



Tutorial Letter 101/3/2018

Introduction to Criminal Law CRW1501

Semesters 1 and 2

Department of Criminal and Procedural Law

This tutorial letter contains important information
about your module.

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Dear Student

1. INTRODUCTION

Welcome to this module, which deals with the general principles of criminal law. I hope that you will find it interesting and rewarding. This tutorial letter contains important information about this module. I urge you to read it carefully and to have it available when you work through the study material, do the assignments, prepare for the examination, and address questions to your lecturers.

This tutorial letter also provides all the relevant information with regard to the prescribed study material. Please read it carefully. You will also find the assignments for the semester and instructions on how to do and submit them in this tutorial letter.

Finally, I have included information on general and administrative matters relevant to this module. Please study this section of the tutorial letter carefully.

I would like to point out that you must read all the tutorial letters you receive during the semester immediately and carefully – they always contain important, and sometimes urgent, information. Please read Tutorial Letter 301 in conjunction with Tutorial Letter 101 as it gives you important information about studying at a distance institution and within a particular college.

The study material for CRW1501 consists of the following:

- one study guide
- this tutorial letter, Tutorial Letter 101/2018
- additional tutorial letters (which you will receive during the semester)

Some of this tutorial matter may not be available when you register. Such tutorial matter will be posted to you as soon as possible, but is also available on *myUnisa*.

I hope that you will enjoy this module and wish you all the best with your studies!

2. PURPOSE AND OUTCOMES

2.1 Purpose

The code of this module is CRW1501, which is a semester module. This means that if you register for this module in the first semester of 2018, you will write your examination in May/June 2018. If you register in the second semester of 2018, you will write your examination in October/November 2018. If you fail the examination in May/June 2018 but you are granted a supplementary examination, you will write the supplementary examination in October/November 2018. If you fail the examination in October/November 2018 but you are granted a supplementary examination, you will write the supplementary examination in May/June 2019.

The work in this module is based on the general principles of criminal law. The **purpose** of this module is that you should gain the knowledge, skills and competencies that will enable you to analyse and critically evaluate the current general principles for criminal liability. A further aim of this module is that you should be able to apply the knowledge, skills and competencies to practical problems.

If you have registered for this module, you are at the first-year level of your studies and you will be required to demonstrate a clear understanding of the basic, general principles of criminal law and the most pressing and prevalent issues regarding these principles. You will also be required to demonstrate a clear understanding of criminal law in a variety of contexts that are typical of the demands made on an undergraduate student. Finally, you will have to demonstrate a clear

understanding of how to apply the theory to practice in the context of problem situations in your daily work environment (e.g. in the police service).

2.2 Outcomes

The **main outcomes** for this module and the competencies that you should develop are the following:

- the ability to discuss the rules that govern the principle of legality
- the ability to explain the requirements for criminal liability

The outcomes mentioned above are also relevant for **assessment** purposes (by your lecturers and yourself). In the examination, you will have to answer **theoretical questions** which will require you to demonstrate your knowledge of the study material. A number of **problem questions** will also be posed to assess your understanding and ability to apply your theoretical knowledge in practice. Both types of question will assess how you use certain competencies, such as the ability to remember legal principles and to apply them to factual scenarios.

Since you are a Unisa student learning by means of distance education, you will also be required to assess yourself. **Self-assessment (or self-evaluation)** is an important tool for assessing the extent to which you have mastered the study outcomes. Apart from the feedback on assignments, which will provide specific guidance, you must take note of the specific outcomes identified in each study unit of your study guide to determine whether you have achieved the knowledge and insight required. In this way you will be able to identify areas in which you may need to improve your knowledge and/or understanding.

3. LECTURER(S) AND CONTACT DETAILS

3.1 Lecturer(s)

Please direct all queries about the module content (**but not about administrative matters**) to me, and ensure that you have the study material at hand when doing so. Address letters to:

The Module Leader (**CRW1501**)
Department of Criminal and Procedural Law
PO Box 392
UNISA 0003

PLEASE NOTE: Letters to lecturers may not be enclosed with or inserted into assignments.

You may contact me by **telephone or e-mail**:

Dr K Naidoo 012 429 8663
E-mail: KNaidoo@unisa.ac.za

When I am not available, your phone calls will be forwarded to an answering machine. You can therefore leave voicemail messages for me at any time of the day or night. I will reply as soon as possible. You are welcome to visit me to discuss any queries about or problems concerning the module. However, **please make an appointment beforehand**; otherwise, there is a risk that I may not be available. My office is on the eighth floor of the Cas van Vuuren Building, Main Campus, Muckleneuk Ridge, Pretoria.

My office number is: Cas Van Vuuren 8-44

3.2 Department

You are welcome to leave a message with the departmental secretaries, at 012-429 4995/8397/8444.

4. RESOURCES

4.1 Prescribed books

There are no prescribed books for this module. Your CRW1501 study guide contains all the law (i.e. legal principles and case law) that you need to know for this module.

4.2 Recommended books

There are no recommended books for this module.

4.3 Electronic reserves (e-reserves)

There are no e-reserves for this module.

