a previous conspiracy to murder the victim and that there was a reasonable possibility that they joined in the attack only at a stage **after** the victim had been fatally wounded.

### **Legal question:**

Can a so-called joiner-in be convicted of murder in terms of the doctrine of common purpose?

**Decision:** A joiner-in can be convicted of attempted murder only and not of murder.

### **Reasons for decision:**

To hold a joiner-in liable for murder on the basis of an association with the crime only **after** all the acts contributing to the victim's death have already been committed would involve holding him/her responsible *ex post facto* for the acts of the others. The criminal law is opposed to *ex post facto*, or retrospective, liability and it would be unacceptable to recognise it in the situation of a joiner-in.

(ii) *Hlatwayo* 1933 TPD 441

**(Note that this case and topic no longer form part of CRW2602.)**

### **Facts**

X, a domestic servant, put caustic soda into her employers' porridge, intending to poison them. She noticed that the caustic soda discoloured the porridge, so she threw the mixture away.

### **Legal question:**

Is voluntary withdrawal a defence on a charge of attempted murder if the withdrawal occurred after the act of execution?

**Decision:** X was convicted of attempted murder.

**Reasons for decision:**

The court held that her acts had already reached the stage of **consummation (execution)**, and that her change of heart did not exclude her liability for attempt. Voluntary withdrawal was not a valid defence here.

**Question 2:**

a) **SG 4.10.** The crime is trafficking in persons for sexual purposes/human trafficking. Any person who traffics in any person for sexual purposes, **without that person's consent**, is guilty of this offence. The mere **encouraging, incitement, instigation and other preparatory actions** amount to the offence of involvement in trafficking in persons for sexual purposes.

b) **SG 3.4.2.**

Yes, X can be charged with the use or possession of or dealing in drugs in terms of the *Drugs and Drugs Trafficking Act 140 of 1992*.

The elements of this offence consist of the unlawful and intentional

(1) **possession or use of or dealing in**

(2) any dependence-producing substance or any dangerous dependence-producing substance or in any undesirable dependence-producing substance.

X gave the women drugs in order to control them; therefore, he had drugs in his possession for their use as described in the Act.

(c) **SG 7.5.**

X can be charged with **kidnapping** in respect of the women that he locked up. Kidnapping is the unlawful and intentional depriving of a person of his or her freedom of movement, and if such a person is a child, the custodians of their control over the child. The crime of kidnapping can be committed even though there is **no physical removal**, for instance where the women are concealed or imprisoned where they happen to be. Also, X's motive in depriving Y or the

women of their freedom of movement need not necessarily be to demand a ransom for their release. He may kidnap them for his own use.

d) **SG 3.3.**

Yes, X can be convicted of **extortion**, as he takes photos of the naked women in compromising positions by exercising pressure through threats to send the photos to their families if they try to leave.

Extortion is the unlawful and intentional **acquisition of a benefit** from some other person by **applying pressure** to that person, which induces him or her to part with the benefit. X must acquire the benefit by bringing pressure to bear on Y, and Y must give way under the pressure (causal link). In terms of section 1 of the General Law Amendment Act 139 of 1992, **any advantage** can be extorted, not necessarily a patrimonial benefit.

e) **SG 10.1.**

Yes, X can be convicted of fraud. Fraud is the unlawful and intentional making of a **misrepresentation** that causes actual **prejudice or is potentially prejudicial**. There must be a **deception** by means of a falsehood. X represented to Y that he had job opportunities for young girls as baby-sitters, whereas he wanted to kidnap Y for use in his brothel or to traffic her. This is a **misrepresentation, which** could have caused **actual prejudice**. Fortunately, however, Y was able to escape from X.

(f) **SG 3.2.4.**

Yes, X 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*, as the giver of a gratification.

The basic elements of the offence are the following:  
the unlawful and intentional **giving** by X to Z (the requirement of an act) of **gratification**  
in order to induce Z to act in a certain manner (the element of inducement) that amounts to the **illegal exercise of Z's duties**.

### Question 3

(a)(i) (Note that this question no longer forms part of CRW2602.)

**This statement is incorrect.**

A putative crime is a crime that does not actually exist (because there is no provision stating that that particular type of conduct constitutes a crime), but which X **thinks** does exist. In a putative crime, X is not mistaken about the relevant material facts, but about the contents of the relevant legal provisions or law.

(ii) **SG 2.4.9.2.**

**This statement is correct.**

The crime is committed by publishing information while the matter is still being considered by the court and because this information did not form part of the evidence in court. In order to avoid a so-called trial by newspaper, the judge, assessors or magistrate should not be influenced by information or commentary emanating from sources outside the court.

(iii) **SG 6.2.3.**

**This statement is incorrect.**

The firearm does **not** have to be loaded; also, the firearm must be pointed at somebody else without a good reason to do so.

(iv) **SG 7.2.4.**

**This statement is correct.**

A violation of reputation always involves three parties, namely the person who makes the defamatory statement; the complainant (Y), that is, the person about whom the defamatory statement is made; and the so-called third party (one or more other people) to whose knowledge the defamatory statement must come.

(v) **See “Summary”, study unit 9, point 8.**

**This statement is correct.**

Since persons who are accessories after the fact to theft are usually regarded as thieves (i.e. perpetrators of theft), the crime of receiving overlaps with the crime of theft. Theft is a continuing crime.

(b) **SG 8.6.4.3.**

To have had an intention to appropriate Y's drill, X must have had an **intention to exercise the rights of an owner** in respect of Y's property (positive component of appropriation) and an **intention to exclude the owner (Y) from exercising his rights** over his property (or stated differently, an **intention to deprive Y of his property**) (negative component of appropriation).

The intention to deprive Y of his property must amount to an intention to deprive Y **permanently** of his property. If X wishes to deprive Y only temporarily, then he still respects and recognises Y's right to his drill and thus does not have the intention to appropriate his drill.

In **Sibiya**, the Appeal Court held that the mere temporary use of another's property, without the intention of permanently depriving him/her of such property, does not amount to theft.

However, if X, after having removed Y's property and intending to use it temporarily, loses/breaks it (or makes it ineffective somehow) and thereafter acts in a manner that indicates that he has no intention of notifying/returning the property to Y, then he adopts an intention of permanently depriving Y of his property.

**Conclusion:** X cannot be convicted of theft, since he did not intend to appropriate the drill.



**OCT / NOV 2013**

**PART A (MULTIPLE-CHOICE QUESTIONS)**

**Question 1**

This statement is incorrect. An accomplice is someone whose conduct furthers the commission of a crime by someone else but who does not comply with the requirements of liability set out in the definition of a crime and whose conduct is not imputed to him in terms of the doctrine of common purpose. See SG 1.2.2.

This statement is correct. The liability of an accessory after the fact, and an accomplice, is accessory in character. See SG 2.3.3 (6)

This statement is incorrect. See SG 1.3.3.

You should, therefore, have chosen option **(3)** since only statement (b) is correct.

**Question 2**

This statement is correct. See SG 1.3.4.2.

This statement is correct. See SG 1.3.4.7.

This statement is correct. See SG 1.3.4.8.

You should, therefore, have chosen option **(5)** since all the statements are correct.

**Question 3**

This statement is correct. See SG 1.3.4.5. and Snyman *Casebook* commentary on 224.

This statement is incorrect. See SG 3.2.6.

This statement is correct. See SG 3.3.

You should, therefore, have chosen option (2) since only statements (a) and (c) are correct.

#### **Question 4**

This statement is incorrect. See SG 3.3. (9).

This statement is correct. See SG 3.4.(9).

This statement is correct. See SG 5.1.3.

You should, therefore, have chosen option (4) since only statements (b) and (c) are correct.

#### **Question 5**

This statement is correct. See SG page 61 Summary (15).

This statement is correct. See SG 5.4.9.1.

This statement is incorrect. Intention must be present. See SG 5.4.9.2. b.

You should, therefore, have chosen option (2) since only statements (a) and (b) are correct.

#### **Question 6**

This statement is incorrect. See SG 6.2.6.2 (4)

This statement is correct. See SG 6.2.7.3.

This statement is correct. See SG 6.2.8 (8).

You should, therefore, have chosen option **(3)** since only statements (b) and (c) are correct.

### **Question 7**

This statement is correct. See SG 6.4.2.3.

This statement is incorrect. See SG 6.4.2.6.

This statement is incorrect. See SG 6.4.3.3.

You should, therefore, have chosen option **(1)** since only statement (a) is correct.

### **Question 8**

This statement is correct. See SG 7.4. 1 (iv).

This statement is correct. See SG 7.7.2.4

This statement is incorrect. The crime can only be committed against a child (a person under the age of 18). See SG 7.9.

You should, therefore, have chosen option **(5)** since only statements (a) and (b) are correct.

### **Question 9**

This statement is correct. See SG 10.1.6.

This statement is incorrect. Mere intention is sufficient. See SG 10.1.11.

This statement is incorrect. See SG 11.2.

You should, therefore, have chosen option **(1)** since only statement (a) is correct.

### Question 10

This statement is incorrect. See SG 13.1.6. This act will amount to theft and assault.

This statement is correct. See SG 13.1.5.

This statement is incorrect. See SG 16.4.

You should, therefore, have chosen option **(2)** since only statement (b) is correct.

## PART B

### Question 1:

If **two or more people**, having a common purpose to commit a crime, **act together** in order to achieve that purpose, **the acts of each of them** in execution of such a purpose are **imputed** to the others. In *Safatsa* a crowd of 100 people attacked Y with stones and poured petrol over him and set him alight. The appellants were found guilty of murder based on their common purpose to kill Y. They argued that they could only be liable if a **causal connection** was proved between each person's individual conduct and the act but this was held not to be the case and no causal connection is required. It was held that common purpose may be proved and the **act will be imputed** to all the persons who had the same purpose where there was a **prior agreement** or **active association** and participation in the common design.

SG 1.3.4.1 and 1.3.4.4 and *Casebook* 187.

