

MUTIPLE CHOICE

Question 1

- (i) Public violence can only be committed in a public place.
- (ii) The crime of common-law perjury can only be committed if the particular statement is made orally.
- (iii) If X attempts to induce Y, a witness in a court case to give false evidence in court, X's conduct may amount to committing the crime of defeating or obstructing the course of justice.

- (1) Only statements (i) and (iii) are correct.
- (2) Only statements (i) and (iii) are correct.
- (3) Only statement (ii) is correct.
- (4) Not one of these statements are correct **(5) Only statement (iii) is correct.**

Question 2

- (i) X may be guilty of corruption even if he or she only makes an offer to Y to give Y an improper benefit (assuming that X has an intention required for corruption).
- (ii) In order to prove the requirements of the acct in the crime of possession of a drug, it is sufficient for the prosecution to prove either that X had exercised control over the drug as if he or she were the owner, or that he or she had exercised control over it on behalf of somebody else.
- (iii) If X buys a dagga cigarette from Y in order to smoke it him-or herself, he or she commits an act in connection with the sale of dagga and is accordingly guilty of dealing in drugs.

- (1) Only statement (i) is correct
- (2) **Only statements (i) and (ii) are correct**
- (3) Only statements (ii) and (iii) are correct (4) Only statement (ii) is correct
- (5) Only statements (i) and (iii) are correct.

Question 4

- (i) The crime of unlawfully possessing a weapon is defined by the legislature in such a way that X commits the crime only if he or she exercises control over the weapon with the intention of possessing it as an owner for his or her own benefit.
- (ii) Negligence is a sufficient form of culpability in the crime of unlawfully possessing an arm.
- (iii) If a female commits an indecent act with an 18-year-old boy she renders herself guilty of contravening a provision of the Sexual Offences Act 23 of 1957.

- (1) Only statement (iii) is correct.
- (2) Only statements (i) and (iii) are correct.
- (3) Only statements (i) and (ii) are correct.
- (4) **Only statement (ii) is correct.**
- (5) Only statement (i) is correct.

Question 5

- (i) In order to be convicted of common-law abduction, the prosecution must prove that X in fact married the minor or had sexual intercourse with her.
- (ii) Common-law abduction is only committed if the removal of the minor takes place violently.
- (iii) Common-law abduction can also be committed in respect of a male (as opposed to a female) minor.

- (1) Only statement (i) is correct.
- (2) Only statements (i) and (ii) are correct.
- (3) **Only statement (iii) is correct.**
- (4) Only statements (i) and (iii) are correct.
- (5) Not one of these statements is correct.

Question 6

- (i) It is quite possible for a person to render him-or herself guilty of contempt of court even if he or she did not have culpability in the form of intention, but only in the form of negligence.
- (ii) A person can be convicted of assault with the intent to do grievous bodily harm only if he or she had indeed inflicted grievous bodily harm on the complainant.
- (iii) If X, a male, intentionally puts his hand on the breast of Y, a female, without her consent, but without injuring her, he may render himself guilty of indecent assault.

- (1) Only statement (iii) is correct.
- (2) **Only statements (i) and (iii) is correct.**
- (3) Only statement (ii) is correct.
- (4) Only statements (i) and (ii) are correct.
- (5) Only statements (ii) and (iii) are correct.

Question 7

- (i) If a male, X, secretly watches a female, Y, while she is undressing, he can be convicted of *crimen iniuria* even if, at the time she was undressing, Y was not even aware that someone was watching her.
- (ii) If X plants a bugging device in Y's flat and listens to Y's conversations without Y's consent, X can be convicted of *crimen iniuria* only if the conversation which X overhears contains something scandalous or improper.
- (iii) Arson can only be committed in respect of immovable property.

- (1) All these statements are correct.
- (2) Only statement (iii) is correct.
- (3) Only statements (i) and (ii) are correct.
- (4) **Only statements (i) and (iii) are correct.**
- (5) Only statements (ii) and (iii) are correct.

Question 8

- (i) The reason the word "malicious" appears in the crime "malicious injury to property" is that this crime can be

committed only if X had an evil motive when he damaged the property.

- (ii) For the purpose of the crime of forgery a document is deemed to be forged if it contains an untrue statement.
- (iii) A person may only be convicted of fraud if it is proved that the person to whom he or she had made the misrepresentation was in fact misled by the misrepresentation.

- (1) Only statement (ii) is correct.
- (2) Only statement (iii) is correct.
- (3) Only statements (i) and (ii) are correct.
- (4) **Not one of these statements is correct.**
- (5) Only statements (i) and (iii) are correct.

Question 9

- (i) The threat of violence in robbery may either be express or implied.
- (ii) In robbery there must be a causal link between the application of violence and the acquisition of the property.
- (iii) For the conviction of fraud a causal link between the misrepresentation and the prejudice is not required.

- (1) Only statement (i) is correct
- (2) Only statement (iii) is correct.
- (3) **All three statements are correct.**
- (4) Only statements (i) and (ii) are correct.
- (5) Only statements (i) and (iii) are correct.

Question 10

- (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.

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

Question 11

- (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 the incitement to commit a crime is to discourage people from seeking to influence others to commit crimes.
- (c) The public violence can be committed by an individual acting alone.

- (1) Only statement (a) is correct.
- (2) Only statement (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 12

- (a) The crime of common-law perjury is only committed if the false declaration is made in the course of legal proceedings.
- (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 statement (a) and (c) are correct.

Question 13

- (a) Where an editor of a newspaper is charged with the contempt of court on the ground of having publishes 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 Service 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 are correct.

Question 14

- (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 15

- (a) If X obtains drugs for her own 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 the 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 16

- (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 are correct.**

Question 17

- (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 18

- (a) A person cannot be convicted of theft in respect of property belonging to him-herself.
- (b) An intention to require 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 are correct.**
- (5) Only statements (a) and (b) are correct.

Question 19

- (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 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 of these statements are correct.

Question 20

- (a) In the crime of corruption, the benefit must be of a patrimonial nature.
- (b) Corruption in its active form is completed only once X has given the benefit to another.
- (c) Incest is no longer a crime in our law.

- (1) Only statement (a) is correctly.
- (2) Only statement (c) is correct.
- (3) Only statements (a) and (c) are correct.
- (4) All these statements are correct.
- (5) **Not one of these statements are correct.**

Question 21

- (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 22

- (a) Attempted assault is possible.
- (b) 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.

Question23

- (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 license with prior consent of the holder of a license 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 24

- (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 25

- (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 25

- (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 these statements are correct.**

PUBLIC VIOLENCE:

Smokers United, a group of cigarette smokers, is very upset about the rising prices 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 prices of cigarettes and the manner in which smokers are being treated since the new legislation on smoking has come 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?

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

They participated in the protest.

They disturbed public peace and order.

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.

The acts were accompanied by violence. Note, however, that 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. See the study guide 4.2.2.

PERJURY:

Discuss the crime known as “statutory perjury” that is the contravention of section 319(3) of Act 56 of 1955.

(8)

Statutory perjury:

Here the State needs to prove that X on 2 different occasions made 2 statements under oath and these statements conflict with each other.

