

DISCUSSION NOTES

CRW2602



UNISA



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CRW2602

SPECIFIC CRIMES

CHAPTERS: 1 - 12

- **Crimes against the state:** terrorism, public violence
- **Crimes against the administration of justice:** perjury at common law, statutory perjury, defeating or obstructing the course of justice, contempt of court
- **Crimes against public welfare:** corruption, extortion, drug offences, unlawful possession of firearms or ammunition, road traffic offences
- **Sexual crimes:** rape, sexual assault, compelled sexual assault and compelled self-sexual assault, sexual offences against persons 18 years or older, incest, bestiality, sexual offences against children and mentally-disabled persons, failure to report sexual offences, trafficking in persons, attempt, conspiracy and incitement



- **Crimes against life and potential life:** murder, culpable homicide
- **Crimes against bodily integrity:** assault, pointing of a firearm
- **Crimes against dignity, reputation and freedom of movement:** *crimen iniuria*, criminal defamation, abduction, kidnapping
- **Theft**
- **Robbery and receiving of stolen property**
- **Fraud and related crimes:** fraud, forgery and uttering, theft by false pretences
- **Crimes relating to damage of property:** malicious injury to property, arson
- **Housebreaking with the intent to commit a crime**

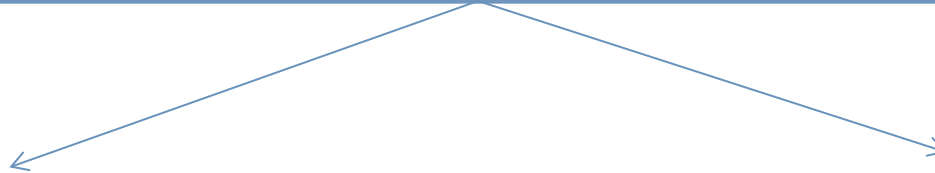
STUDY UNIT 1

CRIMES AGAINST THE STATE AND THE ADMINISTRATION OF JUSTICE

(SG 1 – 28)



CRIMES AGAINST THE STATE



TERRORISM

PUBLIC VIOLENCE

TERRORISM:



Definition: AN ACT
UNLAWFULNESS
SPECIFIC INTENTION

- *Dolus eventualis* a sufficient form of intention

TERRORISM:



ANY ACT committed in/outside the Republic which:

- (i) **involves the use of violence** by any means or method;
- (ii) **involves the release into the environment of**, or distributing or exposing the public to any **dangerous or harmful substance** or organism; any toxic chemical or microbial or other biological agent or toxin;
- (iii) **endangers the life, or violates the physical integrity of any person** or causes serious bodily injury or the death of any person or a number of persons;
- (iv) **causes serious risk to the health or safety of the public** or any segment of the public;
- (v) **causes** the destruction or **substantial damage to any property**, natural resource or the environmental heritage whether private or public
- (vi) **is designed or calculated to cause serious interference with or serious disruption of an essential service**, facility or system, or financial service or financial system; an essential infrastructure facility or any essential emergency services, such as police, medical or civil defence services;
- (vii) causes any **major economic loss or extensive destabilisation of an economic system of a country; or**
- (viii) creates a serious **public emergency** situation or a **general insurrection** in the Republic

TERRORISM:



SPECIFIC INTENTION:

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.**

Public violence:



Definition: 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

- Must be joint action i.e. A number of persons acting in concert (common purpose)
- Must be violence or threats of violence
- Must be serious
- Actual disturbance not required
- Examples:



Factions fights

Rioting

Resistance to police
action

STUDY UNIT 2

CRIMES AGAINST THE ADMINISTRATION OF JUSTICE (SG 13 – 28)

Perjury at common law



- Definition: 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





False declaration:

1. Objective
2. Oral/ writing
3. Express or implied

Oath

1. Oath
2. Solemnly confirm
3. Warning eg children

In the course of a legal proceeding

1. Can be either a criminal or civil case
2. *Beukman*: can be a declaration outside of court if:
 - the declaration is permissible as evidence in a subsequent trial
 - the maker of the declaration foresees the possibility that it may be used in a trial



Unlawfulness:

If you make a false statement and then acknowledge it was false and tell the truth = no excuse!!

Intention:

You must know or foresee the possibility that the declaration is false

Statutory perjury

- Self study: Snyman 336 – 338.
- Contravention of section 319 (3) of Act 56 of 1955
- The state must prove that a person on two different occasions made two statements under oath and the statements conflict with each other

Defeating/obstructing the course of justice

- Self study: Snyman 327 – 331
- Definition: Unlawful and intentional engaging in conduct which defeats or obstructs the course or administration of justice
- E.g. giving false evidence to the police



What happens if you flash your car lights to warn others of a speed trap?

- *Naidoo*: Guilty
- *Perera*: Only guilty if you had reason to believe that the approaching vehicle was exceeding the speed limit

Contempt of court

- Definition: 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.



- The reason for the crime's existence:
 - to protect the administration of justice

Distinguish between:



Contempt *in facie curiae*

Committed in the presence of a judicial officer

Eg: shouting at witnesses in cross-examination

Contempt *ex facie curiae*

Actions/ remarks outside of court eg: failure to comply with a court order, publications which scandalise the court, a summoned witness who does not appear in court

- Fair comment: is not contempt of court if bona fide, in reasonable terms and in the proper administration of justice

- Some forms of the crime of contempt of court:
 1. Contempt of court in facie curiae
 2. Commentary on pending cases
 3. Scandalising the court
 4. Failure to comply with a court order

What is the position regarding the press and the publication of information on pending cases?



