Tutorial Letter 102/1/2017

Criminal Law: General Principles

CRW2601

Semester 1

Department of Criminal and Procedural Law

This tutorial letter contains important information about your module.
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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 you will be writing in May 2017. In order to assist you with preparation for these exams, we provide you with the exam paper written last year in November.

Feedback on the questions in the 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.

There is information on discussion classes that will be conducted by the lecturers during the semester.

We also alert you to important amendments to the study material, 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 examination 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 at “Previous exam papers” under the course code CRW2601 on 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 are now repeating the module, you should read both the answers and the feedback carefully, in order to see where you went wrong in the examination.
This paper consists of eight (8) pages plus the instruction for the completion of a mark reading sheet.

THE QUESTIONS IN THIS PAPER COUNT 100 MARKS. THE PAPER CONSISTS OF TWO PARTS, MARKED A AND B. YOU MUST ANSWER BOTH PART A AND PART B. PART A CONSISTS OF TEN MULTIPLE-CHOICE QUESTIONS. YOU MUST FILL IN THE ANSWERS TO THESE QUESTIONS ON THE MARK-READING SHEET. THE CORRECT ANSWER FOR EACH OF THESE QUESTIONS COUNTS THREE MARKS. THIS MEANS THAT THE QUESTIONS IN PART A COUNT A TOTAL OF 30 MARKS. IN PART B, THE ANSWERS TO THE QUESTIONS MUST BE WRITTEN IN THE EXAMINATION ANSWER BOOK. THE QUESTIONS IN PART B COUNT 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. 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) The principle of legality is also known as the *nullem crimen sine lege* principle.

(b) At the heart of the principle of legality is the fundamental consideration that the individual ought to know beforehand precisely what kind of conduct is criminal so that he can avoid contravening provisions of the criminal law.

(c) An investigation into the presence of the four general requirements for a crime, namely conduct, which complies with the definitional elements of the crime and which is unlawful and culpable, need not follow a certain sequence.

(1) Only statement (a) is correct.
(2) Only statements (b) and (c) are 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) The Constitution of South Africa contains no express provision as regards the *ius certum* principle.

(b) The *ius strictum* principle implies that a court is not authorised to extend a crime’s field of application by means of analogy to the detriment of the accused.

(c) The *ius acceptum* principle refers to statutory crimes only.

(1) Only statement (c) is correct.
(2) Only statement (b) is correct.
(3) Only statements (b) and (c) are correct.
(4) Only statements (a) and (b) are correct.
(5) Only statements (a) and (c) are correct.
Question 3

(a) In cases of “sane” automatism the onus is on the state to prove that the act was voluntary.

(b) The unlawfulness of an act is determined with regard to the perpetrator’s state of mind.

(c) X cannot succeed with a defence of impossibility if he himself is responsible for the situation of impossibility.

(1) Only statement (a) is correct.
(2) Only statements (a) and (b) are correct.
(3) Only statements (a) and (c) are correct.
(4) Only statement (c) is correct.
(5) Only statement (b) is correct.

Question 4

(a) A soldier who acts in the execution of an order can never be held criminally liable for a crime.

(b) In Christian Education South Africa v Minister of Education 2000 (4) SA 757 (CC), the Constitutional Court held that the prohibition on corporal punishment laid down in section 10 of the South African Schools Act 84 of 1996 applies to state schools as well as private schools.

(c) The words “mental illness” refer to a pathological disturbance of the mental faculties.

(1) Only statements (a) and (b) are correct.
(2) Only statement (a) is correct.
(3) Only statement (c) is correct.
(4) Only statements (b) and (c) are correct.
(5) All the statements are correct.
Question 5

(a) A mistake need not be reasonable to exclude intention.

(b) A mistake can exclude intention if it relates to the requirement of an act, a requirement contained in the definitional elements, or the unlawfulness requirement.

(c) A mistake relating to the chain of causation can only occur in the context of materially defined crimes.

(1) Only statements (a) and (b) are correct.
(2) Only statements (b) and (c) are correct.
(3) Only statement (c) is correct.
(4) Only statements (a) and (c) are correct.
(5) All the statements are correct.