4.4 Free computer and internet access

Unisa has entered into partnerships with establishments (referred to as Telecentres) in various locations across South Africa to enable you (as a Unisa student) free access to computers and the Internet. This access enables you to conduct the following academic related activities: registration; online submission of assignments; engaging in e-tutoring activities and signature courses; etc. Please note that any other activity outside of these activities are for your own costing e.g. printing, photocopying, etc. For more information on the Telecentre nearest to you, please visit www.unisa.ac.za/telecentres.

4.5 Library services and resources information

For brief information, go to www.unisa.ac.za/brochures/studies

For detailed information, go to <http://www.unisa.ac.za/library>. For research support and services of personal librarians, click on "Research support".

For research support and services of Personal Librarians, go to:

<http://www.unisa.ac.za/Default.asp?Cmd=ViewContent&ContentID=7102>

The library has compiled a number of library guides:

- finding recommended reading in the print collection and e-reserves – <http://libguides.unisa.ac.za/request/undergrad>
- requesting material – <http://libguides.unisa.ac.za/request/request>
- postgraduate information services – <http://libguides.unisa.ac.za/request/postgrad>
- finding, obtaining and using library resources and tools to assist in doing research – http://libguides.unisa.ac.za/Research_Skills
- how to contact the library/finding us on social media/frequently asked questions – <http://libguides.unisa.ac.za/ask>

5. STUDENT SUPPORT SERVICES

For information on the various student support systems and services available at Unisa (e.g. student counselling, tutorial classes, language support), please consult the brochure *my Studies @ Unisa* which you received with your study material.

I recommend that you establish contact with fellow students. One way of doing this is to form study groups. The addresses of other students in your neighbourhood are obtainable from:

Directorate: Student Administration and Registration
PO Box 392
UNISA
0003

The *myUnisa* learner management system is the new virtual campus that will help you to communicate with your lecturers, other students and the administrative departments of Unisa – all via the internet.

To go to the *myUnisa* website, start at the main Unisa website, <http://www.unisa.ac.za> and click on the link **Login to myUnisa** under the heading **myUnisa**. This will link you to the *myUnisa* main website. You can also go there directly by typing in <https://my.unisa.ac.za>.

No group discussion classes have been scheduled for this module.

Unisa offers an additional academic support service to students to develop and enhance their learning experience and academic performance. Students, at especially first and second-year levels, are provided with weekly face-to-face tutorials led by qualified tutors. For more information on tutorial support services, consult *my Studies @ Unisa*.

Please note that e-tutors are now available for the module CRW1501. The e-tutors will assist you with content-related enquiries and with general enquiries regarding the assignments and examination. The e-tutors are only available online via the *myUnisa* website for this module. You are not allowed to contact your e-tutor telephonically, per e-mail or via standard mail. The e-tutors are appointed when the registration period for a particular semester has closed and you will be notified by the University once you have been allocated an e-tutor. Any updates or other important information will be conveyed to you on the forum for announcements on this module's *myUnisa* website.

Keep in mind that your e-tutors communicate regularly with the lecturers. This means that they are able to convey to you all the important information on the content and administration of this module. However, students are still encouraged to make use of the general *myUnisa* discussion forum to communicate with their fellow students. Please treat your e-tutor with respect; failure to do so could lead to disciplinary action. Remember, your e-tutor is there to assist you and to guide you through the module; however, you are still ultimately responsible for passing this module. This means that you have to study hard and start preparing in advance for the examination.

6. STUDY PLAN

Please refer to Tutorial Letter 301/2018 from the College of Law for an example of a study plan.

7. PRACTICAL WORK AND WORK-INTEGRATED LEARNING

Practical work and work-integrated learning are not applicable to this module.

8. ASSESSMENT

8.1 Assessment criteria

CRW1501 Specific outcomes and assessment criteria:

Specific Outcome 1:

Analyse the different elements of an offence

Assessment criteria

- The general elements of an offence are identified in given case scenarios.
- The relationship between the different elements is explained in given case scenarios.
- Legal problems and issues relating to the general principles of criminal law are identified in real or simulated scenarios.
- Concepts, established principles and theories related to criminal law are understood.
- Information is presented coherently using the basic conventions of academic and professional discourse by using appropriate technologies.

Specific Outcome 2:

Discuss the rules that govern the principle of legality.

Assessment criteria

- The rules that govern the principle of legality are discussed using given case scenarios.
- Concepts, established principles and theories related to criminal law are understood.
- Information is presented coherently using the basic conventions of academic and professional discourse by using appropriate technologies.

Specific Outcome 3:

Explain the requirements for conduct to ensure criminal liability.

Assessment criteria

- Possible defences are identified that will exclude the conduct element.
- Students can distinguish between materially and formally defined crimes and apply the appropriate principles of causation
- When conduct will be regarded as unlawful is explained clearly.
- The requirements of the various grounds of justification that will render seemingly unlawful conduct lawful are discussed in detail.
- Legal problems and issues relating to the general principles of criminal law are identified in real or simulated scenarios.
- Concepts, established principles and theories relating to criminal law are understood.
- Information is presented coherently using the basic conventions of academic and professional discourse by using appropriate technologies.

Specific Outcome 4:

Analyse criminal capacity and intention

Assessment criteria

- Student can identify when a person has the required mental ability to be held criminally liable (criminal capacity).
- The requirements and the different forms of intention are explained based on given case scenarios.
- When a person will be regarded to have acted negligently is discussed based on given case scenarios.

