

Tutorial Letter 102/1/2017

Criminal Law: Specific Offences

CRW2602

Semester 1

Department of Criminal and Procedural Law

This tutorial letter contains important information about your module.

Bar code

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Dear Student

We trust that you have already familiarised yourself with the first tutorial letter, as well as with the Study Guide and prescribed texts. Note that all tutorial letters are very important and should be read carefully.

In this tutorial letter, we discuss the format of the examination paper which you will be writing in May/June 2017. In order to assist you with preparation for these exams, we provide you with the exam paper written last year in November.

Feedback to the questions in the October/November 2016 paper is provided. The feedback also serves as an example of how we expect students to answer if similar types of questions were to be asked.

We also alert you to a new development in criminal law and provide you with information regarding your tutorial letters.

1 Format of the May/June 2017 Examination Paper

The format of the examination paper for the May/June 2017 examinations will in essence be the same as that of previous exam papers.

2 Example of a previous examination paper

Below we provide you with an example of a previous examination paper and feedback on the paper. Please take note that this exam paper as well as other past exam papers for this course are also available online for you to download from *myUNISA*.

If this is the first year that you have enrolled for this module you will find it difficult to understand the answers and the feedback on the examination paper. However, once you have studied all the different topics dealt with in the examination paper, the questions and the feedback will make sense. We therefore recommend that you do not read the feedback until you have studied the relevant topics. If you were registered for this course previously you will find the feedback valuable, since you have been exposed to the topics already. If you have previously failed this course, and you are now repeating the module, you should read both the answers and the feedback carefully, to enable you to see where you went wrong in the examination.

CRW2602

(469775)

October/November 2016

CRIMINAL LAW: SPECIFIC CRIMES

Duration : 2 Hours

100 Marks

EXAMINERS :

FIRST :

PROF L JORDAAN
PROF N MOLLEMA
MR RD RAMOSAPROF S LOTTER
PROF C VAN DER BIJL

SECOND :

Closed book examination.

This examination question paper remains the property of the University of South Africa and may not be removed from the examination venue.

THIS PAPER CONSISTS OF SEVEN (7) PAGES PLUS INSTRUCTIONS FOR COMPLETION OF A MARK READING SHEET.

THE QUESTIONS IN THIS PAPER COUNT ONE HUNDRED (100) MARKS. THE PAPER CONSISTS OF TWO PARTS, MARKED A AND B. YOU MUST ANSWER BOTH PARTS A AND B. PART A CONSISTS OF TEN (10) MULTIPLE CHOICE QUESTIONS. YOU MUST WRITE THE ANSWERS TO THESE QUESTIONS ON THE MARK READING SHEET. EACH QUESTION COUNTS THREE (3) MARKS, WHICH MEANS THAT THE QUESTIONS IN PART A COUNT A TOTAL OF THIRTY MARKS (30). IN PART B, THE ANSWERS TO THE QUESTIONS MUST BE WRITTEN IN THE EXAMINATION SCRIPT ITSELF. THE QUESTIONS IN PART B COUNT SEVENTY MARKS (70).

PART A (MULTIPLE CHOICE QUESTIONS)

IMPORTANT NOTICE. THE QUESTIONS IN THIS PART HAVE TO BE ANSWERED ON THE MARK READING SHEET, WHICH WILL BE ISSUED WITH YOUR EXAMINATION ANSWER BOOK. YOU HAVE TO READ THE INSTRUCTIONS IN CONNECTION WITH THE USE OF THE MARK READING SHEET CAREFULLY. FAILURE TO DO SO MAY MEAN THAT YOUR ANSWERS CANNOT BE MARKED BY THE COMPUTER.

Ten questions (marked 1 - 10) follow. Each question contains three (3) statements (marked (a)-(c)). Some of the statements are correct and some are incorrect. You must decide which of these statements is/are correct. The three (3) statements are followed by five (5) allegations (marked (1)-(5)). Each of them alleges that a certain statement or combination of statements is correct. You must decide which allegation accurately reflects the conclusions to which you have come.

QUESTION 1

- (a) In the crime of terrorism, the interests protected are the safety and security of the Republic, its institutions and people.
 - (b) For the crime of terrorism, a specific intention is required which has two components.
 - (c) Public violence can be committed by an individual acting alone.
- (1) Only statement (a) is correct.
 - (2) Only statement (b) is correct.
 - (3) Only statements (a) and (b) are correct.
 - (4) Only statements (a) and (c) are correct.
 - (5) All the statements are correct.