Commentary on pending cases	Liability of a newspaper editor
<p>The press may not publish information regarding the merits of a case which did not form part of the evidence while the case is still in progress (<i>sub iudice</i>)</p> <p>Eg. may not give opinion on the guilt of an accused.</p>	<p>Intention is a requirement BUT intention OR negligence is sufficient to hold a newspaper editor liable (<i>Harber</i> case)</p> <p>- Reason: the press influences public opinion and therefore has a heavier responsibility</p>

STUDY UNIT 3

CRIMES AGAINST PUBLIC WELFARE

(SG 31 – 76)



Corruption



- Definition: Anyone that unlawfully and intentionally

(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

The crime by the recipient [(a) of the definition]



Acceptance

- agree
- offer

Gratification

- Money, gifts, avoidance of loss or penalty
- Loans, rights, privileges
- Property, employment, favours

Inducement

- Y must accept the gratification in order to act in a certain manner

In General

- Act includes omission
- Y can use a middle man
- It is irrelevant whether Y accepts it for his own benefit or for someone else
- Whether Y did not in actual fact have the power to act in a certain manner affords Y no defence
- A person used as a police trap does not act unlawfully
- Intention is required



Activity/ Self assessment:



- What considerations afford Y no defence? See SG 69!
- What are the aims envisaged by the legislature? See SG 70!
- What are the penalties for corruption? See SG 72!

The crime by the giver [(b) of the definition]



Giving

- Offer or agree to give eg *Shaik* case
- Promise, lend, grant or procure, agree to lend

Gratification

- Money, gifts, avoidance of loss or penalty
- Loans, rights, privileges
- Property, employment, favours

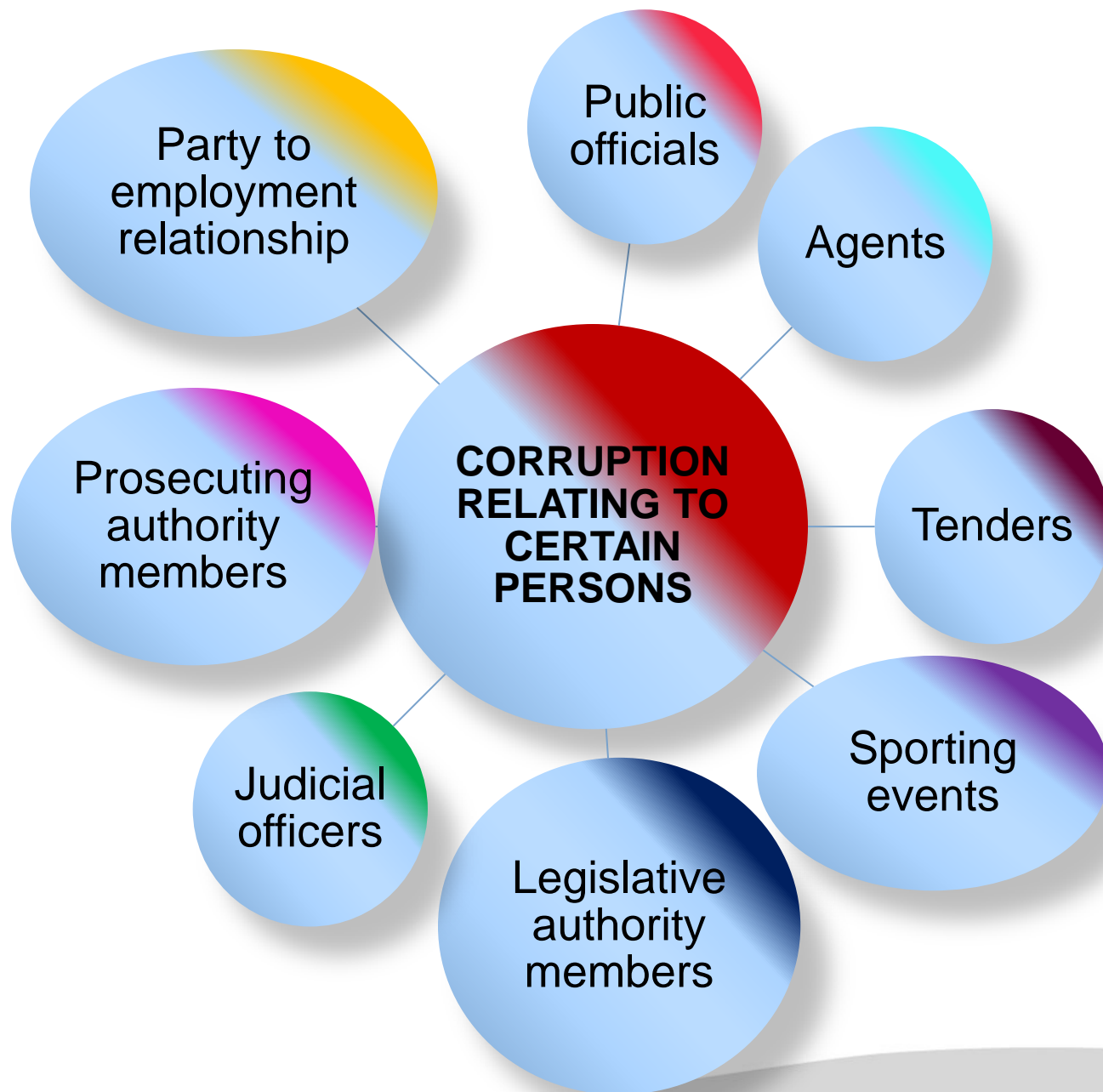
Inducement

- X must give the gratification in order for Y to act in a certain manner

?

Activity/ Self assessment:

What considerations afford X no defence? See SG 73!



Failure to report corrupt acts

- Section 34 of the Prevention and Combating of Corrupt Activities Act 12 of 2004 makes it an offence to not report crimes of corruption set out in this act
- Intention or negligence is sufficient.



Study detail on corruption in SG!!!





