

**Multiple choice****Question 1**

- (a) If X hires Z to murder Y and Z murders Y, Z is the indirect perpetrator.
- (b) If X buys dagga for his own use and Y acts merely as interpreter to the transaction, Y can qualify as an accomplice.
- (c) In Thebus 2003 (2) SACR 319 (CC) it was held that the only way in which a common purpose can be established is if there is proof of a prior agreement between two or more participants.
- (1) Only statement (a) is correct.
- (2) Only statement (b) is correct.
- (3) Only statements (a) and (b) are correct.
- (4) Only statements (b) and (c) are correct.
- (5) Only statement (c) is correct.

**Question 2**

- (a) The liability of an accessory after the fact, and an accomplice, is accessory in character.
- (b) Being an accessory after the fact completely overlaps with the crime known as defeating or obstructing the course of justice.
- (c) A joiner-in is a person who actively associates herself with a common purpose to kill another, (Y), before the lethal wound is inflicted on Y.
- (1) Only statement (a) is correct.
- (2) Only statement (b) is correct.
- (3) Only statement (c) is correct.
- (4) Only statements (a) and (b) are correct.
- (5) All of these statements are correct.

**Question 3**

- (a) In Davies 1956 (3) SA 52 (A) the court held that the commission of a "putative" crime is punishable as attempt.
- (b) One reason that the law punishes anticipatory crimes can be found in the preventive theory of punishment.
- (c) Attempt may be committed even where X's actions amount to the mere preparation for a crime.
- (1) Only statement (a) is correct.
- (2) Only statement (b) is correct.
- (3) Only statement (c) is correct.
- (4) Only statements (a) and (b) are correct.
- (5) None of these statements is correct.

**Question 4**

- (a) X and Z can be convicted of the crime of conspiracy only if there is proof that they were in direct communication with each other.
- (b) X can be convicted of incitement even if there is no proof that X had persuaded Z to commit the crime.
- (c) The crime of corruption is committed only if the person to whom the benefit is offered is a public official.
- (1) Only statement (a) is correct.
- (2) Only statement (b) is correct.
- (3) Only statement (c) is correct.
- (4) Only statements (b) and (c) are correct.
- (5) None of these statements is correct.

**Question 5**

- (a) The crime of public violence can only be committed by a number of persons acting with a common purpose.
- (b) In the crime of perjury at common law, X will not be guilty of this crime if he makes a false

statement under oath and thereafter acknowledges that the statement was false and tells the truth.

(c) Contempt of court may be committed where the press publishes information relating to the merits of a case which does not form part of the evidence while the case is still in progress.

- (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) None of these statements is correct.

#### Question 6

(a) The crime of rape is defined in section 3 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 as “any person (X) who unlawfully and intentionally commits an act of sexual intercourse with a complainant (Y) without his/her consent is guilty of the offence of rape”

(b) The Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 makes provision for the situation that where X misleads Y with regard to the nature of an act of sexual penetration with X, Y’s consent will be deemed to be invalid and the crime of rape will be committed.

(c) In terms of section 3 of the Firearms Control Act 60 of 2000 an offence is committed if a person possesses a firearm without a licence, permit or authorisation in terms of this Act.

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

#### Question 7

(a) In the case of common law abduction it is a requirement that the minor must be forcibly removed from the control of his or her parents or guardian.

(b) In the case of Mshumpa 2008 (1) SACR 126 (E) the court widened the crime of murder to include the killing of an unborn foetus.

(c) The crime of assault may even be committed where X inspires a belief in Y that force is immediately to be applied to her.

- (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) None of these statements is correct

#### Question 8

(a) The crimes of assault and crimen iniuria are committed where X spits into Y’s face.

(b) In the crime of criminal defamation, the term “publication” means that the allegation must be in writing.

(c) X can only commit the crime of theft if he appropriates property which belongs to and is owned by Y.

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

#### Question 9

(a) In the crime of robbery where X threatens Y with violence if he does not hand over the property, it is not a requirement that there must be a causal link between the threats of violence and the acquisition of property.

(b) The crime of receiving stolen property overlaps with the crime of theft, as persons who are

accessories after the fact to theft are usually regarded as perpetrators of theft.

(c) In the crime of fraud, it is a requirement that there must be a causal link between the misrepresentation and the prejudice.

(1) Only statement (a) is correct.

(2) Only statement (b) is correct.

(3) Only statement (c) is correct.

(4) Only statements (b) and (c) are correct.

(5) All of these statements are correct.

#### Question 10

(a) In the case of Heyne 1956 (3) SA 604 (A) it was decided that attempted fraud can be committed by X if the misrepresentation has not yet come to the attention of Y (the person against whom it is directed).

(b) In order to be convicted of the crime of malicious injury to property, X must act with an evil or malicious motive.

(c) In the crime of housebreaking with intent to commit a crime it is a requirement that actual damage must be inflicted to the building or structure, or else X will only be convicted of attempted housebreaking with intent to commit a crime.

(1) Only statement (a) is correct.

(2) Only statement (b) is correct.

(3) Only statement (c) is correct.

(4) Only statements (a) and (b) are correct.

(5) None of these statements is correct

#### QUESTION 1

(a) This statement is incorrect. Z is the direct perpetrator. See SG.1.3.2.

(b) This statement is correct. See SG 2.2.4.(1)

(c) This statement is incorrect. Liability for common purpose can also arise if it can be proved that there was active association and participation in a common criminal design. See SG 1.3.4.2.

You should therefore have chosen option 2, since only statement (b) is correct.

#### QUESTION 2

(a) This statement is correct. See SG 2.3.3(6) and 2.2.4(4) and Summary (9).

(b) This statement is correct. See SG 2.3.5.

(c) This statement is incorrect. The person must associate himself after the lethal wound is inflicted and when Y is still alive. See SG 1.3.5

You should therefore have chosen option 4, since only statements (a) and (b) are correct.

#### QUESTION 3

(a) This statement is incorrect. It is not a punishable attempt where X is mistaken about the relevant legal provisions. See SG 3.2.6.3

(b) This statement is correct. See SG 3.1.

(c) This statement is incorrect. X will only be liable if the actions were more than acts of preparation and were acts of execution. See SG 3.2.5.2.

You should therefore have chosen option 2, since only statement (b) is correct.

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#### QUESTION 4

(a) This statement is incorrect. They need not be in direct communication with each other. See SG 3.3(10).

(b) This statement is correct. In Nkosiyana 1966 (4) SA 655 (A) it was held that no element of persuasion is needed to be found guilty of incitement. See SG 3.4 and Summary (16).

(c) This statement is incorrect. Corruption is not only limited to public officials but can be committed with regard to other persons such as agents, judicial officers, members of the legislative or prosecuting authority. See SG 6.2.8.

You should therefore have chosen option 2, since only statement (b) is correct.

#### QUESTION 5

- (a) This statement is correct. See SG 4.2.2.4 and Summary (3).
- (b) This statement is incorrect. It is no excuse and X still acts unlawfully. See SG 5.1.6.
- (c) This statement is correct. This is a form of contempt of court which falls under commentary on pending cases. See SG 5.4.9.2.

You should therefore have chosen option 4, since only statements (a) and (c) are correct.

#### QUESTION 6

- (a) This statement is incorrect. Section 3 refers to any act of sexual penetration. See SG 7.2.2.1.
- (b) This statement is correct. Consent that was obtained by fraud in relation to the nature of the act of sexual penetration (error in negotio) is invalid. See SG 7.2.2.2c(iii).
- (c) This statement is correct. See SG 6.5.2.

You should therefore have chosen option 4, since only statements (b) and (c) are correct.

#### QUESTION 7

- (a) This statement is incorrect. The removal need not take place with force – in fact, in almost all cases of abduction Y consents to the removal. See SG 8.3.4
- (b) This statement is incorrect. See Casebook 286
- (c) This statement is correct. See SG 10.1.1

You should therefore have chosen option 3, since only statement (c) is correct.

#### QUESTION 8

- (a) This statement is correct. See SG 11.1.7.3(4).
- (b) This statement is incorrect. The publication may be oral or in writing. See SG 11.2.
- (c) This statement is incorrect. It is possible for X to steal his own property in the form of the theft known as arrogation of possession. See SG 12.1 and 12.8.

You should therefore have chosen option 1, since only statement (a) is correct.

#### QUESTION 9

- (a) This statement is incorrect. There must be a causal link. See SG 13.1.6
- (b) This statement is correct. See SG 13.2 and Summary (8).
- (c) This statement is incorrect. Given that proof of potential prejudice is sufficient to constitute the completed crime, there need not be a causal link. See SG 14.1.4.2(6).

You should therefore have chosen option 2, since only statement (b) is correct.

#### QUESTION 10

- (a) This statement is correct. See SG 14.1.7 and Summary (7).
- (b) This statement is incorrect. X's motive is not a relevant consideration for this crime. See SG 15.2.6.
- (c) This statement is incorrect. Actual damage need not be inflicted. See SG 16.3.1.

You should therefore have chosen option 1, since only statement (a) is correct.

#### Question 1

- (a) An accomplice is a participant.
  - (b) An indirect perpetrator is regarded as an accomplice because he does not comply with all the requirements for liability set out in the definition of the crime.
  - (c) The liability of the accessory after the fact is accessory in character, but not that of the accomplice.
- (1) Only statement (a) is correct.  
 (2) Only statement (b) is correct.  
 (3) Only statement (c) is correct.  
 (4) Only statements (a) and (b) are correct.  
 (5) Only statements (a) and (c) are correct.

#### Question 2

- (a) In South African law, a putative crime is not punishable.  
 (b) A putative crime is a crime which exists, but which X believes not to exist.  
 (c) In Schoombie 1945 AD 541, the Appeal Court confirmed X's conviction of (completed) arson on the basis that X's act qualified as an act of execution or consummation.
- (1) Only statement (a) is correct.  
 (2) Only statements (a) and (b) are correct.  
 (3) Only statements (a) and (c) are correct.  
 (4) Only statement (c) is correct.  
 (5) None of these statements is correct.

#### Question 3

- (a) A common purpose of disturbing the public peace and order is required for the crime of public violence.  
 (b) It is not a requirement for the crime of defeating or obstructing the course of justice that a case must be pending.  
 (c) It is possible to convict a person of perjury at common law if, under oath and in the course of a legal proceeding, he speaks the truth while believing that he is telling a lie.
- (1) Only statement (a) is correct.  
 (2) Only statement (b) is correct.  
 (3) Only statements (a) and (b) are correct.  
 (4) Only statement (c) is correct.  
 (5) Only statements (a) and (c) are correct.

#### Question 4

- (a) Only a declaration that is made under oath can lead to a conviction of perjury.  
 (b) X can be convicted of contempt of court if he unlawfully and intentionally falsely pretends to be an officer of the court, like an advocate or attorney.  
 (c) A reporter may be convicted of contempt of court if a reasonable person in his position could foresee that the information which he publishes might deal with a pending case.
- (1) Only statement (a) is correct.  
 (2) Only statement (b) is correct.  
 (3) Only statement (c) is correct.  
 (4) Only statements (a) and (b) are correct.  
 (5) Only statements (b) and (c) are correct.

#### Question 5

- (a) In Williams 1980 (1) SA 60 (A) the court held that it is not possible to be an accomplice to murder.  
 (b) Attempted assault is possible.  
 (c) If X is charged with murder, but it cannot be proved that he had the necessary intention to murder, he will invariably be convicted of culpable homicide.
- (1) Only statement (a) is correct.  
 (2) Only statements (b) and (c) are correct.  
 (3) Only statements (a) and (b) are correct.  
 (4) Only statement (b) is correct.  
 (5) Only statements (a) and (c) are correct.

#### Question 6

- (a) In Van Zyl 1993 (1) SACR 338 (C) the court held that the offence of pointing of an arm is committed only if the arm is pointed directly at the particular person in such a way that, if it were discharged, the bullet would strike that person.  
 (b) A person below the age of 16 years may possess an arm without a licence with prior consent of the holder of a licence to possess such firearm.  
 (c) It is not possible to convict X of robbery unless the property was on the victim's person.
- (1) Only statements (a) and (b) are correct.  
 (2) Only statements (b) and (c) are correct.

(3) Only statement (a) is correct.

(4) Only statement (b) is correct.

(5) Only statement (c) is correct.

#### Question 7

(a) Spitting in someone's face can amount to both assault and crimen iniuria.

(b) X can be convicted of kidnapping if he unlawfully and intentionally deprives Y of her freedom of movement by locking her up in her own bathroom.

(c) X will be guilty of statutory abduction if he abducts a minor with the intention to marry her.

(1) Only statement (a) is correct.

(2) Only statement (b) is correct.

(3) Only statement (c) is correct.

(4) Only statements (a) and (b) are correct.

(5) All of these statements are correct.

#### Question 8

(a) If a moveable, corporeal thing is set on fire unlawfully and intentionally, it amounts to arson.

(b) Every case of theft by false pretences involves fraud, but every case of fraud does not involve theft by false pretences.

(c) It is required for the crime of fraud that there is a causal connection between the misrepresentation and the prejudice.

(1) Only statement (a) is correct.

(2) Only statement (b) is correct.

(3) Only statements (a) and (b) are correct.

(4) Only statements (a) and (c) are correct.

(5) None of these statements is correct.