QUESTION 2

- (a) Proof of mere presence at the scene of the crime is sufficient to be found guilty of public violence.
 - (b) The status of the participants is one of the factors examined in order to determine whether or not the act of public violence can be classified as serious.
 - (c) A witness who intentionally makes a false statement in the course of a legal proceeding commits perjury even if his statement is not under oath, but merely made after an affirmation to speak the truth or after being warned to speak the truth.
- (1) Only statement (a) is correct.
 - (2) Only statement (b) is correct.
 - (3) Only statement (c) is correct.
 - (4) Only statements (b) and (c) are correct.
 - (5) None of the statements is correct.

QUESTION 3

- (a) Contempt ex facie curiae concerns acts which refer to pending and non-pending cases.
 - (b) The crime of defeating the course of justice is only committed where it is proved that as a result of the conduct of the accused, an innocent person has been convicted or a guilty one discharged.
 - (c) Defeating or obstructing the course of justice may be committed by either a positive act or an omission.
- (1) All the statements are correct.
 - (2) Only statements (a) and (b) are correct.
 - (3) Only statement (b) is correct.
 - (4) Only statement (c) is correct.
 - (5) Only statements (a) and (c) are correct.

QUESTION 4

- (a) In the crime of statutory perjury both the statements made under oath need to be made in the course of a judicial proceeding.
 - (b) One of the categories of specified persons whose corrupt activities are criminalised by the Prevention and Combating of Corrupt Activities Act 12 of 2004 are agents.
 - (c) In the crime of corruption, no distinction is made between the main crime on the one hand, and conspiracy or incitement to commit the main crime on the other.
- (1) Only statement (a) is correct.
 - (2) Only statement (b) is correct.
 - (3) Only statements (a) and (b) are correct.
 - (4) Only statements (b) and (c) are correct.
 - (5) All these statements are correct.

QUESTION 5

- (a) In the instance where X unlawfully acquires property from Y by bringing pressure in the form of a threat of physical violence to Y himself, extortion and robbery overlap.
 - (b) If X obtains drugs for her own personal use, she can be convicted of the crime known as “dealing in drugs”.
 - (c) The Firearms Control Act 60 of 2000 draws a distinction between “firearms”, “prohibited firearms” and “weapons of war”.
- (1) Only statement (a) is correct.
 - (2) Only statement (b) is correct.
 - (3) Only statement (c) is correct.
 - (4) Only statements (b) and (c) are correct.
 - (5) All the statements are correct.

QUESTION 6

- (a) Road traffic offences fall under crimes against public welfare.
 - (b) A person pushing his vehicle by exercising control over the steering wheel and handbrake from outside the vehicle is “driving” the vehicle in terms of the National Road Traffic Act 93 of 1996.
 - (c) Any person who drives a vehicle in wilful or wanton disregard for the safety of persons or property is guilty of inconsiderate driving.
- (1) Only statement (a) is correct.
 - (2) Only statement (b) is correct.
 - (3) Only statements (a) and (c) are correct.
 - (4) Only statements (b) and (c) are correct.
 - (5) Only statements (a) and (b) are correct.

QUESTION 7

- (a) "Sexual violation" is widely defined in terms of section (1) of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 Of 2007 so as to include not only the actual act of X whereby he or she makes direct or indirect contact with the body of another, but also any act whereby he or she causes such contact.
 - (b) A person commits the crime of sexual grooming of a child over the internet if he or she invites the child by e-mail to travel with him/her in order to commit a sexual act with the child.
 - (c) If X is charged with murder but lacked the necessary intention to murder because of intoxication, the crime is not automatically reduced from murder to culpable homicide.
- (1) Only statement (a) is correct.
 - (2) Only statement (b) is correct.
 - (3) Only statements (a) and (c) are correct.
 - (4) All these statements are correct.
 - (5) None of the statements is correct.

