CRW2601      (480882)  May/June 2013

GENERAL PRINCIPLES OF CRIMINAL LAW

Duration  2 Hours

EXAMINERS
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SECOND   PROF C VAN DER BIJL
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100 Marks

Closed book examination.

This examination question paper remains the property of the University of South Africa and may not be removed from the examination venue.

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

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

PART A (MULTIPLE CHOICE QUESTIONS)

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

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

[TURN OVER]
Question 1

(a) According to the absolute theory, punishment is only a means to a secondary end

(b) The nature of the relative theories relate to the future purpose which one would like to achieve by means of punishment

(c) The preventive theory requires a proportional relationship between harm and punishment

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

Question 2

(a) The four requirements for criminal liability follow a prescribed sequence: act, unlawfulness, compliance with the definitional elements of the crime, and culpability

(b) Conduct is voluntary if X is capable of subjecting his bodily movements to his will or intellect

(c) X kidnaps Y's wife and threatens to kill her if Y does not murder his (X) arch-enemy Z. This situation is an example of relative force

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

Question 3

(a) If X relies on the defence of insane automatism, the onus of proof rests on X to prove his mental illness

(b) There is a legal duty on a parent who stands in a protective relationship to a child, to feed the child

(c) It was held in Minister van Polisie v Ewels 1975 (3) SA 590 (A) that a policeman who sees somebody else being unlawfully assaulted has a duty to come to the assistance of the person being assaulted

(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 of the statements are correct

[TURN OVER]
Question 4

(a) If X is imprisoned for a certain period, he can invoke the defence of impossibility if he is charged with a failure to pay tax even if it had been possible for him to arrange for somebody else to pay it on his behalf

(b) The definitional elements of a crime consist of the definition as well as a reference to the requirements of unlawfulness and culpability

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

(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 5

(a) Whether X thought that his conduct was lawful or unlawful is irrelevant when determining unlawfulness

(b) Culpability must exist contemporaneously with the unlawful act

(c) The cognitive and conative functions in the test for criminal capacity amount to insight and self-control respectively

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

Question 6

(a) In Eadie 2002 (1) SACR 663 (SCA) the court held that a plea of non-pathological criminal incapacity owing to emotional stress and provocation should be treated as the defence of sane automatism

(b) A person cannot rely on the defence of mental illness if his/her mental illness or mental defect was merely temporary at the time when the crime was committed

(c) Delinum tremens is a mental illness caused by the chronic abuse of alcohol

(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) None of these statements is correct
Question 7

(a) As an element of intention, knowledge of the unlawfulness of an act may be present in the form of dolus eventualis

(b) If X administers a fatal drug to his ailing mother to release her from a long, painful and incurable illness, X cannot be found guilty of murder because he has a good motive and his intention is therefore excluded

(c) In order for a mistake to exclude intention, such mistake need not be reasonable but must be material

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

Question 8

(a) The case of Mtshiza 1970 (3) SA 747 (A) concerns aberratio ictus and the concrete-figure approach

(b) In De Blom 1977 (3) SA 513 (A) the court held that mistake of law may exclude intention

(c) The Appeal Court held in Ngubane 1985 (3) SA 677 (A) that proof of intention completely excludes a finding that X was negligent

(1) All of the statements are correct
(2) Only statement (a) is correct
(3) Only statement (b) is correct
(4) Only statement (c) is correct
(5) Only statements (a) and (c) are correct
Question 9

(a) The reasonable person is a fictitious person which the law invents to personify the objective standards of reasonable conduct which the law sets in order to determine negligence

(b) The fact that X has subjective knowledge which is superior to the knowledge of the reasonable person is taken into account by the court when determining his negligence

(c) The question to determine negligence is not whether the reasonable person would have foreseen the likelihood that the result may ensue, but whether he would have foreseen the possibility that it may ensue

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

Question 10

(a) Strict liability is found in statutory crimes only

(b) Involuntary intoxication is a complete defence

(c) Since corporate bodies are regarded as abstract entities, they may not be convicted of crimes in South Africa

(1) Only statements (a) and (b) are correct
(2) Only statement (c) is correct
(3) Only statement (a) is correct
(4) Only statement (b) is correct
(5) Only statements (a) and (c) are 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 QUESTIONS. NOTE THAT YOU HAVE A CHOICE IN CERTAIN OF THE SUB-SECTIONS. 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) Merely name the five rules embodied in the principle of legality Also give their Latin equivalents  

(b) Distinguish between a legal norm, a criminal norm and a criminal sanction  

(c) May a court extend the field of application of a crime? Identify the specific legal principle applicable and briefly discuss Also refer to the authoritative case in this regard  

