CRW2601 (496346) October/November 2013

GENERAL PRINCIPLES OF CRIMINAL LAW

Duration: 2 Hours

100 Marks

EXAMINERS:
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Closed book examination

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

THE QUESTIONS IN THIS PAPER COUNT A 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.

[TURN OVER]
Question 1

(a) The *ius certum* rule, which forms part of the principle of legality, implies that nobody ought to be convicted of a crime unless the kind of act performed by him/her had already been recognised by the law as a crime at the time of its commission.

(b) Before one can assume that a provision in an Act created a crime, it must be clear that the provision contains a criminal norm.

(c) The *ius strictum* principle requires that where doubt exists concerning the interpretation of a criminal provision, the provision should be interpreted in favour of the accused.

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

Question 2

(a) Relative force renders X's conduct involuntary.

(b) If X keeps a dangerous bulterner dog in his unfenced yard in an urban area and the dog bites and kills a child in the street, X may be held liable for culpable homicide on the basis of an omission.

(c) X can succeed with a defence of impossibility even if he himself was responsible for causing the situation of impossibility.

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

Question 3

(a) The maxim *nulla poena sine lege* implies that the principle of legality also applies to the imposition of punishment.

(b) The case of Francis 1994 (1) SACR 350 (C) addressed the application of the *ius acceptum* rule to the creation of a statutory crime.

(c) The *ius praevium* rule was applied by the Constitutional Court in Masiya v Director of Public Prosecutions 2007 (2) SACR 435 (CC).

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 these statements are correct.
Question 4

(a) In *Dlamini* 1955 (1) SA 120 (T), the accused was not convicted of any crime because he successfully relied on the defence of insane automatism.

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

(c) The defence of impossibility can be pleaded only in cases where the infringed legal provision placed a positive duty on X to act.

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

Question 5

(a) An act is a *conditio sine qua non* for a situation if the act cannot be thought away without the situation disappearing at the same time.

(b) Possession of dagga is a materially-defined crime.

(c) Consent is no defence in the case of euthanasia where X (a doctor) kills Y (a cancer patient who is experiencing excruciating pain) on the latter's request.

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

Question 6

(a) The limits of the grounds of justification are determined by the legal convictions of society.

(b) One of the distinctions between private defence and necessity relates to the object at which the act of defence is directed.

(c) Parents may never chastise their children by means of corporal punishment.

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

[TURN OVER]
Question 7

(a) Although a child between the ages of ten and fourteen years is presumed to lack criminal capacity, the state is free to rebut this presumption.

(b) Intention in the form of dolus eventualis is present if the causing of the forbidden result is not X's main aim, but he subjectively foresees the possibility that his conduct may cause the forbidden result and reconciles himself with this possibility.

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

(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 these statements are correct.

Question 8

(a) A mistake relating to the chain of causation can only occur in the context of maternally-defined crimes.

(b) In order to have intention, X must have knowledge of all the elements of the crime including the requirement of culpability itself.

(c) The fact that X happens to have knowledge, which is superior to the knowledge of the reasonable person, is not taken into account by the court when determining his negligence.

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

Question 9

(a) Someone who commits an error of judgment is necessarily negligent, since the fictitious reasonable person is not subject to the limitations of human nature.

(b) Involuntary intoxication is a complete defence.

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

(1) Only statement (a) is correct.
(2) Only statement (b) is correct.
(3) Only statement (c) is correct.
(4) None of these statements is correct.
(5) Only statements (a) and (b) are correct.
Question 10

(a) The **versât doctrine** holds that if a person engages in unlawful conduct, he is criminally liable for all the consequences flowing from such conduct, irrespective of whether there was in fact any culpability on his part in respect of such consequences.

(b) If X is charged with common assault, the evidence of provocation may result in X being completely acquitted.

(c) In South Africa corporate bodies may be convicted of 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) None of these statements is correct.

SUB-TOTAL [30]

PART B

THIS PART CONSISTS OF THREE (3) QUESTIONS. EACH QUESTION IS SUBDIVIDED INTO A NUMBER OF SUB-QUESTIONS. YOU MUST ANSWER ALL THREE (3) QUESTIONS. NOTE THAT YOU HAVE A CHOICE IN CERTAIN OF THE SUB-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) In *Zinn* 1969 (2) SA 537 (A) the court emphasised that three (3) factors must be taken into account when imposing sentence.

