

Tutorial Letter 102/3/2015

Criminal Law: Specific Offences

CRW2602

Semesters 1 and 2

Department of Criminal and Procedural Law

This tutorial letter contains important information about your module.

Bar code

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Dear Student

We hope that you have already familiarised yourself with the first tutorial letter, as well as with the study guide and prescribed texts. Please remember that all these tutorial letters are very important and should be read carefully.

In this tutorial letter, we will be discussing the format of the examination that you will be writing in May/June or October/November 2015. In order to assist you to prepare for these exams we have supplied you with the examination paper from November 2014.

The model answers to these questions follow the exam paper, so that you will be able to check your own answers when you prepare for the exam. The feedback also serves as an example of what we would expect in your answers if you were to be asked similar types of questions.

We will also supply you with information regarding your tutorial letters and discussion classes.

1 Format of the examination paper 2015

The format of the examination papers for the May/June and October/November 2015 examinations will essentially be the same as that of the October/November 2014 paper.

2 October/November 2014 examination paper

Below we provide you with the October/November 2014 examination paper. The correct answers to the questions in this paper follow in the next section.

If you have enrolled for this module for the first time, you will only fully understand the answers and the feedback on the examination paper once you have studied the different topics dealt with in the examination paper. We recommend that you refrain from reading the feedback until you have studied the relevant topics. However, if you took this course last semester, you will find the feedback valuable, since you will have covered most of the work already. If you wrote this paper in November 2014, but failed it and are now repeating the module, you should read both the answers and the feedback carefully to see where you went wrong in the examination.

NB: You will notice that there were questions in the October/November 2014 paper on participation in crime and inchoate crimes, such as attempt and conspiracy. These topics previously formed part of this second module, CRW2602 (Specific Offences). The revised study guides for 2015 have been amended to include the abovementioned topics in the module for CRW2601 because these topics relate more to the general principles of criminal law than to specific offences. The CRW2602 module has been amended to include only a discussion of specific offences. Therefore, this module (CRW2602) contains new prescribed study material that was not covered in the 2014 examination paper. Please keep that in mind when you consider the examination paper below.

UNIVERSITY EXAMINATIONS

UNIVERSITEITSEKSAMENS

**CRW2602**

(470102)

October/November 2014

CRIMINAL LAW: SPECIFIC CRIMES

Duration : 2 Hours

100 Marks

EXAMINERS :

FIRST :

SECOND :

DR N MOLLEMA

PROF C VAN DER BIJL

MR RD RAMOSA

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 EIGHT (8) PAGES PLUS INSTRUCTIONS FOR COMPLETION OF A MARK READING SHEET.

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

PART A (MULTIPLE CHOICE QUESTIONS)

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

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

Question 1

- (a) A **participant** is anyone who does something, in whatever manner, whereby he **further**s the commission of the crime.
 - (b) The distinction between a principal offender and other perpetrators is not important for the purposes of liability but it is important in the assessment of punishment.
 - (c) Where A enters a house and shoots and kills Y while B merely keeps guard outside the house, both can be regarded as co-perpetrators in the commission of the murder.
- (1) Only statements (a) and (b) are correct.
 - (2) Only statements (b) and (c) are correct.
 - (3) All the statements are correct.
 - (4) Only statement (a) is correct.
 - (5) None of the statements is correct.

Question 2

- (a) An accomplice is defined as somebody who does not commit the crime with his own hands.
 - (b) The crucial requirement of the doctrine of common purpose is that the different accused should have had the same purpose.
 - (c) If one approves of or ratifies another's criminal deed which has already been completed, one could be held criminally liable on the basis of active association.
- (1) None of the statements is correct.
 - (2) Only statements (a) and (c) are correct.
 - (3) Only statement (a) is correct.
 - (4) Only statement (b) is correct.
 - (5) Only statements (b) and (c) are correct.

Question 3

- (a) If Z assaults Y after Y has **already died** from the injuries inflicted by X or his associates, Z cannot be convicted of any offence.
 - (b) Liability as an accomplice is known as accessory liability.
 - (c) One may be an accessory after the fact on the ground of an omission.
- (1) Only statements (a) and (b) are correct.
 - (2) All the statements are correct.
 - (3) Only statements (b) and (c) are correct.
 - (4) Only statement (a) is correct.
 - (5) Only statement (b) is correct.

Question 4

- (a) If X is apprehended while trying to set alight his neighbour's house, he can be found guilty of attempted arson.
 - (b) If two or more persons unite in an organisation with the declared purpose of committing a crime or crimes, they must be in direct communication with each other for the purpose of the crime of conspiracy.
 - (c) A person may be convicted of incitement only if there is proof that he had persuaded the incitee to commit the crime.
- (1) All the statements are correct.
 - (2) Only statement (b) is correct.
 - (3) Only statements (a) and (b) are correct.
 - (4) Only statement (a) is correct.
 - (5) Only statements (b) and (c) are correct.