Murder is the unlawful and intentional **causing of the death of another person**. In **Williams** 1980 (1) SA 60 (A) it was held that a person **can be an accomplice** to murder. In this case the accused persons were travelling on a train and the one accused held the victim and the other charged the victim with a broken bottle while the one accused held the victim. Snyman criticises this decision as he says the conduct of the accused who held the victim **contributed causally** to the death and should be convicted as a **co-perpetrator** as his conduct complied with the definition of murder. To be an accomplice one would have to **further the death without causing it** or **contribute causally** to it which is not possible.

SG 2.2.5 and *Casebook* 207-212.

In the first stage X's conduct amounts to no more than **acts of preparation** and he will **not be convicted of any crime**. In the second stage his acts qualify as **acts of execution** or **consummation** and he will be guilty of **attempted murder**. In the third stage the **act has been completed and the requirements for liability have been met** and **X will be guilty of the completed crime** such as murder.

In *Schoombie* X went to a shop and placed petrol around it with a tin of inflammable material. He was stopped by a policeman. He was convicted of **attempted arson**. The court held that one needs to distinguish between **acts of preparation** and **acts of consummation** using an **objective criterion**.

See SG 3.2.5.1 – 3.2.5.3. and *Casebook* 227.

This is an example of contempt *ex facie curiae*. It relates to **scandalising the court**. The crime is not to protect the dignity of an **individual judicial officer** but to **protect the administration of justice**. The publication of allegations imputing dishonest motives can be **oral or in writing**. The words should have the tendency or **likelihood to harm**. As far as unlawfulness is concerned, **fair comment** on the administration of justice is not contempt but they must be **reasonable and bona fide**. There must be **intention** present and the offensive action must be directed at a judicial officer in his judicial capacity. In *Moila* 2005 (2) SACR 517 (T) it was held that the accused acted with malice and intentionally abused his right to

freedom of expression to damage the character and dignity of the judges acting in their capacity as judges.

Contempt of court consists in the **unlawful and intentional violation of the dignity, repute or authority of a judicial body or a judicial officer in his judicial capacity or the publication of information/ comment concerning a pending judicial proceeding which may influence the outcome of the proceeding or the administration of justice.**

## Question 2

- (a)(i) **Yes she may possibly be found guilty of rape.** Rape is any person who unlawfully and intentionally commits an act of **sexual penetration** with a complainant without his or her **consent** is guilty of rape. Consent means **voluntary or uncoerced agreement**. It must be given **consciously** and the person must understand what they are consenting to. There is **no valid consent if X is in an altered state of consciousness** and under the influence of alcohol (intoxicated) and is **unable to appreciate** the nature of the sexual act.

See SG 7.2.

**Yes she may be found guilty of attempted extortion.** Extortion is the unlawful and intentional **acquisition of a benefit** from some other person by **applying pressure** to that person which **induced him or her to part with the benefit**. In this set of facts there is no indication that the benefit was handed over to X. The pressure can take the form of intimidation or **threats**. The benefit can be **any advantage** which is **patrimonial or non-patrimonial**. See the case of **S v J** 1980 (4) SA 113 (E) or **Ex Parte Minister van Justisie: In re S v J en S v Von Mollendorff**.

See SG 6.3

X may be found guilty of the crime of **defeating or obstructing the course of justice** or an **attempt to commit this crime**. This crime is defined as consisting in unlawfully and intentionally engages in conduct which defeats or obstructs the course of justice. It is **not a requirement that a case must be pending**. It is sufficient if Y **subjectively foresees** that her conduct may lead to the case being **prosecuted or investigated**.

See Snyman *Criminal Law* self-study 338ff and SG 5.3

(b) Discuss the case of either:

*v Sibiya 1955 (4) SA 247 (A) OR*

In this case the complainant took his car for repairs. The appellant took the car for a joyride and it ended up in a donga. They were charged with the theft of the car. They were convicted of theft and took the case on appeal. It was held that they had not **intended to permanently deprive** the owner or person entitled to the possession of the car but to use it temporarily and bring it back. The court upheld the appeal and confirmed that ***furtum usus* or the temporary use of another's thing without the intention of permanently depriving** the owner is no longer the crime of theft. In order to be convicted of theft there must be an **intention to appropriate** and permanently deprive an owner of his property. They were therefore **not guilty of the crime of theft**. The Legislation enacted Section 1(1) of the **General Law Amendment Act 50 of 1956** to make this type of temporary use a crime.

See *Casebook* 244.

OR

*v Jonathan 1987 (A) SA 633*

*Any 7 marks can be awarded.*

In this case the three accused were charged with murdering a co-prisoner who was in the same cell as them. The court could not decide if they were **guilty of murder or had acted with a common purpose**. They found them **guilty as accessories after the fact**. The court referred to the ***Gani*** case and confirmed it. They considered this case as an exception to the general rule that **one cannot be an accessory after the fact to a crime committed by himself**. The logic was if all three committed the murder then all three are accessories after the fact as they all disposed of the corpse. This *Gani* decision has been criticised because it did not consider that there was **no perpetrator** to whom ones act

could be an accessory after the fact. The decision was based on **legal policy** that it would not be fair to acquit all three of the accused in the *Jonathan* case.

See Snyman *Casebook* 215ff.

- (ii) They may possess ammunition however:

If they hold a **licence**

If they hold a **permit**

If they hold a **dealer's licence** - If **otherwise authorised** to do so

See SG 6.5.3.

### Question 3

- (a) (i) **No, X may not be found guilty of murder of the foetus.** Murder is the unlawful and intentional causing of the death of a human being. In the *Mshumpa* 2008 (1) SACR 126 (E) case it was held that this means the person must be **born alive**. The Constitution does not confer the right to life on an unborn child and the common law may be developed but incrementally and in accordance with the Constitution but **may not be applied retrospectively** as it will offend the principle of legality.

See *Mshumpa* case in casebook 264.

**No he may not be found guilty of damaging** the door if he is the owner or co-owner unless it is **only X's property then he may be found guilty**. Malicious injury to property is the unlawful and intentional **damaging of property belonging to another person or damaging one's own insured property** with the intention of claiming the value of the property from the insurer.

See SG 15.2.

**Yes** he could be found guilty. Assault may be caused by **applying force directly or indirectly to another person** or **inspiring a belief** that force will be immediately applied. It



is not a requirement for this crime for Y to **suffer serious bodily harm**. Only X's **intention** to impose serious bodily harm is required.

See SG 10.1.11.

(b)

It means there must be the **risk of prejudice** or **likelihood** of prejudice

Likelihood means the **possibility of prejudice** and not that it can or will be caused

- It should **not be too remote or fanciful** - The prejudice **need not necessarily be suffered by the representee**

It is irrelevant whether the victim (Y) was **not misled** by the prejudice

Since potential prejudice is sufficient it is **unnecessary to require a causal connection** between the misrepresentation and the prejudice

See SG 14.1.4.

(c)(i) Embezzlement (appropriation of property belonging to another in the perpetrator's own possession).

There must be **intention in respect of the property** ie X must know that he is taking property which belongs to somebody else and which is not *res nullius* or *res derelictae*

- There must be **intention in respect of the unlawfulness**
- There must be **intention in respect of the act** (intention to **appropriate**) and this means X must have the intention to **exercise the rights of an owner** in respect of the property as well as an intention to exclude the owner from exercising her rights over her property (**permanently deprive the owner of her property**)

**X is guilty** as he is paying his debts and there is an intention to permanently deprive Y of her property and he exercised the right of an owner of the property (incorporeal property exception ie theft of an abstract sum of money).

See SG 12.6.4 and 12.7

### Additional Revision Questions

**Discuss the type of attempt known as attempt to commit the impossible as well as the**

**circumstances under which attempt to commit the impossible is not punishable (in other words the exception/s to the rule that attempt to commit the impossible is punishable). (10)**

Attempt to commit the impossible

Subjective and objective approaches: before 1956 there was no certainty if this type of attempt was punishable or not. It was also uncertain whether deciding X's conduct amounted to a punishable attempt, employ an objective or subjective test.

Objective test consider the facts only from the outside, that is without considering the subjective aims which X has in mind when he performs the act.

If one follows this approach, X would never be guilty of attempt because what he is trying to do cannot physically result in the commission of an offence.

Example: X tries to sell uncut diamonds to Y. He offers a stone to Y which X thinks is an uncut diamond but it is actually a piece of worthless glass. If one applies the objective test, X cannot be convicted of an attempt to sell an uncut diamond because the sale of a piece of glass is entirely different to the sale of an uncut diamond.

Subjective test if you apply the subjective test however, X can be convicted of attempt because according to this test what is decisive is X's subjective state of mind, that is his belief that what he was doing was selling an uncut diamond and not a piece of glass.

The decision in Davies:

Court had to decide whether X was guilty of an attempt to commit the former crime of abortion if the foetus which he had caused to be aborted was already dead, although he had believed the foetus to be still alive. The Appeal Court adopted the subjective test and held that X was guilty of attempt. It held that X would have been guilty of attempt even if the woman had not been pregnant provided, of course, that X had believed that she was pregnant and had performed some act intending to bring about an abortion.

**Briefly discuss the liability of a newspaper editor for the crime of contempt of court in the form of commentary on pending cases, and refer to the culpability requirement in particular. (4)**

Definition

Contempt of court consists in the unlawful and intentional

Violation of the dignity, repute or authority of a judicial body or a judicial officer in his judicial capacity, or

The publication of information or comment concerning a pending judicial proceeding, which

has the tendency to influence the outcome of the proceeding or to interfere with the administration of justice in that proceeding

### Intent

In general intention is an essential element of the crime except in cases where the editor of a newspaper is charged with this crime on the ground of the publication in his newspaper of information concerning a pending case, which tends to influence the outcome of the case. Culpability in the form of negligence will be sufficient to establish contempt of court in such circumstances. However, remarks in a newspaper article, for example, must be read in context to establish the presence of intent. Liability of a newspaper editor: in *Harber* the Appellate Division held that it is not necessary to prove intention in these cases, since, in cases such as these the culpability may consist of either intention or negligence. The editor would be negligent if the reasonable person in his position could foresee that the information which he publishes might deal with a pending case or that it might scandalize the court.