Question 6

(a) The case of *Masilela* 1968 (2) SA 558 (A) constitutes an apparent exception to the general rule that the unlawful act and the culpability must have existed at the same moment.

(b) The conative element of the term “criminal capacity” deals with X’s ability to exercise self-control.

(c) In *Fourie* 2001 (2) SACR 674 (C), the court confirmed the principle that the test to determine unlawfulness is the *boni mores* or legal convictions of the community.

(1) Only statements (a) and (b) are correct.
(2) Only statements (b) and (c) are correct.
(3) Only statement (c) is correct.
(4) All the statements are correct.
(5) Only statements (a) and (c) are correct.
Question 7

(a) Since putative private defence is not real private defence, it cannot exclude X's culpability.

(b) For X to succeed with a defence of private defence, his defensive act must have been directed against an attack that has already been completed.

(c) A parent's chastisement of a child by means of corporal punishment is justified provided that it is reasonable and moderate.

(1) Only statement (a) is correct.
(2) Only statement (c) is correct.
(3) Only statement (b) is correct.
(4) Only statements (a) and (c) are correct.
(5) None of the statements is correct.

Question 8

(a) X can rely on the defence of mental illness to escape liability even if it is established that, at the time of committing the alleged offence, his mental illness did not affect any of his abilities set out in the psychological leg of criminal capacity.

(b) According to the Child Justice Act 75 of 2008, a 10-year-old child is irrefutably presumed to lack criminal capacity.

(c) The category of persons known as “participants” can be divided into two sub-categories, namely perpetrators and accessories after the fact.

(1) Only statements (a) and (c) are correct.
(2) Only statement (c) is correct.
(3) Only statement (b) is correct.
(4) None of the statements is correct.
(5) Only statement (a) is correct.
Question 9

(a) Intention in the form of *dolus eventualis* is present if it was not the perpetrator’s main aim to cause the forbidden consequence, but he proceeds with the knowledge that, in order to achieve his main aim, his actions will **necessarily** cause the specific result.

(b) A “joiner-in” is a person who actively associated himself with a common purpose of others (to kill Y) at a time **before** the lethal wound had been inflicted upon Y.

(c) *Williams 1980 (1) SA 60 (A)* is authority for the point of view that a person may be convicted as an accomplice to the crime of murder.

(1) Only statements (a) and (b) are correct.
(2) All the statements are correct.
(3) Only statement (c) is correct.
(4) Only statements (a) and (c) are correct.
(5) Only statements (b) and (c) are correct.

Question 10

(a) It is possible for a person to be accessory after the fact on the ground of an omission.

(b) The *actio libera in causa* is a form of involuntary intoxication which serves as a complete defence.

(c) Intoxication does not offer X a defence if charged with an offence requiring only negligence.

(1) Only statement (a) is correct.
(2) Only statements (b) is correct.
(3) Only statements (a) and (c) correct.
(4) Only statements (b) and (c) are correct.
(5) All the statements are correct.        **Subtotal: [30]**
PART B

THIS PART CONSISTS OF THREE QUESTIONS, NUMBERED 1, 2 AND 3. YOU MUST ANSWER ALL THREE QUESTIONS (WITH THEIR SUBDIVISIONS). NOTE THAT SOME OF THE QUESTIONS CONTAIN A CHOICE BETWEEN TWO ALTERNATIVES. SUBSTANTIATE YOUR ANSWERS AND REFER TO DECIDED CASES WHERE RELEVANT. IN DETERMINING THE LENGTH OF YOUR ANSWERS, YOU SHOULD BE GUIDED BY THE MARKS ALLOCATED TO EACH QUESTION.

Question 1

(a) Distinguish between a legal norm, a criminal norm and a criminal sanction, and state which one of these is essential for the creation of a crime in an Act. (4)

(b) Define the concept “voluntary conduct”. (2)

(c) Name the factors that exclude the voluntariness of conduct. (3)

(d) In legal practice a number of specific instances are generally recognised in which a legal duty is imposed upon X to act positively. The following are a number of those instances. Illustrate the instances mentioned by referring to case law. You are required to give a brief description of the facts of the case. You will not be penalised for not remembering the name of the case.