Question 5

- (a) Public violence is a crime committed with common purpose.
 - (b) The false declaration made under oath in the crime of common-law perjury must be subjectively false.
 - (c) The crime of defeating or obstructing the course of justice may be committed even though there is no pending case.
- (1) Only statements (a) and (c) are correct.
 - (2) Only statement (a) is correct.
 - (3) Only statements (a) and (b) are correct.
 - (4) Only statement (c) is correct.
 - (5) All the statements are correct.

Question 6

- (a) Mere criticism of the prosecution in a criminal case will be sufficient to establish contempt of court *ex facie curiae*.
 - (b) If one loudly sings praise songs in a courtroom after being acquitted at the end of a trial, one cannot be convicted of contempt of court *in facie curiae*, as there was no intent to violate the dignity of the court.
 - (c) For the crime of scandalising the court to be committed, it must be likely that the publication can bring the administration of justice through the courts into disrepute.
- (1) None of the statements is correct.
 - (2) Only statements (a) and (b) are correct.
 - (3) Only statement (a) is correct.
 - (4) Only statements (b) and (c) are correct.
 - (5) Only statement (c) is correct.

Question 7

- (a) A person used as police trap does not commit the crime of corruption if he agrees to receive gratification from another person in order to trap that person into committing corruption.
 - (b) If someone corrupts a judicial officer, the conduct can be punished as both corruption and contempt of court.
 - (c) Although section 91(1) of the *Firearms Control Act 60 of 2000* 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 he holds a licence, it provides that a dedicated sports person may possess more cartridges than stipulated.
- (1) Only statement (b) is correct.
 - (2) Only statements (a) and (b) are correct.
 - (3) Only statement (c) is correct.
 - (4) Only statements (a) and (c) are correct.
 - (5) All of the statements are correct.

Question 8

- (a) If Y is misled by X that having sexual intercourse with him (X) will cure her (Y) of her infertility, X can be guilty of rape as there is no valid consent.
 - (b) Common-law abduction protects the rights of parents to consent to the marriage of their minor children, as well as to exercise control over where they stay.
 - (c) According to *Chretien* 1981 (1) SA 1097 (A), intoxication may lead to X's lacking the intention to assault, in which case X must be found not guilty of the crime of assault.
- (1) Only statement (b) is correct.
 - (2) Only statements (b) and (c) are correct.
 - (3) None of the statements is correct.
 - (4) Only statement (a) is correct.
 - (5) Only statements (a) and (b) are correct.

Question 9

- (a) If X attempts to assault Y but his blow misses Y, he (X) can be guilty of completed assault provided he intentionally inspired a belief in Y that force was immediately to be applied to him.
 - (b) Y's right to dignity can be infringed even without Y's being aware of the infringement (as where X watches Y undressing).
 - (c) The violation of Y's dignity is more serious if she is insulted by a stranger, than when she is insulted by her husband or boyfriend during the course of a domestic argument.
- (1) None of the statements is correct.
 - (2) Only statement (b) is correct.
 - (3) Only statements (a) and (c) are correct.
 - (4) Only statement (a) is correct.
 - (5) Only statement (c) is correct.

Question 10

- (a) If X, intending to steal a chocolate in a self-service shop, conceals it in her handbag but is apprehended with the article before leaving the shop, she may be found guilty of attempted theft only as she is still in the shop.
 - (b) If X steals something from Y, and then uses violence to retain the property, X does not commit robbery but the crimes of theft and assault.
 - (c) In the crime of robbery where X threatens Y with violence if he does not hand over the property, it is not a requirement that there must be a causal link between the threats of violence and the acquisition of property.
- (1) None of the statements is correct.
 - (2) Only statement (b) is correct.
 - (3) Only statement (a) is correct.
 - (4) Only statement (c) is correct.
 - (5) Only statements (a) and (b) are correct.

SUB-TOTAL: [30]

PART B

THIS PART CONSISTS OF THREE QUESTIONS. EACH QUESTION IS SUBDIVIDED INTO A NUMBER OF SUB-QUESTIONS. YOU MUST ANSWER ALL THREE QUESTIONS. SUBSTANTIATE YOUR ANSWERS AND REFER TO DECIDED CASES WHERE NECESSARY. IN DECIDING UPON THE LENGTH OF YOUR ANSWERS YOU SHOULD BE GUIDED BY THE MARKS ALLOCATED TO EACH QUESTION.

Question 1

A, B, C and D are members of a rebel group trying to overthrow the government. D pretends as if he supports the group's cause but is a police informant. In an effort to make the government take notice of them, the group plan to take children from a rural school hostage. They will only release the children if their demands are met. One night, A, B, C and D break into the school and hold the children captive. They force the school principal to open the school safe and take all the money in the safe. A suggests that they kill the principal to show the government how serious they are. C and D do not want to partake in the killing of the principal and decide to leave. A and B then shoot and kill the principal. They load all the children onto trucks and set the school building on fire. At that moment, the police – who were informed by D about the plan - arrive. A and B are arrested on the spot. C and D are apprehended the next day.