### **DEFINE THE FOLLOWING :**

**Criminal defamation:** Violations of a person's good name or reputation are made punishable.

Elements of the crime are:

1. The publication
2. Of defamatory matter
3. Which is serious, and
4. Unlawful, and
5. Intentional

**Crimen iniuria:** Violations of a person's dignity and privacy are made punishable.

Elements of the crime:

1. The infringement
2. Of another's dignity or privacy
3. Which is serious
4. Unlawfulness
5. Intentional

Violations of dignity or privacy must be serious and may not be of a trifling nature (**Seweya**). If every swear word or scornful remark could result in a criminal prosecution, the courts would be inundated with unnecessary trials. In **Walton** it was held: *"in the ordinary hurly-burly of everyday life a man must be expected to endure minor or trivial insults to his dignity"*. Factors which may, *inter alia*, play a role in deciding whether the behaviour was serious are:

- **The ages of the parties:** Certain conduct towards young persons more serious.

- **The gender of the parties:** Protection of girls and women against insults from men usually more serious than in the case of insults offered by one man to another (**Van Meer**).
- **The nature of the act:** Certain types of conduct are by their nature notoriously serious, ie indecent exposure or the activities of "Peeping Toms".
- **The relationship between the parties:** The violation more serious if by a stranger.
- **The persistence of the conduct:** Persistent repetition of conduct of non-punishable conduct may constitute *crimen iniuria*, ie to stare at a woman is scarcely injurious, but to follow her and rudely stare persistently at her may be (**Van Meer**).
- **Publicity of the conduct:** Impairment may be greater if witness by others/larger audience.
- **Sexual impropriety:** May be viewed in more serious light than conduct without such element.
- **Y's public standing:** Attacks upon the dignity of a person occupying a public office and related to such a person's performance of his duties may be viewed in a more serious light compared to the same behaviour directed at a person in his private capacity (**Momberg**).

**Dealing in drugs:** Section 4 of the drugs and Drugs Trafficking Act 140 of 1992 provides that it is an offence for any person unlawfully and intentionally to use or have in his/her possession any dependence producing substances or any dangerous dependence producing substances or any undesirable dependence producing substance. Discuss the act required for this offence. In other words, discuss the meaning of to use and to have in possession".

#### The use or possession of drugs

##### Definition

It is an offence for any person unlawfully and intentionally to use or have in her possession any dependence-producing substance or any dangerous dependence producing substance or any undesirable dependence-producing substance.

#### The act: Possession or use:

##### Use

Smoking, inhalation, injection or ingestion of drugs will amount to use of the drug. It is not clear why the legislature prescribed not only the possession of, but also the use of drugs, since any instance of use of a drug involves also its possession and as such amounts to an offence under the Act. It is probably for this reason that in practice it seldom happens that X is accused only of using a drug.

##### Possession:

(i) General meaning of "possession":'

In law, possession consists of two elements, namely

1. a physical or corporeal element (referred to as corpus or detentio)
2. a mental element, that is X's intention (the animus ) The physical element - appropriate degree of physical control over the thing. The precise degree of control required depends upon the nature of the article and the way in which control is ordinarily exercised over such a type of article. The control may be actual or constructive. Constructive control means control through somebody else, such as a representative or servant. The mental element (animus) of possession relates to the intention with which somebody exercises control over an article. In this respect there may be more than one possibility: X may exercise control over the article as if she is the owner of the article. This type of possession is possession in the ordinary juridical meaning of the term. It is also known as *possessio civilis*. This is the narrow meaning of possession. X may exercise control over the article with the intention of keeping it for somebody else. This type of possession is known as *possessio naturalis*. This is the broader type of possession.

(ii) Meaning of “possession” in the Act:

Section 1 of the Act provides that the word “possess” as used in the Act includes

1. keeping
2. storing or
3. having in custody or under control or supervision.

This provision is wide enough to cover situations in which a person has the custody over an article not in order to use it herself, but on behalf of somebody else, as where she looks after it for somebody else.

“Includes” means that the meaning ascribed to “possession in this section (i.e. keeping, storing etc) is not the only meaning that the word can have in the Act. Apart from the meaning ascribed to the word in section 1, the word also has another meaning. This other meaning can be nothing else than *possessio civilis* described above.

If the state charges X with having possessed a drug, there are two ways in which the state may prove the element of possession.

The first is by proving that X exercised control over the drug as an owner that is for herself, as opposed to exercising control over the drug on behalf of somebody else. This type of possession (i.e. possession as an owner) is *possessio civilis*. The second way of proving possession is by proving that although X did not exercise control over it as an owner (i.e. to use it for herself), she nevertheless kept it for or on behalf of somebody else. This type of possession is *possessio naturalis*.

## **Pointing of a firearm**

Definition

- a) any firearm, an antique firearm or an airgun, whether or not it is loaded or capable of being discharged, at any other person, without good reason to do so; or
- b) Anything which is likely to lead a person to believe that it is a firearm, an antique firearm or an airgun at any other person, without good reason to do so.

#### Elements of the offence

1. the pointing of
2. a firearm or other article
3. at any person
4. unlawfully and
5. intentionally

#### The act: To point at

The state need not prove any of the following:

- that X fired a shot;
- that the firearm or article was loaded; or
- That the firearm or article was of such a nature that it could be discharged, in other words, that it was capable of firing a shot. It is simply the pointing of the firearm

The expression “point at is capable of being interpreted in more than one way:

- ❖ Firstly, it may be interpreted narrowly, as meaning the pointing of the firearm at Y in such a way that, if discharged, the bullet would hit Y (this interpretation was adopted in Van Zyl.
- ❖ Secondly, it may be interpreted broadly, as meaning the directing of the firearm towards Y in such a way that, if it were discharged, the bullet would either strike Y or pass in her immediate vicinity.

#### A firearm, et cetera:

The effect of the words “or anything which is likely to lead to a person to believe that it is a firearm etc” in the definition of this offence is that X may commit the offence even if she points a toy pistol at Y, provided the toy pistol is such that it is likely to lead to a person to believe that it is a real pistol.

#### “Any other person”

The firearm must be pointed at a person, so for example pointing at an animal cannot lead to a conviction.

#### Unlawfulness:

The words “without good reason to do so” in the definition are wide enough to incorporate the grounds of justification. For example, she points a firearm at another while acting in private

defence, or if X is a police officer lawfully affecting an arrest.

**Intention:**

Intention is not expressly required. It is highly unlikely that the legislature intended to create a strict liability offence.

It is also unlikely that it could have intended mere negligence to be a sufficient form of culpability. The words “point at” prima facie denote intentional behaviour.

It is submitted that the form of culpability required for a conviction under the subsection is intention.

This means that X must know that:

- What she is handling is an object described in the act.
- She is pointing the weapon at another person – thus if she thinks that she is pointing it at an animal she lacks intention.
- There is no “good reason” for her conduct and that it is unlawful, that is, not covered by a ground of justification. Mere negligence is not sufficient. It is submitted that, according to general principles, intention in the form of *dolus eventualis* is sufficient.

### **Kidnapping:**

Definition: unlawfully and intentionally depriving a person of his freedom of movement and/or if such a person is a child, the custodians of their control over the child.

The elements of the crime are:

- 1) The deprivation
- 2) Of freedom of movement (or parental control)
- 3) Unlawfully, and
- 4) Intentionally.

The crime is against a person’s freedom of movement. The interest protected is the liberty of another.

A person cannot commit kidnapping in respect of his own child.

The interests protected by the crime of kidnapping is the freedom of movement of person or, if the person is a child, the control of the parent or guardian over the child.

### **Theft:**

Definition: theft is the unlawful, intentional appropriation of movable, corporeal property which:

- 1) Belongs to, and in the possession of another
- 2) Belongs to another, but is in the perpetrators possession,
- 3) Belongs to the perpetrator, but is in another’s possession and such other person has the right to possess it which legally prevails against the perpetrator’s own right of

## possession

There must be intention to misappropriate and permanently to deprive the person entitled to the possession of the property.

1. The property must be movable. An example of immovable property is a farm. Therefore, one cannot steal a part of a farm by moving its beacons or fences. If part of an immovable property is separated from the whole, it qualifies as something that can be stolen; examples in this respect are mealie-cobs separated from a mealie-plant.
2. The property must be corporeal. This means that it must be an independent part of corporeal nature. In principle, one must be able to see or touch it. One cannot therefore steal an idea. The rule that only corporeal property is capable of being stolen should, however, be viewed circumspectly. This requirement has already been considerably watered down in our law. There are however two exceptions:
  - 1) An owner may steal her own property from somebody else who is in lawful possession of it (such as a pledge). (This form of theft is known as arrogation of possession). Yet, in reality it is not the property that is stolen. While it is true that here the act is directed at a corporeal thing, what is infringed is the possessor's right of retention, which is a right and therefore something incorporeal.
  - 2) In the case of certain types of conduct recognised by the courts as theft, namely the theft of money through the "manipulation" of cheques, banking accounts, et cetera, and the object stolen is not the crime, as it is not a corporeal thing rather something called "credit" or an "abstract sum of money".
3. The property must be available in commerce. (In commercio).

Property is available in commerce if it is capable of being sold, exchanged or pledged, or generally of being privately owned. The following types of property are not capable of forming part of commercial dealings and are therefore not susceptible to theft:

  - (a) Res communes, property belonging to everyone like the air.
  - (b) Res derelictae, property abandoned by its owners with the intention of getting rid of it. This does not include money someone drops as they had no intention to get rid of it.
  - (c) Res nullius, property belonging to no-one but can be subject of private ownership such as wild animals. However animals in a zoo for instance can be stolen.
4. The property must belong to someone else. One can therefore not steal one's own property. The exception to the rule is the unlawful arrogation of the possession of a



thing. (Furtum possessionis).