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

LOOK (Note: additional element: causal link between the pressure and the acquisition of the benefit)

In General

- The pressure placed by X on Y can take the form of threats, the inspiring of fear and intimidation
- The benefit can be:

Patrimonial	Non-patrimonial
Money or economic value	Any advantage can be extorted (See s1 of the General Law Amendment Act 139 of 1992 Eg. Threatening to show nude photos of Y



Drug Offences

- 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

(S4 of the Drugs and Drugs Trafficking Act
140 of 1992)

In General



- Possession consists of two elements

Physical/ corporeal element

Mental element

- Possess = storing, keeping, having in custody or under control or supervision
- The presumption of possession is no longer valid and the prohibition of use/ possession of dagga = constitutional
- There are 2 ways the state must prove the element of possession

As an owner

Keeping it for/ on behalf of someone else

Possessio civilis

Possessio naturalis



Dealing in drugs

- Definition: it is an offence unlawfully and intentionally to deal in any dependence-producing substance or any dangerous dependence-producing substance or any undesirable dependence-producing substance

Unlawful possession of firearms or ammunition

Unlawful possession of a firearm



Definition: Any person who possesses a firearm without a licence, permit or authorisation issued in terms of the Act for that firearm, commits an offence





What is a firearm?

“any device manufactured or designed to propel a bullet or projectile through a barrel or cylinder by means of burning propellant”
(s1 of The Firearms Control Act 60 of 2000)



Self study: There are a number of other offences in the act – have a look at pp 57-58!!!

Unlawful possession of ammunition

- S90 provides that no person may possess any ammunition unless she:

1.

- Holds a licence in respect of the firearm.

2.

- Holds a permit to possess ammunition

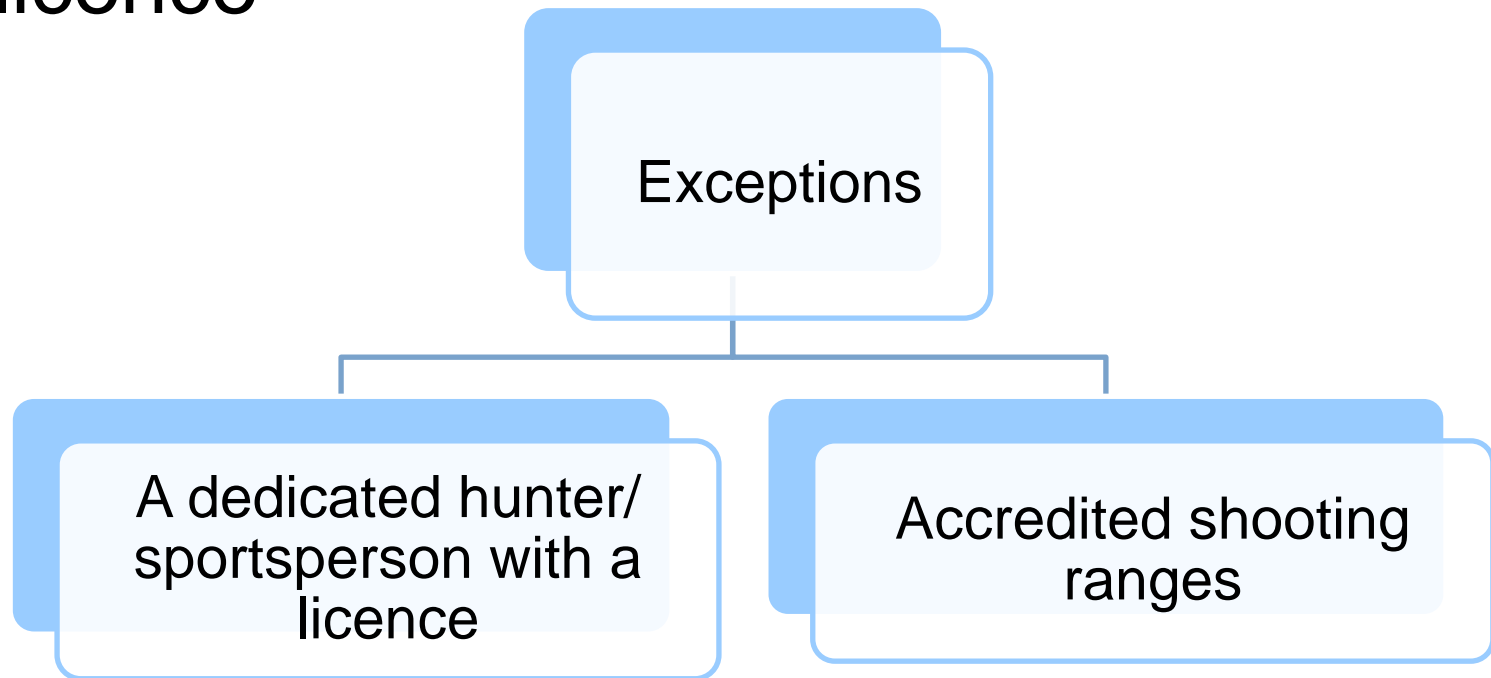
3.