- Legal problems and issues relating to the general principles of criminal law are identified in real or simulated scenarios.
- Concepts, established principles and theories related to criminal law are understood.
- Information is presented coherently using the basic conventions of academic and professional discourse by using appropriate technologies.

8.2 Assessment plan

You have to submit **two** compulsory assignments during the semester for which you have registered. If you have registered for the first semester, you must submit only the assignments for the first semester. If you have registered for the second semester, you must submit only the assignments for the second semester. Both assignments contribute to your semester mark.

The semester mark contributes 40% towards the final mark and is calculated as follows:

- Assignment 01 = 20% of the semester mark
- Assignment 02 = 20% of the semester mark

The final examination mark contributes 60% towards the final mark.

Supplementary examination and the semester mark

Please note that should the University grant you a supplementary or aegrotat (sick) examination, your semester mark will contribute towards your final mark. Your semester mark will constitute 40% of your final mark.

NB! YOU *MUST* SUBMIT THE FIRST ASSIGNMENT IN ORDER TO BE ADMITTED TO THE EXAMINATION.

All students who submit the first compulsory assignment in time (before or on the date of submission) will be admitted to the examination. Students who do not submit the first compulsory assignment before or on the due date will **not be admitted to write the examination, irrespective of whether they submit the second compulsory assignment afterwards.** Assignments, like the activities in the study guide, form an extremely important part of this module. When you do the assignments, study the prescribed reading, discuss the work with fellow students or do research, you are actively engaged in learning. In the assignments you have to prove that you have the required knowledge about and insight into the subject to answer relevant questions. You must submit **two compulsory assignments** during the semester for which you have registered.

We will send our comments on the compulsory assignments in **tutorial letters** to all students registered for this module, and not only to those students who submitted the assignments. You will automatically receive the correct answers to multiple-choice questions.

Markers will supply constructive comments on your written assignments. As soon as you receive the comments, please check your answers against them. The assignments and the feedback constitute an important part of your study material for the examination.

Students often find it rewarding to work in a group when preparing an assignment. Unisa encourages students to work together. However, note that when doing an assignment, you must give your own interpretation of what you have learnt in the group. Identical assignments by different members of a group are not acceptable. Please note, although students may work together when preparing assignments, each student must write and submit his or her own individual assignments. Several students may not hand in identical assignments merely because they worked together on them. This is plagiarism, and such assignments will not be marked. In addition, these students may be penalised or subjected to the disciplinary proceedings by the University.

8.3 Assignment numbers

8.3.1 Unique assignment numbers

Semester 1

Assignment 01: 738018

Assignment 02: 684432

Semester 2

Assignment 01: 843366

Assignment 02: 696192

8.4 Assignment due dates

Semester 1

Assignment 01: 15 March 2018

Assignment 02: 11 April 2018

Semester 2

Assignment 01: 31 August 2018

Assignment 02: 21 September 2018

8.5 Submission of assignments

Address assignments to:

The Registrar

PO Box 392

UNISA

0003

You may submit written assignments and assignments done on mark-reading sheets either by post or electronically via myUnisa. **Assignments may not be submitted by fax or e-mail.** For detailed information and requirements as far as assignments are concerned, see the brochure *my Studies @ Unisa*. **Please note that all assignments that are submitted electronically MUST be submitted in PDF format (not in PDF Read only format, or in Zip file, or Word format or password protected. If the electronically submitted assignment is submitted in the incorrect format, it will be cancelled and not be marked!)**

To submit an assignment via myUnisa:

- Go to myUnisa.
- Log in with your student number and password.
- Select the module from the orange bar.
- Click on **assignments** in the menu on the left.
- Click on the assignment number you want to submit.
- Follow the instructions.

8.6 The assignments

SEMESTER 1

ASSIGNMENT 1

Due date: 15 March 2018

Unique number: 738018

You should have read and understood the contents of the first three (3) units of your CRW1501 study guide before attempting to answer this assignment.

1. List the rules that are contained in the principle of legality. (5)
 2. An omission is punishable only if there is a legal duty on X to act positively. Such a legal duty may arise where a person stands in a protective relationship to somebody else. Briefly discuss this statement. (5)
- [10]**

ASSIGNMENT 2

Due date: 11 April 2018

Unique number: 684432

You should have read and understood the contents of the first nine (9) units of your CRW1501 study guide before attempting to answer this assignment.

Ten questions marked 1 to 10 follow. Each question consists of three statements marked (a) to (c). Some of the statements are correct and some are incorrect. You must decide which of the statement(s) is/are correct. The three statements are followed by five allegations. Each of them alleges that a certain statement or combination of statements is correct. You must decide which allegation accurately reflects the conclusion you have reached and write down only the corresponding number on your mark reading sheet (either 1, 2, 3, 4 or 5).

Here is an **example** of how to answer the questions:

Carefully read the three statements marked (a) to (c) below:

- (a) As far as legislation as a source of law is concerned, the most important source is the rules of common law.
- (b) As far as legislation as a source of law is concerned, the most important of all the Acts is the Constitution of the Republic of South Africa, 1996. **(This statement is correct.)**
- (c) As far as legislation as a source of law is concerned, the most important source is the writings of the Roman-Dutch authors.