#### Question 9

(a) For the purposes of the offence of unlawfully possessing drugs in contravention of section 4 of the Drugs and Drugs Trafficking Act 140 of 1992, to "possess" a drug means to possess the drug in the ordinary juridical sense of the word, or to keep, store or have in custody or under control or supervision such drug.

(b) For possession of a dangerous or undesirable dependence-producing substance (such as dagga, heroin or mandrax), a court may impose any fine it deems fit to impose, or imprisonment for a period not exceeding 15 years, or both such fine and such imprisonment.

(c) In the case of Solomon 1986 (3) SA 705 (A) the Appeal Court held that a person who buys drugs for her own use does not commit an act amounting to dealing in drugs.

(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) All the statements are correct.

#### Question 10

(a) Proof of sexual intercourse is required for a conviction of bigamy.

(b) If X is charged with contravening section 14(1) of the Sexual Offences Act 23 of 1957, which prohibits sexual intercourse with a girl under the age of 16 years, consent by the girl is not a defence; unless the girl led X to believe she was above the age of 16.

(c) The crime of extortion is completed only once the benefit is handed over.

(1) Only statement (a) is correct.

(2) Only statements (a) and (b) are correct.

(3) Only statement (b) is correct.

(4) Only statements (b) and (c) are correct.

(5) None of the statements are correct. [30]

#### QUESTION 1

(a) This statement is correct. See SG 1.2.1.

(b) This statement is incorrect. See SG 1.3.2. An indirect perpetrator is merely a certain kind of perpetrator. He is not an accomplice.

(c) This statement is incorrect. The liability of both an accomplice and an accessory after the fact is accessory in character. As to accomplice liability, see SG 2.2.4 (4), and as to the liability of an accessory after the fact, see SG 2.3.3 (6).

Therefore option (1) is correct since only statement (a) is correct.

#### QUESTION 2

(a) This statement is correct. See SG 3.2.6.3.

(b) This statement is incorrect. A putative crime is a crime which (objectively) does not exist, but which X (subjectively) believes to exist. See SG 3.2.6.3.

(c) This statement is incorrect. See SG 3.2.5.3

Therefore option (1) is correct since only statement (a) is correct.

#### QUESTION 3

(a) This statement is correct. Those participating in the disturbance of the peace must act in concert; that is with a common purpose (Wilkins 1941 TPD 276, 289; Ndaba 1942 OPD 149; Kashion 1963 (1) SA 723 (R) 149). See SG 4.2.2.4.

(b) This statement is correct. You have to study the discussion of the crime of defeating or obstructing the course of justice in Criminal Law. On page 339 under heading 6 of this book, it is clearly stated that, for the crime to be committed no pending case is necessary. See also point (8) in the summary appearing at the end of study unit 5 in the SG.

(c) This statement is incorrect. According to SG 5.1.3 (1), section 101(1) of the Criminal Procedure Act assumes that an objectively false declaration is required; not a subjective falsity as described in the statement.

Therefore option (3) is correct since only statements (a) and (b) are correct.

#### QUESTION 4

(a) This statement is incorrect. See SG 5.1.4.

(b) This statement is correct. Falsely pretending to be an officer of the court is merely one of many ways in which the crime of contempt of court can be committed. See SG 5.4.5.

(c) This statement is incorrect. See SG 5.4.9.2b. From the discussion under this heading it is clear that it is only in cases where the editor or owner of a newspaper is charged with the crime, that intention need not be proved but only negligence. The rule does not apply to cases where an individual reporter is charged with the crime. In such a case intention is required.

Therefore option (2) is correct since only statement (b) is correct.

#### QUESTION 5

(a) This statement is incorrect. The court held the opposite view. In the Williams case the court held that it is possible for somebody to be an accomplice to murder. Read Criminal Law 272 - 274 for Snyman's opinion about the decision. Also see SG 2.2.5 for more information.

(b) This statement is correct. It was previously assumed that attempted assault was impossible because every time there is an attempt to assault but the blow misses, a belief is inspired in the victim that force is immediately to be applied to him / her. Nowadays the conviction is that certain cases do exist where no fear is inspired with the victim when there is an attempted assault. Examples of these are where the victim is blind, deaf, unconscious or under the influence of alcohol or drugs. See SG 10.1.10.

(c) This statement is incorrect. See Criminal Law 426 – 427.

Therefore option (4) is correct since only statement (b) is correct.

#### QUESTION 6

- (a) This statement is correct. The court in the Van Zyl case interpreted the expression "pointed at" in the act consisting of the pointing of an arm or object at a particular person very narrowly as illustrated in the statement above. See SG 10.2.3.
- (b) This statement is incorrect. Any person, who possesses a firearm without a licence issued in terms of the Act for that firearm, commits an offence. See SG 6.5.2.1.
- (c) This statement is incorrect. The property need not be on the victim's person or in his presence at the time of the theft. Read the discussion of the Ex parte Minister van Justisie: in re S v Seekoei case in your SG 13.1.8.

Therefore option (3) is correct since only statement (a) is correct.

#### QUESTION 7

- (a) This statement is correct. Spitting in someone's face can be seen as both assault and *crimen iniuria*, as seen in the Ndlangisa case. See SG 11.1.7.3.
- (b) This statement is correct. It is not necessary for the kidnapper to remove the kidnapped person from one place to another. Kidnapping can take place even though there is no physical removal, as where Y is imprisoned where she happens to be. See Criminal Law 464 and SG Summary (21).
- (c) This statement is incorrect. Statutory abduction only takes place if the purpose of the abduction is to have sexual relations with the minor. See SG 8.3.3, and there under the point of difference between statutory and common-law abduction marked (1). Also see SG 8.3.2.

Therefore option (4) is correct since only statements (a) and (b) are correct.

#### QUESTION 8

- (a) This statement is incorrect. If a movable thing is set on fire, it amounts to malicious injury to property. See SG Chapter 15; Summary (6).
- (b) This statement is correct. Theft by false pretences completely overlaps with the crime of fraud. However, every case of fraud does not involve theft by false pretences since X can commit fraud without obtaining or appropriating movable, corporeal property; e.g. writing an exam in another's place. See SG 14.3.3.
- (c) This statement is incorrect. Since potential prejudice is sufficient, it is unnecessary to require a causal connect between the misrepresentation and the prejudice. See SG 14.1.4 (6).

Therefore option (2) is correct since only statement (b) is correct.

#### QUESTION 9

- (a) This statement is correct. See SG 6.4.2.3 b (ii).
- (b) This statement is correct. See SG 6.4.2.7.
- (c) This statement is correct. See SG 6.4.3.3.

Therefore option (5) is correct since all the statements are correct.

#### QUESTION 10

- (a) This statement is incorrect. See SG point (2) of the summary appearing at the end of Study Unit 8 as well as Criminal Law 368 - 370.
- (b) This statement is correct. According to the first special defence as set out in section 56(2)(a), it is a valid defence for X to contend that the girl deceived him into believing that she was 16 years or older at the time of the alleged commission of the crime, and that X reasonably believed that the girl was 16 years or older. The prosecution then bears the onus of proving that X was not deceived into believing that the girl was 16 years or older. X also has an evidential onus to lay a factual foundation for the existence of his belief. See SG 7.7.2.2.
- (c) This statement is correct. See SG 6.3.5, the last sentence.

Therefore option (4) is correct since only statements (b) and (c) are correct.



**Question 1**

- (a) A person may only be convicted of the crime of murder if he/she committed the crime with his/her own hands or body.
- (b) The existence of a common purpose between two or more participants can only be proved on the basis of an expressed or implied prior agreement to commit an offence.
- (c) If X, (a woman) ties Z (another woman) to a bed to make it possible for Y (a man) to rape Z, and Y in actual fact rapes Z, X may be convicted as a perpetrator of the crime of rape.
- (1) Only statement (a) is correct.
- (2) Only statement (b) is correct.
- (3) Only statements (a) and (c) are correct.
- (4) None of the statements is correct.
- (5) Only statement (c) is correct.

**Question 2**

- (a) In *Davies 1956 (3) SA 52 (A)* the Appeal Court held that the commission of a so-called putative crime is nevertheless punishable as attempt.
- (b) In order to be convicted of an attempt to commit a specific crime, negligence is a sufficient form of culpability.
- (c) The act in the crime of conspiracy consists in the entering into an agreement to commit a crime or crimes.
- (1) Only statement (a) is correct.
- (2) Only statement (c) is correct.
- (3) Only statements (a) and (c) are correct.
- (4) Only statements (b) and (c) are correct.
- (5) None of these statements is correct.

**Question 3**

- (a) X ought to be convicted of incitement even if there is proof that the crime that he incited Y to commit, has indeed been committed.
- (b) The crime of common-law perjury can only be committed if the particular statement is made orally.
- (c) In statutory perjury the declaration must be made in the course of a legal proceeding.
- (1) None of these statements is correct.
- (2) Only statement (b) is correct.
- (3) Only statements (a) and (c) are correct.
- (4) Only statement (c) is correct.
- (5) Only statement (a) is correct.

**Question 4**

- (a) If X persuades Y, a witness in a trial, to give false evidence in court, X may be convicted of the crime of defeating or obstructing the course of justice.
- (b) Laying a false criminal charge at the police against another person does not constitute the crime of defeating or obstructing the course of justice (or an attempt to commit it).
- (c) Contempt of court in *facie curiae* is punished solely to protect the dignity of the individual judicial officer who presides in the case.
- (1) Only statement (c) is correct.
- (2) Only statement (a) is correct.
- (3) All the statements are correct.
- (4) Only statement (b) is correct.
- (5) Only statements (a) and (b) are correct.

#### Question 5

- (a) X cannot be convicted of the offence of corruption created in section 3 of the Prevention and Combatting of Corrupt Activities Act 12 of 2004 if he/she had merely agreed to accept gratification unlawfully in the future.
- (b) If X is charged with corruption in terms of the abovementioned provision (Section 3 of Act 12 of 2004) and it appears at the trial that X had given gratification to Y in the belief that Y will give him a passport, but that Y is in actual fact not entitled to issue passports, this fact affords X a defence.
- (c) A person used as a police trap does not act unlawfully if he/she agrees to receive gratification from another person in order to trap that person into committing the crime of corruption.
- (1) Only statement (a) is correct.
- (2) Only statements (b) and (c) are correct.
- (3) Only statements (a) and (c) are correct.
- (4) None of these statements is correct.
- (5) Only statement (c) is correct.

#### Question 6

- (a) A person in a position of authority who knows or who ought reasonably to have known that certain crimes have been committed in terms of the Prevention and Combatting of Corrupt Activities Act 12 of 2004 commits a crime if he/she fails to report this to a police officer.
- (b) The benefit in extortion is limited to patrimonial benefit.
- (c) The crime of extortion is completed the moment X intentionally exerts pressure on Y to hand over a benefit to him, irrespective of whether X has received the benefit or not.
- (1) Only statement (a) is correct.
- (2) None of the statements is correct.
- (3) Only statements (a) and (b) are correct.
- (4) Only statement (b) is correct.
- (5) Only statement (c) is correct.

#### Question 7

- (a) If X exercises control over Mandrax tablets on behalf of Y but has no intention of using the drugs personally, X cannot be convicted of the crime known as "use or possession of drugs" in terms of section 4 of the Drugs and Drugs Trafficking Act 140 of 1992.
- (b) In *Prince v President, Cape Law Society 2002 (2) SA 794 (CC)* the Constitutional Court ruled that section 4 of Act 140 of 1992 (which criminalises the possession of drugs) is unconstitutional because Rastafari who use and possess dagga only for religious purposes, are also targeted in terms of this provision.
- (c) Failing to report to the police that one is aware that somebody else possesses a firearm illegally, amounts to a crime in terms of the Firearms Control Act 60 of 2000.
- (1) Only statement (a) is correct.
- (2) Only statement (c) is correct.
- (3) Only statements (a) and (c) are correct.
- (4) Only statement (b) is correct.
- (5) Only statements (b) and (c) are correct.

#### Question 8

- (a) If X, a 20-year-old man, indecently exposes himself in front of a 13-year-old girl, he may be convicted of a contravention of section 14 of the Sexual Offences Act 23 of 1957.
- (b) If X, a 20-year-old man, has sexual intercourse with a girl below the age of 12, he is guilty of rape irrespective of whether he was under the impression that the girl had consented to intercourse.
- (c) If X, a 21-year-old man, has sexual intercourse with a 15-year-old prostitute with her

consent, he commits no offence.

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

#### Question 9

- (a) If X takes Y, a minor girl, to his house, has sexual intercourse with her and immediately thereafter takes her home, he may be guilty of the crime of commonlaw abduction.
  - (b) Assault may be committed even if there is no physical contact with or impact on the victim's body.
  - (c) For a conviction of assault with the intent to cause grievous bodily harm, it is required that the victim had in actual fact suffered grievous bodily harm.
- (1) Only statement (a) is correct.
  - (2) Only statement (b) is correct.
  - (3) Only statements (a) and (b) are correct.
  - (4) None of these statements is correct.
  - (5) Only statement (c) is correct.

#### Question 10

- (a) If X secretly watches his neighbour undressing, he may be convicted of criminal defamation.
  - (b) The crime of *crimen iniuria* involves some measure of sexual impropriety.
  - (c) The crime of theft by false pretences completely overlaps with the crime of fraud.
- (1) Only statement (a) 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.