- Holds a dealers licence/gunsmiths licence etc

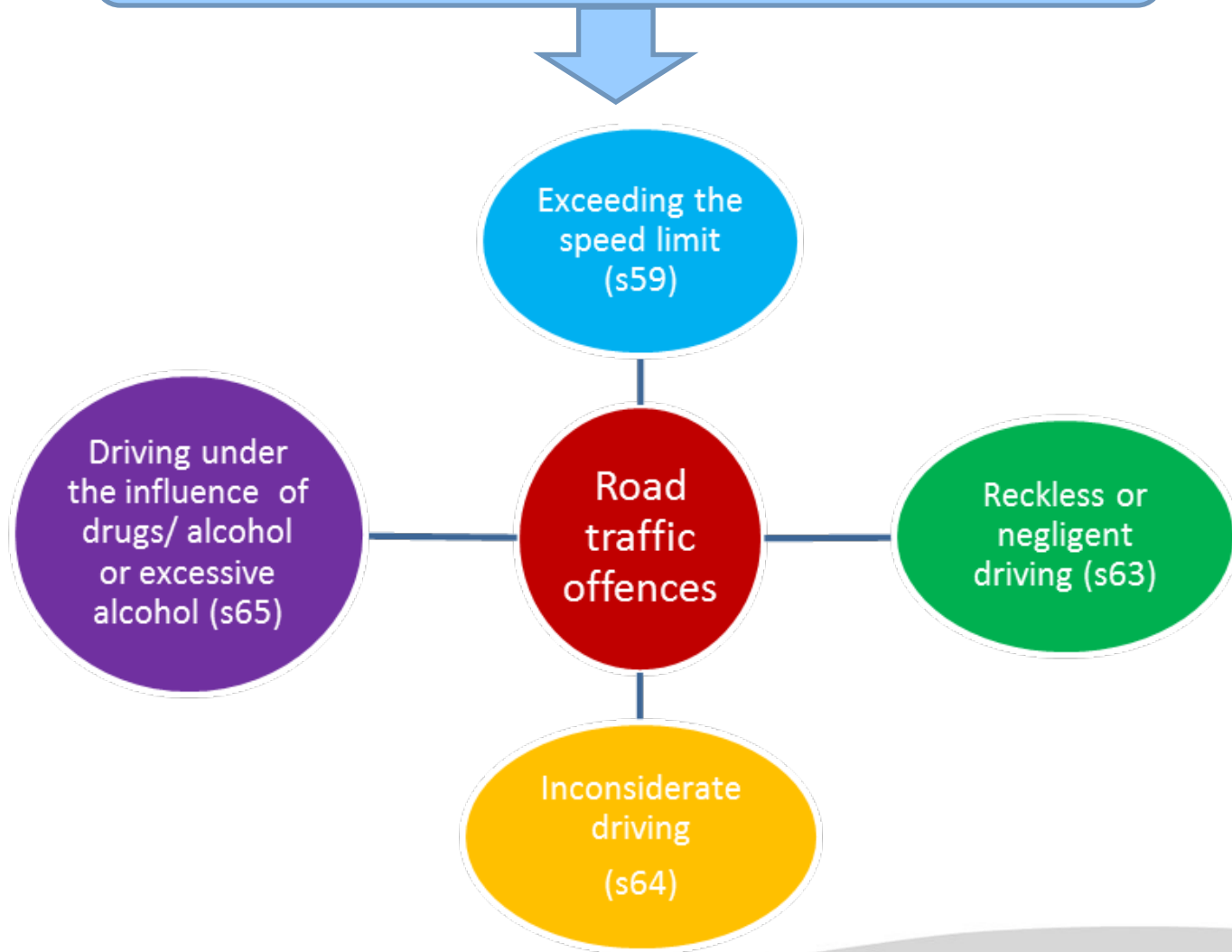
4.

- Is otherwise authorised to do so

- Section 91(1) provides that the holder of a licence to possess a firearm may not possess more than 200 cartridges for each firearm in respect of which she holds a licence



Road Traffic Offences



Driving in excess of speed limit



Elements of speeding:

- (1) Driving – what is driving, a driver?
- (2) Vehicle – what is a vehicle?
- (3) Public road – what is a public road?
- (4) In excess of speed limit – what is the speed limit?
- (5) Unlawfulness – exceptions?
- (6) Culpability – strict liability?



Reckless or negligent driving



Section 63 of the NRTA:

- (1) **No person shall drive a vehicle on a public road recklessly or negligently.**
- (2) Without restricting the ordinary meaning of the word “recklessly” any person who drives a vehicle in **wilful or wanton disregard** for the **safety of persons or property** shall be deemed to drive that vehicle recklessly.
- (3) In considering whether subsection (1) has been contravened, the court shall have regard to all the circumstances of the case, including, but without derogating from the generality of subsection (1) or (2), the **nature, condition and use of the public road** upon which the contravention is alleged to have been committed, the **amount of traffic** which **at the relevant time** was or which could reasonably have been expected to be upon that road, and the **speed** at and **manner** in which the vehicle was driven.

Inconsiderate driving



Elements:

- (1) Driving – what is driving, a driver?
- (2) Vehicle – what is a vehicle?
- (3) Public road – what is a public road?
- (4) Without reasonable consideration – what is reasonable and considerate?
- (5) Unlawfulness – grounds of justification?
- (6) Culpability – intention or negligence



Driving under the influence of intoxicating liquor or drugs with a narcotic effect



Elements:

- (1) **Driving** – what is driving, a driver?
- (2) **Vehicle** – what is a vehicle?
- (3) **Public road** – what is a public road?
- (4) **Under the influence of intoxicating alcohol/drugs with a narcotic effect** – what is skill, judgement, narcotics?
- (5) **Unlawfulness** – grounds of justification?
- (6) **Culpability** – intention or negligence



Driving with excessive alcohol in the blood



Elements:

- (1) Driving – what is driving, a driver?
- (2) Vehicle – what is a vehicle?
- (3) Public road – what is a public road?
- (4) Blood alcohol – what is excessive amounts of alcohol?
- (5) Unlawfulness – grounds of justification?
- (6) Culpability – intention or negligence



Additional offences relating to driving



Look at these offences in SG 71-72!!
Remember case law !