Decide which of the above statements is/are correct.

Now read the five allegations below (marked 1 to 5).

- (1) Only statement (a) is correct.
- (2) Only statement (b) is correct. **(This allegation is correct, since it reflects that only statement b is correct.)**
- (3) Only statements (a) and (b) are correct.
- (4) Only statement (c) is correct.
- (5) Only statements (b) and (c) are correct.

Which of the five allegations above reflects your choice? In the above example it should be 2, since that would mean that statement (b) is the correct one. Now simply write down 2 on your answer sheet.

Q 1

- (a) Most of the general principles of South African criminal law are codified or summarised in a code.
 (b) The rules of South African criminal procedure that relate, for example, to how an accused must be brought to trial, are uncodified.
 (c) After the annexation of the Cape by the English, English law exerted a considerable influence on Roman-Dutch common law.
- (1) Only statement (a) is correct.
 (2) Only statement (b) is correct.
 (3) Only statements (a) and (b) are correct.
 (4) Only statement (c) is correct.
 (5) Only statements (a) and (c) are correct. (2)

Q 2

- (a) The principle of legality is expressed in the maxim “no crime will exist without law”.
 (b) Even if certain conduct is prohibited by law, it may still not be a crime.
 (c) A court of law must interpret the wording in the definition of a crime as widely as possible.
- (1) Only statement (a) is correct.
 (2) Only statement (b) is correct.
 (3) Only statements (a) and (b) are correct.
 (4) Only statement (c) is correct.
 (5) Only statements (a) and (c) are correct. (2)

Q 3

- (a) An act in criminal law is sometimes referred to as positive conduct or commission, while an omission is referred to as negative conduct.
 (b) An omission is only punishable when there is a moral duty upon X to act positively.
 (c) Before there can be any question of criminal liability, X must have started converting his thoughts into actions.
- (1) Only statement (a) is correct.
 (2) Only statement (b) is correct.
 (3) Only statements (a) and (b) are correct.
 (4) Only statement (c) is correct.
 (5) Only statements (a) and (c) are correct. (2)

Q 4

- (a) X's act is the legal cause of Y's death if “but for” X's act the prohibited condition would not have happened.
 (b) An act is a *conditio sine qua non* for a situation if that situation exists because the act took place.
 (c) In the case of *Mokgethi* 1990 (1) SA 32 (A) 40-41, the court held that the proximate cause theory is the one theory of legal causation that should be applied in all circumstances.
- (1) Only statement (a) is correct.
 (2) Only statement (b) is correct.
 (3) Only statements (a) and (b) are correct.
 (4) Only statement (c) is correct.
 (5) Only statements (a) and (c) are correct. (2)

Q 5

- (a) The requirements of the attack in private defence are that the attack must be unlawful, it must be against an interest which ought to be protected and it must be completed.
 - (b) X acts in private defence if he defends himself or another against an attack by an animal.
 - (c) If X is attacked by Y but in retaliating X exceeds the limits of private defence, he (X) acts unlawfully.
-
- (1) Only statement (a) is correct.
 - (2) Only statement (b) is correct.
 - (3) Only statements (a) and (b) are correct.
 - (4) Only statement (c) is correct.
 - (5) Only statements (b) and (c) are correct. (2)

Q6

- (a) Necessity is directed at either the interests of another innocent third party or merely amounts to the violation of a legal provision.
 - (b) If X acts in a situation of necessity, she acts unlawfully.
 - (c) For a plea of necessity to succeed, it is immaterial whether the situation of emergency is the result of human action or chance circumstances.
-
- (1) Only statement (a) is correct.
 - (2) Only statement (b) is correct.
 - (3) Only statements (a) and (b) are correct.
 - (4) Only statement (c) is correct.
 - (5) Only statements (a) and (c) are correct. (2)

Q7

- (a) Consent may operate as a ground of justification in the crime of murder.
 - (b) Consent may operate as a ground of justification in the crimes of theft and malicious injury to property.
 - (c) The reason why a medical doctor cannot be charged with assaulting a patient upon whom she performs an operation is because of the patient's consent to the operation (assuming that it has been given).
-
- (1) Only statement (a) is correct.
 - (2) Only statement (b) is correct.
 - (3) Only statements (a) and (b) are correct.
 - (4) Only statement (c) is correct.
 - (5) Only statements (b) and (c) are correct. (2)

Q8

- (a) In order to successfully rely on obedience to orders as a ground of justification the order need not be lawful.
 - (b) In order to successfully rely on obedience to orders as a ground of justification the order must be given by a competent person.
 - (c) In order to successfully rely on obedience to orders as a ground of justification the accused must do only what he was ordered to do.
-
- (1) Only statement (a) is correct.
 - (2) Only statement (b) is correct.
 - (3) Only statements (a) and (b) are correct.
 - (4) Only statement (c) is correct.
 - (5) Only statements (b) and (c) are correct. (2)

Q9

- (a) Before it can be said that a person acted with culpability, it must be clear that such a person was endowed with criminal capacity.
 - (b) The term criminal capacity refers to a person's mental ability.
 - (c) Intention and causation are usually referred to as the two forms of culpability.
-
- (1) Only statement (a) is correct.
 - (2) Only statement (b) is correct.
 - (3) Only statements (a) and (b) are correct.
 - (4) Only statement (c) is correct.
 - (5) Only statements (a) and (c) are correct. (2)