It is indeed possible to “steal one’s own property.” The form of theft is known as arrogation of possession. The facts in this question are derived in part from those in the case of Roberts.

A person commits the completed crime of theft if two things happen; firstly, he must deprive the lawful owner, or person in possession of the property, of the property and then secondly he must exercise the rights of an owner in respect of the property.

Proof of the intention of theft only if he or she had the intention of deriving some gain or benefits for him- or herself from the acquisition to handling of the property, is in fact, not required for a conviction of theft

### **Public Violence:**

If one participated in a protest that disturbed public peace and order. It will be a joint action if the people acted with a common purpose. Once it has been established that the accused knowingly participated with the aim of threatening public peace and order, it is not necessary for the police to prove the specific acts that were committed by each of the accused.

The acts were accompanied by violence. Note, however, that the crime is committed even if there is no actual disturbance of the public peace and order or no actual infringement of the rights of another. It is sufficient if the action is aimed at these purposes.

### **Perjury:**

Definition

Perjury at common law consists in the unlawful, intentional making of a false declaration under oath (or in a form allowed by law to be substituted for an oath) in the course of a legal proceeding.

### **Statutory perjury:**

Here the State needs to prove that X on 2 different occasions made 2 statements under oath and these statements conflict with each other.

The difference between common law and statutory perjury are:

1. in criminal law perjury, only one statement and in SP, two statements
2. in criminal law perjury crime can only be committed during the course of a legal proceeding; in state perjury neither of the statements need be made in the course of a legal proceeding.

### **Incitement:**

Incitement to commit a crime is punishable in terms of section 18(2) of Act 17 of 1956.

X ought to be charged with and convicted of incitement only if there is no proof that the crime to which he incited another has indeed been committed. No one ever charged with plain incitement – must be incitement to commit a crime. Purpose of the crime is to discourage people from seeking to influence others to commit crimes.

A person may be convicted of incitement even though there is no proof that he had persuaded the incitee to commit the crime.

No element of unwillingness on part of incitee needed for X to commit the crime.

In Nkosiyana X had suggested to Y that they murder Mr. Kaiser Matanzima of the Transkei. However, Y was in fact a policeman who suspected X of trying to murder Mr. Matanzima and wanted to trap X. X was unaware of the fact that Y was a policeman. X was charged with incitement to commit murder. The Appeal Court held that the fact that Y was a policeman who at no time was susceptible to persuasion did not stand in the way of a conviction for incitement. Incitement can therefore be committed even in respect of a police trap in which the police officer involved has no intention of ever committing the actual crime, but who simply wants to trap the inciter.

Someone who seeks to influence the mind of another to the commission of a crime is an inciter. Whether Y is capable of being persuaded is immaterial. The incitement can occur explicitly or impliedly.

If it does not come to the attention of Y, X can't be convicted of incitement but may be of attempted incitement.

### **Conspiracy:**

Conspiracy to commit a crime is punishable in terms of section 18(2) of Act 17 of 1956.

Our courts have indicated that this should only be used if there is no proof that the envisaged crime was in fact committed. No one is ever charged with plain "conspiracy", it needs to be conspiracy to commit a crime, like murder / assault. The act of conspiracy consists in entering into an agreement to commit a crime.

While parties still negotiating, there is no conspiracy yet.

The crime is completed the moment the parties have come to an agreement and it is not necessary for the state to prove the commission of any further acts in execution of the conspiracy.

They need not agree on the exact manner how crime to be committed. The intention requirement consists in the intention to conspire as well as the intention to commit a crime or to further its commission. Someone convicted of this crime is punished with the same punishment as the punishment prescribed for the commission of the actual crime envisaged.

### **Extortion**

Definition: is the unlawful and intentional acquisition of a benefit from some other person by applying pressure to that person which induces her to part with the benefit.

Elements:

1. the acquisition of
2. a benefit
3. by applying pressure
4. a causal link between pressure and acquiring benefit (NB)
5. unlawfulness and
6. intention.

The perpetrator:

- Crime can be committed by anyone, not just an official.

Exertion of pressure:

- X MUST acquire the benefit by applying pressure and Y must give way under the stress of the pressure.
- Pressure can be threats, inspiring fear and intimidation (thus robbery and extortion can overlap).
- Threats can be in the negative, like threatening to not return something borrowed, it can be threats of defamation, or employment benefits etc.

The benefit:

- For long time there was uncertainty regarding whether or not the benefit had to be one of a patrimonial nature.
- In Von Mollendorff the AD limited it to one of a patrimonial nature. But the legislature intervened with the General Law Amendment Act which stated that any advantage was enough. In J, Y was threatened by X that unless he had sexual intercourse with him, he'd show nude photos of her to her parents. Court found him guilty.
- The crime is not committed until the benefit has been handed to X.

Causation:

- Just like in robbery (see later and remember the connection!) there must be a causal link between the pressure and the acquisition of the benefit. If the benefit was handed over not due to the pressure but because of a trap set for X by Y, X is only guilty of attempted extortion.

Unlawfulness:

- Obviously the pressure must be exerted unlawfully, but this does not mean that if Y is threatened with something which X is entitled to, the threat can never be sufficient for extortion.
- It's irregular if police official states he'll prosecute unless Y pays him a sum of money.

Intention:

- X must intend her words to give fear, intend to acquire the benefit realizing he's not entitled to it. Motive irrelevant.

### **Robbery:**

Definition: Robbery consists of in theft of property by unlawfully and intentionally using

- Violence to take the property from another or
- Threats of violence to induce the other person to take the property

The "bag-snatching" cases:

Does X commit robbery if with a quick unexpected manoeuvre he snatches Y's bag and runs away without Y being able to offer any resistance she falls to the ground and her bag is stolen? In Sithole, the Natal court held that the handbag snatcher does in fact commit robbery. The reason for this is force is used to remove the handbag which the court believes is sufficient enough for a robbery. Especially if Y does offer resistance as there will be a greater chance of violence.

Robbery requires theft of property by means of violence or a threat of violence.

It is not required that the property be on the victim's person or in his/her presence. The relevant authority is Ex Parte Minister van Justisie: in re S v Seekoei.

### **Fraud:**

Definition: Fraud is the unlawful and intentional making of a misrepresentation which causes actual prejudice or which is potentially prejudicial.

#### The Misrepresentation:

The first requirement of fraud is that there must be a misrepresentation. This is the conduct requirement of the crime. There must be a deception by means of a falsehood. X must, in other words represent to Y that a fact or set of facts exists when in fact it doesn't.

- 1) Form that misrepresentation may take: generally it takes the form of writing or speech, conduct other than writing or speech may be sufficient, such as the nod of a head signifying consent.
- 2) The misrepresentation may be either tacit or implied.
- 3) The misrepresentation may be made by either a commission (positive act) or an omission. Most cases the misrepresentation is made by means of a commissio. A mere omission by X to disclose a fact may amount to the making of a misrepresentation, if there is a legal duty on X to disclose the fact. The legal duty may arise specifically by statute. E.g., in terms of section 137(a) of the Insolvency Act 24 of 1936, an insolvent person is obliged to disclose the fact that she is insolvent to any person from whom she receives credit

amounting to more than R20.

From considerations other than the terms of a statute, such as where a court is of the opinion that X should have acted positively to remove a misconception which would, in the natural course of events, have existed in Y's mind.

- 4) It has sometimes been stated (e.g. in Larkins) that a mere false promise as to the future cannot be equated to a misrepresentation. From this it follows that the misrepresentation must refer to an existing state of affairs or to some past event, but not to some future event. A person writing out a cheque and handing it over as payment generally implies they have the money to cover the cheque.

### **The Prejudice**

The misrepresentation must cause actual prejudice or be potentially prejudicial. Mere lying is not fraud. The lie must bring about some sort of harm. The harm is called Prejudice. Actual prejudice is not required, mere potential prejudice is sufficient to warrant a conviction. Nor is it required that the prejudice need not only be of a patrimonial nature.

- ❖ Prejudice may be proprietary if it has to do with a person's property or material possessions. In other instances of prejudice the prejudice is non-proprietary in nature, for example:
  - Writing an examination for another
  - Submitting a forged driving license to a prosecutor during the trial of a traffic offence
  - Making a false entry into a register reflecting the sale of liquor to the state control on the sale of liquor.
  - Laying a false charge with the police.

### Unlawfulness

Compulsion or obedience to orders may operate as grounds of justification. The fact that Y is aware of the falsehood is no defence, as we saw above. As any fraudulent misrepresentation is obviously unlawful, unlawfulness does not play an important role in this crime.

### Intent

X's intent must relate to all the requirements of the crime. This means apart from the intention relating to unlawfulness (i.e. awareness of unlawfulness) X's intent must cover the following: The intent relating to the requirement of misrepresentation means that X must know or at least foresee the possibility, that the representation she is making is untrue.

The intent relating to the requirement of prejudice means that X must know, or at least foresee the possibility, that Y may suffer actual or potential prejudice as a result of the misrepresentation or falsehood.

- ❖ There is a distinction between an intention to deceive and an intention to defraud.
  - The intention to deceive means an intention to make somebody believe that something, that is false.

- The intention to defraud means the intention to induce somebody to embark on a course which is prejudicial to her.

Application to facts:

Fraud is the unlawful and intentional making of a misrepresentation which causes actual prejudice or which is potentially prejudicial. X represented to them that facts existed which in truth did not exist. The misrepresentation was made expressly and by means of a positive act. Although only potential prejudice is required for the crime of fraud, X's misrepresentation may result in actual prejudice. The victims suffer financial loss by paying money into the bank account.

The state of mind required for the crime of fraud is to defraud. X knew the facts that he represented to the people were untrue and he knew that people might suffer actual or potential prejudice as a result of his misrepresentation. Moreover, his intention was to induce the people to embark on a course of action prejudicial to themselves. X may accordingly be convicted of fraud.

