CRW2602 (488547) May/June 2016

CRIMINAL LAW: SPECIFIC CRIMES

Duration 2 Hours 100 Marks

EXAMINERS
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SECOND MR RD RAMOSA

Closed book examination.

This examination question paper remains the property of the University of South Africa and may not be removed from the examination venue.

THIS PAPER CONSISTS OF SEVEN (7) PAGES PLUS INSTRUCTIONS FOR COMPLETION OF A MARK READING SHEET.

THE QUESTIONS IN THIS PAPER COUNT ONE HUNDRED (100) MARKS. THE PAPER CONSISTS OF TWO PARTS, MARKED A AND B. YOU MUST ANSWER BOTH PARTS A AND B. PART A CONSISTS OF TEN (10) MULTIPLE CHOICE QUESTIONS. YOU MUST WRITE THE ANSWERS TO THESE QUESTIONS ON THE MARK READING SHEET. EACH QUESTION COUNTS THREE (3) MARKS, WHICH MEANS THAT THE QUESTIONS IN PART A COUNT A TOTAL OF THIRTY MARKS (30). IN PART B, THE ANSWERS TO THE QUESTIONS MUST BE WRITTEN IN THE EXAMINATION SCRIPT ITSELF. THE QUESTIONS IN PART B COUNT SEVENTY MARKS (70).

PART A (MULTIPLE CHOICE QUESTIONS)

IMPORTANT NOTICE. THE QUESTIONS IN THIS PART HAVE TO BE ANSWERED ON THE MARK READING SHEET, WHICH WILL BE ISSUED WITH YOUR EXAMINATION ANSWER BOOK. YOU HAVE TO READ THE INSTRUCTIONS IN CONNECTION WITH THE USE OF THE MARK READING SHEET CAREFULLY. FAILURE TO DO SO MAY MEAN THAT YOUR ANSWERS CANNOT BE MARKED BY THE COMPUTER.

Ten questions (marked 1 - 10) follow. Each question contains three (3) statements (marked (a)-(c)). Some of the statements are correct and some are incorrect. You must decide which of these statements is/are correct. The three (3) statements are followed by five (5) allegations (marked (1)-(5)). Each of them alleges that a certain statement or combination of statements is correct. You must decide which allegation accurately reflects the conclusions to which you have come.

[TURN OVER]

QUESTION 1

(a) An act which causes the destruction or substantial damage to any private or public property is included in the definition of "terrorist activities" as defined in section 1 of the *Protection of Constitutional Democracy against Terrorist and Related Activities Act* 33 of 2004

(b) Negligence is a sufficient form of culpability for the crime of terrorism

(c) In terrorism cases where there is no direct evidence of intention, the courts draw inferences of subjective intention from the perpetrator's outward conduct

(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) All the statements are correct

QUESTION 2

(a) The interest protected in the case of public violence is the proper administration of justice

(b) Taking over a meeting by a gang of people may constitute an act of public violence

(c) The participation of an individual in public violence may be justified on the ground of compulsion

(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 the statements are correct

QUESTION 3

(a) The crime of perjury is committed even when someone speaks the truth, while believing that he is telling a lie

(b) The crime of common-law perjury can only be committed if the false declaration was made **in the course of a legal proceeding.**

(c) If one tells a lie under oath during cross-examination but later acknowledges that the statement was false and then tells the truth, one **cannot** be found guilty of common-law perjury

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

QUESTION 4

(a) If X acts as an agent for Y and purchases drugs for Y's own use, X performs an act relating to the supply or furnishing of drugs

(b) In the offence of driving in excess of the speed limit (section 59 of the *National Road Traffic Act* 93 of 1996), one of the descriptions of a driver is anyone who leads a herd or flock of animals

(c) The act of sitting behind the steering wheel of a vehicle, or controls the movements of the steering wheel of a vehicle which is being towed by another vehicle, qualifies as "driving" in terms of the *National Road Traffic Act* 93 of 1996

(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) All these statements are correct

QUESTION 5

(a) The word "reckless" in the offence of reckless driving includes both gross negligence and intention in the form of *dolus eventualis*

(b) If one's driving is calculated to embarrass or inconvenience other road users, one may be guilty of the offence of inconsiderate driving

(c) Involuntary intoxication will serve as a defence in the crime of "driving under the influence of intoxicating liquor or drugs with a narcotic effect"

(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 the statements are correct

QUESTION 6

(a) The crime of assault constitutes an *iniuria* against the **physical integrity** of another

(b) If X, with a gun in his (X's) hand, confronts Y in an alley and commands "Hands up!" and Y complies out of fear, then X may be convicted of assault

(c) For a conviction of assault with intent to cause grievous bodily harm the state must prove that the victim was seriously injured

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

[TURN OVER]

QUESTION 7

(a) The harm in the offence of the pointing of a firearm is the arousal of fear in the mind of Y of being struck by the bullet