Q10

- (a) Intention consists of two elements, namely a cognitive and a conative element.
 - (b) The conative element of intention consists of X directing his will towards an act or a result.
 - (c) There are three forms of intention, namely direct intention, indirect intention and criminal capacity.
-
- (1) Only statement (a) is correct.
 - (2) Only statement (b) is correct.
 - (3) Only statements (a) and (b) are correct.
 - (4) Only statement (c) is correct.
 - (5) Only statements (a) and (c) are correct. (2)
- [20]**

SELF EVALUATION ASSIGNMENT

Please complete this assignment, but do NOT submit it to Unisa for marking. It will be returned to you unmarked. Feedback will be provided in a second tutorial letter later in the semester. Please ensure that you have mastered ALL the study units in the study guide before doing this assignment.

- Name and briefly discuss each of the four elements of criminal liability. [8]
- Explain the meaning of the term “common law”. [4]
- Name and discuss the points of difference between a crime and a delict. [12]
- List the rules that are contained in the principle of legality. [5]
- Briefly explain the meaning of the requirement that “the act must be a human act”. [3]
- A legal duty to act positively may sometimes arise by virtue of the fact that a person holds a certain office. Discuss this statement with reference to case law. [5]
- One of the instances in which our law does not regard conduct as voluntary is where a person behaves in a mechanical fashion. This is referred to as automatism. Give four (4) examples of conduct that could be regarded as automatism. [4]
- Explain what you understand by the theory of *novus actus interveniens*. [2]
- *Read the scenario below and then answer the questions that follow:*

X wishes to kill Y. He stabs Y with a knife and inflicts a small wound to Y’s arm. Y tries to escape from X and runs into the street, where he is run over by a car driven by Z, and killed.

- (a) Explain whether X is the *factual cause* of Y’s death. [5]
- (b) Explain whether X is the *legal cause* of Y’s death. [10]

- Distinguish between putative private defence and actual private defence. [4]
- List some of the interests that could be protected when invoking private defence as a ground of justification. [5]
- X, a 20-year old woman is walking down the street holding a packet of fruit. She is approached by Y, an 11-year old pickpocket who tries to grab the packet of fruit from X’s hand. X retaliates by pulling out a revolver from her pocket and shooting Y in the head. Y dies instantly. Can X successfully rely on private defence on a charge of murder? Discuss with reference to the requirements of the defence in private defence. [10]
- Distinguish between private defence and necessity. [4]
- Distinguish between absolute and relative compulsion, and indicate which of the two constitutes necessity. [4]
- *Read the scenario below and then answer the questions that follow:*

X’s child, Y, is seriously injured in a game and is bleeding profusely. X’ decides that he has to rush Y to the nearest hospital. X bundles Y into the car and ignores all the red robots that he encounters. X is charged with reckless driving and exceeding the speed limit. Which ground of justification can X rely on? Discuss in detail with reference to the requirements of this ground of justification. [10]

- In cases where consent is raised as a ground of justification, it must comply with a number of requirements. List these requirements. (NB: You do not have to discuss each requirement.) [6]
- Can X rely on consent as a ground of justification in the following examples? Explain.
 - (a) X is a nurse. Her father, Y, is 90 years old and is in severe pain from a terminal illness. Y begs X to end his life as he cannot bear the pain and suffering any longer. X administers a lethal injection to Y. Y dies peacefully a few minutes later. [2]
 - (b) X is a well built young man. He threatens to stab Y, a frail old woman, if she does not hand her cellphone over to him. Y meekly hands the cellphone over to X. [2]

- Officials occupying a public office who commit acts which would otherwise be unlawful, can rely as a defence on the fact that they are entitled to perform these acts because they were performed in the course of their official duties. Discuss this statement critically. [5]
- Give two examples of conduct that would not be regarded as unlawful since it is justified by the ground of justification of official capacity. [4]
- X is a security officer at OR Tambo International Airport. She conducts a physical search on Y, a female passenger who is about to board a flight to London. Y complains that X had no right to touch her. Which ground of justification can X rely on? Explain. [3]
- In the case of *S v Mostert* 2006 (1) SACR 560 (N), the court applied the principle in section 199(6) of the Constitution of the Republic of South Africa, 1996, that the defence of obedience to orders will be successful provided that the orders were not manifestly unlawful. Discuss with reference to the requirements of this defence. [6]
- Define the concept of “criminal capacity”. [3]
- Explain the difference between the concepts of “criminal capacity” and “intention”. [4]
- Name and explain the two psychological components or “legs” of the test for criminal capacity. [5]
- Briefly discuss how culpability is established. [2]
- What are the two (2) forms of culpability? [2]
- What are the two (2) components of the test used to determine whether a person is endowed with criminal capacity? [4]
- List two (2) defences that exclude criminal capacity. [2]
- List the possible orders that a court may make if X succeeds with his defence of mental illness. [3]
- Name the two (2) elements of intention and explain briefly what each entails. [4]
- Define each of the three (3) forms of intention and illustrate each by means of an example. [6]
- Why is it said that the test for intention is subjective? Explain briefly. [5]
- Where there is no direct proof of intention, a court may infer or find from indirect proof that an accused acted intentionally. List some of the factors that a court can take into consideration when trying to prove intention. [6]
- Explain the concept of *error in objecto* by means of a practical example. [5]

