

CRW2601

(481928)

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General Principles of Criminal Law

Duration 2 Hours

100 Marks

EXAMINERS

FIRST

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SECOND

PROF N MOLLEMA

Closed book examination

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This paper consists of 7 pages plus the instruction for the completion of the mark-reading sheet

THE QUESTIONS IN THIS PAPER ARE WORTH 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 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 3 MARKS THIS MEANS THAT THE QUESTIONS IN PART A ARE WORTH 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 ARE WORTH 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. CAREFULLY READ THE INSTRUCTIONS IN CONNECTION WITH THE USE OF THE MARK-READING SHEET. FAILURE TO DO SO COULD RESULT IN YOUR ANSWERS NOT BEING 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) To determine whether conduct is unlawful, we must enquire whether the conduct concerned conflicts with the *boni mores* or legal convictions of society
 - (b) In *Foune* 2001 (2) SACR 674 (C), the court upheld the defence of the accused, a regional magistrate, that his conduct was lawful because whilst he had exceeded the speed limit he had strove to promote the interests of the administration of justice
 - (c) Unlawfulness is determined without reference to X's state of mind
- (1) Only statement (a) is correct
 - (2) Only statements (b) and (c) are correct
 - (3) Only statements (a) and (b) are correct
 - (4) Only statements (a) and (c) are correct
 - (5) All the statements are correct

Question 2

- (a) X may rely on private defence to prevent Y from attacking him at some time in the future
 - (b) In *Van Wyk* 1967 (1) SA 488 (A), the court rejected the objection that since property and life are not equal in value, X cannot rely on private defence in killing Y to defend his (X's) property
 - (c) In *Steyn* 2010 (1) SACR 411 (SCA), the court held that it could not have been expected of X to gamble with her life by turning her back on Y who was about to attack her with a steak knife
- (1) Only statement (c) is correct
 - (2) Only statement (b) is correct
 - (3) Only statements (b) and (c) are correct
 - (4) All the statements are correct
 - (5) Only statements (a) and (c) are correct

Question 3

- (a) The differences between private defence and necessity relate to the origin of the situation of emergency, and the object at which the act of defence is directed
 - (b) In *Goliath* 1972 (3) SA 1 (A), the court held that necessity can be raised as a defence against a charge of murdering an innocent person in a case of extreme compulsion
 - (c) Necessity is a ground of justification excluding culpability
- (1) Only statement (a) is correct
 - (2) Only statements (a) and (b) are correct
 - (3) Only statements (b) and (c) are correct
 - (4) Only statement (c) is correct
 - (5) Only statement (b) is correct

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Question 4

- (a) Consent operates as a ground of justification to the crime of rape
 - (b) Mercy killing (euthanasia) at the request of a terminally ill patient is lawful under South African law
 - (c) A requirement for successfully relying on presumed consent is that there must be reasonable grounds for assuming that, had Y been aware of the material facts, Y would not have objected to X's conduct
- (1) Only statements (a) and (b) are correct
 - (2) Only statement (a) is correct
 - (3) Only statement (c) is correct
 - (4) Only statements (a) and (c) are correct
 - (5) All the statements are correct

Question 5

- (a) Private schools still have the right to subject learners to corporal punishment
 - (b) An act in obedience to orders can be justified if the order is not manifestly unlawful
 - (c) To successfully rely on the defence of official capacity, it is sufficient to prove that the person who performed the otherwise unlawful act holds a *public office* that permits her to perform that act
- (1) Only statements (a) and (b) are correct
 - (2) Only statements (b) and (c) are correct
 - (3) Only statement (b) is correct
 - (4) Only statements (a) and (c) are correct
 - (5) Only statement (c) is correct

Question 6

- (a) The concept of culpability means that X must have committed the unlawful act in a blameworthy state of mind
 - (b) The term "criminal capacity" refers to the knowledge or awareness that a person must have in order to act with culpability
 - (c) The principle of contemporaneity requires that there must have been culpability on the part of X at the very moment when the unlawful act was committed
- (1) Only statements (a) and (b) are correct
 - (2) Only statements (b) and (c) are correct
 - (3) Only statement (c) is correct
 - (4) None of the statements is correct
 - (5) Only statements (a) and (c) are correct

[TURN OVER]

Question 7

- (a) The test for intention is objective
 - (b) The two legs of the defence of mental illness are the pathological leg and the psychological leg
 - (c) Intention may be excluded if X acted with a good motive
- (1) Only statement (a) is correct
 - (2) Only statement (c) is correct
 - (3) Only statement (b) is correct
 - (4) Only statements (a) and (c) are correct
 - (5) None of the statements is correct

Question 8

- (a) Knowledge of unlawfulness includes awareness that the type of conduct to be committed is prohibited by law as a crime
 - (b) To exclude intention, a mistake must be reasonable
 - (c) *Aberratio ictus* is not a form of mistake
- (1) Only statements (a) and (c) are correct
 - (2) Only statement (c) is correct
 - (3) Only statement (b) is correct
 - (4) All the statements are correct
 - (5) Only statements (a) and (b) are correct

Question 9

- (a) A participant is anyone who does something, in whatever manner, whereby she furthers the commission of the crime
 - (b) A person is an accomplice if her conduct, the circumstances in which it takes place and her culpability are such that she satisfies all the requirements for liability contained in the definition of the offence
 - (c) A joiner-in is a participant who acts in common purpose together with the other persons who also inflicted wounds on Y
- (1) Only statements (a) and (b) are correct
 - (2) All the statements are correct
 - (3) Only statements (a) and (c) are correct
 - (4) Only statements (b) and (c) are correct
 - (5) Only statement (a) is correct