(b) If X insults Y, a young child who does not understand the nature of X's insult and, consequently, is not able to feel degraded by it, X **cannot** be convicted of the crime of *crimen iniuria*

(c) In *Hoho* 2009 (1) SACR 276 (SCA), the court held that criminal defamation charges should always be based on serious cases and not be of a trifling nature

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

QUESTION 8

(a) Common-law abduction is only committed when the minor is removed forcibly

(b) If Y, an unmarried minor, does **not** consent to her removal by X from her (Y's) parents' home, X may be convicted of abduction as well as kidnapping

(c) If X removes a shirt from a washing line but is apprehended 2 metres from the line by the owner of the property, X has committed completed theft as he had already gained control over the property

(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) All the statements are correct

QUESTION 9

(a) It is a requirement for robbery that the property should be **on the victim's person or in his presence** at the time of the theft

(b) In the crime of receiving stolen property, X must **know or suspect** that the property is stolen in order to be found guilty of the crime

(c) For the purpose of determining intention in the crime of fraud, **no distinction** is drawn between an intention to deceive and an intention to defraud

(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) All the statements are correct

QUESTION 10

(a)   Arson is a form of malicious injury to property

(b)   "Breaking", in the context of the crime of housebreaking, consists of an act which causes some degree of **damage** to the building or structure

(c)   Climbing through an **open** window into a house in order to steal something inside constitutes the crime of housebreaking with the intention to commit theft

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

SUB-TOTAL: [30]

PART B

THIS PART CONSISTS OF THREE (3) QUESTIONS. EACH QUESTION IS SUBDIVIDED INTO A NUMBER OF SUB-QUESTIONS. YOU MUST ANSWER ALL THREE (3) QUESTIONS. NOTE THAT SOME OF THE QUESTIONS CONTAIN A CHOICE BETWEEN TWO ALTERNATIVES. SUBSTANTIATE YOUR ANSWERS AND REFER TO DECIDED CASES WHERE NECESSARY. IN DECIDING UPON THE LENGTH OF YOUR ANSWERS YOU SHOULD BE GUIDED BY THE MARKS ALLOCATED TO EACH QUESTION.

QUESTION 1

(a)   X, a final-year student at a University has failed Criminal law four times   He knows that his lecturer, Y, is having an affair with a student and threatens the lecturer that he (X) will put this fact out on Twitter if he (Y) does not ensure that X passes his Criminal law examination   Y, who is afraid that X will do what he says, gives X a mark of 60% in the examination although X deserves only a mark of 30%   Can X be found guilty of a crime? Discuss   (5)

(b)   Name five ways in which the crime of defeating or obstructing the course of justice can be committed   (5)

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

   (i)   Define the crime of dealing in drugs

      OR

   (ii)   Define the crime of unlawful possession of a firearm   (3)

(d)   The crime of theft can be committed in various ways   Name and explain in one sentence the different forms of theft   (6)

(e)   Briefly discuss whether a person who steals electricity may be convicted of common-law theft
                                                                                       (4)

(f)   Define the crime of *crimen iniuria*   (2)
                                                                                     [25]
                                                                              [TURN OVER]

QUESTION 2

(a)   X, Y and Z attend a year-end party together At the end of the party, X, who has been harbouring a grudge against Y because she ignores his sexual advances, pulls out his gun and orders Z to take hold of Y so that he (X) can have intercourse with Y X tells Z that he (X) will kill Z if he refuses to do what he requests Z, who is too afraid to run away, grabs hold of Y and X has sexual intercourse with her X subsequently orders Z to also have intercourse with Y, and Z, who fears for his life, complies with the order

      (i)   Name and briefly discuss the potential crimes with which X may be charged In your answer you must set out the elements of the various offences   (8)

      (ii)   Can Z also be convicted of a crime? Answer "yes" or "no" and give a reason for your answer   (2)

(b)   Discuss ONE of the following cases

      S v A 1993 (1) SACR 600 (A)

      OR

      S v Mshumpa 2008 (1) SACR 126 (E)   (6)

(c)   Two burglars, X and Y, go to the house of Mrs Z, armed with a pistol and an axe They break into the house and find Mrs Z in her bedroom They threaten to kill her unless she tells them where the safe is Mrs Z tells them that she does not have a safe in the house X and Y then flee with a number of Mrs Z's belongings X and Y are later arrested and charged with robbery During the trial, X and Y testify that they did not expect to find Mrs Z at home on the day of the burglary as they had received news that Mrs Z was away on holiday and that they only planned to commit theft Their legal representative argues that they cannot be convicted of robbery because Mrs Z was not physically assaulted Explain whether X and Y may be convicted of robbery In your answer you must discuss the elements of the offence   (8)

