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 the instruction for the completion of the mark reading sheet.

THE QUESTIONS IN THIS PAPER COUNT A HUNDRED 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. 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 SEVENTY 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.
Question 1

(a) The efficacy of the preventive theory depends on proof of a real possibility that the offender will again commit a crime.

(b) The theory of retribution is aimed at restoring the legal balance which has been disturbed by the commission of a crime.

(c) In *Masiya* 2007 (2) SACR 435 (CC) the court confirmed that the legislature, and not the courts, has the major responsibility for law reform.

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

Question 2

(a) A legal norm in an Act is a provision which makes it clear that certain conduct constitutes a crime.

(b) A person will always be held criminally liable where his or her act merely complies with the definitional elements of a crime.

(c) The three factors emphasised in *Zinn* 1969 (2) SA 537 (A) which need to be taken into account when sentencing are the crime, the criminal and the interests of society.

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

Question 3

(a) Absolute force, natural forces and automatism are all factors that exclude the voluntariness of an act.

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

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

1. Only statement (b) is 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. None of the statements is correct.
Question 4

(a) In the case of Daniëls 1983 (3) SA 275 (A) the Appellate Division stated that a court may be guided by policy considerations in determining whether a condition which is a factual cause of a situation can also be regarded as the legal cause of that situation.

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

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

Question 5

(a) If Y, who has financial problems, requests his friend X to shoot and kill him and X complies with this request and is charged with murder, he, (X) can rely successfully on the defence of consent as the consent was voluntarily given

(b) In Mogohlwane 1982 (2) SA 587 (T), the court held that X could not rely on private defence because Y's unlawful attack had already been completed when he acted in defence.

(c) The decision in Mostert 2006 (1) SACR 560 (N) confirms the principle laid down in the Constitution (s 199(6)) that the defence of obedience to orders will be successful, provided the orders were not manifestly unlawful.

(1) Only statement (a) is correct
(2) Only statements (a) and (b) are correct.
(3) Only statement (c) is correct.
(4) None of the statements is correct.
(5) Only statements (b) and (c) are correct.
Question 6

(a) The conative element of the term "criminal capacity" deals with a person's insight and understanding.

(b) In the case of Eadie 2002 (1) SACR 663 (SCA) it was held that there is no difference between the defence of non-pathological criminal incapacity, resulting from emotional stress or provocation, and the defence of sane automatism.

(c) Goosen 1989 (4) SA 1013 (A) is authority for the proposition that a mistake relating to the chain of causation may exclude intention

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

Question 7

(a) Knowledge of the unlawfulness of an act is an element of intention.

(b) The principle of contemporaneity requires that there must have been culpability on the part of X at the very moment that he committed the unlawful act

(c) For dolus indirectus, the accused must foresee the forbidden result as a necessary consequence of his act of pursuing his main aim or goal

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

Question 8

(a) If X steals from the rich in order to give to the poor, X cannot be found guilty of theft because he has a good motive and his intention is therefore excluded.

(b) In the case of Ngubane 1985 (3) SA 677 (A) the Appeal Court held that intention and negligence are conceptually different and can therefore never overlap

(c) Dolus eventualis is a Latin term, which is also known as the reasonable-man test and is used to refer to negligence

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

(a) 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.

(b) According to South African law, if X intends to shoot and kill Y but his bullet ricochets and kills Z instead, his intention to kill Y is transferred to his killing of Z.

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

Question 10

(a) A person who is charged with a crime, and who was so intoxicated that he or she was incapable of committing a voluntary act, may be convicted of contravening section 1 of Act 1 of 1988.

(b) In South African law, a company can be held liable for murder.

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

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

SUBTOTAL: [30]
PART B

THIS PART CONSISTS OF THREE QUESTIONS. YOU MUST ANSWER ALL THREE QUESTIONS (WITH THEIR SUB-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) Name the four general requirements of criminal liability in the correct sequence in which they should be investigated (5)

(b) X, a fourteen-year-old girl is a movie star. She is also a drug addict and after making a bonfire in her neighbour's driveway, she is placed into a rehabilitation centre by her parents for a month. Three days after being placed in rehabilitation, X escapes from the centre. Legislation dealing with the admission to rehabilitation centres provides that "No minor person admitted to a rehabilitation centre may leave the centre without the doctor's consent" Answer the questions below.

(i) Define the principle of legality. (3)

(ii) Is X guilty of a crime? Discuss the ius acceptum principle with specific reference to this scenario and also refer to applicable case law. (7)

(c) An omission is punishable only if there is a legal duty on a person to act positively

(i) When is there a legal duty to act positively? (1)

(ii) Name five specific instances where it is generally recognised that there is a legal duty on a person to act positively (5)

(iii) Discuss briefly with reference to case law whether there rests a duty on the state to protect its citizens from violent crime (4)

[25]

Question 2

(a) X hijacks a motorcar. He overpowers Y, the owner of the car. He ties her up and throws her into the boot of the car. While he is crossing a green traffic light, a police vehicle reacting to an emergency crosses a red traffic light and drives into the car and Y dies in the accident. X is charged with the murder of Y. At his trial, X's legal representative argues that X's conduct did not cause Y's death. Discuss the merits of this argument. (8)

(b) Discuss the question of whether a threatened person is entitled to kill another person out of necessity in order to preserve his own life with reference to all legal authority. (8)

(c) Name the requirements of the act of defence in private defence. (4)

[20]

TURN OVER
Question 3

(a) NOTE THE CHOICE YOU HAVE IN THIS QUESTION

Define the test for negligence.

OR

Name 5 (five) effects of provocation under current South African law

(b) X, a part-time criminal law student, who has just written his exams in record time arrives back at the office of his own business which he runs with a male partner B. X’s wife, Y, is the secretary. He goes to the office store-room to collect another pen. While there he can see the outline of a man and a woman kissing each other in the dark. X, who is under the impression that the woman is his wife Y, in a state of rage takes out his firearm and fires a shot at the woman. Discuss X’s liability in each of the set of facts that follows. You must evaluate each set of facts separately.

(i) The woman dies as a result of the shot but afterwards it transpires that the woman was not Y, but Z, her married sister who has been secretly meeting with B. Can X be convicted of murder or any other crime in respect of Z?

(ii) The bullet hits a fan in the storeroom, changes direction and kills A, the tea lady, who enters the room at that moment to investigate the cause of the noise. A dies immediately. Discuss X’s possible criminal liability in respect of A.

(c) NOTE THE CHOICE YOU HAVE IN THIS QUESTION

Choose ONE of the following decisions for discussion:

(1) Van Wyk 1967 (1) SA 488 (A)
(2) Chretien 1981 (1) SA 1097 (A)

(d) 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 in an Act, it must not be applied to the ... .... .... .... .... of the accused who committed the crime before the punishment was increased

(ii) Conduct is ... .... .... if it conflicts with the legal convictions of society

(iii) A .... .... .... .... .... test is applied in order to determine intention

(iv) 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

[25]

SUB-TOTAL: [70]
TOTAL: 100