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 (3) 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 (3) statements are followed by five (5) allegations (marked (1)–(5)). Each of them alleges that a certain statement or combination of statements is correct or not correct. You must decide which allegation correctly reflects the conclusions to which you have come.
Question 1

(a) The four requirements of criminal liability are the following: conduct (act or omission), compliance with the definitional elements of the offence, unlawfulness and culpability.

(b) In terms of the ius acceptum principle a court may only find a person guilty of an offence if the kind of act performed is recognized by the law as a crime.

(c) The ius praevium principle requires that a court may only find a person guilty of an offence if the kind of act performed was recognized as a crime at the time of its commission.

(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) A South African court is allowed to create new crimes if the court is of the opinion that the particular conduct is against the good morals of society.

(b) A provision which reads as follows: “Nobody may criticise the government and anybody who contravenes this provision is guilty of a crime” complies with the ius certum rule of the principle of legality.

(c) In Masiya v Director of Public Prosecutions 2007 (2) SACR 435 (CC) the Constitutional Court extended the definition of the crime of rape in order to give effect to the rights of women to dignity, privacy and sexual autonomy.

(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) The rules of the principle of legality need not be complied with in the context of punishment.

(b) X performs a voluntary act if he can subject his bodily movements to his will or intellect.

(c) If a person acted negligently, it means that he did not perform a voluntary act.

(1) None of the 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 (b) is correct

[TURN OVER]
Question 4

(a) If Y tells X that he will kill him unless he (X) kills Z and as a result of this threat X kills Z, then he (X) acts in a situation of **absolute force**

(b) **Sane automatism** means that a person did not act voluntarily as a result of **mental illness**

(c) In *Henry* 1999 (1) SACR 13 (SCA) the accused, who had shot his wife in a fit of rage relied upon the defence of **insane 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) An omission is punishable only if there is a legal duty upon X to act positively

(b) The defence of impossibility may be raised if it is **objectively** impossible for X to comply with a criminal norm which places a positive duty upon him to act

(c) **Causation** is a requirement in all **materially-defined crimes**

(1) Only statement (b) 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 statement (c) is correct

Question 6

(a) Teachers may not impose corporal punishment on children

(b) If X sees that Y is attacked by Z and helps to defend Y, he (X) cannot rely on private defence since he does not defend his own life or property

(c) Killing an innocent person in a situation of necessity can **never** be a defence but only a mitigating circumstance

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

[TURN OVER]
Question 7

(a) In a crime requiring intention, the intention requirement is satisfied irrespective of whether X had intention in the form of direct intention, indirect intention or dolus eventualis.

(b) If X wants to kill his enemy Z, but realizes that in order to kill Z, he will necessarily have to break into his (Z’s) house, he has indirect intention with regard to the crime of housebreaking with the intent to commit a crime.

(c) In order to have intention, X’s knowledge must refer to all the elements of the offence, excluding the element of culpability.

(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) All these statements are correct

Question 8

(a) If X fires a shot at an object believing it to be an animal and it turns out to be a human being, X can, on a charge of murder, rely on the defence of mistake.

(b) Whether X had intention to commit an offence necessarily involves an investigation into his motive for committing the offence.

(c) Aberratio ictus is a form of mistake which affords X a defence provided it was a matenal mistake.

(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 appears behind Y, the \textit{transferred-culpability} approach requires that X be convicted of murder in respect of Z.

(b) An accessory after the fact is regarded as a participant in a crime.

(c) A "joiner in" is a person who joins in an attack at a stage when the victim had already died as a result of the wounds inflicted by other persons who acted in a common purpose.

(1) All the 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) An interrupted attempt at a crime can still amount to a punishable attempt provided X's actions qualify as acts of execution.

(b) If X thinks that it is a crime to commit adultery and then commits adultery, he may be convicted of an attempt to commit the impossible.

(c) If X fires a shot at Y while he (Y) is driving a vehicle with bullet-proof windows and Y is not injured, X may be convicted of attempted murder provided the state can prove that X had the intention to kill Y.

(1) None of these statements is 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

Sub-total: [30]
PART B

THIS PART CONSISTS OF THREE (3) QUESTIONS, NUMBERED 1, 2 AND 3. YOU MUST ANSWER ALL THREE (3) QUESTIONS (WITH THEIR SUBDIVISIONS). NOTE THAT SOME OF THE QUESTIONS CONTAIN A CHOICE. 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

(a) Y, a 22-year-old woman is obese and very keen to lose weight. She has tried all kinds of diets but in vain. She sees an advertisement placed in a magazine by a hypnotist, X, who claims that his clients lose weight as a result of his hypnosis. Y makes an appointment with X and agrees to hypnosis. While Y is under hypnosis, X has sex with Y. Y lays a charge of rape against X. X relies on the defence of consent. He argues that since Y consented to treatment through hypnosis to lose weight, she implicitly consented to any treatment that would cure her of obesity, including sexual intercourse.

