May/June 2016
Part A
1. 1
2. 4
3. 5
4. 5
5. 1
6. 2
7. 4
8. 5
9. 5
10. 2

Part B
Question 1
a.
Ius acceptum rule: A court may find an accused guilty of a crime only if the kind of act performed is recognised by the law as a crime. This rule is not referred to expressly in section 35(3) (l). However, the rule is implied in the provision

Ius praevium rule: A court may find an accused guilty of a crime only if the kind of act performed is recognised as a crime at the time of its commission. The rule is recognised expressly in section 35(3)(l). (See the words “…at the time it was committed or omitted”.)

Ius certum rule: Crimes ought not to be formulated vaguely. The rule is not referred to expressly in section 35(3)(l). However, it is suggested that the provision will be interpreted in the sense that it includes the rule.

Ius strictum rule: A court must interpret the definition of a crime narrowly, rather than broadly. The principle is not referred to expressly but it will also probably be interpreted to include the rule.

b.
In the case of absolute compulsion, X does not commit a voluntary act. For example, Z grabs X’s hand which is holding a knife and stabs Y. Because X did not perform a voluntary act, he cannot be held liable. In the case of relative force X indeed performs a voluntary act. An example is where Z threatens X to kill him (X) if he does not kill Y. X still has a choice % to kill Y, or to die instead. However, if he/she decides to rather kill Z, he/she may rely on the ground of justification known as “necessity”.
Question 2

A person acts in a state of automatism if he acts in a mechanical fashion. Examples of such instances are reflex movements such as heart palpitations or a sneezing fit and somnambulism (see p 34 second paragraph). A person who acts in a state of automatism does not act voluntarily.

(i) Dlamini's case - X killed Y while under influence of the nightmare.

Mkize's case - X killed Y while he was having an epileptic fit.

Du Plessis's case - an experienced driver had a mental “blackout”.

(ii) Sane automatism insane automatism onus on state to prove onus is on X to prove that the act was voluntary he suffered from mental illness if X's defence is successful, if defence is successful, X is he leaves the court a free dealt with in terms of section man 78 (6) of the Criminal Procedure Act 51 of 1977

(iii) Antecedent liability: X knows that he suffers from epileptic fits or that, because of some illness or infirmity he may suffer a" black out", but nevertheless proceeds to drive a motor-car, hoping that these conditions will not occur while he is sitting behind the steering wheel, but they nevertheless do occur. He can then not rely on the defence of automatism. He can be held liable for certain crimes requiring negligence, for example culpable homicide. His
voluntary act is then performed when he proceeds to drive the car while still conscious. SG pp 35 - 36. See also Victor’s case - SG p 36.

(b) DEFENCE OF IMPOSSIBILITY

X's omission must be voluntary in order to result in criminal liability. An omission is voluntary if it is possible for X to perform the positive act.

1. The legal provision which is infringed must place a positive duty on X. The conduct which forms the basis of the charge must consist in an omission. The defence will succeed, for example, if X has failed to comply with a legal provision which placed a positive duty on him to attend a meeting or to report for military duty.
2. It must be objectively impossible for X to comply with the relevant legal provision. It must have been impossible for any person in X's position to comply with the law. It must have been absolutely (not merely relatively) impossible to comply with the law. The test is objective (in the opinion of reasonable people in society).
3. X must not himself be responsible for the situation of impossibility. X cannot rely on impossibility if he himself is responsible for the circumstances in which he finds himself.

Question 3

(a) This question deals with causation. In order to find that there is a causal link between X's act and Y's death, X’s act must be both the
factual and the legal cause of Y's death. X's act is the factual cause of Y's death if it can be proven that if it were not for his (X's) act, Y's death would not have occurred. In this set of facts, it is clear that if X had not struck Y with a metal pipe, Z would not have taken him (Y) to the hospital, and they would not have been caught in the explosion. Therefore, X's act is a *conditio sine qua non* for Y's death. This is the so-called "but-for- test". This means X's act qualifies as the factual cause of Y's death.

Is X’s act also the legal cause of Y's death? X's act is the legal cause of Y's death if in terms of policy considerations it is reasonable and fair that X's act is deemed to be the cause of Y's death. Students could have referred to the cases of *Mokgethi* and *Daniëls*. Students should have briefly discussed the three theories of legal causation. The explosion was clearly a *novus actus interveniens*. Therefore there was no legal causation and consequently no causal link between X’s act and Y’s death.