The difference between common law and statutory perjury are:

- a) **in CL perjury, only one statement and in SP, two statements**
- b) **in CL perjury crime can only be committed during the course of a legal proceeding; in SP neither of the statements need be made in the course of a legal proceeding.**

Definition

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

Discuss the liability of a newspaper editor for the crime of contempt of court in the form of commentary in the form on pending cases. (4)

Definition

Contempt of court consists in the unlawful and intentional

- 1) **Violation of the dignity, repute or authority of a judicial body or a judicial officer in his judicial 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**

Intent

In general intention is an essential element of the crime except in cases where the editor of a newspaper is charged with this crime on the ground of the publication in his newspaper of information concerning a pending case, which tends to influence the outcome of the case. Culpability in the form of negligence will be sufficient to establish contempt of court in such circumstances. However, remarks in a newspaper article, for example, must be read in context to establish the presence of intent. Liability of a newspaper editor: in Harber the Appellate Division held that it is not necessary to prove intention in these cases, since, in cases such as these the culpability may consist of either intention or negligence. The editor would be negligent if the reasonable person in his position could foresee that the information which he publishes might deal with a pending case or that it might scandalize the court.

Define perjury at common law. (3)

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

One of the elements of common-law perjury is that the false declaration must be made in the course of legal proceedings. Discuss what is meant by “In the course of legal proceedings.”

(5)

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

A distinction is drawn between contempt *in facie curiae* and contempt *ex facie curiae*.

***In facie curiae* literally means “in the face of the court”, and contempt in this form is contempt in the presence of the judicial**

officer during a session of the court. In Nyalanbisa the court held that merely falling asleep in court does not necessarily amount to contempt in *facie curiae*, since it merely amounted to “a trivial breach of court etiquette”.

CONTEMPT OF COURT:

Discuss the form of contempt of court known as “contempt in *facie curiae*.”

In your answer you need not also give a definition of contempt of court.
(6)

***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.**

Only give the definition of ONE of the following crimes:

Contempt of court OR Public Violence

(3)

Contempt of court consists in the unlawful and intentional

- 1) Violation of the dignity, repute or authority of a judicial body or a judicial officer in his judicial 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.**

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.

Name the elements of ONE of the following crimes:

(i) Perjury at common law

Elements of the crime:

- 1) **An act**
- 2) **Performed by a number of persons**
- 3) **Which assumes serious proportions**
- 4) **Which is unlawful**
- 5) **Intentional**

(ii) Contempt of court

(4)

The elements of the crime are

- 1) **Any act which**
- 2) **Defeats or obstructs the course of justice**
- 3) **In an unlawful and**
- 4) **Intentional manner**

Briefly discuss contempt *ex facie curiae* in the form of scandalising the court. (4)

***Ex facie curiae* occurs through actions or remarks out of court, and can take a variety of forms:**

- **Scandalizing the court by the publication of allegations which, objectively speaking, are likely to bring judges or magistrates or the administration of justice through the courts generally into contempt, or unjustly to cast suspicion on the administration of justice**
- **The failure to comply with a court order**

CORRUPTION:

Discuss the elements of 'acceptance' (the element of the act) in respect of the crime or corruption committed by the recipient.

(5)

General crime of corruption: the crime committed by the recipient

Elements of the crime:

- 1) The acceptance by Y
- 2) Of gratification
- 3) In order to act in a certain way
- 4) Unlawfulness
- 5) Intention

1. The acceptance (element of an act)

The legislature employs two ways to broaden the meaning of “accept”:

- The Act also provides (in s 3(a)) for certain conduct by Y which precedes the acceptance, namely
 - To agree to accept a gratification or
 - To offer to receive

The Act provides that the words or expressions “accept”, “agree to accept” and “offer to accept” as used in the Act, also have the following broader meanings:

- 1) To demand, ask for, seek, request, solicit, receive or obtain gratification
- 2) To agree to perform the acts named under (1)
- 3) To offer to perform the acts named under (1)

The following considerations afford Y no defense:

- 1) The fact that Y did not accept the gratification “directly”, but only “indirectly”. Y does not have to accept the gratification personally. The fact that Y makes use of a middle man to accept the gratification affords her no defense.
- 2) The fact that Y did not in actual fact later perform the act which X had induced her to perform. Therefore, the crime is completed even if Y has not yet done what she had undertaken to do, expressly or implicitly.
- 3) The fact that the corrupt activity between X and Y was unsuccessful. This consideration affords neither X nor Y a defense.

- 4) **For the purpose of liability, it is irrelevant that the state or the private enterprise concerned with the transaction did not suffer prejudice as a result of X or Y's conduct.**
- 5) **The fact that Y accepted the gratification but that she, in actual fact, did not have the power or right to do what X wished her to do, affords neither X nor Y a defense.**

EXTORTION:

Fully discuss the crime of extortion. In your answer you must inter alia give the definition of the crime, identify the elements of the crime, and discuss the elements of the crime.

(9)

Definition: is the unlawful and intentional acquisition of a benefit from some other person by applying pressure to that person which induces her to part with the benefit.

Elements:

1. the acquisition of
2. a benefit
3. by applying pressure
4. a causal link between pressure and acquiring benefit (NB) 5. unlawfulness and
- 6) intention.

The perpetrator:

Crime can be committed by anyone, not just an official.

Exertion of pressure:

X MUST acquire the benefit by applying pressure and Y must give way under the stress of the pressure.

Pressure can be threats, inspiring fear and intimidation (thus robbery and extortion can overlap).

Threats can be in the negative, like threatening to not return something borrowed, it can be threats of defamation, or employment benefits etc.

The benefit:

For long time there was uncertainty regarding whether or not the benefit had to be one of a patrimonial nature.

In Von Mollendorff the AD limited it to one of a patrimonial nature. But the legislature intervened with the General Law Amendment Act which stated that any advantage was enough. In J, Y was threatened by X that unless he had sexual intercourse with him, he'd show nude photos of her to her parents. Court found him guilty.

The crime is not committed until the benefit has been handed to X.

Causation:

Just like in robbery (see later and remember the connection!) there must be a causal link between the pressure and the acquisition of the benefit. If the benefit was handed over not due to the pressure but because of a trap set for X by Y, X is only guilty of attempted extortion.

Unlawfulness:

Obviously the pressure must be exerted unlawfully, but this does not mean that if Y is threatened with something which X is entitled to, the threat can never be sufficient for extortion.

It's irregular if police official states he'll prosecute unless Y pays him a sum of money.

Intention:

X must intend her words to give fear, intend to acquire the benefit realizing he's not entitled to it. Motive irrelevant.

Discuss the requirement of causation in the crime of extortion.

Definition: is the unlawful and intentional acquisition of a benefit from some other person by applying pressure to that person which induces her to part with the benefit.

Causation:

Just like in robbery (see later and remember the connection!) there must be a causal link between the pressure and the acquisition of the benefit. If the benefit was handed over not due to the pressure but because of a trap set for X by Y, X is only guilty of attempted extortion.

Discuss the requirement of unlawfulness in the crime of extortion.

(3)

Definition: is the unlawful and intentional acquisition of a benefit from some other person by applying pressure to that person which induces her to part with the benefit.

Unlawfulness:

Obviously the pressure must be exerted unlawfully, but this does not mean that if Y is threatened with something which X is entitled to, the threat can never be sufficient for extortion.

It's irregular if police official states he'll prosecute unless Y pays him a sum of money.

Y, a married woman, has a secret affair with a colleague. Y and her lover go away for a weekend and are spotted together by X, one of her husband's friends. X phones Y the following Monday and tells Y that he, X, will tell Y's husband if Y does not have sexual intercourse with him (X). Y has sexual intercourse with X. Does X commit extortion? Discuss (6)

Definition: is the unlawful and intentional acquisition of a benefit from some other person by applying pressure to that person which induces her to part with the benefit.

Elements:

- 1. the acquisition of**
- 2. a benefit**
- 3. by applying pressure**
- 4. a causal link between pressure and acquiring benefit (NB) 5. unlawfulness and**
- 6. intention.**

The perpetrator:

Crime can be committed by anyone, not just an official.