(d) X is a single mother of two small children She is very poor and consequently works long hours to feed her children She is extremely stressed, tired and despondent One night she gets up from her bed, walks to the children’s room, and strangles her children  
(i) On a charge of murder, discuss whether X can rely on the defence of automatism 
(ii) Can X be convicted of murder or any other crime if the evidence reveals that X suffers from schizophrenia, a well-known disease of the mind, and was labouring under hallucinations when she killed her children? She was hearing a voice instructing her to kill her children so that they could go to heaven  

(e) Merely name the requirements of the act of defence in private defence  

[25]

Question 2

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

Discuss ONE of the following cases

(i) C 1952 (4) SA 117 (O)  

(ii) Van Wyk 1967 (1) SA 488 (A)  

[TURN OVER]
(b) X and Y are both mine workers at the same mine. They are both applying for the same position, which only one can get. X knows that Y will probably get the job as he is better qualified than him. X wants the promotion very badly as he is deeply in debt. X decides to get rid of Y. One night after their shift has finished, X stabs Y twice in the chest and the abdomen with the intention to kill him. Mortally wounded, Y crawls to the night watchman who takes Y to the nearest state hospital. However, Y receives inadequate and negligent care because the nursing staff are on a general strike. He dies two weeks later as a result of septicaemia, caused by the stab wounds. X is charged with murder. X’s lawyer argues that the negligence and inadequate care in the hospital constituted a *novus actus interveniens* which broke the chain of causation between X’s original act and the ultimate result. You are the state prosecutor. With reference to case law, discuss the arguments that you will present to prove that X’s act is the cause of Y’s death.

(c) **NOTE THE CHOICE YOU HAVE IN THIS QUESTION**

Define the test for negligence

**OR**

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

(d) 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 Act 1 of 1988 and/or culpable homicide? Discuss with reference to all relevant legal authority.

**Question 3**

(a) Fill in the missing words or phrases next to the corresponding question in your answer book.

(i) The application of the *ius praevium* rule to punishment is that if the punishment to be imposed for a certain crime is increased, it must not be applied to the . of the accused who committed the crime before the punishment was increased.

(ii) For a plea of necessity to succeed, it is immaterial whether the situation of emergency is the result of or (two words).

(iii) The minimum requirement for *dolus eventualis* is that X must have the causing of the result and.
(iv) A test is applied in the case of intention

(v) Intention is to and to an act or a result

(vi) In Goosen 1989 (4) SA 1013 (A) the court decided that excludes intention if there is a (two words) between the actual and the foreseen manner of events

(b) Y works for a security company. His job is to patrol the streets of a certain suburb and to protect the people who live in the suburb. One evening he receives a message over his radio that he must immediately go to Z's house which has been broken into. He goes to the house and presses the bell at the gate but receives no response. He then climbs over the wall. As he approaches the house, he sees a figure coming out of the house and running to the back of the house. Y pursues the figure, who then jumps over the fence into the neighbour's property. Y follows the figure into the neighbour's property. The neighbour, X, who has a grudge against his neighbour (Z) and wishes to harm him, awakes from the noise, and sees Y (the security guard) running across his lawn. He (X) thinks that Y is his neighbour Z, and wants to teach him a lesson. X fires a shot at Y. Discuss X's liability in each of the set of facts that follows. You must evaluate each set of facts separately.

(i) Y dies as a result of the shot. It transpires afterwards that Y was not his neighbour Z, but a security guard on patrol. Can X be convicted of murder or any other crime in respect of Y?

(ii) The bullet fired by X hits a lamp pole, changes direction and A, the gardener, who came to investigate the cause of the noise, is killed instantly. Discuss X's possible criminal liability in respect of A.

(c) Define the versari doctrine and indicate whether this doctrine still forms part of our law.

**SUB-TOTAL:** [70]

**TOTAL:** 100

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**IMPORTANT**

1. USE ONLY AN HB PENCIL TO COMPLETE THIS SHEET
2. MARK LIKE THIS ↔
3. CHECK THAT YOUR INITIALS AND SURNAME HAS BEEN FILLED IN CORRECTLY
4. ENTER YOUR STUDENT NUMBER FROM LEFT TO RIGHT
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6. CHECK THAT ONLY ONE ANSWER PER QUESTION HAS BEEN MARKED
7. DO NOT FOLD

**BELANGRIK**

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7. MAAK SIKER DAT NEE EEN ALTERNATIEF PER VOLOAG GEMERK IS
8. MOENIE VUIE

**PART 2 (ANSWERS/ANTWOORDE) DEEL 2**

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