(b)

**ABERRATIO ICTUS**

*Aberratio ictus* means the going astray of the blow. It is not a form of mistake. X has pictured what he is aiming at correctly, but through lack of skill, clumsiness or other factors he misses his aim, and the blow or shot strikes somebody or something else. The two opposing approaches to cases of *aberratio ictus* are the transferred culpability approach and the concrete culpability approach. We shall first consider the transferred culpability approach. X intends to shoot and kill Y. The bullet strikes a pole, ricochets and strikes Z who is a few paces away, killing him (Z). According to this approach, X will be guilty of murder since he intended to kill a person. The fact that the actual victim of X's act proved to be some somebody different from the one he wished to kill, ought not to afford him any defence, because X’s intention to kill Y is transferred to his killing of Z. We next consider the concrete culpability approach. According to this approach, X
can only be guilty of murder if it can be proved that X knew that his blow might strike Z and if he had reconciled himself to this possibility. X’s intention of killing Y cannot serve as a substitute for the intention to kill Z. In order to determine whether X had the intention to kill the person who was actually struck by the blow, the question is not simply whether he had the intention to kill a person, but whether he had the intention to kill that particular (concrete) person who was actually struck by the blow. The concrete culpability approach is to be preferred for the following two reasons:
First, this approach is more in accordance with the subjective test for intention than the transferred culpability approach. Secondly, the transferred culpability approach amounts to an application of the doctrine of versari in re illicita. Students should briefly have explained this doctrine. The most important case dealing with aberratio ictus is Mtshiza. This was one of the prescribed cases and students could have discussed this case.

October/November 2016

Part A
1. 3
2. 1
3. 5
4. 2
5. 5
6. 2
7. 3
8. 4
9. 2
10. 3
(a) This question deals with the defence of voluntary intoxication. See SG 12.5. Voluntary intoxication may be a complete defence, depending on the degree of intoxication at the time that the offence was committed. In 1981, in Chretien, the Appellate Division set out the legal position in cases of intoxication as follows:

- A person can be so drunk that he/she cannot act, leading to acquittal of any crime.
- A person can be so drunk that he/she lacks criminal capacity, leading to acquittal.
- A person can be too drunk to form intention, leading to an investigation of the person’s negligence.
- A court must not lightly infer that intoxication has the above effect.

Therefore, according to Chretien, intoxication could qualify as a complete defence leading to an acquittal. Because this position would result in drunken people being treated more leniently than sober people, parliament passed legislation in 1988 that criminalized drunken behavior in terms of section 1 of Act 1 of 1988. You had to set out the elements of the offence known as “statutory intoxication” in section 1 of the Act. Briefly stated, a person will be found guilty of contravention of section 1 of the Act
if he/she was charged with an offence (eg murder) but acquitted of that offence on the ground that he/she had lacked criminal capacity as a result of intoxication. The given set of facts states that X had criminal capacity at the time of the commission of the crime, but that he was intoxicated to such a degree that he nevertheless lacked intention. Therefore, the conclusion is as follows:

* He cannot be convicted of murder because he lacked intention.
* He can also not be convicted of the statutory offence created in section 1 of Act 1 of 1988. In order to be convicted of this offence, the state must prove that X had been acquitted of murder on the ground that he lacked criminal capacity as a result of intoxication at the time of the commission of the offence. The facts clearly state that he was acquitted on the basis that he lacked intention, and not that he was acquitted on the basis that he lacked criminal capacity.
* X can, however, be convicted of culpable homicide. He performed an unlawful act and had the required criminal capacity. If the state can also prove that, in causing Y’s death, X was negligent, he may be convicted of culpable homicide.

Some students answered that this is a situation of error in objecto which excludes intention or a situation of aberratio ictus (SG 10.5). This is wrong because the facts clearly state that the court found that X had lacked intention. Therefore, the question whether X had intention had already been decided by the court. Most students find it difficult to understand the principles relating to intoxication as a defence in our law. Make sure that, after you have studied the relevant text in the study guide, you do the activity (SG p 164) on your own. Then compare your answer with the given answer. If your answer is wrong, go back to the study guide and read the relevant parts until you grasp it!
Question 2

(a) This question deals with the effect of intoxication on criminal liability. Unless you have already mastered the general requirements for criminal liability, this is a difficult topic to understand. Therefore make sure first that you understand these general requirements before you study the defence.

You were expected to discuss X’s liability for A’s death as well as his liability for the attempt on B’s life. Therefore the crimes which are relevant in this question, are murder, culpable homicide, attempted murder assault and the statutory offence created in section 1 of Act 1 of 1988. X’s liability in respect of A and B respectively are discussed below.

X’s liability for A’s death: According to the facts, X was, at the time of the event, drunk to such an extent that he did not have the intention to kill A. Therefore he cannot be convicted of murder. However, he may be convicted of culpable homicide if the state can prove that he was negligent. According to the facts X had criminal capacity and a conviction of culpable homicide is, therefore, possible. The relevant decision is Chretien. You had to discuss this important decision.

