This paper consists of eight (7) pages plus the instruction for the completion of a mark-reading sheet.

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. THESE QUESTIONS HAVE TO ANSWERED ON THE MARKREADING SHEET. 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 (3) 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 conclusion to which you have come.

[TURN OVER]
Question 1

(a) The principle of legality is not applicable to common-law crimes

(b) The *ius strictum* rule implies that a court is not authorised to extend a crimes' field of application by means of analogy to the detriment of the accused

(c) The *ius praevium* rule means that crimes should be formulated clearly

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

(b) Punishable conduct includes thoughts

(c) Conduct will be voluntary if X has the ability to control his bodily movements through his mind or will

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

Question 3

(a) X will succeed with a defence of impossibility if he finds it inconvenient to obey a specific legal rule

(b) If the defence of impossibility is successfully raised the element of an act will be excluded

(c) Absolute force is one of the factors which 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
Question 4

(a) If the defence of consent is successfully raised intention will be excluded

(b) When private defence is raised as defence, the nature of the weapon used in the attack is a relevant factor to be taken into consideration in order to determine whether there was a reasonable relationship between the attack and defence

(c) The test for private defence is subjective

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

Question 5

(a) Factual causation is irrelevant as only legal causation is required for criminal liability

(b) Causation is a requirement for materially defined crimes

(c) X’s conduct will be viewed as the legal cause of Y’s death if a court is of the view that policy considerations require that X’s act be regarded as the cause of Y’s death

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

Question 6

(a) Criminal capacity is an element of unlawfulness

(b) The test for mental illness in terms of sec 78 of the Criminal Procedure Act 51 of 1977 comprises a pathological leg and a psychological leg

(c) Sane automatism excludes the element of culpability

(1) All these 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 (b) are correct
Question 7

(a) Children under the age of ten lack criminal capacity

(b) Children above the age of ten years are presumed to have criminal capacity

(c) The cognitive element of criminal capacity refers to an ability to appreciate the wrongfulness of an act and the conative element of criminal capacity refers to the ability to act in accordance with this insight

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

Question 8

(a) Knowledge, as an element of intention, must cover all the requirements of crime except the requirement of culpability

(b) The motive behind the crime will determine whether X acted with direct intention or indirect intention

(c) Mtshiza 1970 (3) SA 747 (A) supports the statement that the concrete-figure approach should be applied in cases relating to aberratio ictus

(1) All the 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

Question 9

(a) The reasonable person is exceptionally cautious and very knowledgeable

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

(c) The test for negligence is objective while the test for intention is subjective

(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 10

(a) Section 1 of the Criminal Law Amendment Act 1 of 1988 addresses the effect of voluntary intoxication on the existence of intention.

(b) The decision in Chretien 1981 (1) SA 1097(A) provides authority for the statement that voluntary intoxication can never exclude criminal capacity.

(c) Provocation may reduce qualified assault to common assault.

(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 NUMBERED 1,2 AND 3. 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) Name the five rules embodied in the principle of legality. You do not have to provide the Latin terms. (5)

(b) Discuss ONE of the following cases:

(i) S v De Blom 1977 (3) SA 513 (A)
(ii) S v de Oliveira 1993 (2) SACR 59(A)
(iii) S v Tembani 2007(1) SACR 355 (SCA) (6)

(c) Define formally and materially defined crimes and provide an example of each type of crime. (4)

(d) When will conduct be unlawful in terms of the current approach in criminal law? (2)

[TURN OVER]
(e) **NOTE THE CHOICE THAT YOU HAVE IN THIS QUESTION**

X a world–famous neurosurgeon, is pulled over by a traffic officer and issued with a summons to appear in court for talking on his cell phone while driving. X argues that his conduct is not unlawful as he was advising his colleague who was busy performing a lifesaving operation, on a technical procedure. X’s lawyer advises him that he cannot rely on the defence of necessity. X claims that his conduct was lawful because it was not in conflict with the legal convictions of society. He was talking on his cell phone while driving in the interest of the community and more specifically to save the life of the patient who was being operated on and not for personal reasons. Discuss with reference to relevant case law whether X will succeed with his defence that his conduct was not in conflict with the legal convictions of society.

OR

Name the requirements for a plea of necessity

(f) Briefly discuss the form of mistake relating to the chain of causation

Question 2

(a) Distinguish between criminal capacity and intention

(b) Define the test for criminal capacity in terms of sec 78 of Act 51 of 1977 and identify the names of the two legs of the test

(c) X and Y decide to rob a jewellery shop. They storm into the shop, pull out their fire-arms and start to smash the glass counters in which the jewellery is displayed. The shop assistant rushes towards them to prevent them from taking the jewellery. X fires at her and hits her in the arm. She falls on the display counter where a shard of broken glass slashes her throat. She bleeds to death. X is charged with murder. Discuss whether X’s act can be viewed as the cause of Y’s death.

(d) Explain the meaning of the following Latin terms

(i) *Error in objecto*

(ii) *Aberratio iclius*

(iii) *Dolus eventualis*

(iv) *Bonus paterfamilias*

(v) *Actio libera in causa*

[TURN OVER]
Question 3

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

(i) Name the four different forms of attempt  (4)
(ii) Provide two examples of conduct that will qualify as acts of preparation, and two examples of conduct that will qualify as acts of consummation  (4)

OR

Discuss the possible effects that provocation may have on criminal liability  (8)

(b) Define the following concepts  

(i) perpetrator  
(ii) accomplice  
(iii) accessory after the fact  (6)

(c) X joins a group of persons who are attacking Y. It is clear that the group have a common intention to kill Y. X, who also has a grudge against Y, throws a few stones at Y. It transpires that the mortal wound had already been inflicted when X joined the group. Y dies as a result of the attack. Discuss X’s liability for Y’s death in terms of the doctrine of common purpose  (6)

[20]

SUB-TOTAL: [70]

TOTAL: [100]
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### PART 2 (ANSWERS/ANTWOORDE) DEEL 2

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**Specimen only**