Exertion of pressure:

X MUST acquire the benefit by applying pressure and Y must give way under the stress of the pressure.

Pressure can be threats, inspiring fear and intimidation (thus robbery and extortion can overlap).

Threats can be in the negative, like threatening to not return something borrowed, it can be threats of defamation, or employment benefits etc.

The benefit:

For long time there was uncertainty regarding whether or not the benefit had to be one of a patrimonial nature.

In Von Mollendorff the AD limited it to one of a patrimonial nature. But the legislature intervened with the General Law Amendment Act which stated that any advantage was enough. In J, Y was threatened by X that unless he had sexual intercourse with him, he'd show nude photos of her to her parents. Court found him guilty.

The crime is not committed until the benefit has been handed to X.

Causation:

Just like in robbery (see later and remember the connection!) there must be a causal link between the pressure and the acquisition of the benefit. If the benefit was handed over not due to the pressure but because of a trap set for X by Y, X is only guilty of attempted extortion.

Unlawfulness:

Obviously the pressure must be exerted unlawfully, but this does not mean that if Y is threatened with something which X is entitled to, the threat can never be sufficient for extortion.

It's irregular if police official states he'll prosecute unless Y pays him a sum of money.

Intention:

X must intend her words to give fear, intend to acquire the benefit realizing he's not entitled to it. Motive irrelevant.

Discuss the question whether the crime of **extortion** is committed by X in the following circumstances:

- (i) X threatens to sue Y if he (Y) does not pay back the money he owes her. Y does on fact owe X money and has already, for a considerable time, refrained from paying his debts on demands by X. Y, is afraid of the legal costs that may incur if he does not pay the money, immediately he pays his debts to X.
- (ii) X tells Y that she will hire somebody to break into his house and steal his property if he does not pay back the money that he owes her. Y, being afraid, pays her immediately.
- (iii) X is Y's boss at work. She tells Y that he will not get a promotion unless he has intercourse with her. Y refuses and lays a charge at the police. (9)

(1) X cannot be convicted of extortion since her conduct is not unlawful. It is not against the legal convictions of society to obtain a perfectly legitimate advantage (payment of a debt) by means of a threat of legal action.

(2) X can be convicted of extortion. It is undoubtedly against the legal convictions of society to use this type of pressure (i.e. to threaten to hire somebody to break into someone else's house and violate his property rights) to obtain a benefit. Although the benefit obtained is legitimate, the illegitimate pressure used to obtain the benefit makes X's conduct unlawful.

(3) X may only be convicted of attempted extortion. Extortion is materially defined crime. This means that there must be a causal link between the pressure and the acquisition of the benefit, and that the crime is not completed unless the perpetrator has received the benefit. Because X has not yet obtained the "advantage", they may not be convicted of

the completed crime but only of an attempt to commit extortion

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 naked positions. Y decides to save her marriage and ends the affair. X is shattered and threatens to show the photographs to her husband unless she provides him with the questions for the examination. Y agrees and provides X with the questions. Has X committed a crime?

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 nonpatrimonial 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 or not the benefit in extortion should be limited to patrimonial benefit. Since the promulgation of section 1 of the General Law Amendment Act 139 of 1992, 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.

DRUG OFFENCES:

Z possesses a quantity of mandrax tablets. She goes to her friend X and asks whether she may leave the mandrax tablets in X's care while she (Z) goes overseas, because she is afraid the police may find the tablets in her (Z's) house while she is overseas. X agrees. X and Z place the tablets in a box under the floor boards of X's house. While Z is overseas, the police search X's house and find the mandrax tablets. X is charged with having unlawfully possessed the tablets. Her defence is that she never intended to use the tablets herself, but only allowed Z to store the tablets temporarily in her (X's) house. Can X be convicted by having unlawfully possessed the drugs (mandrax tablets)? Discuss. In your answer you must focus on the concept of possession in the crime of possession of drugs. (6)

This question deals with the unlawful possession of drugs. X can be convicted of having possessed the tablets. The fact that she did not intend to use the tablets herself, but only stored them temporarily on Z's behalf, does not afford her a defence. The term "possession is used in the Act is not confined to *possession civilis* (possession as an owner) but includes *possession naturalis* (possession on behalf of someone else).

Section 4 of the drugs and Drugs Trafficking Act 140 of 1992 provides that it is an offence for any person unlawfully and intentionally to **use or have in his/her possession** any dependence producing substances or any dangerous dependence producing substances or any undesirable dependence producing substance. Discuss the **act** required for this offence.

In other words, discuss the meaning of "to use" and "to have in possession".
(7)

The use or possession of drugs Definition

It is an offence for any person unlawfully and intentionally to use or have in her possession any dependence-producing substance or any dangerous dependence producing substance or any undesirable dependenceproducing substance.

The act:

Possession or use:

a. Use

Smoking, inhalation, injection or ingestion of drugs will amount to use of the drug. It is not clear why the legislature prescribed not only the possession of, but also the use of drugs, since any instance of use of a drug involves also its possession and as such amounts to an offence under the Act. It is probably for this reason that in practice it seldom happens that X is accused only of using a drug.

b. Possession:

(i) General meaning of "possession":'

In law, possession consists of two elements, namely

❖ a physical or corporeal element (referred to as corpus or detentio)

❖ a mental element, that is X's intention (the animus)

The physical element - appropriate degree of physical control over the thing. The precise degree of control required depends upon the nature of the article and the way in which control is ordinarily exercised over such a type of article. The control may be actual or constructive. Constructive control means control through somebody else, such as a representative or servant. The mental element (animus) of possession relates to the intention with which somebody exercises control over an article. In this respect there may be more than one possibility:

X may exercise control over the article as if she is the owner of the article. This type of possession is possession in the ordinary juridical meaning of the term. It is also known as *possessio civilis*. This is the narrow meaning of possession. X may exercise control over the article with the intention of keeping it for somebody else. This type of possession is known as *possessio naturalis*. This is the broader type of possession.

(ii) Meaning of “possession” in the Act:

Section 1 of the Act provides that the word “possess” as used in the Act includes

❖ keeping

❖ storing or

❖ having in custody or under control or supervision.

This provision is wide enough to cover situations in which a person has the custody over an article not in order to use it herself, but on behalf of somebody else, as where she looks after it for somebody else.

“Includes” means that the meaning ascribed to “possession in this section (i.e. keeping, storing etc) is not the only meaning that the word can have in the Act. Apart from the meaning ascribed to the word in section 1, the word also has another meaning. This other meaning can be nothing else than *possessio civilis* described above. If the state charges X with having possessed a drug, there are two ways in which the state may prove the element of possession. The first is by proving that X exercised control over the drug as an owner that is for herself, as opposed to exercising control over the

drug on behalf of somebody else. This type of possession (i.e. possession as an owner) is possessio civilis. The second way of proving possession is by proving that although X did not exercise control over it as an owner (i.e. to use it for herself), she nevertheless kept it for or on behalf of somebody else. This type of possession is possession naturalis.

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?

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 140 of 1992 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.

POINTING OF A FIREARM

Name and discuss the elements of the crime of pointing of a firearm in contravention of section 120(6) of the Firearms Control Act of 2000.

Definition

- a) any firearm, an antique firearm or an airgun, whether or not it is loaded or capable of being discharged, at any other person, without good reason to do so; or
- b) Anything which is likely to lead a person to believe that it is a firearm, an antique firearm or an airgun at any other person, without good reason to do so.