(i) Name the three factors.
(ii) Explain what each of these factors means. In your answer, also identify the theory (or theories) of punishment that is (are) applicable to each factor.

(b) Name the four requirements for criminal liability in the sequence in which they should be investigated.

(c) The concept of a **voluntary act** should not be confused with the concept of a **willed act**. Define, in one sentence, what each concept means and identify the requirement of criminal liability relevant to each

(d) **NOTE THE CHOICE THAT YOU HAVE IN THIS QUESTION**

In deciding the question of **legal causation**, our courts are guided by **policy considerations**. Discuss this approach in **TWO** of the following cases:

(i) *Daniels* 1983 (3) SA 275 (A)  
(ii) *Mokgethi* 1990 (1) SA 32 (A)  
(iii) *Tembani* 2007 (1) SACR 355 (SCA)
Question 2

(a) Fill in the missing words/phrases. Write in your answer script the number of the question followed by the words/phrases:

(i) An act which complies with the definitional elements of an offence is not necessarily (1)

(ii) In Goliath 1972 (3) SA 1 (A) it was held that (1)

(iii) In order to exclude intention, a mistake must be (1)

(iv) In judging aberrato iactus situations, the Appeal Court in Mtshiza 1970 (3) SA 747 (A) (2)

(v) In the case of (just the name) it was held that the cliché "ignorance of the law is no excuse" has no foundation in our law. (1)

(b) Discuss the principle of contemporaneity, referring to relevant case law (5)

(c) X is driving home after being told that he did not get the promotion he thought he was entitled to. There are many road works along the way which cause delays. After driving for 2 hours on the highway, the lane in which X is driving suddenly ends. Y does not want to allow X into the next available lane. X takes his firearm which he always carries with him, fires a shot at Y and kills him. X is charged with murder. Discuss whether X's lawyer will succeed with any of the following defences on a charge of murder, and on the lesser charge of culpable homicide:

(i) that X's criminal capacity was excluded as a result of tension, stress, disappointment and anger, (5)

(ii) that X had a few drinks before he left the office and was therefore intoxicated to the extent that he had criminal capacity but did not have intention (4)

(iii) Discuss whether X can be convicted of contravening section 1 of Act 1 of 1988 if the court finds that he was intoxicated to the extent that he had criminal capacity but did not have intention (5)

Question 3

(a) X, a strongly built male, is in a heated argument with Y, a young female. Y reacts by grabbing a long, sharp knife and attacking X with it. X grabs Y's arm, dispossesses her of the knife and hits her with his fists three times on the head. Y is severely injured and dies later in hospital from brain damage. Discuss X's liability in each of the set of facts that follow. You must evaluate each set of facts separately.

(i) On a charge of murder, X relies on private defence. Consider briefly whether X can succeed with this defence. You need not give a complete definition, nor do you need to discuss all the requirements. Confin your answer to applying the most relevant requirement(s) of private defence to the facts (4)

(ii) The court finds that X has exceeded the bounds of private defence. X argues that he did not kill Y intentionally because he subjectively believed that he was acting in private defence. Consider, with reference to case law, whether X can succeed with such a defence. (6)
(b) **NOTE THE CHOICE THAT YOU HAVE IN THIS QUESTION**

Name the rules to be applied in determining whether the legislature intended culpability to be an ingredient of a statutory provision.

OR

Define the test for criminal capacity in terms of section 78(1) of the Criminal Procedure Act 51 of 1977

(c) Can the concepts of intention and negligence overlap, and does proof of the former exclude the possibility of a finding on the latter?

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**SUB-TOTAL:** [70]

**TOTAL:** [100]
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**IMPORTANT**

1. USE ONLY AN HB PENCIL TO COMPLETE THIS SHEET.
2. MAKE SURE THIS IS THE RIGHT EXAMINATION SHEET.$\cdots$
3. CHECK THAT YOUR INITIALS AND SURNAME HAS BEEN FILLED IN CORRECTLY.
4. ENTER YOUR STUDENT NUMBER FROM LEFT TO RIGHT.
5. CHECK THAT YOUR STUDENT NUMBER HAS BEEN FILLED IN CORRECTLY.
6. CHECK THAT THE UNIQUE NUMBER HAS BEEN FILLED IN CORRECTLY.
7. CHECK THAT ONLY ONE ANSWER PER QUESTION HAS BEEN MARKED.
8. DO NOT FOLD.

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**BELANGRIK**

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