X also commits theft by false pretences, which is a form of theft, as well as a form of fraud. A person commits this crime if he unlawfully and intentionally obtains movable, corporeal property belonging to another, with the consent from the person whom he obtains it, such consent being given as a result of a misrepresentation by the person committing the offence, and appropriates it. The victims consent is not regarded as valid consent because it is induced by fraud. X obtained credit from the people by means of a fraudulent misrepresentation. From the facts it also appears that he appropriated it.

**Define the crime of forgery and uttering. (3)**

Forgery definition: unlawfully and intentionally making a false document to the actual/potential prejudice of another.

Elements:

1. making a document
2. which is false
3. prejudice
4. unlawfulness and
5. Intention, which includes intention to defraud.

Uttering definition: unlawfully and intentionally passing off a false document as to the actual or potential prejudice of another.

**Name the three different forms of theft, and give a short description of each. NOTE: You must give a description, and not an example. (3)**

- 1) The removal of property. Here X removes someone else's property. Without consent.
- 2) Embezzlement. X appropriates another's property which she already has in her possession.
- 3) Arrogation of possession. X removes her own property which is in the lawful possession of another (such as a pledge) and appropriates it.

The property must be corporeal. This means that it must be an independent part of corporeal nature. In principle, one must be able to see or touch it. One cannot therefore steal an idea. The rule that only corporeal property is capable of being stolen should, however, be viewed circumspectly. This requirement has already been considerably watered down in our law. There are however two exceptions:

- 1) An owner may steal her own property from somebody else who is in lawful possession of it (such as a pledge). (This form of theft is known as arrogation of possession). Yet, in reality it is not the property that is stolen. While it is true that here the act is directed at a corporeal thing, what is infringed is the possessor's right of retention, which is a right and therefore something incorporeal.
- 2) In the case of certain types of conduct recognised by the courts as theft, namely the theft of money through the "manipulation" of cheques, banking accounts, et cetera, and the object stolen is not the crime, as it is not a corporeal thing rather something called "credit" or an "abstract sum of money."

#### **NOTE PART OF CRW2602 BUT CRW2601 (COMMON PURPOSE)**

**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.**

**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)**

You are required to discuss the legal principles which a state prosecutor will rely upon to prove that all the participants (A, B, C, D and E) are guilty of murder.

A person is a perpetrator if :

- 1) His conduct, the circumstances in which it takes place (including, where relevant, a particular description with which he as a person must, according to the definition of the offence, comply), 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 offence

OR

- 2) If, although his own conduct does not comply with that required in the definition of the crime, he acted together with one or more persons and the conduct required for a conviction is imputed to him by virtue of the principles relating to the doctrine of common purpose .

The legal principles applied in terms of the doctrine of common purpose are relevant to this particular set of facts.

The definition of this doctrine of common purpose is the following:

if two or more people, having a common purpose to commit a crime, act together in order to achieve the purpose, the acts of each of them in execution of such a purpose are imputed to the others. Therefore when the doctrine is applied, a causal link between each participant's act and the prohibited result is NOT required. The existence of a common purpose may be proved on the basis of prior agreement, or active association and participation in a common criminal design. The state must, however, prove that each participant had the necessary intention to commit the crime of murder.

The relevant case law is *Safatsa*; *Mgedezi* and *Thebus*.

According to the facts, there was prior agreement among the participants to commit the robbery. Moreover, each participant performed an act of association with the execution of the crime. D fired the shot which caused the death of the guard. The state nevertheless has to prove that D had the intention to kill Z before he can be convicted of the crime of murder.

As far as the rest (except E) are concerned, the state has to prove that they had foreseen the possibility that the acts of any of the participants might result in a person's death, and that they had reconciled themselves to such a possibility.

An important fact in support of proof of the existence of *dolus eventualis* on the part of the rest (except E) are that they also had guns with them when they embarked upon the robbery. The state can therefore argue that each participant had the necessary *dolus eventualis* and can be convicted of murder.



### The most important principles relating to common purpose

- 1) If two or more people, having a common purpose to commit a crime, act together in order to achieve that purpose, the acts of each of them in the execution of such a purpose are imputed to the others
- 2) In a charge of having committed a crime which involves the causing of a certain result (such as murder), the conduct imputed includes the causing of such result
- 3) Conduct by a member of the group of persons having a common purpose which differs from the conduct envisaged in the said common purpose may not be imputed to another member of the group, unless the latter knew that such other conduct would be committed, or foresaw the possibility that it might be committed and reconciled himself to that possibility
- 4) A finding that a person acted together with one or more other persons in a common purpose may be based upon proof of a prior agreement or proof of active association in the execution of the common purpose
- 5) On a charge of murder the rule that liability may be based on active association applies only if the active association took place while the deceased was still alive and before a mortal wound had been inflicted by the person or persons who commenced the assault.
- 6) Regarding common purpose and culpable homicide if on a charge of culpable homicide the evidence reveals that a number of persons acted with a common purpose to assault or commit robbery and that the conduct of one of them resulted in the death of the victim, the causing of the death is imputed to the other members of the gang as well, but the negligence of the causing of the death is not imputed.

### Proof of existence of common purpose

Proved in the following ways:

- On basis of an express or implied prior agreement to commit an offence, which is difficult to prove as people conspire in secret; or if it cannot be proved
- An active association and participation in a common criminal design ([Thebus](#)).

Active association as proof of participation in a common purpose If there is no proof of a previous agreement between perpetrators, an accused whose individual act isn't causally related to Y's death can only be convicted of murder on the strength of the doctrine of common purpose if the following requirements have been complied with ([Mgedezi](#)):

- he must have been present at the scene of the crime;
- he must have been aware of the assault on Y;
- he must've intended to make common cause with those committing the assault;

- he must have manifested his sharing of a common purpose by himself performing some act of association with the conduct of the others; and
  - he must have intention to kill Y or to contribute to his death.
- **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)**

General crime of corruption: the crime committed by the recipient

Elements of the crime:

- 1) The acceptance by Y
- 2) Of gratification
- 3) In order to act in a certain way
- 4) Unlawfulness
- 5) Intention

The acceptance (element of an act)

The legislature employs two ways to broaden the meaning of “accept”:

- The Act also provides (in s 3(a)) for certain conduct by Y which precedes the acceptance, namely
  - To agree to accept a gratification or
  - To offer to receive

The Act provides that the words or expressions “accept”, “agree to accept” and “offer to accept” as used in the Act, also have the following broader meanings:

- 1) To demand, ask for, seek, request, solicit, receive or obtain gratification
- 2) To agree to perform the acts named under (1)
- 3) To offer to perform the acts named under (1)

The following considerations afford Y no defense:

- 1) The fact that Y did not accept the gratification “directly”, but only “indirectly”. Y does not have to accept the gratification personally. The fact that Y makes use of a middle man to accept the gratification affords her no defense.
- 2) The fact that Y did not in actual fact later perform the act which X had induced her to perform. Therefore, the crime is completed even if Y has not yet done what she had undertaken to do, expressly or implicitly.
- 3) The fact that the corrupt activity between X and Y was unsuccessful. This

consideration affords neither X nor Y a defense.

- 4) For the purpose of liability, it is irrelevant that the state or the private enterprise concerned with the transaction did not suffer prejudice as a result of X or Y's conduct.
- 5) The fact that Y accepted the gratification but that she, in actual fact, did not have the power or right to do what X wished her to do, affords neither X nor Y a defense.

**X1, X2 and X3 are female members of a criminal gang who specialise in the human trafficking of young boys. X1 is the leader of the gang who makes plans for the group from her office. She never participates in the actual kidnapping of the boys for human trafficking purposes. X2 and X3 have to do the kidnapping of the boys. One evening, X2 and X3 wait outside the house of a woman, Y. As Y gets into her car with her 14-year old son Z, X2 approaches Y and points a gun at her and Z. She orders Y to get out of the car and instructs Z to climb into the boot of the car or else both Y and Z will be shot. Z obeys and gets into the boot of the car. X2 and X3 drive away with the vehicle. After pulling Z out of the boot, X2 assaults Z. X3 does not participate in the assault. Z dies as a result of the assault by X2.**

**Discuss whether X1 and X3 may be convicted as perpetrators of the crime of murder in respect of Z with reference to case law. (10)**

See above

**Y's girlfriend Z is 7 months pregnant. After visiting the doctor, Y and Z are about to get into their car, when a stranger X points a gun at them and instructs them to get into their car. After driving 2km, X instructs Y to pull over to the side of the road. X shoots Z in the stomach and shoots Y in the leg with the purpose of taking Y and Z's cell phones, wallets, watches and car. He takes their possessions and car and drives away. Both Y and Z survive but the unborn child is declared dead at the hospital.**

In *Mshumpa* it was held that X cannot be charged with murder of an unborn child but only of attempted murder of Y, the mother. The court refused to broaden the definition of murder to include the killing of an unborn child in the mother's womb.

X can also be held liable for

- attempted murder of Y
- Unlawful possession of a firearm and ammunition

- Aggravated assault
- Robbery

**In the crime of rape it is required that Y (the complainant) did not consent to the act of sexual penetration. Consent means 'voluntary and uncoerced agreement.' Discuss the various factors that result in the law not deeming consent to be valid for the crime of rape. (10)**

The Act provides that any person (X) who unlawfully and intentionally commits an act of sexual penetration with a complainant (Y) without his/her consent is guilty of the offence of rape.

The elements of the crime are the following:

1. sexual penetration of another person
2. without the consent of the latter person
3. unlawfulness and
4. intention.

Circumstances in respect of which Y does not voluntarily or without coercion agree to an act of sexual penetration include the following:

Where Y submits or is subjected to such a sexual act as a result of

- (a) the use of force or intimidation by X against Y or Z (a third person ) or W (another person) or against the property of Y, Z or W or a threat of harm by X against Y, Z or W or against the property of Y, Z or W.
- (b) where there is an abuse of power or authority by X to the extent that Y is inhibited from indicating his or her unwillingness or resistance to the sexual act, or unwillingness to participate in such a sexual act;
- (c) where the sexual act is committed under false pretences or by fraudulent means , including where Y is led to believe by X that Y is committing such a sexual act with a particular person who is in fact a different person; or such a sexual act is something other than that act ; or
- (d) where Y is incapable in law of appreciating the nature of the sexual act, including where Y is, at the time of the commission of such sexual act:
  - asleep;
  - unconscious;
  - in an altered state of consciousness, including under the influence of any medicine, drug, alcohol or other substance, to the extent that Y's consciousness or judgment is adversely affected;
  - a child under the age of 12 years; or
  - a person who is mentally disabled.