Elements of the offence

- 1) the pointing of
- 2) a firearm or other article
- 3) at any person
- 4) unlawfully and
- 5) intentionally

The act: “To point ... at”

The state need not prove any of the following:

- 1. that X fired a shot;
- 2. that the firearm or article was loaded; or
- 3. That the firearm or article was of such a nature that it could be discharged, in other words, that it was capable of firing a shot. It is simply the pointing of the firearm

The expression “point at” is capable of being interpreted in more than one way:

- ❖ Firstly, it may be interpreted narrowly, as meaning the pointing of the firearm at Y in such a way that, if discharged, the bullet would hit Y (this interpretation was adopted in Van Zyl).
- ❖ Secondly, it may be interpreted broadly, as meaning the directing of the firearm towards Y in such a way that, if it were discharged, the bullet would either strike Y or pass in her immediate vicinity.

A firearm, et cetera:

The effect of the words “or anything which is likely to lead to a person to believe that it is a firearm etc” in the definition of this

offence is that X may commit the offence even if she points a toy pistol at Y, provided the toy pistol is such that it is likely to lead to a person to believe that it is a real pistol.

“Any other person”

The firearm must be pointed at a person, so for example pointing at an animal cannot lead to a conviction.

Unlawfulness:

The words “without good reason to do so” in the definition are wide enough to incorporate the grounds of justification. For example, she points a firearm at another while acting in private defence, or if X is a police officer lawfully affecting an arrest.

Intention:

Intention is not expressly required. It is highly unlikely that the legislature intended to create a strict liability offence.

It is also unlikely that it could have intended mere negligence to be a sufficient form of culpability. The words “point at” *prima facie* denote intentional behaviour.

It is submitted that the form of culpability required for a conviction under the subsection is intention.

This means that X must know that:

- 1. What she is handling is an object described in the act.**
- 2. She is pointing the weapon at another person – thus if she thinks that she is pointing it at an animal she lacks intention.**
- 3. There is no “good reason” for her conduct and that it is unlawful, that is, not covered by a ground of justification. Mere negligence is not sufficient. It is submitted that, according to general principles, intention in the form of *dolus eventualis* is sufficient.**

Section 120(6) of the Firearms Control Act 60 of 2000 provides that it is an offence to point a firearm at any person unlawfully and intentionally. Discuss the requirement of an **act** (“to _____at”) in this offence. (5)

To point a firearm is defined as:

- a) any firearm, an antique firearm or an airgun, whether or not it is loaded or capable of being discharged, at any other person, without good reason to do so; or
- b) Anything which is likely to lead a person to believe that it is a firearm, an antique firearm or an airgun at any other person, without good reason to do so.

The act: “To point ... at”

The state need not prove any of the following:

1. that X fired a shot;
2. that the firearm or article was loaded; or
3. That the firearm or article was of such a nature that it could be discharged, in other words, that it was capable of firing a shot.

The expression “point at” is capable of being interpreted in more than one way:

Firstly, it may be interpreted narrowly, as meaning the pointing of the firearm at Y in such a way that, if discharged, the bullet would hit Y (this interpretation was adopted in *Van Zyl*).

Secondly, it may be interpreted broadly, as meaning the directing of the firearm towards Y in such a way that, if it were discharged, the bullet would either strike Y or pass in her immediate vicinity.

RAPE:

- (a) X’s wife, Y, is very unwilling to allow him to have sexual intercourse with her. In an attempt to persuade her to consent to intercourse, X tells her that if she allows him to have intercourse with him, he will buy her a fur coat. On the ground of representation by X, Y consents, and the two of them have sexual intercourse. Thereafter X refuses to buy Y a fur coat. Y is furious and goes to the police, where she lays a charge of rape against X. Discuss the question whether X has committed the crime. (5)

The question deals more specifically with the requirement for the crime complainant should not have consented to intercourse, and hereunder the question t which extent a mistake by the complainant relating to the true facts surrounding the intercourse affects the validity of consent given by intercourse.

Fraud (by X) which vitiates consent (in other words, which renders consent invalid) s fraud relating to the identity of the man or the nature if the act. Misrepresentation of any other circumstance does not affect the validity of the consent. This is the reason why, in the facts of this case, the misrepresentation or fraud by X does not vitiate the consent given by Y. Y's consent to intercourse is therefore deemed by law to be valid, with the result that X is not guilty of rape.

The fact that X and Y were married s irrelevant, because it is not possible for a husband to commit this crime with his wife.

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. (4)

X has committed indecent assault. The Act repeals the common-law crime of indecent assault and replaces it with new statutory offences of sexual assault, compelled sexual assault as well as compelled self-sexual assault. These various offences relate to the non-consensual sexual violation of another person either by the perpetrator himself or herself, or by another person who is compelled by the perpetrator to perform the prohibited act. The compelled person may also be the complainant himself or herself.

A person (X) who unlawfully and intentionally sexually violates a complainant (Y) without the consent of Y; is guilty of the offence of sexual assault.

A person (X) who unlawfully and intentionally inspires the belief in a complainant (Y) that Y will be sexually violated; is guilty of the offence of sexual assault.

The elements of the crime are the following:

(a) an act of sexual violation of another person

- (b) without the consent of the latter person**
- (c) unlawfulness and**
- (d) intention; or**

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

- (i) X, a thirty-year-old school teacher, 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 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 he knows 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) X may be convicted of rape.**
- (iv) X may be convicted of assault.**

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

- (i) by fear induced by violence or threats.**
- (ii) where someone has intercourse with a sleeping woman.**

- (iii) when a woman is in a state of intoxication, or whose senses are benumbed as a result of drug-taking or hypnosis.
- (iv) if as a result of a mental defect she is so devoid of reason that she is incapable of giving consent.
- (v) when it is obtained by fraud regarding the identity of the man or the nature of the act she 'agrees' to.
- (vi) if a girl is irrebuttably presumed to be incapable of consenting because she is under 12 years of age.

X's wife Y is very unwilling to allow him to have sexual intercourse with her. In an attempt to persuade her to consent to have intercourse with him, X promises Y that he will buy her a new pair of designer jeans if she consents to intercourse. On the ground of this representation by X, Y consented to intercourse, and the two of them have sexual intercourse. Thereafter, however, X refuses to buy Y a pair of designer jeans. Y is furious and goes to the police and lays a charge of rape against X. Discuss the question whether X has committed a crime. (5)

This question deals with rape. In this set of facts consent was obtained by fraud. This type of consent, in certain circumstance, deemed by law to be invalid. Fraud which vitiates (invalidates) consent is fraud in respect of the identity of the man (where the woman is led to believe that the man is her husband) or in respect of the nature of the act to which she "agrees" (when is persuaded that the act is not sexual intercourse, but some medical operation). Misrepresentation of any other circumstances does not affect the validity of consent. Consent is deemed to be valid where the woman is misled, not about the nature of the act of sexual intercourse, but about the results which will follow on such intercourse. In this question, X is not guilty of rape since the woman's consent is deemed by the law to be valid consent. The fact that they were married is irrelevant since it is possible in South Africa law for a husband to rape his wife.