Discuss fully whether X’s mistake in the two scenarios below can exclude the intention to commit murder:

- (a) X is out hunting. He sees what he thinks is a buck and decides to shoot. He aims his gun and pulls the trigger. It later appears that what X thought was a buck was actually Y, another human being. [3]
 - (b) X wants to kill Y. He aims his gun and pulls the trigger. However, it later appears that the person whom X shot and killed was not Y, but Z. [3]
- Suppose X wants to kill Y. Just as X is about to stab Y with a knife, Z steps between them and is stabbed and eventually dies from the stab wound. Can X be found guilty of murdering Z? Explain. [6]
 - X intends killing her enemy, Y. X places a poisoned apple at a spot where she expects Y to pass, expecting Y to pick up the apple and eat it. However, Z, and not Y, passes the spot, picks up the apple, eats it, and dies. [6]
 - Explain with reference to an example what you understand by a mistake with regard to the presence of a ground of justification. [3]
 - The test for negligence is described as objective, whereas the test for intention is described as subjective. Discuss the main differences between the two tests. [6]

SEMESTER 2

ASSIGNMENT 1

Due date: 31 August 2018

Unique number: 843366

You should have read and understood the contents of the first three (3) units of your CRW1501 study guide before attempting to answer this assignment.

1. Does the following charge meet the requirements of the principle of legality? Explain.

A law prohibiting smoking comes into effect on 1 January 2018. The next day, X, the owner of a bar, lays a charge against Y because Y smoked in his bar on 25 December 2017. **(2)**

2. List the instances in which a legal duty is imposed on X to act positively. (NB: You are only required to list these instances and NOT explain or discuss them. **(8)**

[10]

ASSIGNMENT 2

Due date: 21 September 2018

Unique number: 696192

You should have read and understood the contents of the first nine (9) units of your CRW1501 study guide before attempting to answer this assignment.

Ten questions marked 1 to 10 follow. Each question consists of three statements marked (a) to (c). Some of the statements are correct and some are incorrect. You must decide which of the statement(s) is/are correct. The three statements are followed by five allegations. Each of them alleges that a certain statement or combination of statements is correct. You must decide which allegation accurately reflects the conclusion you have reached and write down only the corresponding number on your mark reading sheet (either 1, 2, 3, 4 or 5).

Here is an **example** of how to answer the questions:

Carefully read the three statements marked (a) to (c) below:

- (a) As far as legislation as a source of law is concerned, the most important source is the rules of common law.
- (b) As far as legislation as a source of law is concerned, the most important of all the Acts is the Constitution of the Republic of South Africa, 1996. **(This statement is correct.)**
- (c) As far as legislation as a source of law is concerned, the most important source is the writings of the Roman-Dutch authors.

Decide which of the above statements is/are correct.

Now read the five allegations below (marked 1 to 5).

- (1) Only statement (a) is correct.
- (2) Only statement (b) is correct. **(This allegation is correct, since it reflects that only statement b is correct.)**
- (3) Only statements (a) and (b) are correct.
- (4) Only statement (c) is correct.
- (5) Only statements (b) and (c) are correct.

Which of the five allegations above reflects your choice? In the above example it should be 2, since that would mean that statement (b) is the correct one. Now simply write down 2 on your answer sheet.

Q 1

- (a) In order to know what the law is relating to crimes such as murder and theft, we must turn to our common law.
 - (b) Apart from being influenced by English law, the common law of South Africa was further amended and supplemented by legislation.
 - (c) The primary sources of our common law can be found in legislation.
- (1) Only statement (a) is correct.
 - (2) Only statement (b) is correct.
 - (3) Only statements (a) and (b) are correct.
 - (4) Only statement (c) is correct.
 - (5) Only statements (b) and (c) are correct. (2)

Q 2

- (a) In order to determine if X is criminally liable, the first question that has to be asked is whether the conduct that X allegedly committed is recognised by the law as a crime.
 - (b) Crimes may be defined vaguely.
 - (c) Certain conduct could be wrong from a moral or religious point of view, but may not be prohibited by law.
- (1) Only statement (a) is correct.
 - (2) Only statement (b) is correct.
 - (3) Only statements (a) and (b) are correct.
 - (4) Only statement (c) is correct.
 - (5) Only statements (a) and (c) are correct. (2)

Q3

- (a) The word "act" does not include an omission, but the word "conduct" could include an act or an omission.
 - (b) The general rule is that there is a legal duty on X to act positively if the legal convictions of the community require him to do so.
 - (c) The perpetrator of an act can be a human being, an animal or an inanimate object.
- (1) Only statement (a) is correct.
 - (2) Only statement (b) is correct.
 - (3) Only statements (a) and (b) are correct.
 - (4) Only statement (c) is correct.
 - (5) Only statements (b) and (c) are correct. (2)