For consent to succeed as a defence it must have been given consciously and voluntarily, either expressly or tacitly, by a person who has the mental ability to understand what he or she is consenting to, and the consent must be based on a true knowledge of the material facts relating to the act.

The accused may be convicted of indecent assault.

Indecent assault is an act which consists at least in the touching of another's body, unlawfully with the intention, which includes an intention to act indecently. You had to discuss the Constitutional Court decision in *National Coalition for Gay and Lesbian Equality v Minister of Justice*. Before this case was decided, the conduct described in the set of fact was punishable as the common-law crime of sodomy. However, the crime of sodomy (which targeted non-consensual and intercourse) was declared unconstitutional in the abovementioned case on various grounds; inter alia that the existence of the crime is incompatible with the right to equality; the right to dignity and the right to privacy. However, as pointed out by the court, non-consensual anal intercourse may still be punished as indecent assault or assault with the intent to cause grievous bodily harm.

**In terms of the Criminal law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 the failure to report the commission of a sexual offence is made punishable in certain situations. Name and briefly discuss two such situations. (2)**

Section 54(1) of the SOA provides that a person, who has knowledge that a sexual offence has been committed against a child, must report such knowledge immediately to a police official.

Section 54(2) provides that a person who fails to report such knowledge is guilty of an offence and places a similar obligation on any person to report knowledge, reasonable belief or suspicion that a sexual offence has been committed against a person who is mentally disabled. Failure to comply with these obligations amounts to an offence.

**Z and Y are on honeymoon in South Africa In the course of a severe quarrel between Z and Y, Y threatens to reveal that Z had committed fraud Z decides that the only way in which he can assure Y's silence, is to murder her He drives Y to a deserted beach with the intention of shooting and killing her On the way to the beach, the car is hijacked by X1 and X2 X1 shoots Y in the head while X2, who also has a gun in his hand, is standing next to X1, encouraging him to kill Y Z jumps out of his car with his pistol in his hand. X1 and X2 sees the pistol and the two of them run away together Z sees that Y is still alive, recognises an opportunity, and fires a shot at Y which hits her in the leg Y dies,**

**but according to the post-mortem examination the shot fired by Z did not hasten Y's death**

- **Discuss Z's possible criminal liability in respect of Y (5)**

In **Williams** it was accepted that a person can be an accomplice to murder, but this aspect of the judgment has been criticised by *Snyman* as follows:

- An accomplice to murder would have to intentionally further somebody else's commission of crime without own conduct qualifying as co-cause of the death, otherwise he will be a coperpetrator as his conduct falls within definition of murder.
- Is it possible to further a victims' death without simultaneously causing it? **No!**
- X's act was a co-cause of Y's death, thus he's a co-perpetrator, not an accomplice. Court itself admitted there was causal connection between "accomplice's" act and the murder.
- If a person may indeed be convicted as an accomplice to murder, one would expect a court to do so where a person furthered death, but no causal connection could be proved between the act and the death (**Safatsa**). The judgment effectively excluded the possibility of being convicted as an accomplice to murder if it is proved that X was a party to a common purpose to kill and death resulted from combined conduct of the group as all persons acting with the group to achieve the common purpose were all convicted as co-perpetrator: no accomplices.

Thus it is impossible to be accomplice to murder as:

- Y's death cannot be "furthered" without "causally furthering" it; and
- If a difference existed between "furthering the death causally" and "furthering the death without causing it" it would be slight and artificial as to lead to difficulties in application.

The "**joiner-in**" is a person -

- whose attack on Y did not hasten Y's death;
- whose blow was administered at a time when Y was still alive;
- who did not act with a common purpose together with the other persons who also inflicted wounds on Y.

Thus, here, the person comes onto the scene **AFTER** the mortal wound has been inflicted on Y, but while Y is still alive and the wound inflicted on Y does **NOT** hasten his death **PLUS** this "joiner-in" has **NO** prior agreement with the persons who inflicted the mortal wound on Y. (**Motaung**)

In this case however, it was the intention of Z to murder Y and would he be liable for murder had he not been interrupted by these unforeseen circumstances.

Because he did join in, he will be only be convicted of attempted murder in this case.

- **Discuss the possible criminal liability of X2 in respect of Y in view of the fact that X2 did not himself fire the shot that caused Y's death. (5)**

### **Doctrine of common purpose**

If two or more people, having a common purpose to commit a crime, act together in order to achieve that purpose, the acts of each of them in the execution of such a purpose are imputed to the others.

Crucial requirement: If different accused had **same purpose**, **acts** of one is **imputed** on all who **actively associated** themselves with achievement of such purpose, even though one can't construe a **causal connection** between such a party's act and the result.

**Culpability isn't imputed** and the other parties' liability is based upon his own culpability. If X throws a stone at Y, which misses, and Z also throws a stone, which struck Y on the head, the act of Z is imputed to X, who had a common purpose with Z to kill Y (**Malinga**).

### **Proof of existence of common purpose**

Proved in the following ways:

- On basis of an express or implied **prior agreement** to commit an offence, which is difficult to prove as people conspire in secret; or if it cannot be proved
- An active association and participation in a common criminal design (**Thebus**).

### **Why is it necessary to have such a doctrine?**

It prevents criminals from escaping punishment when they act in groups. If a common purpose to kill is proved, the accused can be convicted without proof of causal connection between each one's conduct and Y's death.

### **Leading case - **Safatsa 1988 (1) SA 868 (A)****

Active association as proof of participation in a common purpose. If there is no proof of a previous agreement between perpetrators, an accused whose individual act isn't causally related to Y's death can only be convicted of murder on the strength of the doctrine of common purpose if the following requirements have been complied with (**Mgedezi**):

- he must have been **present** at the scene of the crime;
- he must have been **aware** of the assault on Y;
- he must've **intended to make common cause** with those committing the assault;
- he must have manifested his sharing of a common purpose by himself performing **some act of association** with the conduct of the others; and
- he must have **intention to kill** Y or to contribute to his death.

In terms of this doctrine, a passive spectator of the events won't be liable to conviction even though he may have been present at the scene of crime. Other principles which emerged from case law are:

- In murder cases, active association can only result in liability if act of association took place whilst Y was still **alive** and at a stage **before** the **lethal** wound had been inflicted by one or more other persons (**Motaung**).
- Active association with common purpose shouldn't be confused with **ratification** or approval of another's criminal deed which has already been completed. Criminal liability cannot be based on such ratification (**Williams**).

### **Liability on the basis of active association declared constitutional**

In **Thebus** liability for murder on the basis of active association with the execution of a common purpose to kill was challenged on the grounds that it unjustifiably limits:

- the constitutional right to dignity;
- the right to freedom and security of a person; and
- right of an accused person to a fair trial.

Constitutional Court rejected these arguments and declared it constitutional as:

- the doctrine of common purpose serves a vital purposes;
- the object of the doctrine is to criminalise collective criminal conduct and to control crime committed in the course of joint enterprises;
- insisting on a causal relationship would make prosecution of collective criminal enterprises ineffective;
- effective prosecution of crime is a legitimate, pressing social need.

### **Common purpose and *dolus eventualis***

To have a common purpose with others to commit murder it is not necessary that X's intention to kill be present in the form of *dolus directus* - *dolus eventualis* is sufficient.

Person acts with *dolus eventualis* if the causing of the forbidden result isn't his main aim, but

- he subjectively **foresees** the **possibility** that, in striving towards his main aim, his conduct may cause the forbidden result and
- he **reconciles** himself with the possibility.

In **Mambo** it was held that by participating in a plan to escape where X1 gripped Y's neck, X2 grabbed his legs and X3 grabbed Y's firearm, X2 can only have common purpose with X1 and X3 who murdered Y, if he could have foreseen the possibility that by holding on to



Y's legs in the escaping attempt could result in Y's death and he had reconciled himself with this possibility.

- **There are a number of different ways in which the crime of assault can be committed**  
**Briefly name and discuss the different ways in which this crime can be committed**  
**Your answer must cover all the different subdivisions of the act of assault (7)**

### **Assault**

Definition: A person commits assault if he/she unlawfully and intentionally

- Applies force, directly or indirectly, to the person of another, or
- Inspires a belief in another person that force is immediately to be applied to her.

Ways in which the crime can be committed:

First it may consist in the application of force, Secondly it may consist in inspiring fear in Y, and more particularly a belief in Y, that a force is immediately to be applied to him. This is subdivided into direct and indirect application of force.

Inspiring fear of immediate force

This is an unusual way of committing of the crime – it departs from the lay persons' conception of what constitutes assault. To hold someone liable for assault in this form the following rules must apply:

- (a) The threat must be one of violence to the person of Y. thus a threat by X to damage Y's property is not sufficient.
- (b) The threat must be one of immediate violence. Thus a threat by X to cause Y some physical harm in the future would not be sufficient.
- (c) The threat must be one of unlawful violence. If X is entitled by law to threaten Y with violence should Y not behave in a certain manner (such as to leave X's house), she does not commit assault. Thus X may always threaten Y to use force to defend herself or her property.
- (d) Y (the complainant) must subjectively believe that X intends to carry out her threat and that she is able to do so. The essence of this type of assault is the intentional inculcation of fear into Y. If Y does not in fact fear the threat, no assault is committed.

Intention:

The intention may take form of either direct or indirect intention or *dolus eventualis*. An example of an assault in which X had intention in the form of *dolus eventualis* is the following: X throws a stone at birds. There are many children about. She foresees the possibility of something going wrong and reconciles with this fact and throws the stone and misses the bird, hitting a child.