[TURN OVER]

Question 10

- (a) The court in *Davies* 1956 (3) SA 52 (A) employed an objective test in determining the liability of the accused for attempt
- (b) The case of *Schoombie* 1945 AD 541 illustrates an instance of voluntary withdrawal
- (c) In instances of attempt to commit the impossible, our courts draw a distinction between acts of preparation and acts of execution
- (1) None of the statements is correct
- (2) Only statements (a) and (b) are correct
- (3) Only statement (c) is correct
- (4) Only statements (a) and (c) are correct
- (5) Only statements (b) and (c) are correct [30]

PART B

THIS PART CONSISTS OF THREE QUESTIONS, NUMBERED 1, 2 AND 3 YOU MUST ANSWER ALL THREE QUESTIONS (WITH THEIR SUBDIVISIONS) NOTE THAT SOME OF THE QUESTIONS CONTAIN A CHOICE BETWEEN TWO ALTERNATIVES 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) Name the four elements of criminal liability (4)
- (b) Can a person be charged and convicted of an offence if the statutory provision only creates a criminal norm, but stipulates nothing about a criminal sanction? Justify your answer with reference to case law (5)
- (c) In *Masiya v Director of Public Prosecutions* 2007 (2) SACR 435 (CC), the Constitutional Court had to decide on the constitutional validity of the common-law definition of rape to the extent that it excluded anal penetration of a penis into the anus of a female Answer the following questions
- (i) Define the *ius strictum* principle (2)
- (ii) Did the Constitutional Court's ruling comply with the *ius strictum* principle? (1)
- (iii) What was its ruling in relation to the *ius strictum* principle? (2)
- (iv) Define the *ius praeivum* principle (2)
- (v) What was the Court's reasons on the application of the *ius praeivum* principle to the particular case? (5)
- (d) When is an omission punishable? What is the general rule that applies for omission-based liability? (3)
- (e) Distinguish between sane and insane automatism (6)
- [30]

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Question 2

- (a) Discuss the policy considerations approach to legal causation, and refer to decided cases to illustrate its application by our courts (Please note that you are not required to provide the facts of the cases and you are not required to provide full definitions of the theories of legal causation) (8)

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

- (i) Define the concept of criminal capacity, and name the three defences that exclude this element of criminal liability

OR

- (ii) Define each of the three forms of intention *dolus directus*, *dolus indirectus* and *dolus eventualis* (6)

- (c) **X1 and X2** enter a jewellery shop in a mall during the midday hours **X3** waits for them in a getaway vehicle behind the mall **X1** and **X2** successfully rob the store of money and items of jewellery. As they leave the store, a policeman (**Z**) sees them and orders them to surrender. They ignore his calls and proceed to run to the exit. A number of gunshot exchanges take place between **X2** and **Z**. One of these gunshots strikes a bystander (**A**) and he dies on the scene. This fatal shot was fired by **Z**.

X1 manages to get into the getaway car with some items and **X3** speeds off with him. **X2** goes into another store and takes a random shopper (**B**) hostage. **Z** fires a shot at **X2**, but it strikes and wounds **B**. **X2** surrenders. **X1** and **X3** are later arrested through the assistance of **X2**. They are all charged with **robbery**, **murder of A**, and **attempted murder of B**. Answer the following questions

- (i) Define the doctrine of common purpose (2)
- (ii) On the robbery charge, **X3** argues that he should not be convicted because he never personally possessed the stolen items through the use of force. Can **X3** succeed with this argument? Explain (3)
- (iii) On the murder charge, **X1** argues that the manner in which the death of **A** occurred was not foreseeable because he was killed by a gunshot fired by **Z**. Can **X1** succeed with this argument? Explain with reference to case law (3)
- (iv) On the attempted murder charge, **X1** and **X3** argue that the wounding of **B** was too far removed from what was foreseeable in the execution of the common purpose, and that, hence, they could not be held liable. Can they succeed with this argument? Explain with reference to case law (3)

[25]

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Question 3

(a) NOTE THE CHOICE YOU HAVE IN THIS QUESTION

(i) Define the test for negligence

OR

(ii) Define an accessory after the fact (5)

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

(i) In *Eadie* 2002 (1) SACR 663 (SCA), the court held that there is no distinction between _____ owing to emotional stress and provocation, on the one hand, and the defence of _____ on the other (2)

(ii) An act is a _____ for a situation if the act cannot be thought away without the situation disappearing at the same time (1)

(iii) The _____ approach is preferred in South African law when judging *aberratio ictus* situations (1)(iv) In *Chretien* 1981 (1) SA 1097 (A), the court held that, depending on the degree of intoxication, an accused may lack _____ or _____ (3)

(v) According to the Child Justice Act 75 of 2008, a child who commits an offence while under the age of _____ years does not have criminal capacity and cannot be prosecuted for that offence (1)

(vi) *Error in objecto* will only exclude intention if it relates to a requirement contained in the _____ of the particular crime (1)(vii) In *Williams* 1980 (1) SA 60 (A), the court held that a person can be an _____ to the crime of murder (1)

[15]

[70]

Total. [100]