Q4

- (a) The individualisation theories of legal causation singles out the most operative condition as being the legal cause of Y's death.
 - (b) According to the theory of adequate causation, an act is a legal cause if but for the occurrence of the act, the prohibited condition would not have happened.
 - (c) An act is a *novus actus interveniens* if it constitutes an expected, normal and usual occurrence.
- (1) Only statement (a) is correct.
 - (2) Only statement (b) is correct.
 - (3) Only statements (a) and (b) are correct.
 - (4) Only statement (c) is correct.
 - (5) Only statements (b) and (c) are correct. (2)

Q5

- (a) Private defence is also referred to as 'self defence' but this description is too narrow since not only persons who defend themselves, but also those who defend others, can rely upon this ground of justification.
- (b) Putative private defence refers to a situation where X thought he was acting in private defence but in reality the defence only existed in his (X's) thoughts.
- (c) Private defence can be invoked only to protect two interests: life or physical integrity.
- (1) Only statement (a) is correct.
- (2) Only statement (b) is correct.
- (3) Only statements (a) and (b) are correct.
- (4) Only statement (c) is correct.
- (5) Only statements (b) and (c) are correct. (2)

Q6

- (a) A person can act in a situation of necessity to protect another person's interests, for example, where X acts to protect Y from being attacked by an animal.
- (b) To successfully rely on necessity as a ground of justification, the emergency should be terminated or be expected in the future.
- (c) If X is legally compelled to endure the danger, she cannot rely on necessity.
- (1) Only statement (a) is correct.
- (2) Only statement (b) is correct.
- (3) Only statements (a) and (b) are correct.
- (4) Only statement (c) is correct.
- (5) Only statements (a) and (c) are correct. (2)

Q7

- (a) Consent may operate as a ground of justification in the crimes of theft and malicious injury to property.
- (b) The criterion to be applied to determine whether consent excludes unlawfulness is the *boni mores* or the legal convictions of society.
- (c) Consent obtained as a result of violence, or coercion is nevertheless still regarded as voluntary consent.
- (1) Only statement (a) is correct.
- (2) Only statement (b) is correct.
- (3) Only statements (a) and (b) are correct.
- (4) Only statement (c) is correct.
- (5) Only statements (b) and (c) are correct. (2)

Q8

- (a) A subordinate is legally compelled to obey the manifestly unlawful order of his superior.
- (b) For a successful reliance on the ground of justification of obedience to orders, the person who gives the order must be lawfully authorised to give the order and person carrying out the order must be obliged in law to obey the order.
- (c) If X relies on the ground of justification of obedience to orders, he cannot have caused more harm than necessary in carrying out the order.
- (1) Only statement (a) is correct.
- (2) Only statement (b) is correct.
- (3) Only statements (a) and (b) are correct.
- (4) Only statement (c) is correct.
- (5) Only statements (b) and (c) are correct. (2)

Q9

- (a) Criminal capacity refers to the mental abilities that a person must have in order to act with culpability and to incur criminal liability.
 - (b) The two defences that exclude criminal capacity are mental illness and youthful age.
 - (c) Intention and causation are usually referred to as the two forms of culpability.
- (1) Only statement (a) is correct.
 - (2) Only statement (b) is correct.
 - (3) Only statements (a) and (b) are correct.
 - (4) Only statement (c) is correct.
 - (5) Only statements (b) and (c) are correct. (2)

Q10

- (a) A person acts with direct intention if the causing of the forbidden result is not his main aim or goal.
 - (b) The conative element of intention consists of X's knowledge or awareness of the act, the definitional elements and the unlawfulness of the act.
 - (c) There are three forms of intention, namely direct intention, indirect intention and *dolus eventualis*.
- (1) Only statement (a) is correct.
 - (2) Only statement (b) is correct.
 - (3) Only statements (a) and (b) are correct.
 - (4) Only statement (c) is correct.
 - (5) Only statements (b) and (c) are correct. (2)

[20]

SELF EVALUATION ASSIGNMENT

Complete this assignment, but do NOT submit it to Unisa for marking. It will be returned to you unmarked. Feedback will be provided in a second tutorial letter later in the semester.

Please ensure that you have mastered ALL the study units in the study guide before doing this assignment.

- Name and briefly discuss each of the four elements of criminal liability. [8]
- Explain the meaning of the term "common law". [4]
- Name and discuss the points of difference between a crime and a delict. [12]
- List the rules that are contained in the principle of legality. [5]
- Briefly explain the meaning of the requirement that "the act must be a human act". [3]
- A legal duty to act positively may sometimes arise by virtue of the fact that a person holds a certain office. Discuss this statement with reference to case law. [5]
- One of the instances in which our law does not regard conduct as voluntary is where a person behaves in a mechanical fashion. This is known as automatism. Give four (4) examples of conduct that could be regarded as 'automatism'. [4]
- Explain what you understand by the theory of *novus actus interveniens*. [2]
- Read the scenario below and then answer the questions that follow:

X wishes to kill Y. He stabs Y with a knife and inflicts a small wound to Y's arm. Y tries to escape from X and runs into the street where he is run over by a car driven by Z and killed.