STUDY UNIT 4

SEXUAL CRIMES

(SG 77 – 111)

- The Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 has revamped the laws on sexual offences

Rape is now defined as:

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 (s3)

In General

1. Sexual penetration is very broad and includes penetration of genital organs, a person's anus or mouth and includes penetration by genital organs, part of the body of one person, objects and the genital organs of animals (see p 81 for more detail)
2. Consent is defined as:

“voluntary or uncoerced agreement”

- Consent will be invalid if due to:

Force,
intimidation or
threats

Where Y is unable to
appreciate the nature
of the act eg asleep,
child under 12,
mentally disabled

Abuse of
power/authority

Under false pretences/
fraudulent means ie
nature or identity NOT
results of act (HIV?)

? Self assessment/ Activity



- Define rape (See SG 80)
- Who can be a perpetrator of rape and who can be a victim? (See SG 80)
- When is consent deemed to be invalid? (See SG 81 – 84)
- Unlawfulness - when can it be excluded? (See SG 85)
- Culpability – intention – which forms? (See SG 85)

Compelled rape

Definition:



Any person (X) who unlawfully and intentionally compels a third person (Z) without his/ her (Z's) consent to commit an act of sexual penetration with a complainant (Y) without (Y's) consent is guilty of the offence of compelled rape.

Sexual assault

Definition: A person (X) who unlawfully and intentionally sexually violates a complainant (Y) without the consent of Y or inspires a belief in a complainant (Y) that Y will be sexually violated is guilty of the offence of sexual assault (s5)

Note: Sexual violation includes a number of acts which cause direct or indirect contact - see SG p89-91!!!



Compelled sexual assault

Definition: A person who unlawfully and intentionally compels a third person to commit an act of sexual violation with a complainant (Y) without his/ her consent, is guilty of the offence of compelled sexual assault (s6)

See the definition of compelled self-sexual assault in SG p93!!!



- Sexual offences against persons 18 years or older include:

1. Forcing such persons to witness sexual offences, sexual acts with another or self-masturbation
2. Flashing
3. Exposure or display of child pornography
4. The engagement of such persons in sexual services

See SG 94 – 95!!!



Incest

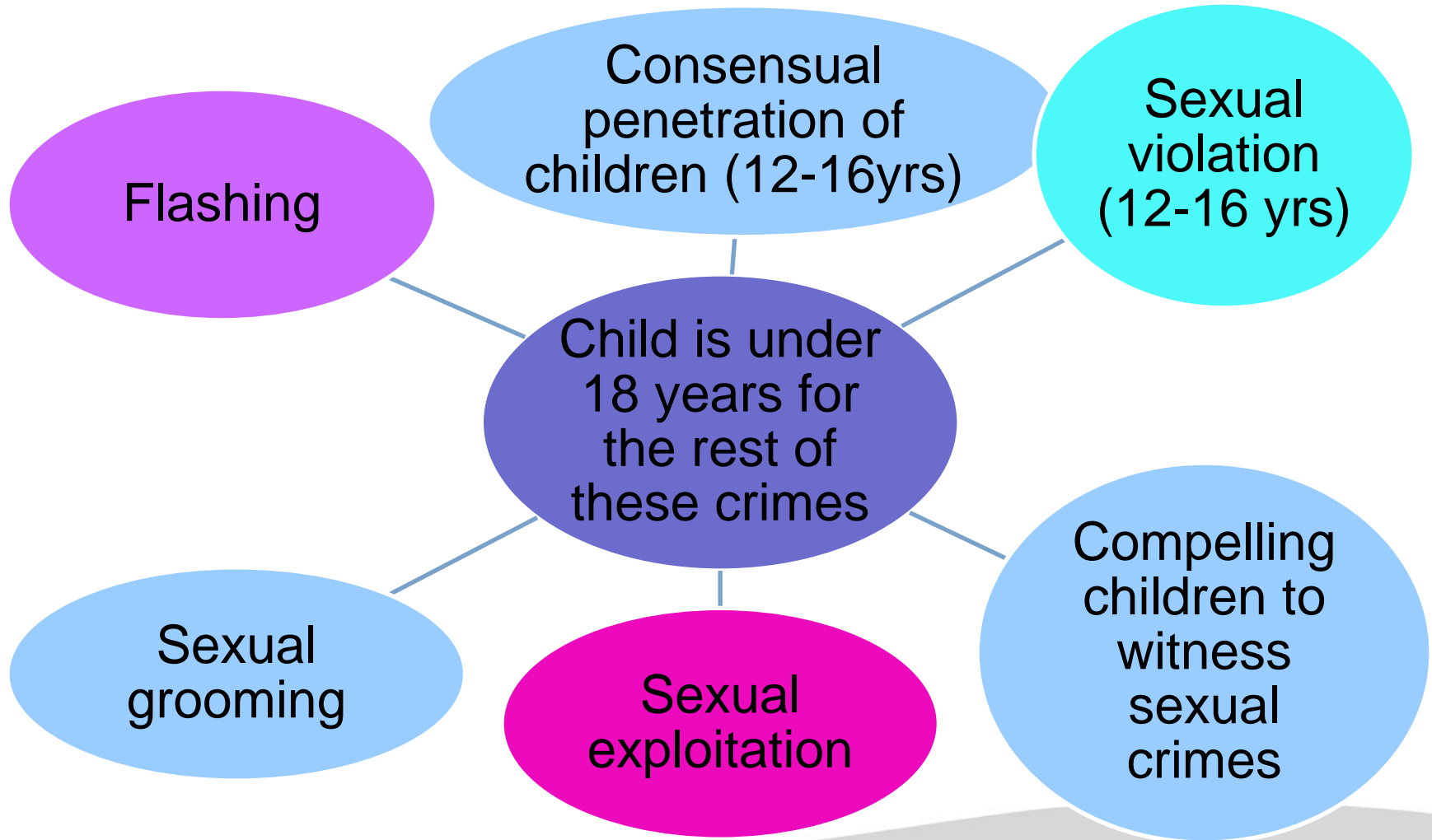
- Definition: Persons who may not lawfully marry each other on account of consanguinity (blood relationship), affinity (by marriage) or an adoptive relationship and who unlawfully and intentionally engage in an act of sexual penetration with each other are despite their mutual consent to engage in such act guilty of the offence of incest