(i) X is the incumbent of a certain office.
(ii) X accepts responsibility for the control of a dangerous or potentially dangerous object.
(iii) X stands in a protective relationship to somebody else. (6)

(e) The definitional elements signify the concise description of the requirements set by the law for liability for a specific type of crime. Name the two descriptors that feature in the definitional elements of a crime. (2)

(f) Give a summary of the approach of our courts when determining legal causation. Refer to case law to illustrate this approach. (8)

[25]
Question 2

(a) NOTE THE CHOICE YOU HAVE IN THIS QUESTION.

(i) Name the requirements for a successful reliance on consent as a ground of justification.

OR

(ii) Distinguish between private defence and necessity. (6)

(b) B has a grudge against Y, a loan shark lender who has been regularly demanding the repayment of a loan amount from him. B hires an assassin, X, to kill Y and he provides X with information regarding Y’s whereabouts. For one week, X tracks the movements of Y in order to establish a pattern of behaviour. Y leaves his house at 07:30 every weekday morning and takes his son, Z, to school. At 07:00, Y always starts the car so that it would warm up in preparation for the trip.

One morning before 07:00, X positions himself to fire his revolver with a silencer to kill Y. A few minutes after 07:00 the door opens and Y appears. X fires a shot at Y, but only injures him. He fires a second shot to finish him off but the bullet misses Y and strikes his son Z, who at that moment, appeared behind Y. Z dies immediately. B and X are both arrested and charged with murder and attempted murder. Answer the following questions.

(i) Name and briefly explain the factual scenario that describes the manner in which Z was killed. (3)

(ii) Name the two opposing approaches that are proposed in the legal literature to determine the criminal liability of X for the scenario you have explained in (i) above. (2)

(iii) Briefly explain how the liability of X in respect of Z’s death is to be determined according to each of the approaches named in (ii) above. (6)

(iv) On the charge of the attempted murder of Y, can B be found guilty according to the doctrine of common purpose? In your answer, give the definition of this doctrine and explain the basis of such possible liability. (5)

(v) On the charge of the murder of Z, B’s lawyer argues that his client lacked intention because the manner in which the death occurred was not foreseeable. Name the type of defence that B’s lawyer is raising. Can B succeed with this defence? (3)
(c) X is driving home from a party after having consumed six beers and knocks over a child, Y, who is killed. X is charged with murder. The court finds that, although X was not so intoxicated that he lacked criminal capacity, he was so intoxicated that he could not have had the intention to cause Y’s death. Can X be convicted of a contravention of section 1 of the Criminal Law Amendment Act 1 of 1988 and/or culpable homicide? Discuss with reference to all relevant legal authority. (5)

Question 3

(a) NOTE THE CHOICE YOU HAVE IN THIS QUESTION.

Discuss ONE of the following cases

(i) Steyn 2010 (1) SACR 411 (SCA)
(ii) Eadie 2002 (1) SACR 663 (SCA)
(iii) Davies 1956 (3) SA 52 (A) (6)

(b) With reference to case law, discuss the liability of a joiner-in (5)

(c) Name the four different forms of attempt. (4)

Subtotal: [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 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
Reader – Case Law Reader for CRW2601
Case Book - CR Snyman Criminal Law Case Book 5th edition 2013

PART A (MULTIPLE-CHOICE QUESTIONS)

QUESTION 1

(a) This statement is correct. See SG 2.2.
(b) This statement is correct. See SG 2.3.2.
(c) This statement is incorrect. The investigation into the presence of the four general requirements must follow a certain sequence, namely conduct, which complies with the definitional elements of the crime, unlawfulness and culpability. See SG 1.5.3.

Therefore, option 3 is correct because only statements (a) and (b) are correct.

QUESTION 2

(a) This statement is correct. See SG 2.6.
(b) This statement is correct. See SG 2.7.
(c) This statement is incorrect. The ius acceptum principle applies to both common law and statutory crimes. See SG 2.4.