- (a) Discuss whether A, B, C and D may all be convicted of **murder** in respect of the killing of the school principal. In your answer, you must discuss the basis of their possible liability in detail and also refer to relevant case law. (10)

- (b) Can A, B, C and D be convicted of the following offences?
- (i) **Robbery** or only **attempted robbery**. In your answer you must set out the elements of the crime of robbery. (5)
 - (ii) **Housebreaking with intent to commit a crime**. Also give the definition of the crime. (3)
 - (iii) **Common-law abduction**. In your answer, also give the definition of the crime. (3)
 - (iv) **Arson**. Explain how the crime of arson differs from **malicious injury to property**. (4)
- (c) Discuss **ONE** of the following decisions:
- (i) *Motaung* 1990 (4) SA 485 (A)
 - (ii) *Hlatwayo* 1933 TPD 441 (5)
- [30]**

Question 2

X is a pimp who operates from a seedy hotel in an unsavoury neighbourhood. He keeps the women who work for him locked up in their rooms by day, and follows their every move at night while they are selling their services. He also gives them drugs to keep them under his control. They receive no compensation for their services. X takes naked photos of the women in compromising positions, and threatens to send the photos to their families if they try to leave the premises or disobey him. To keep the women in line, X is assisted by Z, a police officer, who informs him ahead of time about planned raids on the hotel. X and Z have an agreement that Z will receive five percent (5%) of the money made from the brothel's services.

There is a demand for younger girls by X's clientele. As such, X places an advertisement in a newspaper for job opportunities for young girls as baby sitters. Y, a fourteen-year-old girl, sees the advertisement and applies for the job. X arranges to meet Y in the hotel, whereupon he overpowers her and locks her in a room. Y manages to climb through a broken window and runs away.

- (a) In terms of section 71 of the *Criminal Law (Sexual Offences and Related Matters) Amendment Act* 32 of 2007, with which offence may X be charged? Give a short description of the crime. (4)
- (b) Can X be charged with the use, possession or dealing of drugs in terms of the *Drugs and Drugs Trafficking Act* 140 of 1992? In your answer, you must provide the elements of the offence. (4)
- (c) Can X be charged with kidnapping or attempted kidnapping? Also give the definition of the crime of kidnapping in your answer. (4)
- (d) Can X be charged with the crime of extortion? In your answer, you must give the elements of the offence. (4)

- (e) Can X be charged with fraud? In your answer, you must give the elements of the offence. (4)
- (f) Discuss whether X may be charged with 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)
- [25]**

Question 3

- (a) The following statements refer to various crimes. Indicate whether these statements are correct or incorrect. Give a reason for your answer:
- (i) A putative crime is an impossible attempt concerning a mistake regarding the presence of certain material facts.
 - (ii) Contempt *in facie curiae* is committed by publishing information or commentary calculated to influence the outcome of a case that is still *sub iudice*.
 - (iii) The offence of pointing a firearm consists of pointing the loaded firearm or article at somebody else.
 - (iv) A person's good name or reputation can be harmed only if the conduct or words complained of come to the notice of someone other than the victim, in other words, if publication takes place.
 - (v) A person who commits the crime of receiving stolen property renders himself, at the same time, guilty of being an accessory after the fact to theft. (10)
- (b) X's drill is out of order. He takes his neighbour Y's drill without his (Y's) consent. X drills holes in the walls of his house with Y's drill. He plans to put it back in Y's garage the next day while Y is at work. In the meantime, he stores the drill on the porch at the back of his (X's) house. During the night, the drill is stolen from X's premises. X is charged with theft. At the trial his attorney argues that X cannot be convicted of theft because he did not have the intention to appropriate. Explain whether this argument is correct. (5)

[15]

SUB-TOTAL: [70]

TOTAL: [100]

3 Feedback on October/November 2014 examination paper

Below is the feedback on the exam supplied above.

We have found that most students provide extremely superficial answers in the examination. Therefore, we advise you to complete the given examination paper on your own as a form of self-assessment. Test whether you are able to identify the relevant sections of the work. Plan and structure your answers. Look, especially, at the length of each answer and how much time you need to allocate to each answer. Then compare your answers with those in this feedback. This exercise will indicate exactly what is expected of you in the examination.

The following abbreviations are used:

SG – Study Guide for CRW2602

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

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

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**)

See *Case Book* 194.

Students had to give a brief account of the 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.**)

See *Case Book* 225.

Students had to give a brief account of the 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.

4 Group discussion classes

Please note that **NO** group discussions will be offered in this module in 2015.

5 Number of tutorial letters

You will receive a total of **FOUR** (4) tutorial letters this semester. You received the first letter (101) when you registered. In addition to this tutorial letter you are reading now (TL 102), you will receive a third tutorial letter (TL 201), which will provide the answers to the first compulsory assignment. The final tutorial letter (TL 202) will provide feedback 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 **CRW2602-15-S1**, at the Official Study Material link.

We wish you success in your studies!

Regards

Prof C van der Bijl
Prof L Jordaan
Mr R Ramosa

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