Self study: See the definition of bestiality
SG pp 97

Sexual offences against children

See detail in SG pp 97 – 105



Consensual penetration (Statutory rape) (Child:12 – 16 years)

Two defences:

X deceived about
his or her (Y's) age
(reasonable)

X and Y both
children and age
difference not more
than 2 years

Other sexual offences include:

1. Offences against the mentally disabled
2. A failure to report sexual offences against children and mentally disabled persons
3. Trafficking in persons for sexual purposes
4. Attempt, conspiracy and incitement to commit sexual offences



(See SG pp106 – 108 for detail)

STUDY UNIT 5

CRIMES AGAINST LIFE AND POTENTIAL LIFE

(SG 115- 119)

Murder:

Is the unlawful, intentional causing of the death of another human being

? Can a foetus be murdered?
See *Mshumpa* case

? Must life imprisonment always be imposed?

Culpable homicide

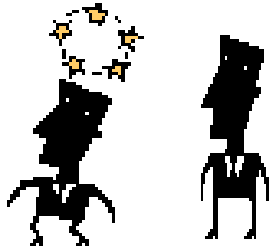
Is the unlawful, negligent causing of the death of another human being



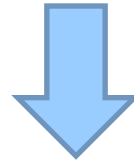
STUDY UNIT 6

CRIMES AGAINST BODILY INTEGRITY

(SG 121 -131)



Assault



- Definition: A person commits assault if he/she unlawfully and intentionally
 1. applies force, directly or indirectly, to the person of another, or
 2. inspires a belief in another person that force is immediately to be applied to her

In General

1. The application of force can be direct (e.g. punching someone) or indirect (eg. setting a dog on another person)
2. Includes the inspiring of fear in another
3. Can attempted assault be committed?
Yes. Eg if Y does not understand the threat or is oblivious to it
4. What is assault with the intent to commit grievous bodily harm? See Snyman 453 – 454!
5. What is assault with intent to commit another crime? See Snyman 454!



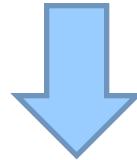
Pointing of a firearm (S120(6) of the Firearms Control Act 60 of 2000)

- Definition: it is an offence to point:
 - (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.
- ① A firearm means any device manufactured or designed to propel a bullet or projectile through a barrel or cylinder by means of burning propellant.

STUDY UNIT 7

CRIMES AGAINST DIGNITY, REPUTATION AND FREEDOM OF MOVEMENT (SG 133-143)

Crimen iniuria



Definition: is the unlawful, intentional and serious infringement of the dignity or privacy of another

What is the difference between *crimen iniuria* and criminal defamation?

<i>Crimen iniuria</i>	Criminal defamation
<ol style="list-style-type: none">1. Violations of a person's dignity and privacy = punishable2. 2 parties involved	<ol style="list-style-type: none">1. Violations of a person's good name or reputation is punishable (publication does not have to be in print – it must come to the attention of people other than Y)2. 3 parties involved

Crimen inuria: In General

- Dignity = self-respect, mental tranquility
- Privacy can be infringed without Y being aware of the infringement eg X watches Y undressing
- Can lead to a civil claim and criminal prosecution
- Subjective and objective elements of infringement:

Subjective

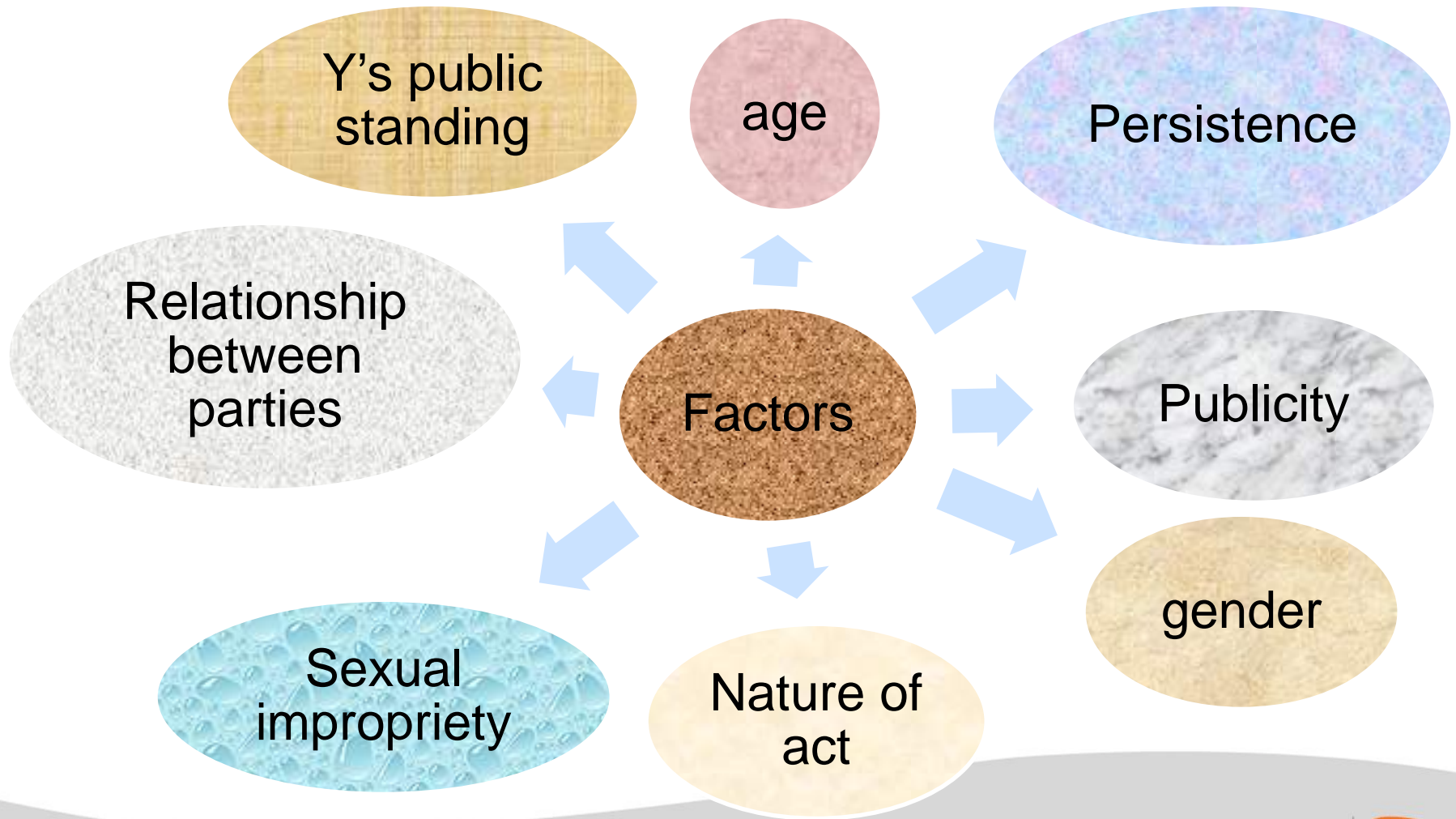
With the infringement of dignity Y must be aware of X's offending behaviour and feel degraded or humiliated by it (differs from the rule for privacy i.e. need not be aware of X's conduct)
Exception: children/mentally disabled