Therefore, option 4 is correct because only statements (a) and (b) are correct.
QUESTION 3

(a) This statement is correct. See SG 3.3.4.2.c.ii.
(b) This statement is incorrect. Unlawfulness is usually determined without reference to X’s state of mind. See SG 5.2.4.
(c) This statement is correct. See SG 3.4.2.

Therefore, option 3 is correct because only statements (a) and (c) are correct.

QUESTION 4

(a) This statement is incorrect. The defence of obedience to orders will not justify an act that was done in obedience to a manifestly unlawful order. See SG 6.6 and Criminal Law 135.
(b) This statement is correct. See SG 6.5.2.
(c) This statement is correct. See SG 8.2.4(1).

Therefore, option 4 is correct because only statements (b) and (c) are correct.

QUESTION 5

(a) This statement is correct. See SG 10.2.
(b) This statement is correct. See SG 10.3.
(c) This statement is correct. See SG 10.4.

Therefore, option 5 is correct because all the statements are correct.

QUESTION 6

(a) This statement is correct. See SG 7.2.5; Reader 97; Casebook 131.
(b) This statement is correct. See SG 7.3.3.
(c) This statement is correct. See SG 5.2.3(2); Reader 52; Casebook 61.

Therefore, option 4 is correct because all the statements are correct.
QUESTION 7

(a) This statement is incorrect. **Putative** private defence occurs when X *thinks* that she was entitled to act in private defence. It is not a real situation of private defence. But it is an example of a mistake relating to the element of unlawfulness (i.e. the existence of a ground of justification). See SG 10.3 to understand which wrong impression of facts qualifies as a material mistake that affords X a defence excluding culpability. **This form of mistake does exclude culpability.** See 10.6.1.

(b) This statement is incorrect. The attack must be threatening but **must not have been completed.** See SG 5.3.2(3).

(c) This statement is correct. See SG 6.5.3.

Therefore, option 2 is correct because only statement (c) is correct.

QUESTION 8

(a) This statement is incorrect. To succeed on the defence of mental illness, it must be established that the mental illness resulted in the impairment of any of the mental abilities in the psychological leg of criminal capacity. See SG 8.2.5.

(b) This statement is incorrect. The legal presumption of criminal incapacity in relation to a 10-year-old child is rebuttable. See SG 8.3.

(c) This statement is incorrect. Accessories after the fact are “non-participants”. See SG 14.2.1.

Therefore, option 4 is correct because none of the statements is correct.

QUESTION 9

(a) This statement is incorrect. See the correct definition of *dolus eventualis* at SG 9.4.3.

(b) This statement is incorrect. A “joiner-in” **does not act with a common purpose** of others, and his blow is administered at a stage when Y’s lethal wound **had already been inflicted.** See SG 14.3.5.

(c) This statement is correct. See SG 15.2.5.

Therefore, option 3 is correct because only statement (c) is correct.
QUESTION 10

(a) This statement is correct. See SG 15.3.3.
(b) This statement is incorrect. *Actio libera in causa* is where X, intending to commit a crime, voluntarily drinks in order to generate the necessary courage to perpetrate the crime once he is intoxicated. This form of voluntary intoxication is no defence. See SG 12.4.1.
(c) This statement is correct. See SG 12.6 and Summary in study unit 12.

Therefore, option 3 is correct because only statements (a) and (c) are correct.

PART B

QUESTION 1

(a) See SG 2.4.2.

- A legal norm in an Act is a provision creating a legal rule that does not simultaneously create a crime.
- A criminal norm in an Act is a provision that makes it clear that certain conduct constitutes a crime.
- A criminal sanction is a provision in an Act stipulating what punishment a court must impose after it has convicted a person of that crime.
- A criminal norm is essential for the creation of a statutory crime.

(b) See SG 3.3.4.1.

Conduct is voluntary if X is capable of *subjecting his bodily movements* to his will or intellect.

(c) SG 3.3.4.2

- Absolute force
- Natural forces
- Automatism

(d) See SG 3.4.1.2.