Y, a thirty-year old woman, desperately wants to have a child with her husband, Z. she has tried all kinds of fertility products but cannot fall

pregnant. Y consults a gynaecologist, Dr X, who tells her that by having sex with him (X) will improve her fertility. Because X is a doctor, Y believes him and has sexual intercourse with him. However her fertility is not cured. Y is furious and lays a charge of rape against X. Discuss the question whether X may be convicted of rape. (6)

Circumstances in respect of which Y does not voluntarily or without coercion agree to an act of sexual penetration include the following:

Where Y submits or is subjected to such a sexual act as a result of

- (a) the use of force or intimidation by X against Y or Z (a third person) or W (another person) or against the property of Y, Z or W or a threat of harm by X against Y, Z or W or against the property of Y, Z or W.**
- (b) where there is an abuse of power or authority by X to the extent that Y is inhibited from indicating his or her unwillingness or resistance to the sexual act, or unwillingness to participate in such a sexual act;**
- (c) where the sexual act is committed under false pretences or by fraudulent means, including where Y is led to believe by X that**
 - (i) Y is committing such a sexual act with a particular person who is in fact a different person; or**
 - (ii) such a sexual act is something other than that act; or**
- (d) where Y is incapable in law of appreciating the nature of the sexual act, including where Y is, at the time of the commission of such sexual act:**
 - (i) asleep;**
 - (ii) unconscious;**
 - (iii) in an altered state of consciousness, including under the influence of any medicine, drug, alcohol or other substance, to the extent that Y's consciousness or judgment is adversely affected;**
 - (iv) a child under the age of 12 years; or (v) a person who is mentally disabled.**

For consent to succeed as a defence it must have been given consciously and voluntarily, either expressly or tacitly, by a person who has the mental ability to understand what he or she is consenting to, and the consent must be based on a true knowledge of the material facts relating to the act.

X, a male prisoner, coerces Y, another male prisoner, to subject himself to sexual intercourse *per annum* 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 the intention, which includes an intention to act indecently. You had to discuss the 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 fact was punishable as the common-law crime of sodomy. However, the crime of sodomy (which targeted nonconsensual and 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, nonconsensual anal intercourse may still be punished as indecent assault or assault with the intent to cause grievous bodily harm.

MURDER:

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. (6)

In *Dodo (CC)* the unconstitutionality of section 51 was rejected and the courts are now bound to convict a person found guilty of murder to imprisonment for life, in the following circumstances:

- 1. If the murder was planned or premeditated**
- 2. If Y, the person murdered, was a law enforcement officer**

3. **If Y was given evidence in a trial for a serious offence (as described in the criminal procedure act)**
4. **If X, the murderer, in the course of committing rape**
5. **If X committed the murder in the course of committing a robbery with aggravating circumstances**
6. **If the murder was committed by a group of persons acting in the execution of a common purpose**

ASSAULT:

In the crime of assault the act may take two different forms, namely firstly the application, and secondly the inspiring of fear in the victim that force is immediately to be applied to him or her. Discuss only the second form in which the crime can be committed.

(4)

Definition: A person commits assault if he/she 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 her.**

Ways in which the crime can be committed:

First it may consist in the application of force, Secondly it may consist in inspiring fear in Y, and more particularly a belief in Y, that a force is immediately to be applied to him. This is subdivided into direct and indirect application of force.

Inspiring fear of immediate force

This is an unusual way of committing of the crime – it departs from the lay persons' conception of what constitutes assault. To hold someone liable for assault in this form the following rules must apply:

- 1) **The threat must be one of violence to the person of Y. thus a threat by X to damage Y's property is not sufficient.**

- 2) **The threat must be one of immediate violence. Thus a threat by X to cause Y some physical harm in the future would not be sufficient.**
- 3) **The threat must be one of unlawful violence. If X is entitled by law to threaten Y with violence should Y not behave in a certain manner (such as to leave X's house), she does not commit assault. Thus X may always threaten Y to use force to defend herself or her property.**
- 4) **Y (the complainant) must subjectively believe that X intends to carry out her threat and that she is able to do so. The essence of this type of assault is the intentional inculcation of fear into Y. If Y does not in fact fear the threat, no assault is committed.**

Discuss the requirement of intention in the crime of assault. (10)

Intention:

- 1) **The intention may take form of either direct or indirect intention or *dolus eventualis*. An example of an assault in which X had intention in the form of *dolus eventualis* is the following: X throws a stone at birds. There are many children about. She foresees the possibility of something going wrong and reconciles with this fact and throws the stone and misses the bird, hitting a child.**
- 2) **In cases of assault which take place by means of the inspiring of fear (as opposed to the application of fear) X must know that her conduct will inspire fear in Y. this mean that X must believe that her threats will inspire fear in Y.**
- 3) **According to the ordinary principles relating to intention, X's intention must incorporate knowledge of unlawfulness. This mean that X must know that her conduct is not covered by a general ground of justification. Thus if X believes that she is entitled to act in private defence because she fears an imminent unlawful attack by Y upon herself, whereas she is in fact not entitled to private defence because Y does not intend to attack her, she lacks the necessary intention to assault.**

- 4) According to *Chretien 1981 (1) SA 1097 (A)*, intoxication may lead to X's lacking the intention to assault, in which case X must not be found guilty.
- 5) It seems doubtful whether our courts would be prepared to recognise provocation as a ground for excluding the intention requirement for ordinary assault. (They do recognise that provocation may exclude the "special intention" requirement for the qualified assaults, such as assault with intent to do grievous bodily harm.)

Inspiring fear or a belief in Y that force is immediately to be applied to her also constitutes an act of assault. Discuss the crime of assault in the form of inspiring fear or a belief in Y that force is immediately to be applied to her.

Name without any discussion the different ways in which assault may be committed. (5)

Definition: A person commits assault if he/she 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 her.

Ways in which the crime can be committed:

First it may consist in the application of force, Secondly it may consist in inspiring fear in Y, and more particularly a belief in Y, that a force is immediately to be applied to him. This is subdivided into direct and indirect application of force.

DEFAMATION:

Merely name without any discussion, the elements of criminal defamation. (4)

The elements of the crime

- are:
- 1) The publication
 - 2) Of defamatory matter
 - 3) Which is serious, and

- 4) Unlawful, and
- 5) Intentional

TOPIC – CRIMEN INIURIA:

Define the crime *crimen iniuria*. (2)

Definition: The unlawful, intentional and serious infringement of the dignity or privacy of another.

Elements of the crime:

1. The infringement
2. Of another's dignity or privacy
3. Which is serious
4. Unlawfulness
5. Intentional

Discuss the requirement for *crimen iniuria* that the violation of dignity or privacy must be serious. Your answer must include a discussion of the factors that may play a role in deciding whether the behaviour was serious. (10)

Violation of dignity or privacy must be serious

In order to constitute *crimen iniuria*, the violation must be serious and not of a trifling nature.

Although vague it is nevertheless necessary. If every swear word or scornful remark could easily result in a criminal prosecution, the courts would be inundated. In *Walton*, "in the ordinary hurly burly of everyday life a man must be expected to endure minor or trivial insults to his dignity.

Whether the words or behaviour is serious enough to qualify, depends on the circumstance of each case. Factors such as the following may play a role in deciding whether the behaviour was serious.

- 1) **Ages of the parties, the younger the person the more serious the crime can be viewed.**
- 2) **Gender of the parties, the law will always try to protect the more sensitive female.**
- 3) **Nature of the act, some acts are notoriously more serious than others such as indecent exposure and “peeping toms”.**
- 4) **Relationship between the parties, the insult is more serious when it comes from a stranger than from a boyfriend in a domestic dispute.**
- 5) **Persistence of the conduct, this can be the border between nonpunishable conduct and *crimen iniuria*, to stare at a woman is not as injurious as to follow her around and keep staring.**
- 6) **Publicity, the degree of impairment of dignity may be greater where X’s words are heard by many people.**
- 7) **Sexual Impropriety, If X makes unwanted overtures towards Y which contain an element of sexual impropriety, the conduct will be viewed in a more serious light than when the overtures do not contain such an element.**
- 8) **Y’s public standing, although the dignity of all people is protected by the crime, a person of greater public standing or public office may have more to lose. Or if a police officer is sworn at while performing his duty it may be taken more seriously than a person randomly swearing at another.**

KIDNAPPING:

Discuss the crime of Kidnapping.