QUESTION 8

- (a) A conviction of assault with intent to do grievous bodily harm is only possible where Y (the victim) in fact sustained grievous bodily harm.
 - (b) Assault can be described as an iniuria against the physical integrity of another.
 - (c) In order to secure a conviction for the crime of pointing a firearm, the state must prove that the firearm was loaded, and that it was capable of firing a shot.
- (1) Only statement (a) is correct.
 - (2) Only statement (b) is correct.
 - (3) Only statements (a) and (b) are correct.
 - (4) Only statements (a) and (c) are correct.
 - (5) All the statements are correct.

QUESTION 9

- (a) The requirement of publication in the crime of criminal defamation means that the allegations should have been made public in printed form.
 - (b) The interests protected by the crime of abduction are the interest of the minor and the parents' or guardian's right to consent to the minor's marriage.
 - (c) If X abducts Y (a minor) and demands a ransom for her (Y's) release, X will be guilty of kidnapping only.
- (1) Only statement (a) is correct.
 - (2) Only statement (b) is correct.
 - (3) Only statements (a) and (b) are correct.
 - (4) Only statements (a) and (c) are correct.
 - (5) None of the statements are correct.

QUESTION 10

- (a) Any person, who assists a thief by hiding property after he (the thief) has stolen such property, is not regarded as an accessory after the fact but a co-perpetrator to the crime of theft.
 - (b) If X sets fire to his own insured car in order to claim its value from the insurer, he commits the crime of arson.
 - (c) Merely pushing open a door which has been closed, although not locked, and then walking into the house can never amount to "breaking" for the purposes of the crime of housebreaking with intent to commit a crime.
- (1) Only statement (a) is correct.
 - (2) Only statement (b) is correct.
 - (3) Only statements (a) and (b) are correct.
 - (4) All the statements are correct.
 - (5) None of the statements is correct.

SUB-TOTAL: [30]

PART B

THIS PART CONSISTS OF THREE (3) QUESTIONS. EACH QUESTION IS SUBDIVIDED INTO A NUMBER OF SUB-QUESTIONS. YOU MUST ANSWER ALL THREE (3) QUESTIONS. SUBSTANTIATE YOUR ANSWERS AND REFER TO DECIDED CASES WHERE NECESSARY. IN DECIDING UPON THE LENGTH OF YOUR ANSWERS YOU SHOULD BE GUIDED BY THE MARKS ALLOCATED TO EACH QUESTION. NOTE THAT SOME OF THE QUESTIONS CONTAIN A CHOICE BETWEEN TWO ALTERNATIVES.

QUESTION 1

- (a) Name the three general speed limits and the roads to which they apply in terms of section 59(1) of the National Road Traffic Act 93 of 1996. (6)
- (b) X is married to Y, who is pregnant. X is a very jealous and controlling man. X hacks into Y's email account. X discovers that Y has been flirting with other men that she has been meeting on an online dating site. Enraged, he (X) creates a fake profile on the dating website and a fake e-mail address and sends Y romantic messages. Y responds and requests to meet X. X agrees and requests Y to meet him at a romantic scenic spot in the city. Y drives there and meets X who kills her (Y) and sets her body alight. Provide a definition of the various offences set out below (if it is recognised as an offence) and then consider whether X's conduct complies with all the elements of the offence. Also refer to relevant case law to substantiate your answer.
 - (i) Crimen iniuria (5)
 - (ii) Fraud (6)
 - (iii) Murder of the unborn foetus (4)

(c) NOTE THE CHOICE YOU HAVE IN THIS QUESTION

- (i) Define the crime of contempt of court.

OR

- (ii) Define the crime of theft by false pretences.

(4)
[25]

QUESTION 2

- (a) A group of nine workers belonging to the X union are unhappy about their employment conditions at a university and want more money. They decide to go on an unprotected strike. They place stones in the middle of the road and then start to sing and shout. They storm the law building and inform the employees to vacate their offices or else they will use physical violence to remove them. The employees are terrified and fearing for their lives they start running out of the building. The workers then deface a statue and set some of the employees' cars on fire. Fully discuss whether the workers belonging to the X union can be found guilty of the following crimes. In your answer you must set out the elements of the various offences.