- Explain whether X is the *factual cause* of Y's death. [5]
- Explain whether X is the *legal cause* of Y's death. [10]
- Distinguish putative private defence from actual private defence. [4]
- List some of the interests that could be protected when invoking private defence as a ground of justification. [5]
- Read the scenario below and then answer the questions that follow:

X, a 25-year-old man, is walking to work one morning when he is approached by Y, a 12-year-old pickpocket. Y tries to steal the plastic lunchbox that X is carrying. X retaliates by pulling a gun out of his trouser pocket and shooting Y in the chest. Y dies a few seconds later. Can X successfully rely on private defence on a charge of murder? Discuss with reference to the requirements of the defence in private defence. [10]

- Distinguish between private defence and necessity. [4]
- Distinguish between absolute and relative compulsion, and indicate which of the two constitutes necessity. [4]
- Read the scenario below and then answer the question that follows:

X is walking home on an extremely hot afternoon. He notices a child locked in a car. The child is clearly suffocating from the intense heat. X breaks open the car window and pulls the child out of the car. A few days later the owner of the car lays a charge of damage to property against X. Which ground of justification can X rely on? Discuss in detail with reference to the requirements of this ground of justification. [10]

In cases where consent is raised as a ground of justification, it must comply with a number of requirements. List these requirements. (NB. You do not have to discuss each requirement). [6]

- Can X rely on consent as a ground of justification in the following examples? Explain your answer:

- (a) X is a doctor. His father, Y, is 85 years old and is in severe pain from a terminal illness. Y begs X to end his life as he cannot bear the pain and suffering any longer. X administers a lethal injection to Y. Y dies peacefully a few minutes later. [2]
- (b) X is a young bodybuilder. He threatens to stab Y, a frail old woman, with a knife if she does not hand her handbag over to him. Y meekly hands the bag over to X. [2]

- Officials occupying a public office who commit acts which would otherwise be unlawful, can rely as a defence on the fact that they are entitled to perform these acts because the acts were performed in the course of their official duties. Discuss this statement critically. [5]
- Give two examples of conduct that would not be regarded as unlawful since it is justified by the ground of justification *official capacity*. [4]
- In the case of *S v Mostert* 2006 (1) SACR 560 (N), the court applied the principle in section 199(6) of the Constitution of the Republic of South Africa, 1996, that the defence of obedience to orders will be successful provided that the orders were not manifestly unlawful. Discuss with reference to the requirements of this defence. [6]
- Define the concept of “criminal capacity”. [3]
- Explain the difference between the concepts of “criminal capacity” and “intention”. [4]
- Name and explain the two psychological components or “legs” of the test for criminal capacity. [5]
- Briefly discuss how culpability is established. [2]
- What are the two (2) forms of culpability? [2]
- What are the two (2) components of the test used to determine whether a person is endowed with criminal capacity? [4]
- List two (2) defences that exclude criminal capacity. [2]
- List the possible orders that a court may make if X succeeds with his defence of mental illness. [3]
- Name the two (2) elements of intention and explain briefly what each entails. [4]
- Define each of the three (3) forms of intention and illustrate each by means of an example. [6]
- Why is it said that the test for intention is subjective? Explain briefly. [5]
- Where there is no direct proof of intention, a court may infer or find that an accused acted intentionally from indirect proof. List some of the factors that a court can take into consideration when trying to prove intention. [6]
- Explain the concept of *error in objecto* by means of a practical example. [5]
- *Discuss fully whether X’s mistake in the two scenarios below can exclude the intention to commit murder:*

(a) X is out hunting. He sees what he thinks is a buck and decides to shoot. He aims his gun and pulls the trigger. It later appears that what X thought was a buck was actually Y, another human being. [3]

(b) X wants to kill Y. He aims his gun and pulls the trigger. However, it later appears that the person that X shot and killed was not Y but Z. [3]
- Suppose X wants to kill Y. Just as X is about to stab Y with a knife, Z steps between them and is stabbed and eventually dies from the stab wound. Can X be found guilty of murdering Z? Explain. [6]
- Explain with reference to an example what you understand by a mistake with regard to the presence of a ground of justification. [3]
- The test for negligence is described as objective, whereas the test for intention is described as subjective. Discuss the main differences between the two tests. [6]

8.7 The examination

At the end of the semester you will write a two-hour, 100-mark examination. This examination will consist of questions that are very similar to the questions that you would have encountered in the first, the second and the self-evaluation assignments.

9. FREQUENTLY ASKED QUESTIONS

- **Do I have to purchase a textbook for this module?**
No. The CRW1501 study guide contains all the relevant information (principles of law and case law) that you will need in order to pass this module.
- **Do I have to read additional case law for this module?**
No. The relevant case law is referred to in the CRW1501 study guide. There is therefore no need to read any additional case law.
- **Will I receive any guidelines, “tips” or the “scope” of the syllabus that I have to study before the final examination?**
No. in accordance with UNISA policy, lecturers are not permitted to provide students with examination guidelines, “tips” or the “scope” of the syllabus prior to the final examination. You are therefore encouraged to revise the entire syllabus prior to the final examination.
- **Are lecturers permitted to change or extend the due dates of assignments?**
No. Please note that it is not within my powers as a lecturer to change or to extend the due dates of assignments. If there are any changes to or extensions of the due dates of assignments, you will receive official communication from UNISA.

10. IN CLOSING

I hope that you will enjoy studying this subject and wish you success in your studies and the forthcoming examination.

DR K NAIDOO