#### QUESTION 1

(a) This statement is incorrect. The definition of the crime of murder is the unlawful, intentional causing of the death of another human being. It is not required that the death be caused in a certain manner, for example, with the perpetrator's own hands or body. If X hires Y to murder Z and Y executes his request, X has in actual fact caused Z's death unlawfully and intentionally. Therefore, he complies with the definition of the offence. See SG 1.2.3 and 1.3.2.

(b) This statement is incorrect. The existence of a common purpose between a certain participant and the other members of a group can also be established by proving that the participant actively associated him- or herself with the actions of the other members of the group. See SG 1.3.4.2 and 1.3.4.5.

(c) This statement is incorrect. X cannot be convicted as a perpetrator because her conduct does not comply with the definition of the crime of rape, namely the unlawful, intentional sexual intercourse by a male with a female without her consent. Therefore, only a male can be a perpetrator of this offence. [According to the new Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007, rape constitutes all forms of penetration, irrespective of gender]. X may, however, be convicted as an accomplice to the crime of rape. Although her conduct does not comply with the requirements set out in the definition of the crime, she nevertheless furthered the commission of the crime performed by Y. See Criminal Law 445; SG 1.2.2 and SG 1.2.3.

You should therefore have chosen option (4), since none of these statements are correct.

## QUESTION 2

(a) This statement is incorrect. The court in fact held the opposite, namely that the commission of a putative crime cannot be punished as an attempt. See SG 3.2.6.3 and make sure that you understand that an attempt to commit a putative crime relates to impossibility originating from X's mistaken view of the law.

(b) This statement is incorrect. As pointed out in SG 3.2.8, negligent attempt is notionally impossible – one cannot attempt (intend) to be negligent.

(c) This statement is correct. See 3.3 (4).

You should therefore have chosen option (2), since only statement (c) is correct.

## QUESTION 3

(a) This statement is incorrect. See SG 3.4(2).

(b) This statement is incorrect. See SG 5.1.3 (2).

(c) This statement is incorrect. In statutory perjury, which requires two conflicting statements, neither of the statements needs to be made in the course of legal proceedings. See Criminal Law 346.

You should therefore have chosen option (1), since none of these statements is correct.

## QUESTION 4

(a) This statement is correct. See Criminal Law 338.

(b) This statement is incorrect. See Criminal Law 339.

(c) This statement is incorrect. The crime is aimed at protecting the proper administration of justice. See SG 5.4.4.

You should have chosen option (2), since only statement (a) is correct.

## QUESTION 5

(a) This statement is incorrect. A mere agreement to accept gratification in the future amounts to the completed crime of corruption. See SG 6.2.6.

(b) This statement is incorrect. See SG 6.2.6.2 page 67 under subparagraph (5).

(c) This statement is correct. See SG 6.2.6.5 under subparagraph (2).

You should have chosen option (5), since only statement (c) is correct.

## QUESTION 6

(a) This statement is correct. See SG 6.2.9.

(b) This statement is incorrect. See SG 6.3.5 and take note of the fact that the legislature extended the benefit required for extortion to include non-patrimonial benefits.

(c) This statement is incorrect. The benefit must in fact be acquired by X before the crime is completed. See SG 6.3.4. and 6.3.5

You should have chosen option (1), since only statement (a) is correct.

## QUESTION 7

(a) This statement is incorrect. Section 1 of the Drugs and Drugs Trafficking Act 140 of 1992 provides that the word "possess" includes "keeping, storing or having in custody or under control or supervision". The last-mentioned type of possession is known as *possessio naturalis*. See SG 6.4.2.3 b i and ii.

(b) This statement is incorrect. The court in fact rejected this contention. See SG 6.4.2.3 b iv.

(c) This statement is correct. See SG 6.5.4(1).

You should have chosen option (2), since only statement (c) is correct.

## QUESTION 8

(a) This statement is incorrect. See SG 7.2.2.1 where it is pointed out that the crime can only be committed if the act is committed with the young person. Mere exposure of the body does not amount to this crime but may amount to *crimen iniuria*.

(b) This statement is correct. See SG 7.2.2.1.

(c) This statement is incorrect. X cannot rely on the special defence set out in section 14 (2) because he is already 21 years old. See SG 7.2.2.2 for the requirements of the defence and note that all three elements must be present cumulatively. You should have chosen option (4), since only statement (b) is correct.

#### QUESTION 9

(a) This statement is incorrect. The mere temporary removal of a girl from her home in order to have sexual intercourse with her is not yet abduction. X must intend to remove the girl from her home either permanently or for a substantial period. See SG 8.3.1.7.

(b) This statement is correct. See SG 10.1.7 where it is stated that the mere inspiring of fear or a belief in another person that force is immediately to be applied to him/her, also constitutes an act of assault.

(c) This statement is incorrect. Whether grievous bodily harm is in fact inflicted on the victim is immaterial in determining liability. The crucial question is whether X had the intention to inflict grievous bodily harm. See Criminal Law 435.

You should have chosen option (2), since only statement (b) is correct.

#### Question 1

(a) An indirect perpetrator is a person who makes use of somebody else to commit a crime.

(b) Williams 1980 (1) SA 60 (A) is authority for the point of view that a person may be convicted as an accomplice to the crime of murder.

(c) A "joiner in" is a person who actively associated himself with the common purpose of others (to kill Y) at a time before the lethal wound had been inflicted upon Y.

(a) Only statement (a) is correct.

(b) Only statements (a) and (b) are correct.

(c) Only statements (a) and (c) are correct.

(d) Only statement (b) is correct.

(e) All of these statements are correct.

#### Question 2

(a) For a conspiracy to be punishable, an agreement between at least two persons to commit a crime is required.

(b) The purpose of the prohibition of incitement to commit a crime is to discourage people from seeking to influence others to commit crimes.

(c) The crime of public violence can be committed by an individual acting alone.

(1) Only statement (a) is correct.

(2) Only statements (a) and (c) are correct.

(3) Only statements (a) and (b) are correct.

(4) Only statements (b) and (c) are correct.

(5) Only statement (b) is correct.

#### Question 3

(a) The crime of common-law perjury is only committed if the false declaration is made in the course of a legal proceeding.

(b) Laying a false criminal charge against another may amount to the crime of defeating or obstructing the course of justice (or attempting to do so).

(c) Fair comment on the outcome of a case or on the administration of justice in general does not constitute contempt of court.

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

#### Question 4

- (a) Where an editor of a newspaper is charged with contempt of court on the ground of having published information in his newspaper concerning a pending case which tends to influence the outcome of the case, it is sufficient if the state proves culpability in the form of negligence.
  - (b) Unfair criticism of the South African Police Services by a newspaper reporter may amount to contempt of court.
  - (c) The reason for the existence of the crime of contempt of court is to protect the dignity of an individual.
- (1) Only statement (b) is correct.
  - (2) Only statement (c) is correct.
  - (3) Only statement (a) is correct.
  - (4) Only statements (a) and (b) are correct.
  - (5) None of these statements is correct.

#### Question 5

- (a) The crime of extortion can only be committed by a public official.
  - (b) The benefit in extortion is limited to patrimonial benefit.
  - (c) The crime of extortion is completed the moment X intentionally exerts pressure on Y to hand over a benefit to him, irrespective of whether X has received the benefit or not.
- (1) Only statement (c) is correct.
  - (2) Only statements (b) and (c) are correct.
  - (3) Only statement (a) is correct.
  - (4) Only statement (b) is correct.
  - (5) None of these statements is correct.

#### Question 6

- (a) If X obtains drugs for her own personal use, she cannot be convicted of the crime known as "dealing in drugs".
  - (b) Culpability in the form of intention is required for the offence of "dealing in drugs".
  - (c) Corruption in its active form is completed only once X has given a benefit to another.
- (1) Only statement (a) is correct.
  - (2) Only statements (a) and (b) are correct.
  - (3) All of these statements are correct.
  - (4) Only statements (a) and (c) are correct.
  - (5) Only statements (b) and (c) are correct.

#### Question 7

- (a) A husband may not be convicted of raping his wife.
  - (b) If X, a twenty-two-year-old male, exposes himself indecently in front of a 13-year-old schoolgirl he may be convicted of a contravention of section 14 of the Sexual Offences Act 23 of 1957.
  - (c) The crime of common-law abduction can only be committed by a male person.
- (1) Only statement (b) is correct.
  - (2) Only statement (c) is correct.
  - (3) Only statement (a) is correct.
  - (4) Only statements (a) and (b) are correct.
  - (5) None of these statements is correct.

#### Question 8

- (a) In A 1993 (1) SA 600 (A) the court held that because urine is not a poisonous or

dangerous substance, X cannot be convicted of assault if he forces Y to drink his own urine.

(b) The crime of indecent assault cannot be committed by a female.

(c) X may only be convicted of assault with the intent to do grievous bodily harm if the victim had in fact been seriously injured.

(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 9

(a) A person cannot be convicted of theft in respect of property which belongs to him- or herself.

(b) An intention to acquire a benefit is a requirement for the crime of theft.

(c) To listen to another person's private telephone conversations by means of an electronic bugging device amounts to the crime of criminal defamation.

(1) Only statement (b) is correct.

(2) Only statement (c) is correct.

(3) Only statement (a) is correct.

(4) None of these statements is correct.

(5) Only statements (a) and (b) are correct.

#### Question 10

(a) It is not required for robbery that the property should necessarily be on the person of the victim or in his presence when the violence takes place.

(b) The misrepresentation required for the crime of fraud may consist in an omission.

(c) If X breaks into a motor car with the intent to steal a car radio, he may be convicted of the crime of housebreaking with intent to commit a crime.

(1) Only statements (a) and (c) are correct.

(2) Only statements (b) and (c) are correct.

(3) Only statement (c) is correct.

(4) Only statements (a) and (b) are correct.

(5) All these statements are correct.

#### Question 1

The statements in this question tested your knowledge of the principles applicable if more than one person is involved in the commission of a crime. These principles are discussed in study units 1 and 2.

Statement (a) is correct. An indirect perpetrator does not commit the crime with his own body, but makes use of somebody else to commit a crime. See the discussion in 1.3.2.

Statement (b) is correct. See the discussion in 2.2.5 and the decision in Williams as discussed in your case book 185-191.

Statement (c) is incorrect. A so-called "joiner-in" associates himself with others' intention to kill at a stage when the victim has already been fatally wounded. See the discussion in 1.3.5. Since only statements (a) and (b) are correct, you should have marked option (2).

#### Question 2

The statements in this question tested your knowledge of the anticipatory crimes known as conspiracy and incitement, as well as the crime of public violence. The anticipatory crimes are discussed in study unit 3 and the crime of public violence, being a crime against the state, is discussed in study unit 4.

Statement (a) is correct. The act in the crime of conspiracy consists of entering into an agreement to commit a crime or crimes. One cannot conspire with oneself to commit a crime. See the discussion in 3.3.

Statement (b) is correct. See the discussion in 3.4.

Statement (c) is incorrect. For the crime of public violence it is required that the public peace

and order be disturbed by a number of persons acting together. See the discussion in 4.2.2. Since only statements (a) and (b) are correct, you should have marked option (3).

#### Question 3

The statements in this question tested your knowledge of the contents of study unit 5, dealing with crimes against the administration of justice.

Statement (a) is correct. See the discussion in 5.1.5.

Statement (b) is correct. See Criminal Law 339.

Statement (c) is correct. Fair comment excludes the unlawfulness of conduct. See the discussion in 5.4.6.

Since all of these statements are correct, you should have marked option (1).

#### Question 4

The statements in this question tested your knowledge of the crime of contempt of court in the form of commentary on pending cases, discussed in study unit 5.

Statement (a) is correct. The relevant decision is Harber 1988 (3) SA 396 (A). See the discussion in 5.4.9.2.

Statement (b) is incorrect. The crime of contempt of court serves to promote the respect of the public for the administration of justice by the courts. Criticism of the performance of a mere administrative function, such as the actions of the South African Police Services, does not amount to contempt of court. See the discussion in 5.4.8.

Statement (c) is incorrect. Contempt of court is punished not to protect an individual judicial officer, for example a judge, but to protect the administration of justice. See the discussion in 5.4.4.

Since only statement (a) is correct, you should have marked option (3).

#### Question 5

The statements in this question tested your knowledge of the crime of extortion which is a crime against public welfare, discussed in study unit 6.

Statement (a) is incorrect. The crime can be committed by any person and not only an official. See the discussion in 6.3.3.

Statement (b) is incorrect. The benefit in extortion may be any advantage or benefit. See the discussion in 6.3.5.

Statement (c) is incorrect. The crime of extortion is only completed once the benefit has been handed over to X. See the discussion in 6.3.6.

Since all of these statements are incorrect, you should have marked option (5).

#### Question 6

The statements in this question tested your knowledge of the crime of corruption and the drug offences, discussed in study unit 6.

Statement (a) is correct. In creating the offence of dealing in drugs the legislature was concerned with punishing those who make drugs available to users rather than punishing the users themselves. See the discussion in 6.4.3.

Statement (b) is correct. See the discussion in 6.4.3.6.

Statement (c) is incorrect. Corruption in its active form is completed even if X has only offered or agreed to give something to Y. See the discussion in 6.2.4.

Since only statements (a) and (b) are correct, you should have marked option (2).