- (i) Public violence (5)
 (ii) Malicious injury to property (3)
 (iii) Assault (5)

- (b) Discuss ONE of the following cases:

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

OR

S v Ndebele 2012 (1) SACR 245 (GSJ) (6)

(c) NOTE THE CHOICE YOU HAVE IN THIS QUESTION

- (i) Section 3 of the Criminal Law (Sexual Offences and Related Matters) Act 32 of 2007 provides that any person who unlawfully and intentionally commits an act of sexual penetration with another person without the latter's consent, is guilty of the crime of rape. In section 1(2) of the said Act it is provided that consent must be 'voluntary and uncoerced agreement'. Discuss the meaning of 'voluntary and uncoerced agreement'.

OR

- (ii) Explain the meaning of 'possession' in the crime of the use or possession of drugs. (6)
[25]

QUESTION 3

- (a) X and Y are gym instructors that are employed at a gym. They are role models and mentors of a gym programme that advocates a three-month 'Transform-Your-Body' routine that uses a banting diet (low carbohydrates and high fat diet) and regular gym exercise. Y does not like the banting diet as she loves to eat bread and does not like fatty food, nor does she like the idea of extensive exercise. Y therefore uses diet pills and steroid drugs to ensure that her body stays in top form. X is aware of Y's secret and tells Y that if she does not have sexual intercourse with him he will inform the gym management of her secret. Y complies and has sexual intercourse with X to keep her secret safe. Has X committed the crime of rape? Discuss. (5)
- (b) Briefly describe the two components for the act of appropriation in the crime of theft. (2)
- (c) Briefly define the crime of corruption. (3)
- (d) X doesn't like a fellow law student Y and punches him so that he falls to the ground. X then sees that Y's cell phone has fallen out of his pocket and decides to grab it and run. Is X guilty of the crime of robbery? Briefly discuss. (4)
- (e) Write down the missing words or phrases in your examination book:
- (i) In the crime of extortion the benefit or advantage can beor (1)
 - (ii) In the crime of perjury at common law the false declaration must be made on oath or in a form that is allowed by law to be substituted for an oath such as an..... (1)
 - (iii) The intention required for housebreaking comprises an intention of unlawfully as well as an intention of..... (2)
 - (iv) Section 54(1) of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 provides that the failure to report sexual offences against and the is an offence. (2)

[20]

SUB-TOTAL: [70]

TOTAL: [100]

3 Feedback and self assessment

Below follows the feedback on the previous exam paper provided above. We find that most students provide very superficial answers in the examination. Therefore we advise that you actually complete the given examination paper on your own as a form of **self-assessment**. Test yourself whether you are able to identify the relevant sections of the work. Plan and structure your answers in accordance with the duration of time provided. Determine the length of your answer with reference to the marks allocated to each question. Then compare your answers with those provided in the feedback. This exercise will enable you to know exactly what is expected of you in the examination.

The following abbreviations are used:

SG - Study Guide

***Criminal Law* - CR Snyman *Criminal Law* 6th ed 2014 (the prescribed book)**

Case Book - CR Snyman *Criminal Law Case Book* 5th ed 2013

Reader – Case Law Reader for CRW2602

PART A (MULTIPLE-CHOICE QUESTIONS)

QUESTION 1

- (a) This statement is correct. See SG 1.2.4.
- (b) This statement is correct. See SG 1.2.7.
- (c) This statement is incorrect. See SG 1.3.4. The crime of public violence must be performed by a number of persons acting in concert.

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

QUESTION 2

- (a) This statement is incorrect. See SG 1.3.4. Mere presence is insufficient as the state must prove active association with the acts of public violence of each individual accused.
- (b) This statement is correct. See SG 1.3.6.
- (c) This statement is correct. See SG 2.1.4.

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

QUESTION 3

- (a) This statement is correct. See SG 2.4.9.2 and 2.4.9.3.
- (b) This statement is incorrect. See *Criminal Law* 328. The crime of defeating the course of justice can also be committed in a civil case.
- (c) This statement is correct. See *Criminal Law* 329.

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

QUESTION 4

- (a) This statement is incorrect. See *Criminal Law* 336. It is immaterial whether the oaths were made during the course of a legal proceeding or not.
- (b) This statement is correct. See SG 3.2.8 (2).
- (c) This statement is correct. See SG 3.2.6.2.

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

QUESTION 5

- (a) This statement is correct. See SG 3.3.4.
- (b) This statement is incorrect. See SG 3.4.2.3 (a). Drugs for personal use will be criminalised under the crime the use or possession of drugs.
- (c) This statement is incorrect. See SG 3.5.1.