Objective

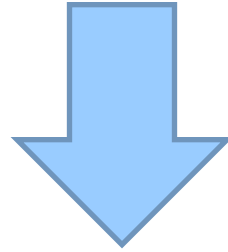
X's conduct must offend at least the feelings of a reasonable person i.e. not a hypersensitive person

- The infringement must be serious
- Grounds of justification are consent, necessity, official capacity

Factors to take into account are:



Criminal defamation



Definition: Is the unlawful and intentional publication of matter which concerns another which tends to seriously injure his reputation

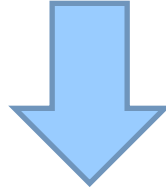
Abduction



Common law Abduction:

If a person unlawfully and intentionally removes an unmarried minor from the control of his/ her parents or guardian, without their consent, intending that he or she, or somebody else, may marry or have sexual intercourse with the minor

Kidnapping



Definition: 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.

STUDY UNIT 8

THEFT

(SG 153 – 171)

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

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

Provided that the intention to appropriate the property includes an intention permanently to deprive the person entitled to the possession of the property, of such property

Different forms of theft

- **Removal of property**

Removes property belonging to someone else and appropriates it

- **Embezzlement**

X appropriates another's property already in X's possession (SG 8.7)

- **Arrogation of possession**

X removes her own property which is in the lawful possession of another (SG 8.8)



Act of appropriation

1. Depriving the lawful owner of her property

- Negative component (excluding Y from the property)

2. Exercising the rights of an owner in respect of the property

- AND
- Positive component (X's actual exercise of the rights of an owner in respect of the property)

In General



1. Fine line between attempted and completed theft

2. Ask: When X was caught had Y lost control over the property and had X gained control over the property?

3. The property must be movable, corporeal (see exceptions SG 161), available in commerce

4. Unlawfulness: consent is a ground of justification

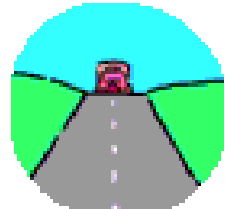
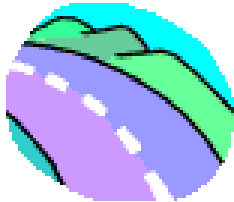
5. Intention to appropriate and to permanently deprive the owner of her property

6. It is not required that X keep the property for himself



Is temporary deprivation of property theft?

- No! *Furtum usus* is not a form of theft (but section 1 of Act 50 of 1956 creates an offence where property is unlawfully removed for temporary use). There must be an intention to permanently deprive the owner of her property (*Sibiya* case)





Self assessment

- X is a doctor who takes possession of four microscopes belonging to the Botswana government without their consent. He intends to return the microscopes to them if they will drop certain charges against him. Explain whether X commits theft with regard to the general requirements of liability for theft. (6)

? ? ? Did you answer this question correctly ? ? ?



Answer: Theft includes the unlawful and intentional appropriation of moveable corporeal property which belongs to another but which is in the perpetrators own possession (embezzlement)(1). Must be an act of appropriation where the lawful owner is deprived of the property(1) and the rights of an owner are exercised in respect of the property(1). Unlawfulness means the owner must not consent and there must be no grounds of justification (1). There must be the intention to permanently deprive the owner of his or her property. *Furtum usus* is no longer a form of theft ito *Sibiya*.(1) After *Sibiya* the legislature created an offence ito section 1 of Act 50 of 1956 which punishes the unlawful removal of another's property for temporary use.(1) This case above in the problem question is an exception to the rule in section 1 Act 50 of 1956 (*Van Coller*). X is not guilty as lacks the intention to deprive the owner of the full benefit of the ownership (1) - See SG 164 d2. (6)

STUDY UNIT 9

ROBBERY AND RECEIVING STOLEN PROPERTY

(SG 173 – 179)

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



1. Violence to take the property from another or
2. Threats of violence to induce the other person to submit to the taking of the property

Study:

Ex parte Minister of Justice: in re R v Gesa; R v de Jongh



In General

1. There must be a causal link between the violence/ threats of violence AND the acquisition of property
2. If X steals something from Y and uses violence to retain the property = theft + assault
3. The violence does not have to precede the acquisition but there must be a close connection between the theft and violence that it can be seen as one and the same act
4. Is handbag snatching robbery?
(*Sithole* case – SG 9.1.7) 
5. Does the property have to be on the victim's person or in her presence?
(*Ex parte Minister van Justisie: in re S v Seekoei* SG 9.1.8.) 