(5)

Definition: unlawfully and intentionally depriving a person of his freedom of movement and/or if such a person is a child, the custodians of their control over the child.

The elements of the crime are:

- 1) **The deprivation**
- 2) **Of freedom of movement (or parental control)**
- 3) **Unlawfully, and**
- 4) **Intentionally.**

The crime is against a person's freedom of movement.

The interest protected is the liberty of another.

A person cannot commit kidnapping in respect of his own child.

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 person or, if the person is a child, the control of the parent or guardian over the child.

THEFT:

(a) X takes his car to a garage to be serviced. He signs an agreement between him and the garage, which stipulates that he will only be entitled to get his car back after he has paid the costs of servicing the car. When he returns in the afternoon to fetch his car, he discovers the costs of the service are very high. X does not have enough money to pay the account. Accordingly the garage refuses to give the car back to X. the garage also retains the key of the car. That night X sneaks stealthily to the backyard of the garage, where his motor is parked, manages to open the door of the car, and tampers with the electrical wiring beneath the steering column of the car in order to start the engine. His intention is to drive away with the car. While X is still busy trying to get the car going, a police official discovers him and arrests him. X is charged with theft of the car. At his trial his attorney advances the following three grounds why X should not be convicted of theft.

- (i) X cannot be convicted of theft because one cannot steal ones own property.
- (ii) X cannot be convicted of theft because at the time he was arrested, he had not yet succeeded in excluding the

lawful possessor of the car (i.e. the garage) from the possession of the car.

- (iii) Because there was undisputed evidence by X that his plan was to sell his car the very day he succeeded in retrieving it and not to appropriate the proceeds of the sale for himself but to give it away to a charitable organisation, he lacked the intention to steal.

Discuss the question whether each of the three arguments of X's attorney is correct. It is not necessary to give a definition of theft in your answer.

(8)

X's attorney's first argument is incorrect. It is indeed possible to "steal one's own property." The form of theft is known as arrogation of possession. The facts in this question are derived in part from those in the case of *Roberts*.

X's attorney's second argument is correct. A person commits the completed crime of theft if two things happen; firstly, X must deprive the lawful owner, or person in possession of the property, of the property and then secondly X must exercise the rights of an owner in respect of the property. In this set of facts X acted as if he was entitled to the property but at the time of his arrest he had not yet succeeded in actually depriving the person entitled to the property of it. This means the negative component of the concept of appropriation has not been complied with. This component would have been complied with only if X had been succeeded in getting the car started and driving away with it. X is accordingly guilty of attempted theft of the car, but not yet the completed theft of it.

X's attorney's third argument is incorrect. This argument is based upon the supposition that a person can be guilty of theft only if he or she had the intention of deriving some gain or benefits for him- or herself from the acquisition to handling of the property. Proof of such an intention is, in fact, not required for a conviction of theft.

Theft can only be committed in respect of certain types of property. Discuss the requirements with which property must comply in order to qualify as

property capable of being stolen.

(8)

- 1. The property must be movable. An example of immovable property is a farm. Therefore, one cannot steal a part of a farm by moving its beacons or fences. If part of an immovable property is separated from the whole, it qualifies as something that can be stolen; examples in this respect are mealie-cobs separated from a mealieplant.**
- 2. The property must be corporeal. This means that it must be an independent part of corporeal nature. In principle, one must be able to see or touch it. One cannot therefore steal an idea. The rule that only corporeal property is capable of being stolen should, however, be viewed circumspectly. This requirement has already been considerably watered down in our law. There are however two exceptions:**
 - 1) An owner may steal her own property from somebody else who is in lawful possession of it (such as a pledge). (This form of theft is known as arrogation of possession). Yet, in reality it is not the property that is stolen. While it is true that here the act is directed at a corporeal thing, what is infringed is the possessor's right of retention, which is a right and therefore something incorporeal.**
 - 2) In the case of certain types of conduct recognised by the courts as theft, namely the theft of money through the "manipulation" of cheques, banking accounts, et cetera, and the object stolen is not the crime, as it is not a corporeal thing rather something called "credit" or an "abstract sum of money".**
- 3. The property must be available in commerce. (*In commercio*). Property is available in commerce if it is capable of being sold, exchanged or pledged, or generally of being privately owned. The following types of property are not capable of forming part of commercial dealings and are therefore not susceptible to theft:**

- (a) ***Res communes*, property belonging to everyone like the air.**
- (b) ***Res derelictae*, property abandoned by its owners with the intention of getting rid of it. This does not include money someone drops as they had no intention to get rid of it.**
- (c) ***Res nullius*, property belonging to no-one but can be subject of private ownership such as wild animals. However animals in a zoo for instance can be stolen.**

4. The property must belong to someone else. One can therefore not steal one's own property. The exception to the rule is the unlawful arrogation of the possession of a thing. (*Furtum possessionis*).

Define theft.

(3)

Definition: theft is the unlawful, intentional appropriation of movable, corporeal property which:

- 1) **Belongs to, and in the possession of another**
- 2) **Belongs to another, but is in the perpetrator's possession,**
- 3) **Belongs to the perpetrator, but is in another's possession and such other person has the right to possess it which legally prevails against the perpetrator's own right of possession**

There must be intention to misappropriate and permanently to deprive the person entitled to the possession of the property.

X's lawn-mower is out of order. He takes his neighbour Y's lawn mower without his (Y's) consent. X mows his lawn with Y's lawn-mower. He plans to put it back 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)

This question focuses on the culpability requirement of the crime of theft. You must consider whether X's defence, namely that he cannot be convicted of the crime because he did not have intention

to appropriate is a valid defence. Firstly you must explain the meaning of the concept “an intention to appropriate”. The concept 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 the rights over his property. Secondly, you had to explain that 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. The relevant authority is *Sibiya* 1955 (4) SA 274 (A). However you could also argue that, by leaving the lawnmower outside on the porch, X had foreseen the possibility that it might be stolen and 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 would find it again. Therefore X adopted an intention that was the opposite of the intention of returning the lawnmower to Y, namely *dolus eventualis* to deprive Y of his property permanently.

Name the three different forms of theft, and give a brief description of each.

(3)

- 1) **The removal of property. Here X removes someone else’s property. Without consent.**
- 2) **Embezzlement. X appropriates another’s property which she already has in her possession.**
- 3) **Arrogation of possession. X removes her own property which is in the lawful possession of another (such as a pledge) and appropriates it.**

In general, property is capable of being stolen only if it is corporeal. Discuss this requirement as well as the exceptions to this requirement.

(3)

The property must be corporeal. This means that it must be an independent part of corporeal nature. In principle, one must be able

to see or touch it. One cannot therefore steal an idea. The rule that only corporeal property is capable of being stolen should, however, be viewed circumspectly. This requirement has already been considerably watered down in our law. There are however two exceptions:

- 1) An owner may steal her own property from somebody else who is in lawful possession of it (such as a pledge). (This form of theft is known as arrogation of possession). Yet, in reality it is not the property that is stolen. While it is true that here the act is directed at a corporeal thing, what is infringed is the possessor's right of retention, which is a right and therefore something incorporeal.**
- 2) In the case of certain types of conduct recognised by the courts as theft, namely the theft of money through the "manipulation" of cheques, banking accounts, et cetera, and the object stolen is not the crime, as it is not a corporeal thing rather something called "credit" or an "abstract sum of money".**

Y wants to go on holiday to Baghdad in Iraq for a few weeks. Before he departs, he requests X, his neighbour, to look after his house and pets while he is away. X agrees and visits Y's house everyday while Y is away. Y has a very expensive rear-projector television set in his bedroom. X desires the television set but cannot afford to buy one for himself. X takes Y's television set to his house and watches it. X intends to return the television set before Y returns. Y and his wife decide to cut their holiday short after the United States invasion of Iraq. Y arrives home with his wife earlier than expected and finds that his television set is missing. He discovers the television set in X's house. Y is furious and lays a charge of theft at the police station. In the light of relevant case law, discuss whether X may be convicted of the theft of the television set.

