CRW2601

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

(b) The principle of legality is one of the elements of a crime that an accused, by his conduct and subjective attributes, must comply with to be criminally liable

(c) The correct sequence of investigation into the elements of criminal liability is conduct, compliance with definitional elements, culpability and unlawfulness

(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) The idea underlying the *ius strictum* rule is that where doubt exists concerning the interpretation of a criminal provision, the accused should be given the benefit of the doubt

(b) There is a legal duty upon X to act positively if the legal convictions of the community require him to do so

(c) The Constitution of the Republic of South Africa, 1996 contains an express provision regarding the *ius certum* rule

(1) Only statements (a) and (b) are 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 *ius praevium* rule prohibits the creation of a crime with retrospective effect

(b) The Constitutional Court in *Masetya v DPP* 2007 (2) SACR 435 (CC) held that one of the central tenets underlying the understanding of legality is that of foreseeability

(c) Absolute force is one of the factors that excludes the voluntariness of an act

(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

[TURN OVER]
Question 4

(a) If X encourages his dog to attack Y and Y is injured as a result of such attack, X cannot be convicted of assault or any other offence because he did not perform an act in the legal sense of the word.

(b) Where X relies on automatism as a defence he must provide a basis for his defence by calling medical or other expert evidence which may create a doubt regarding the voluntariness of his conduct.

(c) One of the requirements for successfully raising the defence of impossibility is that the legal provision that is infringed must place a positive duty on X to perform an 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) The difference between formally defined crimes and materially defined crimes is that, with formally defined crimes the definitional elements proscribe a certain type of conduct whereas the definitional elements of materially defined crimes proscribe any conduct that causes a specific condition.

(b) The definitional elements of a crime contain a reference to the requirements of unlawfulness and culpability.

(c) The novus actus interveniens theory of legal causation is formulated as follows. An act is a novus actus interveniens if, according to human experience, in the normal course of events, the act has a tendency to bring about a certain situation.

(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) Defences that exclude the element of unlawfulness are referred to as grounds of justification

(b) If X strikes his attacker Y, but Y has no criminal capacity because of a mental illness, X cannot rely on private defence because the attack on him (X) was not unlawful.

(c) In Mogothwane 1982 (2) SA 587 (T), the court held that X exceeded the bounds of private defence because the attack by Y had already been completed when he (X) acted

(1) All these statements are correct
(2) Only statement (a) 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

Question 7

(a) One of the differences between private defence and necessity relates to the object at which the act of defence is directed

(b) If doctor X tells his patient Y that he must sexually penetrate her in order to determine whether she has an ulcer and she agrees to his act under the wrong impression that his act is necessary in order to make a diagnosis, she (Y) does not give real consent to his act

(c) Teachers have a right to administer moderate and reasonable corporal punishment on school children in order to maintain authority and discipline

(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) In criminal law the concept “culpability” refers to a blameworthy state of mind in which a person performs an unlawful act

(b) The defence of mental illness has two legs: a pathological and a psychological leg

(c) In Eade 2002 (1) SACR 663 (SCA), the court held that there is no distinction between non-pathological criminal incapacity owing to emotional stress and provocation on the one hand and the defence of sane automatism on the other hand

(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

[TURN OVER]
Question 9

(a) 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.

(b) Mistake must be reasonable in order to exclude intention.

(c) According to the Child Justice Act 75 of 2008, a 10-year old child is irrebuttably presumed to lack criminal capacity.

(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 (c) are correct

Question 10

(a) The test for culpability in the form of intention includes an investigation regarding the motive of the accused for committing the offence.

(b) Intention must be directed at the circumstances included in the definition of the offence.

(c) Putative private defence is a defence which excludes the element of culpability and not the element of unlawfulness.

(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) Define criminal capacity, and name the defences that may possibly exclude this requirement of criminal liability (6)

(b) Explain the difference between the transferred-culpability approach and the concrete-figure approach applied in determining whether X had culpability in an aberratio ictus situation. Also indicate in one sentence which approach is followed in South African law and refer to relevant case law (8)

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

In your study guide, a summary of the legal points decided by the Appellate Division (Rumpff CJ) in Chretien 1981 (1) SA 1097 (A) is provided in a shaded ("screened") block. Set out this summary of these legal points. You are not required to set out the facts in Chretien, but only the most important legal points decided in this case.

OR

Explain and discuss the principle of contemporaneity, referring to relevant case law (5)

(d) Distinguish between dolus directus, dolus indirectus and dolus eventualis by giving a definition of each (6)

[25]

Question 2

(a) On his way home from a business meeting, X begins to feel drowsy. He fails to stop at a certain stop sign and moves into an intersection where he collides with a light delivery-van. The driver of the delivery-van is killed on impact. Evidence in court reveals that a day before the accident X had been diagnosed as suffering from diabetes, but that the doctor had not warned him that he might become drowsy as a result of this, and that this might affect his ability to drive. X is charged with murder, alternatively culpable homicide

(i) Which defence can X advance, and why? (2)

(ii) Which party bears the onus of proof in a situation where this defence is raised? (1)

(iii) Explain how you, as X's lawyer, would conduct his case (2)

(iv) Determine X's liability on the charge of murder (2)

(v) Would your answer in (iv) above be different if the charge is one of culpable homicide? Briefly give reasons for your answer (2)

(vi) On a charge of culpable homicide, would your answer in (v) above be different if X had been warned by his doctor that he might become drowsy and that this might affect his ability to drive? Explain, with reference to case law (4)

[TURN OVER]
(b) X has a heated argument with his girlfriend, Y. He shoots her (Y) twice in the abdomen. The wounds would be fatal if Y is not treated within two days. Y is admitted to hospital within one hour after sustaining the injuries. The medical personnel clean her wounds and put her on antibiotic medication. However, they fail to remove the bullets and leave her unattended for 24 hours. By the time the doctor arrives, Y has already started bleeding internally and her life cannot be saved. She dies a few minutes later. On a charge of murder, X argues that he cannot be held liable because the causal connection between his act and Y's death is too remote.

Assuming that all the other requirements for liability are present, discuss with reference to case law whether X caused Y's death. (8)

(c) Name three possible effects that provocation may have on criminal liability. (3)

Question 3

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

Distinguish between aberratio ictus and error in objecto, and provide one example of each. Explain also under which circumstances error in objecto will exclude intention.

OR

Name the requirements for successful reliance upon private defence. (7)

(b) Discuss ONE of the following cases

(i) De Oliveira 1993 (2) SACR 59 (A)
(ii) Goliath 1972 (3) SA 1 (A)
(iii) De Blom 1977 (3) SA 513 (A) (6)

(c) Define the test for negligence. (5)

(d) Name the subjective factors that are exceptionally taken into account when applying the test for negligence. (3)

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.
5. Check that your student number has been filled in correctly.
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7. Check that only one answer per question has been marked.
8. Do not fold.

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4. Vul U studentennummer van links na regs in.
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