#### Question 7

The statements in this question tested your knowledge of the sexual offences discussed in study unit 7, as well as the crime of abduction discussed in study unit 8.

Statement (a) is incorrect. Since 1993 a husband may be convicted of the rape of his wife. See Criminal Law 447.

Statement (b) is incorrect. If X merely exposes his body to a young person, he does not contravene this section although he may be charged with *crimen iniuria*. See the discussion in 7.2.2.

Statement (c) is incorrect. The crime of common-law abduction can be committed by both



males and females. See the discussion in 8.3.1.  
 Since none of these statements is correct, you should have marked option (5).

#### Question 8

The statements in this question tested your knowledge of the crimes against bodily integrity discussed in study unit 10.

Statement (a) is incorrect. This is an example in the case law of the application of indirect force to the body of another person. See the discussion in 10.1.6.

Statement (b) is incorrect. The crime of indecent assault can be committed by either a male or a female. See Criminal Law 438.

Statement (c) is incorrect. Whether grievous bodily harm has in fact been inflicted on the victim is immaterial. The crucial issue is whether X had the intention of doing such harm. See Criminal Law 435.

Since none of these statements is correct, you should have marked option (4).

#### Question 9

The statements in this question tested your knowledge of the crimes against property discussed in study unit 12.

Statement (a) is incorrect. If X removes his own property which is in the lawful possession of another (such as a pledgee) and appropriates it, he commits theft in the form of arrogation of possession. See the discussion in 12.4.

Statement (b) is incorrect. If X appropriates someone else's property and then hands it over to a charitable institution he still commits theft. See the discussion in 12.6.4 and make sure that you understand the concept "appropriation".

Statement (c) is incorrect. To listen to another person's telephone conversations amounts to an infringement of his privacy. The crime of *crimen iniuria* protects a person's dignity and privacy. Defamation on the other hand, protects a person's reputation. See the discussion in 11.1 and Criminal Law 459 for a discussion of the crime of defamation.

Since none of these statements is correct you should have marked option (4).

#### Question 10

The statements in this question tested your knowledge of the crimes of robbery, fraud and housebreaking with intent to commit a crime. These crimes are discussed in study units 13-16.

Statement (a) is correct. See the discussion in 13.1.8.

Statement (b) is correct. See the discussion in 14.1.3.

Statement (c) is incorrect. The house, structure or premises in respect of which this crime is committed is a structure which is or might ordinarily be used for human habitation or for the storage or housing of property. See the discussion in 16.4.

Since only statements (a) and (b) are correct you should have marked option (4).

### Unit 1- Participation 1 – Introduction and perpetrators

Define the doctrine of common purpose and discuss its application in the case of *Safatsa 1988 (1) SA 868 (A)*.  
 (8)

#### Definition:

If two or more people, having a common purpose to commit a crime

- act together in order to achieve that purpose,
- the acts of each of them in the execution of such a purpose are imputed to the others.

#### S v Safatsa: ➤ Facts:

- Crowd of 100 people attacked Y.
- Stoned him, poured petrol over him, set him alight

- The six appellants formed part of crowd, court found their acts consisted of: grabbing, wrestling, throwing stones at Y – Exhorting crowd to kill him and forming part of crowd.

➤ Legal question:

- Can individuals acting in group only be convicted of murder if causal connection can be proved between each individual's act and Y's death?

➤ Court's finding (Answer to legal question): • No, If common purpose to kill is proved (as in this case), the accused may be convicted without proving a causal connection between every individual's conduct and Y's death

➤ Reason(s) for finding (Ratio Decidendi):

- A person may be convicted in terms of the Doctrine of common purpose if proven beyond a reasonable doubt that he ACTIVELY ASSOCIATED with the execution of the common purpose (As in this case)

➤ Judgment: Appellate Division upheld six's conviction of murder by applying Doctrine of common purpose.

- the fact that it was argued on behalf of the accused that proof of a causal connection between each individual accused's act and Y's death had to be established, and had not been so established on the facts

- the court's ruling that where a common purpose to kill had been proved, it was not necessary that the State prove the existence of a causal link between each accused's act and Y's death

- the court's ruling that if there is no clear evidence that the participants had agreed beforehand to commit the crime together (ie no evidence of prior agreement), the existence of a common purpose between a participant and the others may be proved by the fact that he/she had actively associated him/herself with the actions of the other members of the group

(ii) Define the doctrine of common purpose. (4)

If a number of people have a common purpose to commit a crime and in the execution of this purpose, act together, the act of each of them in the execution of this purpose is imputed to the others.

A shoots Y. Y falls to the ground and is mortally wounded. B (who has not previously agreed with A to kill Y) appears on the scene and stabs Y with a knife. The stab wound does not hasten Y's death. Y dies as a result of the bullet wound. A needs help to dispose of the body. For this purpose, A calls in the help of C, who had agreed before the killing to assist A in disposing of the body, and D, a friend of C's who had no prior agreement with A. Briefly discuss the criminal liability of B, C and D. (6)

B is guilty of attempted murder. B can be referred to as a "joiner" since he associated himself with others' common purpose at a stage when Y's lethal wound had already been inflicted, although Y was then still alive. In **Motaung** – murder cases active association only leads to liability if the act of association took place whilst Y was still alive and at a stage before the lethal wound had been inflicted by the perpetrator(s)

C may be a perpetrator or an accomplice. This will depend on the circumstances. If his conduct, culpability and personal qualities accord with the definition of murder, he will be a co-perpetrator. Otherwise, he may be an accomplice for he furthered the commission of the crime. The facts in casu do not reveal whether C's act of agreeing with A to dispose of the body in fact causally contributed to the commission of the crime by A, and therefore, to Y's death. In **Maserow**, if X agreed beforehand to render assistance; may be perpetrator/accomplice depending if circumstances, conduct, culpability, personal qualities comply with definition of crime (Maserow)

D is an accessory after the fact. A person is an accessory after the fact to the commission of a crime if, after the commission of the crime, he unlawfully and intentionally engages in conduct intended to enable the

perpetrator of or accomplice to the crime to evade liability for the crime, or to facilitate such a person's evasion of liability. Helping a perpetrator to dispose of the body of a person he has killed is an example of conduct that makes a person an accessory after the fact. In **Mavhungu** – Z murdered Y; X + Z removed parts from Y's body; Disposed of body on top of mountain; X did not take part in murder but was convicted as being an accessory after the fact in respect of murder

X1, X2 and X3 are members of a criminal gang. Their main activity is to break into residential homes with the purpose of stealing valuable items. They usually watch the houses that they intend to break into in order to establish at what time the owner is not at home. One evening, X1, X2 and X3 take three guns and travel by car to the house of Z. Because they have been watching Z's house over a period of time, they know that he goes out between seven and eight o'clock every evening. They climb over the electronic gate of Z's property at exactly fifteen minutes past seven. X1 inserts a screw driver in the lock of the backdoor of Z's house and breaks it open. He and his mates (X2 and X3) enter the house. The alarm suddenly goes off. They start running away but as they approach the gate, Z (the owner of the house) enters with his car through the gate. X2 starts to panic and fires a shot at Z. Z is killed instantly. X1, X2 and X3 are all charged with murder. You are the state prosecutor. Discuss the relevant legal principles and case law which you will rely upon in order to prove that X1, X2 and X3 are all guilty of the crime of murder. (12)

The legal principles applied in terms of the doctrine of common purpose are relevant to this particular set of facts.

definition of the doctrine of common purpose:

If two or more people, having a common purpose to commit a crime, act together in order to achieve that purpose, the acts of each of them in the execution of such a purpose are imputed to the others. Therefore, when the doctrine is applied, a causal link between each participant's act and the prohibited result is not required. The existence of a common purpose may be proved on the basis of a prior agreement, or active association and participation in a common criminal design. The state must, however, prove that each participant had the necessary intention to commit the crime of murder.

*S v Safatsa*: Crowd of 100 people attacked Y. Stoned him, poured petrol over him, set him alight

The six appellants formed part of crowd, court found their acts consisted of: grabbing, wrestling, throwing stones at Y – Exhorting crowd to kill him and forming part of crowd.

Legal question: Can individuals acting in group only be convicted of murder if causal connection can be proved between each individual's act and Y's death?

Court's finding: No, If common purpose to kill is proved (as in this case), the accused may be convicted without proving a causal connection between every individual's conduct and Y's death

Reason(s): A person may be convicted in terms of the Doctrine of common purpose if proven beyond a reasonable doubt that he ACTIVELY ASSOCIATED with the execution of the common purpose (As in this case)

Judgment: Appellate Division upheld six's conviction of murder by applying Doctrine of common purpose

In *Mgedezi*: held – where no proof of a previous agreement between perpetrators, an accused who's act is not causally connected to Y's death can only be convicted through Doctrine if he had:

- 1) been present at crime scene
- 2) been aware of the assault on Y
- 3) intended to make common cause with those committing the assault
- 4) manifested his sharing of a common purpose by personally performing some act of association with the conduct of the others
- 5) intention to kill Y or contribute to his death

→ Rules ensure a passive spectator won't be liable under the doctrine for mere presence at scene

in *Thebus*

- Challenged in the CC on the grounds of unjustifiably limiting:
  - 1) Right to dignity (s10 of constitution)
  - 2) Right to freedom and security of person (s12(1)(a))
  - 3) Right of an accused person to a fair trial (s35(3))
- CC rejected argument – declared constitutional principle of requiring active association instead of causation as basis of liability in collaborative criminal enterprises (as found in common-law). Reasons were:
  - Doctrine serves vital purpose in criminal justice
  - It's main goal is to criminalise collective criminal conduct thus controlling crime committed in joint enterprises
  - Proving particular/each person in group contributed causally to prohibited result in consequence crimes(like murder), difficult – insisting on causal connection would make prosecuting joint criminal enterprises ineffectual.
  - Effective prosecution of crime is legitimate, pressing social issue

According to the facts, there was a prior agreement among the three participants to commit housebreaking. Moreover, each participant performed an act of association with the execution of the housebreaking. X2 fired the shot at Z which caused his death. The state nevertheless has to prove that X2 had the intention to kill Z before he can be convicted of the crime of murder.

As far as X1 and X3 are concerned, the state has to prove that they had foreseen the possibility that the acts of any of the participants might result in a person's death, and that they had reconciled themselves to such a possibility.

An important fact in support of proof of the existence of *dolus eventualis* on the part of X1 and X3 is that they also had guns with them when they embarked upon the housebreaking. The state can therefore argue that each participant had the necessary *dolus eventualis* to be convicted of the crime of murder.

In *Molimi* the SCA held that conduct by a member of a group of persons which differs from the conduct envisaged in their initial mandate (common purpose) may not be imputed to the other members, unless each of the latter knew (*dolus directus*) that such conduct would be committed and reconciled themselves to that possibility (*dolus eventualis*)

**(b) Explain the differences between a perpetrator, an accomplice and an accessory after the fact. In your answer you must also give an example of each.(8)**

Category has 2 subdivisions:

- 1) Participant(s) – Anybody doing something in whatever manner whereby they further the commission of the crime, includes:
  - (1) Perpetrators
  - (2) Accomplices
- 2) Non-participant(s) – Although person can be described as being involved in crime he does not further the commission thereof at all, includes:
  - (1) Accessories after the fact

Perpetrator (2 definitions), A person is a perpetrator if:

- 1) his conduct, the circumstances in which it takes place (including, where relevant, a particular description with which he as a person must, according to the definition of the offence, comply), and culpability with which it is carried out are such that he satisfies all the requirements for liability contained in the definition of the offence. Or;
- 2) if, although his own conduct does not comply with that required in the definition of the crime, he acted together with one or more persons and the conduct required for conviction is imputed to him by virtue of the principles relating to the doctrine of common purpose.

Accomplices, A person is an accomplice if:

- 1) although he does not comply with all the requirements for liability set out in the definition of the crime, and

2) although the conduct required for a conviction is not imputed to him in terms of the doctrine of common purpose,

➤ he engages in conduct whereby he furthers the commission of the crime by somebody else.

The distinction between a perpetrator and an accomplice

- Some crimes can only be committed by people complying with certain description(ex. Occupation, license holder): ➤ High treason – only by person owing allegiance to RSA
- When a person(X) not complying with a certain description(see above) furthers the commission of a crime by a person(Y) who does fit the description, that person(X) is an accomplice (because he cannot be brought within the definition of the crime owing to the fact that he does not comply with a particular description he is an accomplice and not a perpetrator)
- When someone convicted of crime without court specifying he is convicted as an accomplice, normally means he is convicted as a perpetrator/co-perpetrator
- No rule in our law that where crime is jointly committed there can only be a single perpetrator, because:
  - Not always possible to select a principle offender from a group
  - No criterion to satisfactorily identify such an offender in every case
- Sometimes a principle offender may be identified between perpetrators:
  - Not important for purposes of liability
  - Great importance in assessment of punishment

Accessory after the fact

- A person is an accessory after the fact to the commission of a crime if, after the commission of the crime, she unlawfully and intentionally engages in conduct intended to enable the perpetrator of, or accomplice to the crime, to evade liability for his crime, or to facilitate such a person's evasion of liability
  - Accessory after the fact not a participant – doesn't further crime
  - Helps perpetrator/accomplice escape justice
- Ex.
  - Mlooi – X helps real murderer by throwing corpse in river
  - Mavhungu – Z murdered Y; X + Z removed parts from Y's body; Disposed of body on top of mountain; X did not take part in murder but was convicted as being an accessory after the fact in respect of murder

The most important principles relating to the doctrine of common purpose can be summarised in six propositions. Without discussing the whole doctrine, merely state these six propositions.(6)

- (1) If 2 or more people having a common purpose to commit a crime, act together in order to achieve that purpose, the acts of each of them in the execution of such a purpose are imputed to the others.
- (2) In crimes involving the causing of certain results (ex murder), conduct imputed includes the causing of such result
- (3) Conduct by member of group having common purpose which differs from conduct envisaged(in said common purpose) may not be imputed on other members unless they knew or foresaw possibility of conduct being committed and reconciled with that possibility
- (4) Proof of common purpose based on prior agreement or active association
- (5) Liability for murder through active association only applicable if association took place while deceased still alive + before mortal wound inflicted
- (6) Just as active association with common purpose may lead to liability, so dissociation or withdrawal from the common purpose may in certain circumstances, lead to negative liability

Discuss the merit of the following statement: "The common purpose doctrine is completely unnecessary. Criminal law can do without it". (6)

Necessity of Doctrine:

- Where common purpose to kill proved, accused can be convicted without proof of causal connection between each one's conduct and Y's death.
- Prevents criminals from escaping punishment when they act in groups.