(i) X is the incumbent of a certain office: *Ewels* case – a policeman who sees somebody else being unlawfully assaulted has a legal duty, by virtue of his office, to come to the assistance of the victim

OR
**Gaba case** – a policeman who knows the identity of an arrested suspect had a legal duty to reveal his knowledge, by virtue of his office, to his fellow team-members of the investigation team.

(ii) X **accepts responsibility for control of a dangerous or potentially dangerous object**: Fernandez case – X kept a baboon and failed to repair its cage properly, with the result that the animal escaped and bit a child. Court held that X had a legal duty to have repaired the cage.

(iii) X **stands in a protective relationship to somebody else**: B case – X, the mother of a 2 and a half year old child, had a legal duty to care for and protect her biological child from the assaults of X’s male partner.

(e) See SG 4.2.

- **Kind/type of act** that is prohibited
- The **circumstances** in which the act must take place; **OR** the **characteristics of the person** committing the act; **OR** the **nature of the object** in respect of which the act must be committed.

(f) See SG 4.3.4 and 4.3.7.

- The courts are guided by policy considerations.
- The policy that the courts adopt is to strive to reach a conclusion that would not exceed the limits of what is reasonable, fair and just.
- The courts do not single out a specific theory of legal causation as the only correct one to be applied in all circumstances.
- In deciding on policy considerations (i.e. what a reasonable and fair conclusion is), courts may make use of one or more of the specific theories of legal causation.
- A court may even base a finding of legal causation on considerations other than these specific theories.
- Students were expected to select any one or more of these cases - Daniels or Tembani or Mokgethi – and discuss how the policy considerations approach was applied in each selected case.
QUESTION 2

(a) **CHOICE QUESTION**

**OPTION 1**

(i) See SG 6.3.4.

Consent must be

- given voluntarily
- given by a person who has certain minimum mental abilities
- based upon knowledge of the true and material facts
- given either expressly or tacitly
- given before the commission of the act
- given by the complainant himself/herself

**OPTION 2**

(ii) See SG 6.2.2.

The differences between private defence and necessity are:

1) The origin of the situation of emergency

- Private defence always stems from an unlawful human attack.
- Necessity may stem either from an unlawful human attack or from chance circumstances.

2) The object at which the act of defence is directed

- Private defence is always directed at the perpetrator of the unlawful attack.
- Necessity is either directed at the interests of another innocent third party or at the violation of a legal provision.

(b) **PROBLEM QUESTION**

(i) See SG 10.5.1.

*Aberratio ictus*

X had pictured what he was **aiming at correctly**, but through lack of skill or clumsiness he **missed his target (Y) and the lethal blow killed another (Z).**

(ii) See SG 10.5.2.

Transferred culpability approach

Concrete-figure approach
Transferred culpability approach: According to this approach, the question of whether X had intention to kill Z is determined as follows:
X intended to kill a person. Murder consists in the unlawful, intentional causing of the death of a person.
The fact that the actual victim (Z) proved to be somebody different from the particular person that X desired to kill (Y) does not afford X any defence.
In the eyes of the law, X intended to kill Z because his intention to kill Y is transferred to his killing of Z.

Concrete-figure approach: According to this approach, the question of whether X had intention to kill Z is determined as follows:
We merely apply the ordinary principles relating to intention and, more particularly, dolus eventualis.
If X had not subjectively foreseen that his blow might strike Z, then he lacked intention in respect of Z’s death and cannot be convicted of murder.
X's intention to kill Y cannot serve as a substitute for the intention to kill Z.
The question is not whether X had the intention to kill a person, but whether X had the intention to kill the particular (concrete) figure that was actually struck by the blow.

Students were credited for referring to the Mtshiza case to demonstrate the application of the concrete-figure approach. See SG 10.5.4.

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 purpose are imputed to the others.

Safatsa; Mgedezi or Thebus

Yes, B can be found guilty for attempted murder according to the doctrine of common purpose.

The basis of B’s liability in terms of the doctrine is prior agreement with X to commit the crime.

Mistake relating to the chain of causation

B will not succeed with this defence

because, there was not a substantial/material difference between the foreseen and the actual manner in which the death was caused.
(c) See SG 12.5.2 and 12.5.3.