(6)

This deals with the crime of theft. The crux of the question deals with the requirement of the intention to steal. You have to explain that the intention required is the intention to appropriate. The two components of the concept of appropriation

are: (i) an intention to exercise the rights of an owner in respect of the property, and (ii) an intention to exclude the owner from exercising their rights over their property. In other words to deprive them of their property.

It is very important to mention that the intention to appropriate includes an intention to permanently to deprive the owner of their property. The important case which must be referred to is *Sibiya*. In this case it was decided that the, if an accused intends to return the property to the owner. They do not commit theft.

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

You merely had to name and not discuss the requirements that the property must comply with in order to be capable of being stolen. You also had to name the exceptions to these requirements which are as follows:

- * **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, et cetera (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.**

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 frightened and abandon the car. The car is

stolen by an unidentified person and is never 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. The intention to appropriate has two 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. The relevant case law is either the *Laforte* or *Sibiya* decision. X may therefore be convicted of theft.

Can a person commit theft in respect of property belonging to himself?

Discuss in detail.
(8)

The property must belong to someone else. One can therefore not steal one's own property. The exception to the rule is the unlawful arrogation of the possession of a thing. (*Furtum possessionis*).

Arrogation of possession (*furtum possessionis*)

Today *furtum usus* is no longer regarded as a crime, *furtum possessionis* is. In the case the owner steals her own thing by removing it from the possession of a person who has the right to possess it which legally prevails over the owner's right of possession. The pledge and somebody who has the right of retention

are examples of persons who enjoy such a preferential right of possession.

The crime of theft may be committed in a variety of ways. Briefly explain (in one sentence) the following ways in which the crime may be committed:

- (i) Removal of property
- (ii) Embezzlement
- (iii) The unlawful arrogation of possession

(3)

(Answered above)

X, a well-known socialite, borrows her friend's (Y's) diamond brooch 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?

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.

ROBBERY:

Can X be convicted of robbery in the following circumstances?
Start by writing down “yes” (X can be convicted) or “no” (X cannot be convicted) and then substantiate your answer. Refer to case law where applicable.

- (i) X unlawfully and intentionally threatens to hit Y with a stick unless y hands over his cellular phone. X does not apply force to the body of Y.
Y hands over the phone as a result of the threats.
- (ii) Y goes on a hiking expedition along the coast. X appears out of nowhere and unlawfully and intentionally threatens to throw Y’s keys into the sea unless she hands over her backpack. Y hands over her backpack as a result of the threats.
- (iii) X, a gang leader, unlawfully and intentionally threatens to kill Y unless Y gives him the name of a certain police informant. Y gives X the name as a result of the threats.
- (iv) Y receives a tip-off that a certain X is planning to rob his shop. Y reports this to the police. The police set a trap for X. X shows up at the shop, and warns Y that unless he hands over all the money in the till, he will be shot. In accordance with the pre-arranged plan he made with the police which was aimed at securing X’s arrest, Y hands over the money.
- (v) With a quick, unexpected manouver, X snatches Y’s handbag, which she is clutching under her arm, and runs away with it without Y offering or being able to offer resistance.

(12)

- (i) **YES – threat of violence**
- (ii) **NO – extortion, no threat of violence**
- (iii) **YES – threat of violence**
- (iv) **YES – threat of violence**

(v) **YES – Sithole, it is robbery**

X grabs Y's handbag in a sudden and unexpected way, and runs with it?

Does X commit robbery? Discuss. (7)

Definition: Robbery consists of in theft of property by unlawfully and intentionally using

- 1. Violence to take the property from another or**
- 2. Threats of violence to induce the other person to take the property**

The “bag-snatching” cases:

Does X commit robbery if with a quick unexpected manoeuvre he snatches Y's bag and runs away without Y being able to offer any resistance she falls to the ground and her bag is stolen?

In *Sithole*, the Natal court held that the handbag snatcher does in fact commit robbery. The reason for this is force is used to remove the handbag which the court believes is sufficient enough for a robbery. Especially if Y does offer resistance as there will be a greater chance of violence.

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 his motor car at a red robot. X who pretends to sell watches at the robot, points a gun at Y and tells him he (X) will kill Y if he does not hand over his cell phone and wallet. Y speeds off without handing over the objects to X.
- (ii) Y stops at a red robot. X jumps into the back of the 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 off 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. The relevant authority is *Ex Parte Minister van Justisie: in re S v Seekoei*.**

FRAUD:

Discuss the requirement of a misrepresentation in fraud. (4)

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

The Misrepresentation:

The first requirement of fraud is that there must be a misrepresentation. This is the conduct requirement of the crime. There must be a deception by means of a falsehood. X must, in other words represent to Y that a fact or set of facts exists when in fact it doesn't.

- 1) **Form that misrepresentation may take: generally it takes the form of writing or speech, conduct other than writing or speech may be sufficient, such as the nod of a head signifying consent.**
- 2) **The misrepresentation may be either tacit or implied.**
- 3) **The misrepresentation may be made by either a commission (positive act) or an omission. Most cases the misrepresentation is made by means of a *commisio*. A mere omission by X to disclose a fact may amount to the making of a misrepresentation, if there is a legal duty on X to disclose the fact. The legal duty may arise –**
 - a) **Specifically by statute. E.g., in terms of section 137(a) of the Insolvency Act 24 of 1936, an insolvent person is obliged to disclose the fact that she is insolvent to any**

person from whom she receives credit amounting to more than R20.

b) From considerations other than the terms of a statute, such as where a court is of the opinion that X should have acted positively to remove a misconception which would, in the natural course of events, have existed in Y's mind.

4) It has sometimes been stated (e.g. in *Larkins*) that a mere false promise as to the future cannot be equated to a misrepresentation. From this it follows that the misrepresentation must refer to an existing state of affairs or to some past event, but not to some future event. A person writing out a cheque and handing it over as payment generally implies they have the money to cover the cheque.

X writes letters to a number of wealthy people 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 X is a con man who obtains money for himself under the pretext that he raises money for deserving causes. Discuss whether X may be convicted of:

- (i) Fraud
- (ii) Theft by false pretences.

(9)

This question focuses on the requirements for the crime of fraud as well as the requirements for the theft by false pretences.

- (i) You have to give a definition of the crime of fraud. 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 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 suffer financial loss by paying money into the bank account.

You then have to consider whether X had the required intention to commit the crime. The state of mind required for the crime of fraud is to defraud. X knew the facts that he represented to the people were untrue and he knew that 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) X also commits theft by false pretences, which is a form of theft, as well as a form of fraud. A person commits this crime if he unlawfully and intentionally obtains movable, corporeal property belonging to another, with the consent from the person whom he obtains it, such consent being given as a result of a misrepresentation by the person committing the offence, and appropriates it. The victims 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.**

In the crime of fraud, the misrepresentation can be made by either a *commisio* (positive act) or an *ommissio* (omission to act) Discuss.
(5)

The Misrepresentation:

The first requirement of fraud is that there must be a misrepresentation. This is the conduct requirement of the crime. There must be a deception by means of a falsehood. X must, in other words represent to Y that a fact or set of facts exists when in fact it doesn't.