Ex.○ Group of 5 people charged for murdering Y by stoning to death, had common purpose as all shouted kill him – Impossible for court to find beyond reasonable doubt that any of accused threw stone which struck Y. - Even if only 1 person's stone hit Y they all had same intention to kill – Would be unfair to convict only one that hit Y.

X, P and Q decide to rob money from Y, a shopkeeper. X tells P and Q that he knows that Y does not possess a firearm. He also tells them that, although none of them has a firearm, he (X) has a toy pistol with which he plans to threaten Y. They then decide that the three of them will go to the shop and that X will point the toy pistol at Y and threaten to shoot him if he does not hand over the money in the cash register. Before going to the shop, P sees X concealing a sharp knife under his clothes. He foresees that X may use the knife in the shop and that somebody may get killed as a result. However, he does not say anything to X about the knife and voluntarily goes with the others to the shop. Q does not know that X has a knife concealed under his clothes. X, P and Q go into the shop. X points the toy pistol at Y and threatens to shoot him if he refuses to hand over the money. A scuffle ensues, and during the commotion P and Q remove the money from the cash register. In the course of the scuffle between X and Y, X draws the knife from under his clothes and stabs Y in the chest. X, P and Q run away with the money. Y dies as a result of the stab wound. X, P and Q are charged with murder and robbery. Discuss the question whether they ought to be convicted of these crimes.

Answer

X, P and Q had a common purpose to rob Y of his money. They in fact succeeded in robbing Y through their joint conduct. The cash they took is moveable, corporeal property in commercio and thus capable of being robbed. Y did not consent to the robbery. It is clear that all three of them intended to take Y's money by force and to appropriate it. They are therefore guilty of robbery.

X complies with all the requirements for murder. His act was the direct cause of Y's death. X's act was unlawful. He cannot rely on any ground of justification.

X had the intention to kill Y. The reasonable inference from the facts is that X took the knife with him in order to kill Y if Y refused to comply with his request to hand over the money.

Are P and Q guilty of murder? They will only be guilty of murder if the doctrine of common purpose can be applied to them. If the evidence reveals that not only X but also another accused intended to kill Y, and that the other accused intended to act together with X in causing Y's death, the other accused must also be convicted of murder, because in terms of the doctrine of common purpose X's act of killing Y is deemed to be the act of such other accused as well. The intention or purpose which triggers the operation of common purpose is not confined to *dolus directus*, but includes *dolus eventualis*. It may be argued that P had *dolus eventualis*. He knew that X had a knife with him and foresaw the possibility that X might use the knife in the shop and that somebody might get killed as a result.

He and X had a common purpose and in terms of the operation of the doctrine of common purpose X's act of killing Y is imputed to P. P is guilty of murder in terms of the doctrine of common purpose.

Q was unaware that X had a knife with him. Neither can the inference be made that he foresaw that their conduct in the shop might result in Y's death and that he reconciled himself to this possibility. He did not have the intention to kill Y and cannot, together with X, be held responsible for Y's death by virtue of the doctrine of common purpose. Q is not guilty of murder.

## Unit 2 – Participation 2 – accomplices and accessories after the fact

X wants to set a shop alight. He pours petrol around and underneath the door, so that the petrol flows into the shop. He places a tin of inflammable material against the door, but before striking the match, he decides not to go ahead with his plan, but to go home instead. (Note: X is not interrupted, but abandons his plan of his own accord.) Can X be convicted of attempted arson? Discuss with reference to the applicable legal principles. (8)

X, of his own accord, abandons his criminal plan of action. This is clearly a case of voluntary withdrawal.

In **Hlatwayo**, X was a servant who put caustic soda into her employer's porridge, intending to poison them. She noticed that the caustic soda discoloured the porridge and threw the mixture away. She was nevertheless convicted of attempted murder. The court held that her acts had already reached the stage of consummation, and that her change of heart did not exclude her liability for attempt.

In **B**, the Appeal Court accepted that it was held in Hlatwayo that voluntary withdrawal was not defence and that the decision was correct.

In **Du Plessis**, the Court stated that if the change of mind occurred before the commencement of the consummation, then the person concerned cannot be found guilty of an attempt, but if it occurred after the commencement, then there is an attempt and it does not avail the person concerned to say that he changed his mind and desisted from his purpose.

An application of the principles to the given facts:

If the approach in B is to be followed, X will be convicted of attempted arson. Voluntary withdrawal cannot be a defence. If the approach in Hlatwayo and Du Plessis is to be followed, one will have to determine whether X's act has reached the stage of consummation before his decision to abandon his plan. If so, X will be guilty of attempted arson. If not, he will be acquitted.

In **Schoombie**, the facts were similar, although X did not decide to abandon his plan, he was interrupted. The court held that X's act had reached the stage of consummation. X can be convicted of attempted arson, because his act had reached the stage of consummation.

#### **Name and discuss the requirements for liability as an accessory after the fact.(6)**

A person is an accessory after the fact to the commission of a crime if, after the commission of the crime, she unlawfully and intentionally engages in conduct intended to enable the perpetrator of, or accomplice to the crime, to evade liability for his crime, or to facilitate such a person's evasion of liability.

It is not required that the protection or assistance given be successful. The act must be unlawful, which means that there must be no justification for it.

The accessory after the fact must furthermore render assistance intentionally. This means that he/she must know that the person who was assisted, committed the crime. Moreover, he/she must have the intention of assisting the perpetrator (or accomplice) to evade liability or to facilitate the evasion of liability.

Similar to the accomplice, the liability of an accessory after the fact is accessory in character. This means that there can only be an accessory after the fact if somebody else committed the crime as a perpetrator.

S v Jonathan:

➤ Facts: 3 accused were prisoners charged with murdering co-prisoner • Accused + deceased were detained in same cell • Proved beyond reasonable doubt that more than 1 accused murdered deceased • Trial court could not determine which of 3 committed murder or if common purpose existed • Trial court held that none of 3 could be convicted of murder → Convicted all 3 of being AATF through statements they made after murder (they all 3 intentionally tried to protect the guilty person[s])

• 3 accused appealed to appellate division against conviction

➤ Legal question:

• Since certainty exists that at least one accused committed murder can all 3 be convicted as being AATF?

➤ Court's findings (Answer to legal question):

• Yes

• Facts analogous to S v Gani

➤ Reason(s) for finding (Ratio Decidendi):

→ If all 3 committed murder, all 3 are AATF because they all disposed of corpse

→ If all did not commit murder, those who did not are AATF in respect of murder committed by other(s) + are accomplices to crime of being AATF

➤ Criticisms of Gani's case included:

• Person whom for arguments sake was deemed the murder was found not guilty of murder

→ Thus no perpetrator in respect of whose act another could be AATF

→ Actual murder found guilty as AATF to murder he himself committed – in conflict with rule

➤ Judgment:

- Gani's case was confirmed
- Court convicted all 3 murder accused of being AATF
- Jansen JA:
- The general rule that One cannot be an accessory after fact in respect of crime committed by oneself must yield to considerations of legal policy
- Thus held that: finding of court was based on policy consideration that it is not fair to acquit all 3 accused of murder in such cases

### Unit 3 –Attempt Conspiracy and incitement

(a) Discuss whether X may be convicted only of attempt to commit the specific offence, or the completed offence in the following circumstances. If your answer is that X has committed only an attempt, you must indicate also which form of attempt is applicable.

(i) X threatens Y with a gun to hand over his wallet to him. Y manages to run away without handing over the wallet. (2)

(ii) X, intending to commit theft, breaks the window of a car. As he opens the door of the car and gets behind the steering wheel, a police officer sees him and arrests him. (2)

(iii) X, an art dealer, buys a valuable painting from Y. X thinks that the painting is stolen. The truth is that Y had bought the painting from the previous owner. In other words, the painting is not stolen. (2)

(iv) X needs money desperately. He reports to the police and to his insurers that somebody has broken into his house and has stolen his computer and television set. He also fills in a claim form against the insurance company and delivers it to them. The police investigate the matter and discover that nobody had broken into the house. At a stage before the insurance company pays out X's claim he (X) admits to the police and the insurance company that he had lied to them in order to claim money from the insurance company. (2)

(i) • X may be convicted of attempted robbery because he did not acquire the property. This is an example of completed attempt.

- X may also be convicted of the completed offence of pointing of a firearm.
- X may also be convicted of the completed offence of assault in the form of inspiring fear in Y that force is immediately to be applied to him.

(ii) • X may be convicted of attempted theft because he did not exclude the owner of his property. This attempt can be characterised either as a form of completed attempt (because arguably X had done everything he could do to commit the crime), or interrupted attempt (X having been interrupted at a stage where his actions were not merely preparatory, but amounted to acts of execution).

- X may also be convicted of the completed offence of malicious damage to property.

(iii) • X may either be convicted of attempted theft or of an attempt to commit the crime known as receiving stolen property. This is an example of an attempt to commit the impossible, where X was mistaken about a fact relating to the particular object of his actions, namely that he thought the painting was stolen property, whereas in fact it wasn't. (See the Davies decision).



(iv)• X may be convicted of the completed offence of fraud. There is potential prejudice to the insurance company after he made the misrepresentation (filing in a claim form and delivering it to them).

X meets Y in a chat room on the Internet. They realise that they are the same age (30-years old) and that they share the same interests. They fall in love and decide to meet in real life. X knows that paedophiles are prosecuted if they use chat rooms to set up meetings with young children. X is under the (incorrect) impression that it is illegal to meet any chat-room partner in real life. However, he is so infatuated with Y that he decides to continue with the arrangements. Has X committed any crime?

Answer

In Davies 1956 (3) SA 52 (A) it was held that attempt to do the impossible is punishable. However, the court formulated two exceptions to this rule. The second exception applies in this case. If what X intended to do was not a crime, but by mistake of law he thought that his act was criminal, his act will not constitute an attempt to commit a crime. Attempt to commit a putative crime is not punishable. In this instance X thought it was a crime to meet chat-room partners in real life, which it was not. He is therefore not guilty of attempt to commit the impossible.

Explain in which circumstances voluntary withdrawal will be a good defence on a charge of attempt to commit a crime.(5)

It is generally accepted that there is no punishable attempt if X voluntarily abandons his criminal plan of action at a stage when his actions can only be described as preparations, in other words, before an act of execution (the so-called “commencement of the consummation”). However, if X withdraws from his criminal plan after this stage, it will be no defence on a charge of attempt to commit a crime. Whether an act of consummation has already taken place will depend on the particular facts of each case.

**In Hlatwayo** X, servant, put caustic soda in employers porridge intending to poison them; noticed soda discoloured porridge; threw it away ▪ Charged with attempted murder

- Legal question:▪ What is the effect of voluntary withdrawal on liability for attempt to commit a crime?
- Court's findings ,Withdrawal did not exclude X's liability for attempt
- Reason(s) , X's acts had reached stage of consummation. Found guilty of attempted murder

(a) Discuss whether X may be convicted of attempted murder in the following instances. In your answer you must indicate which form of attempt is applicable and whether it is punishable.

(i) X intends to murder her husband Y. She puts ant poison in his food. Y eats the food, becomes sick but survives.

(ii) X intends to murder her husband Y. She puts ant poison in his food. Z, the domestic servant, has seen what X was doing. She warns Y that his food contains poison. As a result of the warning he refrains from eating it.

(iii) X intends to murder her husband Y. She mixes bicarbonate of soda in his food. She is under the (incorrect) impression that bicarbonate of soda is a lethally poisonous substance, similar to caustic soda. Y eats the food and his health is not impaired as a result.

(iv) X intends to murder Y. She puts ant poison in his food. Minutes before

-serving his meal, she abandons her evil plan and throws away the poisoned food. (4 X 3 = 12)

(i) Yes, X may be convicted of attempted murder. This is an example of a completed attempt. Her conduct is punishable because X had done everything she set out to do and her conduct reached the "commencement of the execution" stage.

(ii) Yes, X may be convicted of attempted murder. This is an example of interrupted attempt. X's conduct is punishable because she already performed an act of execution (putting poison in Y's porridge). The relevant authority is Schoombie 1945 AD 541.