X cannot be convicted of a contravention of section 1 of Act 1 of 1988. For a conviction of this crime it is required that X lacked criminal capacity at the time of the offence and that he was acquitted of the crime charged (ie murder) on this ground. According to the facts, X had criminal capacity. The intoxication only had the effect of excluding X’s intention. If intoxication did not have the effect that a person lacked criminal capacity, he/she cannot be convicted of this offence.

X’s liability for B’s injuries: X cannot be found guilty of attempted murder in respect of B. According to the given facts it is stated clearly that X, as a result of intoxication, did not have the intention to kill B. Because the
Appeal Court had rejected the specific-intent theory in the decision of *Chretien*, he can also not be charged with a lesser crime such as assault. Therefore you also had to discuss the decision in this context.

X can also not be convicted of a contravention of section 1 of Act 1 of 1988. According to the facts, he had criminal capacity and only lacked intention. Therefore X must be acquitted completely. As indicated above, the statutory offence only applies if X lacked criminal capacity as a result of intoxication.

**(b)** The answer to this question can be found in SG 10.6.2. According to the *De Blom* decision, the cliché that “every person is presumed to know the law” no longer exists in our law. In order to earn good marks, you had to discuss this case. You also had to indicate that ignorance of the law can only be a complete defence in crimes requiring intention.

A person’s conduct is negligent if:

- a reasonable person in the same circumstances would have foreseen the possibility

- that the particular circumstance might exist, or that his conduct might bring about the particular result, and

- a reasonable person would have taken steps to guard against such a possibility, and

- the conduct of the person whose negligence has to be determined differed from the conduct expected of the reasonable person
Most students answered merely that the test for determining whether a person was negligent is the test of the reasonable man. This answer is insufficient.
c) These cases are prescribed and discussed in the *Criminal Law Case Book.*
*De Oliviera – page 178*
*B – page 17*
*Mogohlwane – page 89*

(d) The answer to this question can be found in SG 3.3.4.2(c). X can rely on the defence of sane automatism, which is a complete defence. Sane automatism means that a person did not perform a voluntary act. You had to refer to the case of *Trickett*, where the accused relied on this defence due to a momentary lapse of consciousness. Although the onus of proving that the act was voluntary is on the state, the accused must lay a foundation for this defence.

**Question 3**

(a) The answer to this question can be found in SG 10.5. *Aberratio Ictus* means the going astray of the blow. It is not a form of mistake. The perpetrator X has pictured what he was aiming at correctly, but through lack of skill, clumsiness or other factors, he misses his aim and the blow or shot strikes something or somebody else.

The two opposing approaches are the transferred culpability and the concrete culpability approaches. The transferred culpability approach. X intends to shoot and kill Y. The bullet strikes a pole,
ricoehets and strikes Z fatally. In terms of this approach, X will be guilty of murder because he had the intention to kill a person. The fact that X didn’t kill the person that he intended awards him no defence, since the intention he directed towards Y is transferred to the killing of Z. The concrete culpability approach. In terms of this approach X can only be guilty of murder if he was able to foresee the possibility that the bullet could go astray and kill Z and have reconciled himself with this possibility. X’s intention to kill Y cannot serve as a substitute for the intention to kill Z. In order to determine whether X had the intention to kill the person who was actually struck by the blow, the question is not simply whether he had the intention to kill a person, but whether he had the intention to kill the particular person whose death he caused. Our courts apply the concrete culpability approach, (1) because it is in line with the subjective approach for the test of culpability; and (2) because the transferred culpability approach results in the versari in re illicita doctrine, that has already been rejected by our courts. The relevant case is Mtshiza.

The core of this answer is the principle that culpability should be present on the part of X at the very moment the unlawful act is committed. There is no crime if culpability only exists prior to the commission of the unlawful act, but not at the moment when the act was committed, or if it came into being only after the commission of the unlawful act. A proper discussion of the Masilela case was required to obtain a good mark for this question. You also had to indicate that this decision is an exception to the normal principles of contemporaneity in culpability.

(b) The answer is
The three subjective factors are:
(i) Children
(ii) Experts
(iii) A person who has more knowledge of a particular situation than the reasonable person
(c) The answer to this question can be found in SG 3.4.
(i) A statute;
(ii) The common law;
(iii) In terms of an agreement;
(iv) If a person accepts responsibility for the control of a dangerous or potentially dangerous object;
(v) If a person stands in a protective relationship to somebody else;
(vi) A previous positive act;
(vii) By means of his/her office;
(viii) In terms of an order of court.