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GENERAL PRINCIPLES OF CRIMINAL LAW

Duration 2 Hours 100 Marks

EXAMINERS
FIRST PROF L JORDAAN DR N MOLLEMA
MISS CP MUSEKA MR RD RAMOSA
SECOND PROF C VAN DER BIJL

Closed book examination

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This paper consists of eight (8) pages plus the instruction for the 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 PART A AND PART B. PART A CONSISTS OF TEN (10) 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 (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. 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 statement/s 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 reflects the conclusions to which you have come.

[TURN OVER]
Question 1

(a) The only justification for the imposition of punishment is to deter the community from committing crimes

(b) In Zinn 1969 (2) SA 537 (A) it was held that courts may impose sentences which are grossly disproportionate to the harm caused if the particular crime with which the accused had been charged is prevalent in society

(c) The theory of retribution always plays a role in the imposition of punishment since it is the only theory that requires a proportional relationship between the punishment imposed and the moral blameworthiness of the offender

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

Question 2

(a) The investigation into the presence of the four elements of liability must follow a prescribed sequence

(b) Unlawfulness is one of the elements of an offence

(c) The culpability requirement means that there must be grounds upon which X can be blamed for his conduct

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

(a) A statutory provision which provides as follows "A person may not travel on a bus without a ticket" creates an offence

(b) The principle of legality as set out in section 35(3)(f) of the Constitution of the Republic of South Africa, 1996 only provides that every accused has a right not be convicted of an offence in respect of an act that was not an offence at the time it was committed. In other words, it does not cover omissions as well.

(c) In S v Masiya 2007 (2) SACR 435 (CC) the Constitutional Court held that to convict the appellant of rape would be in violation of his right as set out in section 35(3)(f) of the Constitution.

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

Question 4

(a) If X slapped another person through the face while he (X) was sleepwalking, he cannot be held liable for assault on the ground that his act was not unlawful.

(b) If X loses control over his micro-light plane and crashes into X’s car, he cannot be convicted of malicious damage to property because he was acting in a situation of relative force.

(c) In Henry 1999 (1) SACR 13 (SCA) the accused, who had shot his wife in a fit of rage successfully relied upon the defence of sane automatism.

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

(a) Factual causation is determined by investigating whether X’s act was the most operative cause of Y’s death

(b) If X gives Y a loaded gun to kill herself and Y pulls the trigger herself and dies, X’s act can never be viewed as the legal cause of Y’s death

(c) In Ex parte die Minister van Justisie in re S v Van Wyk 1967 (1) SA 488 (A) the court held that on a charge of murder, X may only succeed with a defence of private defence if he had killed the attacker in protection of his own life, or the life of another person

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

Question 6

(a) Teachers may not impose corporal punishment on children

(b) X can rely on necessity if he defends himself against an attack by an animal

(c) Mental illness is a defence which excludes the element of unlawfulness

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

Question 7

(a) Criminal capacity relates to a person’s mental abilities, whereas intention relates to the presence or absence of a blameworthy state of mind

(b) In order to succeed with a defence of mental illness expert evidence must be provided that the mental illness that X had suffered from at the time of the commission of the offence was of a permanent nature

(c) In terms of the Child Justice Act 75 of 2008 a child who commits an offence while under the age of 10 years does not have criminal capacity and cannot be prosecuted for that offence

(1) None of the statements is correct
(2) Only statements (b) and (c) are correct
(3) Only statement (c) is correct
(4) Only statements (a) and (c) are correct
(5) Only statement (a) is correct
Question 8

(a) Whether error in object is a defence depends on the particular definition of the offence with which X is charged.

(b) In Goosen 1989 (4) SA 1013 (A) the court held that a mistake relating to the chain of causation may exclude intention provided that the actual chain of events differed substantially from that envisaged by the perpetrator.

(c) A good motive always excludes intention.

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

Question 9

(a) If X fires a shot at his enemy, Y, and the bullet hits a wall, ricochets and fatally injures Z who suddenly appeared behind Y, the transferred-culpability approach requires that X be convicted of murder in respect of Z.

(b) The mere fact that somebody has committed an error of judgment does not necessarily mean that he was negligent.

(c) If a person engages in unlawful conduct he is held criminally liable for all the consequences flowing from such conduct.

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

Question 10

(a) If X, at the time of the commission of an offence, was unaware that his conduct amounted to an offence he can rely on the defence known as mistake of law.