In cases of assault which take place by means of the inspiring of fear (as opposed to the application of fear) X must know that her conduct will inspire fear in Y. This means that X must believe that her threats will inspire fear in Y.

According to the ordinary principles relating to intention, X's intention must incorporate knowledge of unlawfulness. This means that X must know that her conduct is not covered by a general ground of justification. Thus if X believes that she is entitled to act in private defence because she fears an imminent unlawful attack by Y upon herself, whereas she is in fact not entitled to private defence because Y does not intend to attack her, she lacks the necessary intention to assault.

According to Chretien 1981 (1) SA 1097 (A), intoxication may lead to X's lacking the intention to assault, in which case X must not be found guilty.

It seems doubtful whether our courts would be prepared to recognise provocation as a ground for excluding the intention requirement for ordinary assault. (They do recognise that provocation may exclude the "special intention" requirement for the qualified assaults, such as assault with intent to do grievous bodily harm.)

**Merely state, without any discussion, the legal interest protected by each of the following crimes**

**public violence**

- Public peace and order

**criminal defamation**

- Reputation of a person

**kidnapping**

- Freedom of movement of a person.

**abduction**

- Rights of a parent to consent to marriage of their minor children as well as to exercise control over where they stay.

**As far as the punishment for murder is concerned, legislation was passed in 1997 providing for life imprisonment to be imposed by a court in certain circumstances upon an accused found guilty of murder. Name the instances in which a court is obliged to impose such imprisonment (In your answer you need not also discuss the circumstances in which a court is not obliged to impose such imprisonment ) (6)**

In Dodo (CC) the unconstitutionality of section 51 was rejected and the courts are now bound to convict a person found guilty of murder to imprisonment for life, in the following circumstances:

1. If the murder was planned or premeditated
2. If Y, the person murdered, was a law enforcement officer
3. If Y was given evidence in a trial for a serious offence (as described in the criminal procedure act)
4. If X, the murderer, in the course of committing rape
5. If X committed the murder in the course of committing a robbery with aggravating circumstances
6. If the murder was committed by a group of persons acting in the execution of a common purpose

**Merely state in one sentence of which crime or crimes (if any) X may be convicted in the following instances**

- **X, a 30-year-old schoolteacher, has sexual intercourse with one of her students, a 15-year-old boy, with his consent**

X may be convicted of a contravention of section 14(3) of the Sexual Offences Act

- **X, a 50-year-old male, has sexual intercourse with his 25-year-old daughter with her consent**

Incest

- **X, a 30-year old male, wants to have sexual intercourse with Y, a 20-year old female but knows that she will not give her consent He puts three sleeping tablets in Y's alcoholic drink Y falls asleep X takes her (Y) to his room and has sexual intercourse with her while she is asleep He videotapes their sexual activities to later show his 17-year-old friend**

Rape

- **X, a 50-year-old male, unlawfully and intentionally shows his naked body to a 13-year-old girl**

Crimen iniuria

- **X, a 50-year-old female, tells Y, a 20-year old male, that he will not get a promotion unless he has sexual intercourse with her Y complies but does not get the promotion.**

No crime committed. In this set of facts consent was obtained by fraud. This type of consent, in certain circumstance, deemed by law to be invalid. Fraud which vitiates (invalidates) consent is fraud in respect of the identity of the man (where the woman is led to believe that the man is her husband) or in respect of the nature of the act to which she "agrees" (when is persuaded that the act is not sexual intercourse, but some medical operation). Misrepresentation of any other circumstances does not

affect the validity of consent. Consent is deemed to be valid where the woman is misled, not about the nature of the act of sexual intercourse, but about the results which will follow on such intercourse. In this question, X is not guilty of rape since the woman's consent is deemed by the law to be valid consent.

**X works every day at his office on a highly sophisticated computer X has a very old computer at home X wants to buy a new computer but cannot afford it One Friday afternoon, X, without permission, packs the office computer in a box and takes it home. He and his family enjoy using the office computer so much that X decides to keep it for himself permanently. On Monday morning, X goes to his employer and tells him that his office computer is gone X suggests to his employer that somebody must have stolen the computer He requests his employer to replace the "stolen" computer so that he (X) can carry on with his work The employer goes to the police X is charged with the crimes of theft and fraud. Discuss whether X's acts and the culpability with which they are carried out comply with the requirements of liability for each of these two offences**

**(10)**

See above

**X, a 50-year old man is the senior waiter at a restaurant Y, a 17-year-old girl, works after hours as a waitress at the restaurant Y, who comes from a broken home, regards X as a father figure and confidante She tells him that she had an abortion X wants to have sexual relations with Y, but she refuses He threatens Y that, unless she has sexual intercourse with him, he will tell her father that she had an abortion Y, who is afraid of her father, succumbs to the threat She accompanies X to his house where they have sexual intercourse After having had sexual intercourse with Y, X mixes a cold drink with a strong sleeping tablet and gives it to Y She falls asleep immediately While Y is asleep, X and his friend Z, takes nude pictures of her They intend to use these pictures for a pornographic movie The next day, X goes to the restaurant and boasts to his boss, A the manager of the restaurant, about his sexual activities with Y A promises X that he will not tell anybody about these activities**

**Discuss whether X may be convicted of the following offences**

**(i) Extortion (6)**

**(ii) Rape in terms of section 3 of the Criminal Law (Sexual offences and Related Matters) Amendment Act 32 of 2007 (6)**

**Merely state whether, by taking nude pictures of Y, X and Z may be convicted of**

**(iii) Any other offence in terms of the abovementioned Act (1)**

**(iv) Any common-law offence (1)**

**(v) Discuss briefly whether A, the manager of the restaurant, may possibly be convicted of any offence (4)**

A brief summary of the punishable acts:

- ✂ Unlawful and intentional compelling of Y without his/her consent to witness sexual offences, sexual acts with another or self-masturbation. It is irrelevant whether the act is performed for the sexual gratification of the perpetrator (X) or for a third person (Z). The word “sexual act” is defined as either sexual penetration or sexual violation.
- ✂ The unlawful and intentional exposure or display (or causing of exposure or display) of the genital organs, the anus or female breasts of X or Z to Y without his/her consent. It is irrelevant whether the act is performed for the sexual gratification of the perpetrator (X) or for a third person (Z). This offence is generally referred to as “flashing”.
- ✂ The unlawful and intention exposure or display (or causing the exposure or display) of Y to child pornography. It is irrelevant whether the act is performed for the sexual gratification of the perpetrator (X) or for a third person (Z). Of importance is that the crime is committed even if Y consented to the exposure or display of the child pornography to himself/herself.
- ✂ The engagement of Y in sexual services for financial or other reward, favour or compensation to Y or a third person (Z). For X to be convicted of this offence the act must be performed –
  - for the purpose of engaging in a sexual act with Y (irrespective of whether the sexual act is in actual fact committed or not) (s 11(a)); or
  - by committing a sexual act with Y (s 11(b)). Note that the conduct of X is punishable even if Y consented to the act. Therefore, a person who engages the services of a prostitute (18 years or older, male or female) may be convicted of this offence.

The section does not expressly criminalise the activity of A, the manager. However, it is clear that A's conduct furthers or promotes the criminal activity, and therefore A may be convicted of being an accomplice to the crime committed (see 2.2 for liability of an accomplice).

(i) • Extortion is the unlawful and intentional acquisition of a benefit from some other person by applying pressure to that person which induces him/her to part with the benefit.

- Yes, X may be convicted of extortion.
- The benefit need not be a patrimonial benefit.
- In terms of section 1 of the General Law Amendment Act 139 of 1992 any advantage can be extorted.
- In the **case of J**, Y was threatened by X that unless she had sexual intercourse with him, he would show photographs of her in the nude to her parents. He was convicted of attempted

extortion because it was held that the benefit need not be of a patrimonial or financial nature. The benefit (sex) was in fact acquired by X.

- Therefore, the crime was completed.

(ii) • In terms of section 3 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 any person who commits an act of sexual penetration with a complainant without his/her consent is guilty of the offence of rape.

- X had sexually penetrated Y since it is stated in the set of facts that they had sexual intercourse.
  - However, the important question is whether Y consented to the act.
- “Consent” is defined in the Act as “voluntary or uncoerced agreement”.
- In the given facts consent is absent because it was obtained by X by the use of intimidation or a threat of harm
  - or an abuse of power of authority by X to the extent that it inhibited Y to indicate her unwillingness to participate in the sexual act.
  - Therefore X may be convicted of rape.

(iii) The use of a child for child pornography.

(iv) Crimen iniuria.

- (v) Yes, he may be convicted of section 54 of Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 which provides that a person who has knowledge
- that a sexual offence has been committed against a child, must report such knowledge
  - immediately to a police official, and that
  - a person who fails to report such knowledge, is guilty of an offence.

### **There are four different types of attempt:**

Four different types of attempt

- 1) Completed attempt – X does everything he can to commit the crime, but for some reason the crime is not completed:
  - Where X fires at Y but misses
  - Where X fires at Y and strikes Y, but Y's life is fortunately saved by timeous medical intervention
- 2) Interrupted attempt – X's actions are no longer merely preparatory, but acts of execution, when they are interrupted, so the crime cannot be completed :

- X, intending to commit arson, pours petrol onto a wooden floor but is apprehended by a policeman just before he strikes the match
- 3) Attempt to commit the impossible – impossible for X to commit the crime, either:
- Because the means he uses cannot bring about the desired result, as where X, intending to murder Y, administers vinegar to him in the firm but mistaken belief that the vinegar will act as a poison and kill Y, or
  - Because it is impossible to commit the crime in respect of the particular object of his actions, as where X, intending to murder Y while he is asleep in bed, shoots him through the head, but Y has in fact died of a heart attack an hour before
- 4) Voluntary withdrawal – X's actions have reached the stage of acts of execution, when X, of his own accord, abandons his criminal plan of action. For example:
- Where, after putting poison into Y's porridge but before giving it to Y, X has second thoughts and decides to throw the porridge away. In *Du Plessis 1981 (3) SA 382 (A)* the Appeal Court held that voluntary withdrawal is no defence if the withdrawal had occurred after the completion of the crime

**X and Y, two 20-year-old robbers, surprise Z, a 15-year-old mentally-disabled girl in her home while she is all alone X tells Z that he would like to have sex with her Z, who is terrified, offers no resistance while X has sexual intercourse with her Y also wants sexual intercourse with her, but she refuses and starts to scream Y assaults Z and leaves her bleeding profusely on the floor while they loot the house Y then returns to Z's bedroom Y decides to rape Z, and indeed has forceful sexual intercourse with her before leaving the house A post mortem examination shows that Z had already died before Y had intercourse with her Discuss whether X and Y will be guilty of any crime relating to their intercourse with Z (6)**

Both X (sexual intercourse without consent) and Y's (sexual intercourse without consent and known as necrophilia) acts constitute rape based on the exclusion of consent in the following instances:

**(1) Where fear was induced by violence or threats.**

(2) Sleeping woman cannot consent.