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

QUESTION 6

- (a) This statement is correct. See SG 3.6.1.
- (b) This statement is correct. See SG 3.6.2.3.
- (c) This statement is incorrect. See SG 3.6.3.1. Driving a vehicle in wilful or wanton disregard for the safety of persons or property is deemed to be reckless driving and not merely inconsiderate driving.

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

QUESTION 7

- (a) This statement is correct. See SG 4.3.2.2 (a).
- (b) This statement is correct. See SG 4.7.5.
- (c) This statement is correct. See *Criminal Law* 442.

You should therefore have chosen option **(4)** since all the statements are correct.

QUESTION 8

- (a) This statement is incorrect. See SG 6.1.11 and *Criminal Law* 453. For the crime of assault with the intent to cause grievous bodily harm to be committed, actual bodily harm need not be sustained as it is only required that X had the intention to do serious bodily harm.
- (b) This statement is correct. See SG 6.1.3.
- (c) This statement is incorrect. See SG 6.2.3. The state need not prove that a shot was fired or that the firearm was capable of being discharged.

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

QUESTION 9

- (a) This statement is incorrect. See SG 7.3. The publication need not only be made public in printed form but can be orally as long as the allegations come to the attention of persons other than Y.
- (b) This statement is incorrect. See SG 7.4.3. The interests protected are those of the parents or guardians as a minor's consent to the removal is not a defence. The interests that are protected are the factual exercise of control over the minor and the parents' or guardian's right to consent to the marriage.
- (c) This statement is incorrect. See *Criminal Law* 472. X may also be found guilty of the crimes of abduction (the facts mention the abduction of Y by X) and extortion.

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

QUESTION 10

- (a) This statement is correct. See SG 8.10.
- (b) This statement is incorrect. See *Criminal Law* 542. The crime of arson is committed if a person sets fire to immovable property such as a building but not for movable property such as a car.
- (c) This statement is incorrect. See SG 12.3.1. Actual damage to a building need not be inflicted and merely walking through an open door will be sufficient in order to amount to an act of breaking.

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

SUB-TOTAL: [30]

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 minimize 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) **SG 3.6.2.4**

There are three general speed limits. The speed limits and the roads to which they apply are the following:

- 60km: This speed limit applies to a public road within an urban area.
- 100km: This speed limit applies to a public road outside an urban area.
- 120km: This speed limit applies to a freeway.

(b)(i) **SG 7.2; 7.2.7.2 and 7.2.7.4***Crimen iniuria.*

Yes, X is guilty of the crime of *crimen iniuria*. *Crimen iniuria* is the unlawful, intentional and serious infringement of the dignity or privacy of another. This crime can be committed in the case of an infringement of privacy such as by opening and reading of a confidential e-mail. Y need not be aware of the infringement of privacy. An objective test is applied which means X's conduct would offend the feelings of a reasonable person.

(ii) **SG 10.1**

Fraud.

Yes, X is guilty of the crime of fraud. Fraud is the unlawful and intentional making of a misrepresentation which causes actual prejudice or which is potentially prejudicial. X has made a misrepresentation (a deception by means of a falsehood) by creating a fake profile and email address which causes actual prejudice or harm to Y. X has the intention to defraud as he had the intention to induce Y to embark, as a result of the misrepresentation, on a course of action prejudicial to herself. *Gardener* 2011 (1) SACR 570 (SCA) (1).

(iii) **SG 5.2.**

Murder of the unborn fetus.

No, X is not guilty of murder in respect of the unborn foetus. Murder is the unlawful and intentional causing of the death of another person. The victim must be a living human being/ must be born alive. The Constitution does not expressly confer any fundamental rights on an unborn foetus. *S v Mshumpa* 2008 (1) SA 126 (E).

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

You should note that when providing definitions the exact legal terminology is required.

(i) **Option 1****SG 2.4**

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

(ii) **Option 2****SG 10.3.**

A person commits theft by false pretences if she unlawfully and intentionally: obtains movable, 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 misrepresentation by the person committing the offence and she appropriates it.