(i) Name the requirements for successful reliance on the defence of consent

(ii) Indicate by a "yes" or "no" whether X can succeed with the defence and give reasons for your answer

(b) NOTE THE CHOICE THAT YOU HAVE IN THIS QUESTION.

For successful reliance on the ground of justification known as private defence, it is required, amongst other things that the defensive action must stand in a reasonable relationship to the attack.

(i) The Supreme Court of Appeal in Steyn 2010 1 SACR 411 (SCA) 417 identified certain factors as relevant in determining whether this requirement is complied with. However, the court also stated that the list is not exhaustive and that each case should be determined in the light of its own circumstances. Name four of the factors identified by the court.

(ii) Discuss the decision in Steyn 2010 1 SACR 411 (SCA) with reference to the facts, the finding of the court and the reasons for the finding

OR

Discuss the ground of justification known as "obedience to orders"

(c) Merely name seven (7) specific instances in which a legal duty to act positively has been recognised by our courts.
Question 2

(a) X is a drug dealer and supplies drugs to Y. Y does not pay him and X decides to take revenge. He approaches Z, who is known as a so-called "contract killer" and makes a deal with him (Z) to kill Y. The exact execution of the killing is not discussed. Z agrees, and fires a shot at Y while he (Y) is driving his car. Y, who is shot in the neck, loses control over the car and collides into an oncoming car, killing the driver of that car. A, instantly Y is taken to hospital by ambulance and treated for his injury. He is dismissed from hospital after two months, having recovered from the injury. However, he is paralysed and unable to return to work. His doctor tells him (Y) that there is a possibility that he may develop bed sores if he does not change his position every four hours. He is also advised to visit the doctor immediately if he should develop bed sores. Y does not listen to his doctor and develops bed sores from which he eventually dies. Both X and Z are charged with murder in respect of A and Y.

(i) Indicate whether both X and Z can be classified as direct perpetrators in relation to Y's death. Give a reason for your answer.

(ii) Can the conduct of both X and Z be regarded as the cause of Y's death? Discuss with reference to the tests for factual and legal causation. Refer also to relevant case law.

(iii) Assume that the court finds that Z's conduct of firing a shot at Y while he was driving a car was also the cause of A's death. Can it be argued that Z should be convicted of murder in respect of A because he had intention in the form of dolus eventualis? In your answer you must give a definition of dolus eventualis.

(b) Explain briefly with reference to an example, what you understand by a mistake with regard to the presence of a ground of justification. Also state in one sentence which requirement of criminal liability is excluded if the defence is raised successfully.

(c) X1, X2 and X3 are members of a criminal gang. Their main activity is to manufacture drugs in the house of X1. Y, the girlfriend of X3, knows about this. One day while having a fight with X3 she (Y) threatens X3 to report their criminal activities to the police. X3 tells X1 and X2 about Y's threat. They all decide to kill her. Their plan is that X2 will take Y for a late-evening walk in a deserted street, that X3 and X4 will wait for them there and then attack and kill Y by stabbing her with knives. Everything goes according to plan and Y is killed by X1 and X2. Answer the following questions.

(i) Define the doctrine of common purpose.

(ii) Discuss whether X1, X2 and X3 may all be convicted of murder in terms of this doctrine.

[TURN OVER]
Question 3

(a) X is a taxi-driver. He drives too fast in an urban area, loses control over his taxi and kills a pedestrian, Y, who was crossing the road. Y is killed on impact. X is charged with culpable homicide. Consider whether X may be convicted of this offence. In your answer you must define the test for negligence. (6)

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

Discuss ONE of the following cases

(i) Eadie 2002 1 SACR 663 (SCA)
(ii) Thebus 2003 2 SACR 319 (CC) (6)

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

(i) If X is charged with murder and the court find that X lacked criminal capacity as a result of intoxication at the time of the commission of the act which caused Y’s death, X cannot be convicted of murder or culpable homicide but may be convicted of . . . . (1)

(ii) If X is charged of murder and the court finds that although he was intoxicated at the time of causing Y’s death, X had criminal capacity but lacked intention, he may nevertheless be convicted of . . . . (1)

(iii) An accomplice is a person who the commission of a crime committed by someone else (1)

(iv) The concept of criminal capacity comprises two psychological components firstly, X’s ability to of his act or omission, and secondly, his ability to . . . . of his act or omission (2)

(v) Intention, in whatever form, consists of two elements, namely a cognitive and a conative element. The cognitive element refers to X’s . . . , while the conative element refers to his (2)

(vi) Whether error in objecto excludes intention and is, therefore, a defence depends upon the of the particular crime . . . . (1)

[20]

Sub-total: [70]

TOTAL: [100]