(b) In South Africa corporate bodies may be convicted of common-law as well as statutory crimes.

(c) Strict liability is possible only in statutory offences.

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

THIS PART CONSISTS OF THREE QUESTIONS, NUMBERED 1, 2 AND 3. EACH QUESTION IS SUBDIVIDED INTO A NUMBER OF SUBDIVISIONS. 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

NOTE THE CHOICE THAT YOU HAVE IN THIS QUESTION

(a) Discuss the question whether a person may kill another person in a situation of necessity

OR

Discuss the ground of justification known as obedience to orders (7)

(b) X leaves a party in a very drunken state. He gets into his car and drives home. On his way he is stopped by a police officer who requests him to get out of his car. X knows that he is very drunk and is afraid that he will be arrested and charged with drunken driving. He drives away as fast as he can. The police officer pursues him in the police van but because X has a very fast car, he manages to get away from the police officer. In his rush to get away he suddenly turns left into an alley and collides into a pedestrian who was crossing the street. The pedestrian is injured and X is charged with attempted murder. His defence is that, although he still had criminal capacity, he was so drunk that he had lacked the intention to kill. Consider these facts and answer the following questions

(i) If the court accepts X’s defence and he is acquitted of attempted murder, can he nevertheless be convicted of the lesser crime of assault? In your answer you must discuss the relevant case law (7)

(ii) Can X be convicted of a contravention of section 1 of Act 1 of 1988 if the court finds that he had criminal capacity but lacked only intention? In your answer you must discuss the elements of the section 1 offence and motivate your conclusion (8)

(c) Merely name six instances in which a legal duty to act positively has been recognised by our courts (3)

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[TURN OVER]
Question 2

(a) Define the following legal concepts

(i) **Novus actus interveniens**
(ii) **Indirect intention**
(iii) **Dolus eventualis**

(b) Discuss ONE of the following cases in detail

(i) **Tembani 2007 (1) SACR 355 (SCA)**
(ii) **Eadie 2002 (1) SACR 663 (SCA)**

(c) X, an 89-year-old widow, lives all on her own on a farm. A number of farmers in the vicinity have been victims of burglaries and even serious crimes of violence such as assault and murder. X locks herself in her bedroom every night and keeps a pistol under her bed in case she is also attacked. One night she wakes up due to sounds of footsteps in her house. She hears somebody walking down the passage. The next moment somebody tries to open her bedroom door and because it is locked, the person then tries to break down the door with some instrument. X is petrified and before calling the police, fires a number of shots through the door. One of these shots hits the intruder, Y. Y dies half an hour later as a result of the shot wound. It turns out that Y was an adult male of about 30 years old and a well-known convicted criminal who had escaped from a nearby prison. X is charged with murder. Her defence is that she was acting in a situation of private defence in order to protect her life and physical integrity.

(i) Discuss the requirements for this defence and consider whether X may succeed with this defence

(ii) Suppose X is acquitted of murder on the ground that she had acted in a situation of private defence. Can she still be convicted of culpable homicide? Give a reason for your answer in one sentence

(iii) Suppose there was no intruder and that the person who had tried to enter X's room was her son (Z), who was worried about his old mother and tried to break down the door because he was under the impression that she had died in her bed. If charged with murder, is there any defence that X can rely upon? Name this defence and refer to relevant case law in which such defence was raised

[TURN OVER]
Question 3

NOTE THE CHOICE THAT YOU HAVE IN THIS QUESTION

(a) Name the requirements for a valid plea of consent

OR

Fully define the test for negligence

(b) The test for criminal incapacity is set out in section 78(1) of the Criminal Procedure Act 51 of 1977. Define the test as set out in this provision

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

(i) If X knows that her husband assaults their three-year-old child and does nothing to prevent it, she may be convicted of on the basis of an

(ii) The defence of impossibility may only be raised successfully if it was impossible to comply with the rule, and not merely inconvenient

(iii) If X knows that he may lose consciousness any time as a result of an illness and, while driving a car, loses consciousness and causes an accident, he may be found guilty of negligent driving. This type of liability is known as liability

(iv) If X contravenes the speed limit because she takes a person who has just had a heart attack to hospital, she may, if charged with a traffic offence, rely on the defence of

[15]

SUB-TOTAL: [70]

TOTAL: 100

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