QUESTION 2

(a)(i) SG 1.3

Yes, the workers of X union can be found guilty of public violence. Public violence is the unlawful and intentional performance of an act, or acts, by a number of persons which assumes serious proportions and is intended to disturb the public peace and order by violent means, or to infringe the rights of another. The public peace and order is disturbed by a number of persons who are acting unlawfully and intentionally in concert (with common purpose). The act is accompanied by violence (violent coercion) and the threats of violence. The action of the group assumes serious proportions as the safety of persons not involved are threatened. Bonus mark: The placing of stones in itself is not public violence (*Mei* case) or the mentioning of the *Salie/ Cele* cases.

(ii) SG 11.2

Malicious injury to property

Yes, they are guilty of the crime of malicious injury to property. The property must be corporeal and either movable or immovable. They have unlawfully and intentionally damaged property belonging to other persons by defacing the statue and setting the cars on fire.

(iii) SG 6.1.1

Assault

Yes, they are guilty of the crime of assault. Assault is committed by unlawfully and intentionally applying force, directly or indirectly, to the person of another, or inspiring a belief in another person that force is immediately to be applied to her. In this case there is the inspiring of fear or a belief in the employees that the threat is one of immediate and unlawful violence and the employees subjectively believe that the threats will be carried out and therefore leave the building as they fear for their lives. The workers know that their conduct will inspire fear in the employees by using coercion.

(b) NOTE THE CHOICE YOU HAVE IN THIS QUESTION

Option 1

Casebook 244 – 250; Reader 16– 20 - S v Sibiya 1955 (4) SA 247 (A)

First the **facts** of the *Sibiya* case have to be set out briefly (see p244 – 245 of the *Casebook*; p16 – 17 of the *Reader*).

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?

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

Reasons for finding: 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.

Option 2

Casebook 252 – 256; Reader 24– 27 - S v Ndebele 2012 (1) SACR 245 (GSJ)

First the **facts** of the *Ndebele* case have to be set out briefly (see p252 – 253 of the Casebook; p24 of the Reader).

Legal question: Is electricity capable of being stolen?

Finding: Yes it can be stolen.

Reasons for finding: 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. This case is contrary to the case of *S v Mintoor* which held that electricity is not capable of being stolen.

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

(i) **Option 1**

SG 4.2.2 c

Section 3 of the *Criminal Law (Sexual Offences and Related Matters) Act 32 of 2007* provides that any person who unlawfully and intentionally commits an act of sexual penetration with another person without the latter's consent, is guilty of the crime of rape. In section 1(2) of the said Act it is provided that consent must be voluntary and uncoerced agreement. Discuss the meaning of "voluntary and uncoerced agreement".

You should take note of the fact that there are circumstances in respect of which Y does **not voluntarily or without coercion** agree to an act of sexual penetration which include, but are not limited to, the following:

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

- (1) the **use of force or intimidation** by X against Y or Z (a third person) or **against the property or a threat of harm or against property**
- (2) where there is **an abuse of power or authority** by X
- (3) where the sexual act is committed **under false pretences or by fraudulent means**
- (4) where Y is **incapable in law of appreciating the nature of the sexual act** - you could also mention any of the below points instead (including where Y is, at the time of the commission of such sexual act —
 - (i) asleep;
 - (ii) unconscious;
 - (iii) 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;
 - (iv) a child under the age of 12 years; or
 - (v) 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.

(ii) **Option 2**

SG 3.4.2.3 (b)

Possession consists of 2 elements:

- A physical or corporeal element – degree of control over the thing
 - A mental element – relates to the intention with which somebody exercises control over a thing
- X can exercise control as if she is the owner of the article (*possessio civilis*)
 - X may exercise control over the article with the intention of keeping it for somebody else (*possessio naturalis*)
- The Act provides that the word “possess” includes keeping, storing or having in custody or under control or supervision.

QUESTION 3

(a) **SG 4.2.2; 4.2.2.2(c)**

Yes, X has committed the crime of rape.

Rape is defined as any person who unlawfully and intentionally commits an act of sexual penetration with a complainant without his or her consent is guilty of the offence of rape. Consent is defined as voluntary or uncoerced agreement. In this case Y submits to the sexual intercourse as a result of the intimidation or threat of harm to her reputation.

(b) **SG 8.6.1.1.**

There are two components for the act of appropriation in the crime of theft.

- A **negative** component (excluding Y from his property)
- A **positive** component (X exercises the rights of an owner of the property in place of Y).