Self study

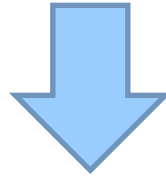
- Punishment for robbery (SG 9.1.9)
- Receiving stolen property (Snyman pp 512 – 514)
- Definition: A person commits the crime of receiving stolen property knowing it to be stolen if he unlawfully and intentionally received into his possession property knowing at the time that he does so that it has been stolen

STUDY UNIT 10

FRAUD AND RELATED CRIMES

(SG 181 -191)

Fraud



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

In General

A mere false promise as to the future is not a misrepresentation

Express/ Implied

Misrepresentation (deception by means of a falsehood)

Commissio or omissio
(omission: must be a legal duty by statute or other considerations)

Can be in any form
eg writing or nod of the head

Meaning of prejudice

1. Can be actual or potential
2. Can be proprietary or non-proprietary in nature
3. “Potential” means:
 - Risk of prejudice or likely to prejudice (need not be a probability but only a possibility)
 - Must not be too remote or fanciful
 - Need not necessarily be suffered by representee
 - It is irrelevant whether Y was misled by the prejudice or not
 - As potential prejudice is sufficient it is unnecessary to require a causal link between the misrepresentation and the prejudice



Self assessment

- What is the difference between intention to deceive and intention to defraud? SG 10.1.6
- Is there a crime such as attempted fraud? Yes. See SG 10.1.7 and *Heyne* case.
- Discuss the elements of unlawfulness and intent in the crime of fraud. See SG 10.1.5. and 10.1.6.
- In the crime of fraud, the misrepresentation may be made through either a *commissio* (a positive act) or an *omissio* (omission). Discuss. SG 10.1.3
- What is the definition of forgery and uttering?



Unlawful and intentional making of a false document to the actual or potential prejudice of another!

Snyman on pp 532 – 535!

- Define theft by false pretences. SG 10.3.1
- You must be able to explain what theft by false pretences is. SG 10.3.3.

STUDY UNIT 11

CRIMES RELATING TO DAMAGE TO PROPERTY (SG 193 – 196)

Malicious injury to property



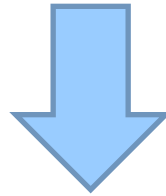
Definition: it consists in unlawfully and intentionally

- (1) Damaging property belonging to another person
- (2) Damaging one's own insured property with the intention of claiming the value of the property from the insurer

In General

1. The property must be corporeal and can be movable or immovable
2. Damage includes the total or partial destruction of the property
3. The unlawfulness can be justified by statutory provisions, necessity, official capacity, consent by the owner
4. There must be intention

Arson



Definition: A person commits arson if he unlawfully and intentionally sets fire to:

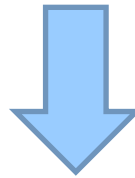
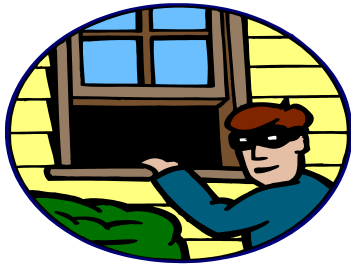
- (a) Immovable property belonging to another
or
- (b) His own immovable insured property, in
order to claim the value from the insurer

STUDY UNIT 12

HOUSEBREAKING WITH THE INTENT TO COMMIT A CRIME

(SG 199 – 204)

Housebreaking with the intent to commit a crime



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

In General

1. It is not a requirement that actual damage be caused
2. There only needs to be the removal or displacement of an obstacle which bars entry to the building and which forms part of the building itself
3. A building or structure can be any structure which might be used for human habitation (immovable or movable) or for the storage or housing of property (immovable only)
4. It must be unlawful
5. X must have the intention to unlawfully break into and enter the house or structure and must have the intention of committing some other crime inside



Self Assessment

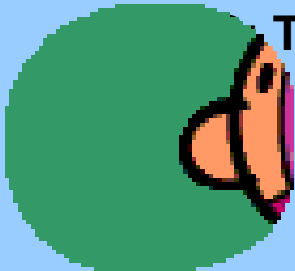
A, B and C are criminals who break into all sorts of structures with the aim to steal. One December evening they hit on a wealthy neighbourhood where most of the inhabitants are on vacation. A breaks into a store-room of a private residence and removes some gardening equipment. B breaks the window of a car which is parked further down the road, and removes the radio. In the next block, C breaks into a caravan which is parked under a shelter. He removes all the bedding from the caravan. A, B and C are apprehended by the police. Can A, B and C, respectively, be successfully prosecuted for **housebreaking with the intent to commit theft**? (5)

Answer: See SG 16.4

- The principle advocated by De Wet & Swanepoel and Snyman: If the structure or premises is used for the storage of goods, it must be immovable (1), but if it is used for human habitation, it does not matter whether it is movable or immovable (1).
- A can be convicted, the store-room being used for the storage of goods and being immovable (1).
- B cannot be convicted, the car being neither immovable, nor used for human habitation (1).
- C can be convicted. The courts accept that a caravan does qualify as a structure, even if the breaking-in takes place at a time when nobody is living in it (*Madyo; Temmers*), but that it does not qualify if, although it cannot be moved, it is used merely for the storing of goods (*Jecha*). (1) (5)



THANK YOU FOR YOUR PARTICIPATION!



**These notes are merely supplementary and must be used
in conjunction with all your prescribed material!!!**