(3) Intoxicated woman cannot consent.

**(4) Mentally deficient woman cannot consent.**

(5) Girl below the age of 12 cannot consent.

(6) Consent obtained by fraud regarding the nature of the act or identity of the man invalid

**Persons involved in the commission of a crime are divided into two groups namely,**

## participants and non-participants

- **What is the difference between a participant and a non-participant? Explain in one sentence and give an example of each one (3)**

Category has 2 subdivisions:

- 1) Participant(s) – Anybody doing something in whatever manner whereby they further the commission of the crime, includes:
  - Perpetrators
  - Accomplices
- 2) Non-participant(s) – Although person can be described as being involved in crime he does not further the commission thereof at all, includes:
  - Accessories after the fact

- **Distinguish between a perpetrator and an accomplice by giving a definition of each one. (7)**

Perpetrator: **A person is a perpetrator if:**

- His conduct, the circumstances in which it takes place (including, where relevant, a particular description with which he as a person must, according to the definition of the offence comply), 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 offence; OR
- If, although his conduct does not comply with that required in the definition of the crime, he acted together with one or more persons and the conduct required for a conviction is imputed to him by virtue of the principles relating to the doctrine of common purpose.

Accomplice: **A person is an accomplice if:**

- Although he doesn't comply with all the requirements for liability set out in the definition of the crime, and
- Although the conduct required for a conviction isn't imputed to him in terms of the doctrine of common purpose,
- He engages in conduct whereby he **further**s the commission of the crime by somebody else.

**"The liability of an accessory after the fact, like that of an accomplice, is accessory in character " Briefly explain, with reference to case law where necessary, the meaning of the accessory character of the liability of an accessory after the fact**



A person is an accessory after the fact to the commission of a crime if, after the commission of the crime, she unlawfully and intentionally engages in conduct intended to enable the perpetrator or accomplice to the crime to evade liability for her crime, or to facilitate such a person's evasion of liability.

## **1. Liability**

### **(i) Act or omission**

Person must engage in conduct (act/omission) whereby he assists either perpetrator or accomplice to evade liability. Mere approval of the crime is not enough. It is possible for a person to be an accessory after the fact on the ground of an omission when there is a legal duty upon such a person to act positively.

### **(ii) After the commission of the crime**

The act/omission must take place after commission of the actual crime. If it takes place at a time when the crime is still in the process of being committed, he may qualify as a copерpetrator or accomplice. Agreement prior to the commission of the crime to render assistance may render him a perpetrator, if his conduct, culpability and personal qualities accord with the definition of the crime or he may be an accomplice (**Maserow**).

### **(iii) Enabling perpetrator or accomplice to evade liability**

The act must assist perpetrator or accomplice to evade liability for his crime or to facilitate such a person's evasion of liability. Success is not required.

### **(iv) Unlawfulness**

The act must be unlawful and there must be no justification for it.

### **(v) Intention**

Assistance must be rendered intentionally and knowing that the person being helped has committed the crime. He must have the intention of assisting perpetrator (or accomplice) to evade liability or to facilitate the evasion of liability (**Morgan**).

### **(vi) Accessory character of liability**

Liability of an accessory after the fact is known as "accessory liability". Only possible if somebody else has committed the crime as perpetrator - one can't be an accessory after the fact to a crime committed by oneself. An exception to this general rule is to be found in **Gani**, which was confirmed in **Jonathan**: It couldn't be determined with certainty which of the accused committed the murder, but it was proved that all disposed of the body and thus all were convicted as accessories after the fact as a result. Even though some were definitely guilty of murder, they were accessories after the fact to their own crimes as none could be proved guilty of committing the murder, but only of disposing the body.

## **2. Punishment**

Section 257 of the Criminal Procedure Act ("CPA") stipulates that punishment imposed may not exceed that of the perpetrator's and, as the accessory after the fact didn't participate in the crime, the sentence is usually more lenient than that of the perpetrator.

### **3. Reason for existence questionable**

Being an accessory of the fact completely overlaps with the crime known as defeating or obstructing the course of justice and is, therefore, deemed unnecessary.

## **Define the crime of malicious injury to property and housebreaking**

### **Malicious injury to property:**

Definition: Malicious injury to property consists in unlawful and intentionally

- Damaging property belonging to another person or
- Damaging one's own insured property with the intention of claiming the value of the property from the insurer.

### **Housebreaking:**

Definition: Housebreaking with intent to commit a crime consists in unlawfully and intentionally breaking into and entering a building or structure, with the intention of committing some crime in it. Intention

Two components:

- X must have the intention of unlawfully breaking into and entering the house or structure.
- X must also have the intention of committing some other crime inside, such as robbery for example.

Housebreaking without such an intention may, depending on the circumstances, be punishable as malicious injury to property.

All that is required for an act to amount to a breaking is the removal or displacement of an obstacle which bars entry to the building and which forms part of the building itself.

The following acts do not amount to a "breaking in":

- walking through an open door into a building
- climbing through an open window into a building
- stretching one's arm through an open hole in wall of a building

The most obvious act which qualifies as breaking in is physically breaking a door, window, wall or roof. The following also qualifies as breaking:

- merely pushing open a closed (even though not locked) door or window

- merely pushing open a partially closed door or window

It is not a requirement for liability for this crime that actual damage be inflicted to the building or structure.

**Do the following questions .**

- In the case of Naidoo 1977 (2) SA 123 (N) it was held that if X, a motorist, flickers his lights to warn oncoming motorists about the presence of a speed trap, he commits the crime of .....
- The mere ..... of a benefit to another with the intention of influencing that other person to perform an act in relation to his power or duty, is sufficient for a conviction of the statutory offence of corruption
- Possession of drugs in the ordinary juridical sense requires a (corpus or detentio) and a ..... (animus)
- If X, intending to steal, conceals in her clothing an article offered for sale in a self-service shop and is apprehended with the article before leaving the shop, the courts accept that she can be convicted of ....., theft.
- In &thole 1981 (1) SA 1186 (N) the court held that the handbag snatcher commits the crime of .....
- Forgery is a form of the crime of .....
- X commits theft in the form of ..... if she appropriates Y's property which is already in her (X's) possession
- X commits the crime of ..... if he unlawfully and intentionally sets Y's house alight, and the crime of ..... if he unlawfully and intentionally sets Y's car alight (10)
- A person is a perpetrator if his , the circumstances in which it takes place, and the ..... with which it is carried out are such that he satisfies all the requirements for liability contained in the definition of an offence. (2)
- A person who possesses a firearm without a ..... , permit or authorization issued in terms of the Act for that firearm commits an offence (s 3 of the Firearms Control Act 60 of 2000). (1)
- Sexual assault is committed if a person unlawfully and intentionally sexually ..... a complainant (Y) without the consent of Y. (1)
- In the case of fraud, the possibility of prejudice should not be too..... or ..... fanciful. (1)
- X commits theft in the form of ..... if she appropriates Y's property which is already in her (X's) possession. .... (1)

- Anyone that accepts any gratification from any other person, or gives any gratification to any other person, in order to act in a manner that amounts to the ..... exercise of any duties, is guilty of the offence of corruption. (1)
- Forgery is merely a species of ..... (1)
- A person commits theft by false pretences if she unlawfully and intentionally obtains ..... corporeal property belonging to another with the consent of the person from whom she obtains it, such consent being given as a result of a ..... by the person committing the offence and she appropriates it (2)
- Arson cannot be committed in respect of ..... property
- A failure by a person in a ..... (3 words) who knows or ought reasonably to have known that certain crimes in the Prevention and Combating of Corrupt Activities Act 12 of 2004 have been committed, commits a crime in terms of the said Act
- In the crime of housebreaking with intent to commit a crime the "breaking" consists in the ..... or ..... of any obstacle which bars entry to the structure ..... and which forms part of the structure itself
- The intention required for the crime of fraud is an intention to .....
- The crime of criminal defamation protects the ..... of a person
- The crime of crimen iniuria protects both a person's ..... and .....
- In the case of Mshumpa 2008 (1) SA 126 (E) the court held that the crime of murder can only be committed in respect of a ..... .. (3 words) 111
- In terms of section 34 of the Prevention and Combating of Corrupt Activities Act 12 of 2004 a failure by a person in a ..... (3 words) who knows or ..... (2 words) to have known that certain crimes named in the Act, have been committed, must report the commission of such an offence to a police officer
- Section 4 of the Drugs and Drug Trafficking Act 140 of 1992 criminalises the use or ..... (1 word) of drugs as well as the ..... (1 word) in drugs
- In terms of section 3 of the Firearms Control Act 60 of 2000 it is not specifically stated whether intention or mere ..... (1 word) is required for a conviction of unlawful possession of a firearm
- In the crime of malicious injury to property, the property may be either movable or ..... (1 word)
- The intention required for the crime of housebreaking with intent to commit a crime comprises the intention of unlawfully breaking into and ..... (1 word)

the building or structure well as the intention to commit ... .. (3 words) inside  
the building or structure

The crime of (1 word) is committed if immovable property is unlawfully and  
intentionally set on fire (10)