(c) **SG 3.2.4.**

The crime of corruption may be defined as:

Anyone that:

- (a) Accepts 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.

(d) **SG 9.1 and 9.1.6.**

X is not guilty of the crime of robbery. X is guilty of assault and theft. For the crime of robbery to be committed there must be such a close causal link/ connection between the theft and the violence that these can be seen as connecting components of one and the same course of action. Robbery is the theft of property unlawfully and intentionally using: violence to take the property from another or threats of violence to induce the other person to submit to the taking of the property. *Malinga* or *Marais* case.

- (e) The following words or phrases had to be filled in:
- (i) **SG 3.3.5** patrimonial or non-patrimonial
 - (ii) **SG 2.1.4.** affirmation to tell the truth
 - (iii) **SG 12.6.** breaking into and entering the house or structure
committing some other crime inside
 - (iv) **SG 4.9.** children and mentally disabled

SUB-TOTAL: [70]

TOTAL: [100]

4 New developments in criminal law: the 2015 *Amendment of the Sexual Offences Act*

PLEASE ADD THE FOLLOWING DISCUSSION AT THE END OF PAR 4.7.2.2 IN STUDY UNIT 4:

The amendments required in terms of the *Teddy Bear Clinic* case are now reflected in the *Criminal Law (Sexual Offences and Related Matters) Amendment Act 5 of 2015* which came into effect on 7th July 2015. In the preamble of the Act it is stated that the **primary objective of sections 15 and 16 of the Act is to protect children who are 12 years or older but under the age of 16 from ADULT sexual predators**. Therefore, the amendment does not mean that the age of consent to sexual acts is now lowered to 12 years. In accordance with the decision in the *Teddy Bear Clinic* case the following amendments have been made:

- **Section 1** of Act 5 of 2015 now provides that a “child” means a **person under the age of 18 years**.
- **Section 15(1)** which deals with **consensual sexual penetration of a child** now provides that:
 - a person (X) who commits an act of sexual penetration with a child (Y) **who is 12 years of age or older but under the age of 16 is, despite the consent of Y, guilty of the offence** of having committed an act of consensual sexual penetration with a child, **unless X**, at the time of the commission of such act, was
 - (a) **12 years of age or older but under the age of 16 years; or**
 - (b) **either 16 or 17 years and the age difference between X and Y was not more than two years.**

Therefore, if X, a 15-year-old boy sexually penetrates Y, a 12-year-old girl with her consent, he does not commit an offence in terms of section 15. Also, if a 17-year-old boy sexually penetrates a 15-year-old girl with her consent he does not commit an offence in terms of section 15.

It is also provided in article 15(2) of the amendment that the institution of a prosecution for an offence referred to in subsection (1) must be authorised in writing by the Director of Public Prosecutions if **X was either 16 or 17 years of age at the time of the alleged commission of the offence and the age difference between X and Y was MORE than two years**. This means that it may be open to the relevant Director of Public Prosecutions to institute a prosecution in the instance where, for example, X a 17-year-old boy had sexually penetrated a 14-year-old girl with her consent. However, this power may be delegated.

- **Section 16** of the Act provides the same as section 15 above, except that it relates to **sexual violation instead of sexual penetration**.
- Because the position is now regulated in terms of the amended sections 15 and 16, **section 9 of Act 5 of 2015 provides for the deletion of the defence set out in section 56(2)(b)**.

You are advised therefore, to **DELETE** the discussion of section 56(2)(b) under par 4.7.2.2. “Second Defence: X and Y are both children”.

- Section 56(2)(a) is, however, still a valid defence.

5 Group Discussion Classes

Please take note that there will be NO group discussion classes held for CRW2602 in 2017.

6 Number of tutorial letters

You will receive a total of **FOUR** (4) tutorial letters this semester. You received the first letter (101) on registration. In addition to this tutorial letter (102), you will also receive a third tutorial letter (201) which will provide the answers to the first compulsory assignment. The final tutorial letter (202) will provide commentary on the second compulsory assignment.

Please note that you can also access these tutorial letters electronically on *myUNISA* (<http://my.unisa.ac.za>) under the course code **CRW2602-17-S1** at the link “Official Study Material”.

We wish you success with your studies.

Regards

Prof N Mollema
Prof L Jordaan
Mr R Ramosa

Unisa/kr