(iii) Yes, X may be convicted of attempted murder. This is an example of an attempt to commit the impossible because the means used cannot bring about the desired result. It is punishable because it originated from X's mistaken view of the facts and not of the law. The relevant authority is Davies 1956 (3) SA 52 (A).

(iv) This is an example of voluntary withdrawal. If a person voluntarily abandons his criminal plan of action at a preparatory stage, there is no punishable attempt. However, withdrawal at a stage after an "act of execution" or at a stage after the "commencement of the consumation" affords the accused no defence. It may be argued that X's conduct is punishable as an attempted murder because she performed an act of execution. The relevant authority is Hlatwayo and Du Plessis

#### Question 1

(a) Discuss whether X may be convicted of attempted murder in the following instances. In your answer you must indicate which form of attempt is applicable and whether it is punishable.

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consumation" affords the accused no defence. It may be argued that X's conduct is punishable as an attempted murder because she performed an act of execution. The relevant authority is Hlatwayo and Du Plessis

#### Unit 4- Specific crimes – Introduction – crimes against the state

Smokers United, a group of cigarette smokers, is very upset about the rising price of cigarettes. They decide to march to the office of the Minister of Finance to hand over a petition from smokers all over South Africa complaining about the rising price of cigarettes and the manner in which smokers are being treated since the new legislation on smoking came into operation. They do not have permission to march, but decide to continue nevertheless. The police request them to disperse in a peaceful manner but they refuse. Some of the protesters throw stones at the police and some try to enter the office of the Minister by breaking down the door. The police throw teargas at them and the protestors run away. The police succeed in arresting five of the protesters. Can these five people be convicted of any crime?

Answer

Yes, they can be convicted of the crime of public violence:

- (a) They participated in the protest.
- (b) They disturbed the public peace and order.
- (c) It was a joint action. Public peace and order was disturbed by a number of persons acting in concert. These people acted with a common purpose. Once it has been established that the accused knowingly participated with the aim of threatening public peace and order, it is not necessary for the police to prove the specific acts that were committed by each of the accused.
- (d) The acts were accompanied by violence. The crime is committed even if there is no actual disturbance of the public peace and order or no actual infringement of the rights of another. It is sufficient if the action is aimed at these purposes

What crime, if any, can X be convicted of in the following instances. State only the name of the crime or, if you are of the opinion that no crime has been committed, "no crime". No discussion of a particular crime is required.

- (i) X threatens Y that unless she (Y) has sexual intercourse with him, he will show photographs of her in the nude to her parents. She refuses to have sexual intercourse with him, and lays a charge with the police. (1)
- (ii) X sells drugs to his sister Y, for the sole purpose of use by Y. (1)
- (iii) X plays with his cigarette lighter and accidentally sets fire to his parents' home. (1)
- (iv) X plants a bugging device in Y's flat with Y's consent, and then listens to his private conversation. (1)
- (v) X quickly and unexpectedly snatches Y's handbag, which she is clutching under her arm, and runs away with it without Y offering or being able to offer any resistance. (1)
- (vi) X writes an examination on behalf of his friend Y, since he (Y) did not study for the examination. (1) [6]

- (i) Attempted extortion; crimen iniuria.
- (ii) Dealing in drugs.
- (iii) No crime.
- (iv) No crime.
- (v) Robbery.
- (vi) Fraud.

Define the crime of public violence. (5)

Public violence is the unlawful and intentional performance of an act or acts by a number of persons, which assumes serious proportions and is intended to disturb the public peace and order by violent means, or to infringe the rights of another.

## Unit 5 – crimes against the administration of justice

X, who bears a grudge against her previous boyfriend, Y, lays a false charge of rape against Y at the police station. Identify and discuss the crime of which X may be charged. (4)

- X may be charged with the crime of:

Unlawfully and intentionally defeating or obstructing the course of justice, or attempting to do so.

- To lay a false charge against somebody at a police station amounts to this crime. *Mene*
- No pending case is necessary and it is not even necessary that there be a court case envisaged by police at the time of X's conduct. It is sufficient that X subjectively foresees the possibility that his conduct may, in the ordinary course of events, lead to the case being prosecuted or at least being investigated by the police. But there must be the possibility of a real court case ensuing.

Elements of the crime:

- 1) Any act which
- 2) defeats or obstructs course of justice
- 3) in an unlawful and
- 4) intentional manner

Intention: • X must subjectively foresee her conduct might constitute this crime

➤ Must have foreseen that it might interfere with judicial proceedings to take place in future or would hamper investigation of offence.

Meaning of "Administration of Justice" • Held in *Bazzard* that:

➤ Course of administration of justice needed to be obstructed to constitute crime, refers to process which is destined to eventuate (turn out) in a court case between parties or state and its subjects

- X may also be charged with the crime of fraud - The unlawful and intentional making of a misrepresentation which causes actual prejudice or which is potentially prejudicial.

Misrepresentation (The act) ➤ Refers to "a deception by means of a falsehood" - X represents to Y a set of facts which is non-existent ➤ Usually in form of speech or writing but may take other forms, Ex. Nodding of head indicating consent – *Larkins*

X had also committed the crime of criminal defamation : ➤ Criminal defamation – publishes violations of person's good name or reputation - *Hoho*

- Reputation refers to what others think of Y
- Violation of reputation always involves 3 parties:
  - i. Person making defamatory statement
  - ii. Complainant(Y) - person about whom statement made
  - iii. Third party (one or more people) to who's knowledge statement must come

(i) Define Perjury at common law

Perjury at common law consists in the unlawful, intentional making of a false declaration under oath (or in a form allowed by a law to be substituted for an oath) in the course of a legal proceeding.

Discuss the form of contempt of court known as contempt in facie curiae. (5)

In facie curiae "in the face of the court; in the open court" – is contempt in the presence of the judicial officer during a session of the court. Contempt of court in facie curiae takes place when X behaves in such a way in court as to violate the dignity or authority of the judge or magistrate, for example by singing loudly in court.

The court has the power to evict the wrongdoer summarily and sentence him. This is done to maintain the dignity of the court; but must be applied with great circumspection.

**(a) Define the crime of theft. (5)**

Def: The unlawful, intentional appropriation of movable, corporeal property which:

1. Belongs to, and is in the possession of, another
  2. Belongs to another but is in the perpetrator's own possession, or
  3. Belongs to the perpetrator but is in another's possession and such other person has a right to possess it which legally prevails against the perpetrator's own right of possession
- provided that the intention to appropriate the property includes an intention permanently to deprive the person entitled to the possession of the property, of such property

**(b) X's lawn-mower is out of order. He takes his neighbour V's lawn-mower without his (Y's) consent. X mows his lawn with V's lawn-mower. He plans to put it back in V's garage the next day while Y is at work. In the meantime, he stores the lawn-mower on the porch at the back of his (X's) house. During the night, the lawn-mower is stolen from X's premises. X is charged with theft. At the trial his attorney argues that X cannot be convicted of theft because he did not have the intention to appropriate. Explain whether this argument is correct. (6)**

Firstly, the meaning of the concept "an intention to appropriate" rests on two states of mind:

- (1) an intention to exercise the rights of an owner in respect of the property, as well as
- (2) an intention to exclude the owner permanently from exercising his rights over the property.

Secondly, X did not have the state of mind described in (2). By using the lawnmower, X exercised the rights of an owner over the property.

However, he did not intend to exclude the owner from exercising his rights over the property permanently. X can accordingly not be convicted of theft because he lacked the intention.

➤ Sibiya

- Facts: Appellant (X) worked at garage where Y brought car for repair; X took Y's car for joyride without permission; car ended up in donga next to road; When police arrived X still present at scene (indication that X had no intention to deprive Y permanently of his possession)
- Legal question: Can *furtum usus* (temporary use of thing with intention to restore it to rightful owner) be regarded as theft?
- Answer to legal question): ◦ No, because *Furtum usus* no longer form of theft in our law : ◦ X's appeal upheld and after this case, legislature created s1 of Act 50 of 1956, making *futum usus* in certain circumstances statutory offence of "unlawful borrowing"

However, one could also argue that, by leaving the lawnmower outside on the porch, X had foreseen the possibility that it might be stolen and had reconciled himself with this possibility. By not storing it in a safe place, X acted indifferently with regard to Y's property and did not care whether Y would ever find it again. Therefore, X adopted an intention that was the opposite of the intention of returning the car to Y, namely, *dolus eventualis* to deprive Y of his property permanently.

**Define the crime of contempt of court(4)**

Definition:

- (1) Violation of the dignity, repute or authority of a judicial body or a judicial officer in his capacity, or
- (2) The publication of information or comment concerning a pending judicial proceeding, which has the tendency to influence the outcome of the proceeding or to interfere with the administration of justice in that proceeding

**X, an outspoken political activist, makes a statement in public that a certain judge has been**

bribed by a certain accused in a criminal matter to decide the case in his favour. X is charged with contempt of court. Name the form of contempt of court which is relevant in this instance and briefly discuss the requirements for liability in terms of this offence. (5)

- The form of contempt applicable here is scandalising the court.
- The crime is committed by publication, either in writing or orally,
- of allegations which , objectively speaking,
- has the tendency or are likely
- to bring judges, magistrates or the administration of justice through the courts generally into contempt, or unjustly to cast suspicion on the administration of justice.
- It is not necessary that the administration of justice is in actual fact being brought into disrepute; the mere likelihood that this will happen is sufficient.
- No pending case is required.
- Authority: S v Moila
- Crime is constitutional (Mamabolo)

### Unit 6 – Crimes against the community

Y, a married woman who teaches at a university, has a love affair with one of her students, X. X is an amateur photographer in possession of photographs which depict Y in various positions while naked. Y decides to save her marriage and ends the affair. X is shattered and threatens to show the photographs to her husband unless she gives him the examination paper. Y agrees and gives X the examination paper. Has X committed a crime?

Answer

X commits extortion. X acquired a benefit by unlawfully exerting pressure on Y. Pressure may take the form of threats, as in this instance. The benefit may be of a patrimonial or non- patrimonial nature. The benefit extorted in this instance is the questions in the examination paper, which is non-patrimonial. Before 1989 there were conflicting decisions on the question whether the benefit in extortion should be limited to patrimonial benefit. Since the promulgation of section 1 of the General Law Amendment Act, any advantage or benefit can be extorted. Note that if Y had not yet handed over the benefit to X, it would amount only to attempted extortion.

X, a horticulturist, is in serious financial trouble. Her friend, who regularly smokes cannabis, convinces her that there is a market for good quality cannabis. He also tells her that there is a movement towards the decriminalisation of the possession of cannabis. She decides to take her chances and grow and sell cannabis to solve her financial difficulties. It turns out that her cannabis is of an extremely high quality and that she would have to sell only one harvest to be financially solvent again. When the cannabis is harvested and ready for distribution, the police find 20 kg cannabis in her garage while she is out looking for a buyer. Has X committed a crime?

Answer

X commits the crime of dealing in drugs. Cannabis qualifies as a dependence-producing substance. "Deal in" is defined in the Drugs and Drugs Trafficking Act as including the performance of any act in connection with the cultivation of drugs. X's acts comply with the definition. She grew the cannabis and harvested it. The fact that it is a large quantity of cannabis is a further indication that she intended to deal in cannabis.

X cannot rely on any ground of justification. The fact that she wanted to overcome her financial difficulties does not offer her a defence. She also fulfils the requirement of intention as she decided to continue with her plan despite the fact that she knew that the possession of cannabis has not yet been decriminalised.

Discuss the element of "acceptance" (the element of an act) in respect of the crime of corruption committed by the recipient.(6)

The Prevention and Combating of Corrupt Activities Act 12 of 2004 provides in s 3(a) for certain conduct by Y which precedes the acceptance which accords with the broader meaning namely:

- to agree to accept a gratification, or
- to offer to receive

satisfies the element of the act. No distinction is made between the main crime on the one hand and conspiracy or incitement or to commit the main crime on the other hand. The Act provides in s 2(3)(a) that the words or expressions "accept", "agree to accept" as used in the Act also have the following meanings: to demand, ask for, seek, request, solicit, receive or obtain gratification.

Merely state, without any discussion, the legal interest protected by each of the following crimes:

- (i) public violence
- (ii) criminal defamation
- (iii) kidnapping
- (iv) abduction (4)

- (i) public peace and order
- (ii) reputation of a person
- (iii) freedom of movement of a person
- (iv) rights of parents to consent to marriage of their minor children as well as to exercise control over where they stay.

X, a fifty year old man is the senior waiter at a restaurant. Y, a seventeen year old girl, works after hours as a waitress at the restaurant. Y, who comes from a broken home, regards X as a father figure and confidante. She tells him that she had an abortion. X wants to have sexual relations with Y, but she refuses. He threatens Y that, unless she has sexual intercourse with him, he will tell her father that she had an abortion. Y, who is afraid of her father, succumbs to the threat. She accompanies X to his house where they have sexual intercourse. After having had sexual intercourse with Y, X mixes a cold drink with a strong sleeping tablet and gives it to Y. She falls asleep immediately. While Y is asleep, X and his friend Z, takes nude pictures of her. He intends to use these pictures for a pornographic movie. The next day X goes to the restaurant and boasts to his boss, A, the manager of the restaurant, about his sexual activities with Y. A promises X that he will not tell anybody about these activities.