- To obtain a conviction of contravening the section, the state must prove that X was so intoxicated that he lacked criminal capacity and
- that on the basis of the Chretien case he was acquitted of the original charge (i.e. murder) because of lack of criminal capacity.
- X can be convicted on the charge of culpable homicide because
- he was negligent, as he did not conduct himself according to the standard of a reasonable person.

QUESTION 3

(a) CHOICE QUESTION

NB: Students are expected to provide a brief account of the facts, as well as provide the legal reasons that the court decided on. To obtain credit on the facts, it is sufficient that the answer accurately demonstrates the student’s awareness of what the case was about. In this commentary, however, we will only provide the legal reasons that were relevant to obtain marks.

OPTION 1

(i) Steyn 2010 (1) SACR 411 (SCA) – See SG 5.3.3(3); Reader 62; Casebook 85.

- The SCA recognised that there must be a reasonable balance between the attack and the defensive act. Strict proportionality is not required.
- The proper enquiry would be whether, in the light of all the circumstances, the defender acted reasonably in the manner in which she defended herself.
- The court was of the view that it could not have been expected of the appellant to gamble with her life by turning her back on the deceased who was extremely close to her and was about to attack her with a knife.
- Her assumption that the deceased would probably have caught her before she reached her bedroom was a reasonable one, and therefore she could not be faulted for offering resistance to the deceased rather than attempting to flee from him.
- The SCA noted that the trial court had held that a reasonable person in the appellant’s position would have foreseen the possibility that the deceased might attack her and would not have left the room; thereby concluding that she had acted unreasonably and could have avoided the fatal incident if she had telephoned for help.
• The SCA rejected this ruling of the trial court and held that X was entitled to leave her bedroom, in her own home, and go to the kitchen to eat. There was nothing unlawful in her action in doing so, and she could not be expected to telephone for assistance every time she needed to do something in her own home.

• In considering the lawfulness of her conduct, it is necessary to keep in mind that she was obliged to act in circumstances of stress in which her physical integrity and her life were in direct threat.

• In the circumstances, she was entitled to use deadly force to defend herself, and her instinctive reaction was reasonable.

**OPTION 2**

(ii) *Eadie 2002 (1) SACR 663 (SCA) – See SG 7.4.3; Reader 75; Casebook 122.*

• The court held that there is no distinction between non-pathological criminal incapacity (NPCI) owing to emotional stress and provocation, on the one hand, and the defence of sane automatism, on the other.

• More specifically, the court said there is no difference between the second (conative) leg of the test for criminal capacity and the requirement that X's bodily movements must be voluntary.

• When it has been shown that an accused has the ability to appreciate the difference between right and wrong, then in order to escape liability he would have to successfully raise involuntariness as a defence.

• The result is the same if an accused alleges that his psyche had disintegrated to such an extent that he was unable to exercise control over his movements – that would amount to the defence of involuntariness (sane automatism).

• When an accused acts in an aggressive, goal-directed and focused manner, spurred on by anger or some other emotion, whilst still able to appreciate the difference between right and wrong, then it stretches credulity when he then claims, after assaulting and killing someone, that at some stage during the directed manoeuvre he had lost his ability to control his actions.

• It is appropriate to test the accused’s evidence about his state of mind, not only against his prior and subsequent conduct but also against the court’s experience of human behaviour and social interaction. This is an acceptable method of testing the veracity of an accused’s evidence about his state of mind and will act as a necessary brake to prevent unwarranted extensions of the defence.

• Courts should bear in mind that the phenomenon of sane people temporarily losing cognitive control, due to a combination of emotional stress and provocation, resulting in automatic behaviour, is rare. It is predictable that accused persons will continue in large numbers to persist that their cases meet the test for NPCI.
OPTION 3

(iii) Davies 1956 (3) SA 52 (A) – See SG 16.2.6; Reader 147; Casebook 229.