(d)   NOTE THE CHOICE YOU HAVE IN THIS QUESTION

      (i)   Name the elements of the crime of theft by false pretences

      OR

      (ii)   In terms of section 1(2) of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 consent means "voluntary and uncoerced agreement " Name the circumstances set out in the Act (s 1(3)) in respect of which a person (Y) does not voluntarily or without coercion agree to an act of sexual penetration or sexual violation
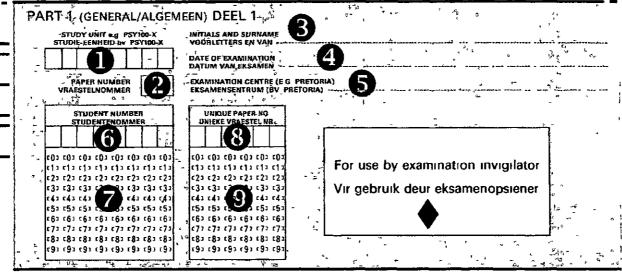   (6)
                                                                                [30]

QUESTION 3

(a) Mr X is a senior manager at Gelato (Pty) Ltd, ("Gelato"), an ice-cream producer He is also a member of a close corporation, Moomoo CC, ("Moomoo"), which has as its main business the supply of milk to ice-cream producers Mr X has signed a copy of Gelato's code of conduct in which it is stated that any employee, manager or director should disclose any interest that he may have in any contract that Gelato concludes, to the managing director of Gelato Mr X did not disclose his interest to the managing director of Gelato Gelato puts out tenders for the supply of milk and Moomoo is awarded the contract Mr X was not involved in the evaluation and recommendation of the prospective bidders, but does have a friend, Mr Y, who sits on the Board He has promised Mr Y a free holiday if the tender is awarded to Moomoo One of the other unsuccessful bidders discovers that Mr X has an interest in Moomoo and institutes an action in the High Court in which he seeks an order that the award of the tender to Moomoo be set aside and that the entire tender process be started afresh Referring to authority, discuss in detail whether Mr X can be successfully prosecuted for fraud and corruption In your answer you must set out the elements of these offences (10)

(b) Write down the missing words or phrases in your **examination book**

    (i) Contempt of court is punished not to protect the dignity of an individual judicial officer, but to protect the (1)

    (ii) The crime of defamation requires . of defamatory matter (1)

    (iii) The crime of public violence can be committed in both a and place (2)

    (vi) *Res nullius* is property that belongs to (1)

    [15]

SUB-TOTAL: [70]

TOTAL: [100]

UNIVERSITY OF SOUTH AFRICA UNISA UNIVERSITEIT VAN SUID-AFRIKA
EXAMINATION MARK READING SHEET
EKSAMEN-MERKLEESBLAD

PART 1 (GENERAL/ALGEMEEN) DEEL 1

STUDY UNIT e.g PSY100-X
STUDIE-EENHEID bv PSY100-X

❶

INITIALS AND SURNAME
VOORLETTERS EN VAN ❸

DATE OF EXAMINATION
DATUM VAN EKSAMEN ❹

PAPER NUMBER
VRAESTELNOMMER ❷

EXAMINATION CENTRE (E G PRETORIA)
EKSAMENSENTRUM (BV PRETORIA) ❺

STUDENT NUMBER
STUDENTENOMMER ❻ ❼

UNIQUE PAPER NO
UNIEKE VRAESTEL NR ❽ ❾

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For use by examination invigilator

Vir gebruik deur eksamenopsiener

◆

IMPORTANT
1. USE ONLY AN HB PENCIL TO COMPLETE THIS SHEET
2. MARK LIKE THIS ▨
3. CHECK THAT YOUR INITIALS AND SURNAME HAS BEEN FILLED IN CORRECTLY
4. ENTER YOUR STUDENT NUMBER FROM LEFT TO RIGHT
5. CHECK THAT YOUR STUDENT NUMBER HAS BEEN FILLED IN CORRECTLY
6. CHECK THAT THE UNIQUE NUMBER HAS BEEN FILLED IN CORRECTLY
7. CHECK THAT ONLY ONE ANSWER PER QUESTION HAS BEEN MARKED
8. DO NOT FOLD

BELANGRIK
1. GEBRUIK SLEGS N HB POTLOOD OM HIERDIE BLAD TE VOLTOOI
2. MERK AS VOLG ▨
3. KONTROLEER DAT U VOORLETTERS EN VAN REG INGEVUL IS
4. VUL U STUDENTENOMMER VAN LINKS NA REGS IN
5. KONTROLEER DAT U DIE KORREKTE STUDENTENOMMER VERSTREK HET
6. KONTROLEER DAT DIE UNIEKE NOMMER REG INGEVUL IS
7. MAAK SEKER DAT NET EEN ALTERNATIEF PER VRAAG GEMERK IS
8. MOENIE VOU NIE

PART 2 (ANSWERS/ANTWOORDE) DEEL 2

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Specimen only

1 [1] [2] [3] [4] [5]	36 [1] [2] [3] [4] [5]	71 [1] [2] [3] [4] [5]	106 [1] [2] [3] [4] [5]
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