Discuss whether X may be convicted of the following offences:

- (i) Extortion (6)
- (ii) Rape in terms of section 3 of the Criminal Law (Sexual offences and Related Matters) Amendment Act 32 of 2007 (6)

Merely state whether, by taking nude pictures of Y, X and Z may be convicted of

- (iii) Any other offence in terms of the abovementioned Act (1)
- (iv) Any common-law offence. (1)
- (v) Discuss briefly whether A, the manager of the restaurant, may be convicted of any offence. (4)

- (i) • Extortion is the unlawful and intentional acquisition of a benefit from some other person by applying pressure to that person which induces him/her to part with the benefit.
  - Yes, X may be convicted of extortion.
  - The benefit need not be a patrimonial benefit.
  - In terms of section 1 of the General Law Amendment Act 139 of 1992 any advantage can be extorted.
  - In the *case of J*, Y was threatened by X that unless she had sexual intercourse with him, he would show photographs of her in the nude to her parents. He was convicted of attempted extortion because it was held that the benefit need not be of a patrimonial or financial nature. The benefit (sex) was in fact acquired by X.
  - Therefore, the crime was completed.

(ii) • In terms of section 3 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 any person who commits an act of sexual penetration with a complainant without his/her consent is guilty of the offence of rape.

- X had sexually penetrated Y since it is stated in the set of facts that they had sexual intercourse.
- However, the important question is whether Y consented to the act. “Consent” is defined in the Act as “voluntary or uncoerced agreement”.
- In the given facts consent is absent because it was obtained by X by the use of intimidation or a threat of harm
- or an abuse of power of authority by X to the extent that it inhibited Y to indicate her unwillingness to participate in the sexual act.
- Therefore X may be convicted of rape.

(iii) The use of a child for child pornography.

(iv) Crimen iniuria.

(v) • Yes, he may be convicted of section 54 of Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 which provides that a person who has knowledge

- that a sexual offence has been committed against a child, must report such knowledge
- immediately to a police official, and that
- a person who fails to report such knowledge, is guilty of an offence.

Discuss the meaning of the word “possession” in the offence of “unlawful possession of a firearm” (s 3 of the Firearms Control Act 60 of 2000). (4)

- Possession consists of two elements namely, a physical or corporeal element and a mental element.
  - Physical element: appropriate degree of physical control over thing.
  - Control may be actual or constructive (eg, through a representative).
  - Mental element: the intention with which somebody exercises control over an article.
- X may exercise control as if he/she the owner of the thing, known as possession civilis, or
- with the intention to keep it for somebody else (possessio naturalis).

## Unit 7 – Sexual Crimes

Rape is committed only if the woman has not consented to intercourse. Sometimes, if a man has intercourse with a woman, there is no express refusal to intercourse by the woman, but the law nevertheless accepts that there has been no valid consent. There are six such instances where consent which has ostensibly been given, is not deemed by the law to be valid consent. Name these six instances. (No discussion is required.) (6)

- (1) Where fear was induced by violence or threats.
- (2) Sleeping woman cannot consent.
- (3) Intoxicated woman cannot consent.
- (4) Mentally deficient woman cannot consent.
- (5) Girl below the age of 12 cannot consent.
- (6) Consent obtained by fraud regarding the nature of the act or identity of the man invalid

Merely state in one sentence of which crime (if any) X may be convicted in the following instances:

(i) X, a thirty-year-old schoolteacher, has sexual intercourse with one of her students, a fifteen-year-old boy, with his consent.

(ii) X, a twenty-year-old male, has sexual intercourse with a thirteen-year-old prostitute with her consent. X has never before been charged with any sexual crimes.

(iii) X, a thirty-year old male, meets Y, a twenty-five year old female, for the first time in a bar. He wants to have sexual intercourse with her but knows that she will not give her consent. He puts three sleeping tablets in



Y's alcoholic drink. Y falls asleep. X takes her (Y) to his car and has sexual intercourse with her while she is asleep.

(iv) X and Y have a quarrel. X becomes very angry, draws a knife and tells Y that he is going to stab him in the chest. Y believes that X will carry out his threat. He (Y) is afraid and runs away. (4)

(i) X may be convicted of a contravention of section 14(3) of the Sexual Offences Act.

(ii) X cannot be convicted of any crime.

(iii) may be convicted of rape.

(iv) X may be convicted of assault.

### Unit 9 – Crimes against life and potential life

(c) Section 51 of the Criminal Law Amendment Act 105 of 1997 provides for certain mandatory minimum sentences. Merely name the circumstances in which a court is bound, in terms of section 51, to sentence a person found guilty of murder to imprisonment for life. (6)

i. Murder planned or premeditated

ii. Law enforcement officer murdered whilst performing duty

iii. Murdered person was to give or had given evidence at trial of person accused of serious offence

iv. Murder committed in course of rape

v. Murder committed in course of robbery with aggravating circumstances

vi. Murder was committed by group of persons acting with common purpose

### Unit 10 – crimes against bodily integrity

X, a policeman forces Y, a detainee, to drink his own urine. Of which crime/crimes, if any, can X be convicted? Discuss. (5)

X commits assault. *Crimen iniuria*

Assault is committed when a person unlawfully and intentionally,

1. applies force, directly or indirectly, to the person of another, or
2. inspires a belief in another person that force is immediately to be applied to him.

In **A** – Policeman (X) forced detained (Y) to drink own urine; X convicted of assault; the court held that the fact that urine is not poisonous/dangerous is no defence; forced drinking of any substance constitutes assault.

X, a male prisoner, coerces Y, another male prisoner, to subject himself to sexual intercourse per anum by X. In other words, X has anal intercourse with Y. Y is not a willing party to the act. With reference to the latest case law, discuss the question which crime (if any) X commits. (6)

X may be convicted of indecent assault.

Indecent assault is an act which consists at least in the touching of another's body, unlawfully with intention, which includes an intention to act indecently.

Constitutional Court decision in *National Coalition for Gay and Lesbian Equality v Minister of Justice*. Before this case was decided, the conduct described in the set of facts was punishable as the common-law crime of sodomy. However, the crime of sodomy (which targeted consensual as well as non-consensual anal intercourse) was declared unconstitutional in the abovementioned case on various grounds, inter alia that the existence of the crime is incompatible with the right to equality; the right to dignity and the right to privacy. However, as pointed out by the court, non-consensual anal intercourse may still be punished as indecent assault or assault with the intent to cause grievous bodily harm. According to the new Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007, rape constitutes all forms of penetration, irrespective of gender

Briefly discuss the crime of assault with the intent to cause grievous bodily harm.(4)

- A person commits assault if he/she unlawfully and intentionally applies force, directly or indirectly, to the person of another, or inspires a belief in another person that force is immediately to be applied to him/her.
- All the requirements for ordinary assault apply here, but in addition there must be intent to cause grievous bodily harm.

- Whether grievous bodily harm is in fact inflicted on the victim is immaterial. It is only the intention to cause such grievous bodily harm that must be proved by the state.
- Factors that may prove that a person had such an intention are, for example, the nature of the weapon or instrument, the way in which it was used, the degree of violence used, and the part of the body aimed at.
- The crime may be committed even if the injuries are slight.  
In Joseph, for example, X was driving a truck and deliberately swerved towards Y but did not hit him. X was nevertheless convicted of assault with intent to cause grievous bodily harm.
- The crime can also be committed by mere threat to inflict grievous bodily harm to Y.

### Unit 11 – Crimes against dignity, reputation and freedom of movement

(c) Define the crime of kidnapping. (3)

- The unlawful and intentional deprivation
- of freedom of movement
- or parental control over a person (in the case of a minor).

(d) Merely name the interests protected by the crime of kidnapping. (2)

The interests protected by the crime of kidnapping is the freedom of movement of a person or, if the person is a child, the control of the parent or guardian over the child.

### Unit 12 – Theft

(a) X, an attorney, undertakes to administer the financial matters of Y, an eighty year old widow who can no longer look after herself. He acts as a trustee of her money and is under the obligation to receive all income due to her and to invest such income in a specific investment account. X, who experiences financial difficulties, decides to take some of this money to pay his own debtors. X draws the money from Y's investment account and pays his debtors. X's financial position is so bad that he realises that he will never be in a position to replace the money in Y's bank account. X is charged with theft. Discuss the following questions:

(i) Name the form of theft that is relevant to this set of facts. (1)

(ii) Discuss the act required for the crime of theft, and consider whether X's conduct complies with this requirement. (3)

(iii) Discuss the intention required for the crime of theft, and consider whether X's conduct complies with this requirement. (4)

(i) Embezzlement

- (ii)• Act of appropriation which consists of depriving the lawful owner of possession of her property, and
- exercising the rights of an owner in respect of the property.
  - X's conduct complies with this requirement

- (iii)• An intention to exercise the rights of an owner in respect of the property, and
- intention to exclude the owner from exercising her rights over the property, in other words, to deprive her of her property.
  - Knowing that conduct is unlawful.
  - The intention to deprive owner of her property must amount to an intention to deprive permanently.
  - Yes, X's conduct complies with this requirement.

X, a well-known socialite, borrows the diamond brooch belonging to her friend Y to wear to a charity ball. At the ball an impromptu raffle is held. X offers the brooch as a prize. She also buys a raffle ticket. Z wins the brooch. Y wants her brooch back but X tells her that Z won it in the raffle. Does X commit any crime?

Answer

X commits the crime of theft in the form of embezzlement. X commits an act of appropriation in respect of property that she already has in her possession. X has the brooch in her possession when she offers it as a prize. She complies with the negative component of the act of appropriation. By offering the brooch as a prize in the raffle, she also complies with the positive component of the act. She exercises the rights of an owner in respect of the brooch. She has excluded Y from control of her property. X also has the intention to appropriate Y's property. X has the intention to exercise the rights of an owner in respect of the property as well as the intention to deprive Y of the property. The fact that she buys a raffle ticket does not negate her intention to deprive Y of her property. The chances are slim that she will win the brooch back. She cannot argue that she had the intention to retrieve the brooch and return it to Y, because she knew or at least foresaw that her chances of retrieving the brooch were relatively small. X therefore commits theft in the form of embezzlement.

X is the treasurer of a golf club. Y pays his club fees, but X does not deposit the cheque into the club account. X is in financial difficulties and uses the cheque to pay his son's tuition fees. Has X committed a crime?

Answer

X commits theft. X does not handle any tangible coins or notes (ie corporeal things). He handles credit or an "abstract sum of money". X is nevertheless guilty of theft since he unlawfully and intentionally appropriated the credit. According to our courts this conduct constitutes theft.

X sees Y's car parked outside Y's house with the keys inside the car. He calls his friend Z, and the two of them take a joyride with the car, intending to return the car. The car is involved in an accident. X and Z are very frightened and abandon the car. The car is stolen by an unidentified person and is never to be found again. X and Z are charged with theft. Discuss the question whether X and Z may be convicted of theft. (8)

By taking Y's car without his consent, X performed an unlawful act of appropriation. The required intention for theft is the intention to appropriate the property which has 2 components:

- (i) A positive component, namely the intention to exercise the rights of the owner over the property.
- (ii) A negative component, namely the intention to permanently exclude the owner from exercising his rights over the property.

If X removed Y's car intending to use it temporarily but before he returns the car, it collides with some object and X abandons it without notifying Y of the situation, he may be guilty of theft. X abandons the car without any intention of notifying Y or returning the car. He foresees the possibility that Y may lose the car and behaves recklessly towards this possibility. This amounts to intention in the form of *dolus eventualis* to deprive Y permanently of his car.

In Laforte - X takes Y's car with intention to return it; Car breaks down or collides with object; X abandons car without notifying Y; X thus foresees possibility that Y may lose property but reconciles with this fact – X guilty of theft has *dolus eventualis*.

In Sibiya X worked at garage where Y brought car for repair; X took Y's car for joyride without permission; car ended up in donga next to road; When police arrived X still present at scene (indication that X had no intention to deprive Y permanently of his possession)

The Legal question: Can *furtum usus* (temporary use of thing with intention to restore it to rightful owner) be regarded as theft?

Answer to legal question: No

Reason being that *furtum usus* no longer form of theft in our law.

X's appeal was upheld and after this case, legislature created s1 of Act 50 making *furtum usus* in certain circumstances statutory offence of "unlawful borrowing"

In conclusion; X may therefore be convicted of theft.

**(d) Name the three different forms of theft, and give a brief description of each. (3)**

- (i) Removal of property. Here X removes property belonging to somebody else from that person's possession and appropriates it.
- (ii) Embezzlement. Here X appropriates another's property which he already has in his possession.
- (iii) Arrogation of possession. Here X removes his own property which is in the lawful possession of another and appropriates it.

**Generally speaking, theft can be committed only in respect of a certain type of property. Name the requirements the property must comply with in order to be capable of being stolen. Also name the exceptions to these requirements. (6)**

\*The property must be movable.

\*It must be corporeal, but there are two exceptions to this requirement, namely

- where arrogation of possession occurs (a possessor's incorporeal right of retention is infringed by the owner)
- when there is theft of money through manipulation of cheques, banking accounts funds, etcetera (where the object stolen is an incorporeal thing, i.e. credit)

\*It must be available in commerce.

\*It must belong to somebody else, except in cases of arrogation of possession.