- It is possible to draw a broad distinction between what has been called “objective” and the “subjective” approaches, the former being concerned principally with the danger to the interests of the community, whilst the latter has regard mainly to the moral guilt of the accused person.
- For present purposes, it is sufficient to state that the consistently “objective” approach, which would exclude from criminal attempts all endeavours to achieve what turns out to be impossible, must be rejected.
- Impossibility, it is said, may relate to the means of achieving the object, such as using an empty firearm or one that cannot shoot far enough to strike the victim, or it may relate to the object sought to be achieved, as in shooting at a stump or at a corpse thought to be alive.
- Whether the source of impossibility is to be found in the means or the object, the distinction between “absolute” and “relative” impossibility is logically unsatisfactory. It is difficult to draw a distinction on logical grounds between circumstances creating the impossibility (which circumstances could be lasting and fundamental, or merely temporary and subject to chance).
- The problem of impossibility is not a branch of the problem of proximity – it is not part of the question when preparation ceases and attempt begins.
- It seems that on principle the fact that an accused’s criminal purpose cannot be achieved, either because the means used are inadequate or the object sought is unattainable, does not prevent his endeavour from amounting to an attempt.
- The essential fact is that he thought that he could achieve his purpose but was (factually) mistaken. He has done all he could and, but for his (factual) mistake, would have been able to complete the ultimate crime. His guilt is established.
- However, if what the accused was aiming to achieve was not a crime, an endeavour to achieve it could not, because by a mistake of law he thought that his act was criminal, amount to an attempt to commit a crime.

(b) See SG 14.3.5.

The joiner-in is a person

- whose attack on Y did not hasten Y’s death
- whose blow was administered at a time when Y was still alive
- who did not act with a common purpose together with the other persons who also inflicted wounds on Y
- In Motaung, the Appellate Division held that a joiner-in could not be convicted of murder, but only of attempted murder.
It reasoned that to hold an accused 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 imposing retrospective liability (ex post facto).

(c) See SG 16.2.3.

- Completed attempt
- Interrupted attempt
- Attempt to commit the impossible
- Voluntary withdrawal

4 Amendments to the study material

Kindly note that there is a Case Law Reader for CRW2601. It will replace the Criminal Law Casebook as a source for those cases that you need to know. Tutorial Letter 101/3/2017 lists a number of prescribed cases (at 4.4) that you need to know to such an extent that you are able to provide the facts; the legal questions that had to be decided upon, and the legal reasons provided by the court. All of these cases are in the Case Law Reader, which you should have received with your study material.

Kindly note that in study unit 12.9 of your study guide, in the section dealing with provocation, where it states that you must study the effects of provocation, the page numbers in the textbook need to be corrected. The first sentence is accurate. The discussion of the effects of provocation on criminal liability is found on pages 230 to 235 of Snyman’s textbook. Please delete the sentences that follow the first sentence.

You may also delete the entire sentence of the third bullet point in your study guide on page 185 that starts: “It may reduce murder to culpable homicide on the basis that, as a result of intoxication, X lacked the intention to kill, but was nevertheless negligent.”
5 Discussion classes

The lecturers of the module will be conducting discussion classes at the Pretoria, Durban and Cape Town regional offices during this semester. Kindly take note of the following:

Date: Saturday 25 March 2017  
Time: 09:00 – 13:00  
Regional centre: Pretoria (Kgorong Function Hall, Kgorong Building, Main Campus)  
Lecturers: Prof N Mollema and Mr RD Ramosa

Date: Saturday 1 April 2017  
Time: 09:00 – 13:00  
Regional centre: Durban (Room 2B4, Unisa Campus, Stalwart Simelane Street)  
Lecturer: Mr RD Ramosa

Date: Saturday 1 April 2017  
Time: 09:00 – 13:00  
Regional centre: Cape Town (Room C01, Unisa Parow Campus, 15 Jean Simons Street, Parow)  
Lecturer: Prof N Mollema

Please note that, for the benefit of all students, discussion class notes will be available on myUnisa after 1 April 2017.

6 Number of tutorial letters

You will receive a total of FOUR (4) tutorial letters this semester. You received the first tutorial 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 last tutorial letter (202) will provide the answers to 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, CRW2601 at the link “Official Study Material”.

We wish you success with your studies!

Regards
Prof N Mollema  
Prof L Jordaan  
Mr RD Ramosa

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