### **Unit 13 – Robbery and receiving of stolen property**

**Discuss briefly whether the grabbing of a cell phone from another person's hand amounts to robbery or merely to theft.(4)**

- If X intentionally uses force in order to overcome the hold which Y has on the cellphone for the purpose of carrying it, or
- if X intentionally uses force to prevent or forestall such resistance as Y would ordinarily offer to the taking of the cell phone if she/he were aware of X's intention,

Then X can be convicted of robbery.

- In the case of *Sithole* and of *Salmans*, the court held that any force applied to the person of the victim, however slight, is sufficient to constitute robbery, and that
- to "grab" is "to seize suddenly and roughly".

It is therefore irrelevant whether such conduct is referred to as "force" or "violence", because it still constitutes a physical act against the person of the victim.

**Discuss briefly whether X can be convicted of robbery in the following circumstances. In your answer you must first state whether your answer is "yes" or "no" and thereafter, in one sentence, substantiate your answer.**

(i) Y stops with his motor car at a red robot. X who pretends to sell watches at the robot, points a gun at Y and tells him that he (X) will kill Y if he does not hand over his wallet and cell phone. Y speeds off without handing over the objects to X.

(ii) Y stops at a red robot. X jumps into the back of his car and puts a gun against Y's head. He tells Y to take him to the nearest ATM machine; to hand over his ATM card and to give him (X) the pin number of his (Y's) account. Y follows X's instructions and drops him at the nearest ATM machine. Y fears for his life and drives away. X withdraws money from Y's account in his absence. (6)

- (i) No. Robbery requires theft of property by means of violence or a threat of violence. Because the wallet had not yet been handed over to X, he can only be convicted of attempted robbery.
- (ii) Yes. It is not required that the property be on the victim's person or in his/her presence.

In *Ex parte Minister van Justisie: In re S v Seekoei* 1984 (4) SA 690 (A), X violently attacked Y and forced her to hand him the keys to her shop which was two kilometres away. He then tied her to a pole, using barbed wire, and drove her car to the shop, where he stole money and other property. The trial judge refused to convict X

of robbery, for he was of the opinion that it was a requirement for robbery that the property should be on the victim's person or in his presence at the time of the theft. The Appellate Division held that the trial judge had erred in this regard, that, for robbery, no such requirement in fact existed, and that X should have been convicted of robbery.

#### Unit 14 – Fraud and related crimes

##### Define the crime of theft by false pretences. (4)

- A person commits theft by false pretences if he/she unlawfully and intentionally obtains movable, corporeal property belonging to another
- with the consent of the person from whom she obtains it,
- such consent being given as a result of a misrepresentation
- by the person committing the offence, and he/she appropriates it.

Indicate whether the following statements with regard to fraud are correct or incorrect:

- (a) The misrepresentation can be either express or implied.
- (b) The misrepresentation may be made by a positive act only.
- (c) If X misrepresents to her insurance company that her insured camera has been stolen and the company reimburses her for the camera, the company will have suffered actual prejudice if the allegation that the camera had been stolen was false.
- (d) “Likely to prejudice” does not mean that there should merely be a possibility of prejudice; it means that there must be a probability of prejudice.
- (e) The prejudice must be suffered by the representee only.
- (f) Laying a false charge with, or making a false statement to, the police is an example of the causing of non-patrimonial prejudice.

Answer

- (a) Correct.
- (b) Incorrect.
- (c) Correct.
- (d) Incorrect.
- (e) Incorrect.
- (f) Correct.

X, a businessman, decides to insure the contents of his home with “Bettensure”, an insurance company for the amount of R200 000. One evening, X decides to store all the items in his home with his friend Y. The next day X falsely submits an insurance claim at “Bettensure” to the effect that his home was robbed the previous evening and that all of the items therein were stolen. Y finds out about X’s criminal activities and informs “Bettensure” about it. The insurance company refuses to pay out X’s claim. Discuss whether X may be convicted of fraud. (7)

Fraud is the unlawful and intentional making of a misrepresentation which causes actual prejudice or which is potentially prejudicial.

As such, the elements of fraud:

- misrepresentation;
- which causes or may cause prejudice and which is
- unlawful and
- intentional must be applied to X’s actions.

This question deals with the element of prejudice, specifically potential prejudice with regards to fraud. In this case, the insurance company runs the risk of suffering potential prejudice if they adhere to X’s claim. What does potential prejudice mean?

- Potential prejudice means that the misrepresentation looked at objectively, involved some risk of prejudice, or that it was likely to prejudice.
- “Likely to prejudice” does not mean that there should be a probability of prejudice, but only that there should be a possibility of prejudice.

- The possibility should not be too remote or fanciful.
- The prejudice need not be suffered by the representee – prejudice by a 3rd party is sufficient.
- It is not relevant that the victim was not misled by the misrepresentation.
- No causal connection between the misrepresentation and the prejudice is required. Here we

X can therefore be convicted of fraud due to the fact that he had the intention to defraud which could have been potentially prejudicial to the insurance company.

X writes letters to a number of wealthy people requesting them to make financial contributions to an orphanage in a very poor neighbourhood. X provides an account number for the purpose specified. A few people react to the request and pay money into the account. It turns out that X is a con man who obtains money for himself under the pretext that he raises funds for deserving causes. Discuss whether X may be convicted of  
 (i) fraud  
 (ii) theft by false pretences. (9)

- (i) Fraud is the unlawful and intentional making of a misrepresentation which causes actual prejudice or which is potentially prejudicial.

X made a misrepresentation to the people. He represented to them that a set of facts existed that in truth did not exist. The misrepresentation was made expressly and by means of a positive act. Although only potential prejudice is required for the crime of fraud, X's misrepresentation resulted in actual prejudice. The victims suffered financial loss by paying money into the bank account.

In Larkins, Larkins – X told Y he would receive his salary on 30Aug instead of 24th; Y lent X money on strength of this; X failed to mention he ceded his entire salary to another before 24th; X guilty of fraud due to omission

The state of mind required for the crime of fraud is the intention to defraud. X knew that the facts that he represented to the people were untrue and he knew that the people might suffer actual or potential prejudice as a result of his misrepresentation. Moreover, his intention was to induce the people to embark on a course of action prejudicial to themselves. X may accordingly be convicted of fraud.

- (ii) A person commits theft by false pretences, if he unlawfully and intentionally obtains movable, corporeal property belonging to another, with the consent of the person from whom he obtains it, such consent being given as a result of a misrepresentation by the person committing the offence, and appropriates it.

The victim's consent is not regarded as valid consent because it is induced by fraud. X obtained credit from the people by means of a fraudulent misrepresentation. From the facts it also appears that he appropriated it. Further, in aspects of Theft of Money, there is no defence if X claims money stolen was incorporeal (Ex, Credit or abstract sum of money (electronic funds)) - In Scoullides, court held - Mechanisms X employ to acquire money not as important as economic effect thereof (reduction of credit in Y's bank account), X may accordingly be convicted of theft by false pretences.

### Unit 16 – Housebreaking with intent to commit crime

Discuss the crime of “breaking” in respect of the crime of housebreaking with the intent to commit a crime. (6)

All that is required for an act to amount to a breaking is the removal or displacement of an obstacle which bars entry to the building and which forms part of the building itself.

The following acts do not amount to a “breaking in”:

- walking through an open door into a building
- climbing through an open window into a building
- stretching one's arm through an open hole in wall of a building

The most obvious act which qualifies as breaking in is physically breaking a door, window, wall or roof. The following also qualifies as breaking:

- merely pushing open a closed (even though not locked) door or window
- merely pushing open a partially closed door or window

It is not a requirement for liability for this crime that actual damage be inflicted to the building or structure.

(b) Indicate with a mere “yes” or “no” whether the following acts qualify as an act of “breaking” as required for the crime of housebreaking with the intent to commit a crime.

- (i) X unlocks a door without causing any damage.
- (ii) X pushes open a partially closed door.
- (iii) X stretches his/her hand through an open window in order to steal a radio.
- (iv) X opens a door which is unlocked.
- (v) X walks through an open door but breaks a window in order to exit the building.(5)

- (i) Yes
- (ii) Yes
- (iii) No
- (iv) Yes
- (v) No

**Fill in Missing word or phrases**

- (i) The act required for the crime of theft consists in an act of.....
- (ii) Theft can be committed in a variety of ways. It is possible to distinguish between the following three different forms of theft:  
.....  
.....  
.....
- (iii) Theft is a continuing crime. That means that the commission of the crime continues for as long as the stolen property remains in the ..... of the thief.
- (iv) Theft of money in the form of credit amounts to theft of ..... property.
- (v) The misrepresentation in fraud must refer to some existing state of affairs or to some past event but not to some .....
- (vi) The prejudice required for the crime of fraud may be either ..... prejudice or ..... prejudice.
- (vii) Malicious injury to property consists in unlawfully and intentionally damaging property belonging to ..... or damaging one’s own insured property with the intention of .....
- (viii) Arson can only be committed in respect of ..... property. (12)

- (i) appropriation
- (ii) removal of property; embezzlement and arrogation of possession
- (iii) possession
- (iv) incorporeal
- (v) future event
- (vi) actual or potential prejudice
- (vii) somebody else .... claiming the value of the property of the insurer
- (viii) immovable

(i) Arson cannot be committed in respect of ..... property.

(ii) A failure by a person in a ..... (3 words) who knows or ought reasonably to have known that certain crimes in the Prevention and Combating of Corrupt Activities Act 12 of 2004 have been committed, commits a crime in terms of the said Act.

(iii) In the crime of housebreaking with intent to commit a crime, the “breaking” consists in the ..... or ..... of any obstacle which bars entry to the structure and which forms part of the structure itself.

(iv) The intention required for the crime of fraud is an intention to .....

(v) The crime of criminal defamation protects the ..... of a person.

(vi) The crime of *crimen iniuria* protects both a person’s ..... and ..... (8)

- (i) movable
- (ii) position of authority
- (iii) removal; displacement
- (iv) defraud
- (iv) reputation
- (v) dignity; privacy

The crime of *crimen iniuria* is committed by infringing a person's dignity or.....

(ii) Forgery is a form of the crime of .....

(iii) Theft by false pretences can be regarded both as a form of .....and as a form of .....

(iv) Malicious injury to property consists in unlawfully and intentionally damaging property belonging to another person, or damaging.....

(v) In *Sitho/e 1981 (1) SA 1186 (N)* the court held that the handbag snatcher commits the crime of .....

(vi) X commits theft in the form of .....if she appropriates Y's property which is already in her (X's) possession.

(vii) The intention required for housebreaking comprises an intention of..... as well as an intention of..... (10)

- (i) privacy
- (ii) fraud
- (iii) theft; fraud
- (iv) one's own insured property with the intention of claiming the value of the property from the insurer
- (v) robbery
- (vi) embezzlement
- (vii) intention of unlawfully breaking into and entering the building or structure and the intention of committing some other crime inside the building or structure

## Cases

Discuss briefly (in one paragraph) the ratio decidendi of ONE of the following decisions:

(i) *Nkosinyana 1966 (4) SA 655 (A)*

(ii) *Heyne 1956 (3) SA 604 (A)*

(iii) *Sibiya 1955 (4) SA 247 (A) (4)*

*Nkosinyana*: In order to be convicted of incitement, it is not necessary to prove an initial unwillingness on the part of the person who was incited and who was overcome by argument, persuasion or coercion. Therefore, incitement can be committed even in respect of a police trap. An inciter is somebody who reaches and seeks to influence the mind of another towards the commission of a crime. It is immaterial whether the other person is susceptible to the persuasion.



Heyne: The element of prejudice in the crime of fraud only requires potential prejudice. This means that the false statement must involve some risk of harm, which need not be financial or proprietary to some person.

Sibiya: There is uncertainty whether the conduct described in Roman law as *furtum usus* (the mere temporary use of another's thing without the intention of permanently depriving the owner) was also punishable as theft in Roman-Dutch law. Therefore such conduct is no longer punishable as theft in our law. The requirement in English law that X must have the intention to deprive the owner permanently of his property is part of South African law. This requirement also implies that the mere temporary use of another's property does not amount to theft.

Discuss ONE of the following decisions:

Nkosiyana 1966 (4) SA 655 (A)

Davies 1956 (3) SA 52 (A) (6)

**Nkosiyana** In order to be convicted of incitement, it is not necessary to prove an initial unwillingness on the part of the person who was incited and who was overcome by argument, persuasion or coercion. Therefore, incitement can be committed even in respect of a police trap. An inciter is somebody who reaches and seeks to influence the mind of another towards the commission of a crime. It is immaterial whether the other person is susceptible to the persuasion. Approach to the other's mind may take various forms, such as suggestion, proposal, request, exhortation, gesture, persuasion, etc. The decisive question in each case is whether the accused reached and sought to influence the mind of the other person towards the commission of a crime – the means employed are of secondary importance. Where the intended influence does not reach the mind of the prospective incitee, the crime may be one of attempted incitement.

**Davies** is the authoritative case on attempt to commit the impossible. The court held that it is immaterial whether the impossibility of achieving the desired result was attributable to the wrong means employed by X, or due to the fact that the object in respect of which the act is committed is of such a nature that the crime can never be committed in respect of it. In cases of attempt to commit the impossible the test according to this decision is therefore subjective, and not objective. Committing of a so-called "putative crime" is therefore not a punishable attempt.