- 1) Form that misrepresentation may take: generally it takes the form of writing or speech, conduct other than writing or**

speech may be sufficient, such as the nod of a head signifying consent.

- 2) **The misrepresentation may be either tacit or implied.**
- 3) **The misrepresentation may be made by either a commission (positive act) or an omission. Most cases the misrepresentation is made by means of a *commisio*. A mere omission by X to disclose a fact may amount to the making of a misrepresentation, if there is a legal duty on X to disclose the fact. The legal duty may arise –**
 - c) **Specifically by statute. E.g., in terms of section 137(a) of the Insolvency Act 24 of 1936, an insolvent person is obliged to disclose the fact that she is insolvent to any person from whom she receives credit amounting to more than R20.**
 - d) **From considerations other than the terms of a statute, such as where a court is of the opinion that X should have acted positively to remove a misconception which would, in the natural course of events, have existed in Y's mind.**
- 4) **It has sometimes been stated (e.g. in *Larkins*) that a mere false promise as to the future cannot be equated to a misrepresentation. From this it follows that the misrepresentation must refer to an existing state of affairs or to some past event, but not to some future event. A person writing out a cheque and handing it over as payment generally implies they have the money to cover the cheque.**

Discuss the intention required for the crime of fraud (5)

X's intent must relate to all the requirements of the crime. This means apart from the intention relating to unlawfulness (i.e. awareness of unlawfulness) X's intent must cover the following:

- a) **The intent relating to the requirement of misrepresentation means that X must know or at least foresee the possibility, that the representation she is making is untrue.**
- b) **The intent relating to the requirement of prejudice means that X must know, or at least foresee the possibility, that Y**

or some other party may suffer actual or potential prejudice as a result of the misrepresentation.

- **There is a distinction between an intention to deceive and an intention to defraud.**
 - **The intention to deceive means an intention to make somebody believe that something, that is false.**
 - **The intention to defraud means the intention to induce somebody to embark on a course which is prejudicial to her.**

Discuss the requirement of prejudice in the crime of fraud. (9)

The misrepresentation must cause actual prejudice or be potentially prejudicial. Mere lying is not fraud. The lie must bring about some sort of harm. The harm is called Prejudice.

Actual prejudice is not required.

Mere potential prejudice is sufficient to warrant a conviction. Nor is it required that. The prejudice need not only be of a patrimonial nature.

Prejudice may be either actual or potential

Even if the prosecution has not proved that the misrepresentation resulted in actual prejudice, X may still be convicted if there was potential prejudicial misrepresentation.

X insures all her belongings with an insurance company. She then claims for certain items saying that they had been stolen when in actual fact they had not. The insurance company finds out that X has lied and doesn't pay, even though no monetary loss has occurred the insurance company can still sue X for the potential prejudice they have suffered.

What is the meaning of "potential prejudice"?

- 1) **Potential prejudice means that the misrepresentation looked at objectively, involved some risk of prejudice, or that it was likely to cause prejudice.**
- 2) **“Likely to prejudice” does not mean that there should be a probability of prejudice, but only that there should be possibility of prejudice.**
- 3) **On the other hand, the possibility should not be too remote or fanciful.**
- 4) **The prejudice need not be suffered by the representee (the party whom the misrepresentation is directed); prejudice to a third party, or even to the state or the community in general, is sufficient.**
- 5) **It is irrelevant that Y, the victim, was not misled by the misrepresentation; it is the representation’s potential which is crucial. Thus it doesn’t matter if X’s scheme is successful or whether Y reacts to the misrepresentation.**
- 6) **Since potential prejudice is sufficient, it is unnecessary to require a causal connection between the misrepresentation and the prejudice. Even where there is no causal connection, there may still be fraud, provided that no one can say that the misrepresentation holds the potential for prejudice.**

X, a businessman, decides to insure the contents of his house with “Bettersure”, an insurance company for the amount of R200 000. One evening, X decides to store all the items with his friend Y. the next day X falsely submits an insurance claim at “Bettersure” to the effect that his house was robbed the previous evening and that all the items therein are stolen. Y finds out about X’s criminal activities and informs “Bettersure” about it. The insurance company refuses to pay X’s claim.

Discuss whether X may be convicted of fraud.

(7)

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 awarded a maximum of 4 marks for supplying information regarding potential prejudice.**
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.

Define the crime of forgery and uttering. (3)

Forgery definition: unlawfully and intentionally making a false document to the actual/potential prejudice of another.

Elements:

1. **making a document**
2. **which is false**
3. **prejudice**
4. **unlawfulness and**
5. **Intention, which includes intention to defraud.**

Uttering definition: unlawfully and intentionally passing off a false document as to the actual or potential prejudice of another.

Y wants to buy a car. He goes to a second hand car dealer (**X**) who shows him a 1994 model ford car which, according to the dealer is in excellent condition. The speedometer on the car shows that it has only done 50 000 kilometres. **Y** buys the car. After three weeks the car’s engine seizes. **Y** takes it to a mechanic who informs him that it is more likely that the car has done 300 000

kilometre. He tells Y that somebody had most probably tampered with the speedometer. Y goes to the police and lays a charge of fraud against X, the car dealer. Discuss the elements of crime that the state must prove in order for X to be convicted of fraud. (8)

Elements of the crime

- 1) **Misrepresentation**
- 2) **Which causes or may cause prejudice, and which is**
- 3) **Unlawful and**
- 4) **intentional**

The Misrepresentation

The first requirement of fraud is that there must be a misrepresentation. This is the conduct requirement of the crime. There must be a deception by means of a falsehood. X must, in other words represent to Y that a fact or set of facts exists when in fact it doesn't.

- 1) **Form that misrepresentation may take: generally it takes the form of writing or speech, conduct other than writing or speech may be sufficient, such as the nod of a head signifying consent.**
- 2) **The misrepresentation may be either tacit or implied.**
- 3) **The misrepresentation may be made by either a commission (positive act) or an omission. Most cases the misrepresentation is made by means of a *commisio*. A mere omission by X to disclose a fact may amount to the making of a misrepresentation, if there is a legal duty on X to disclose the fact. The legal duty may arise –**
 - e) **Specifically by statute. E.g., in terms of section 137(a) of the Insolvency Act 24 of 1936, an insolvent person is obliged to disclose the fact that she is insolvent to any person from whom she receives credit amounting to more than R20.**
 - f) **From considerations other than the terms of a statute, such as where a court is of the opinion that X should have acted positively to remove a misconception which**

would, in the natural course of events, have existed in Y's mind.

- 4) It has sometimes been stated (e.g. in *Larkins*) that a mere false promise as to the future cannot be equated to a misrepresentation. From this it follows that the misrepresentation must refer to an existing state of affairs or to some past event, but not to some future event. A person writing out a cheque and handing it over as payment generally implies they have the money to cover the cheque.

The Prejudice

The misrepresentation must cause actual prejudice or be potentially prejudicial. Mere lying is not fraud. The lie must bring about some sort of harm. The harm is called Prejudice. Actual prejudice is not required, mere potential prejudice is sufficient to warrant a conviction. Nor is it required that the prejudice need not only be of a patrimonial nature.

- Prejudice may be proprietary if it has to do with a person's property or material possessions. In other instances of prejudice the prejudice is non-proprietary in nature, for example:
 - 1) Writing an examination for another
 - 2) Submitting a forged driving license to a prosecutor during the trial of a traffic offence
 - 3) Making a false entry into a register reflecting the sale of liquor – due to the state control on the sale of liquor.
 - 4) Laying a false charge with the police.

Unlawfulness

Compulsion or obedience to orders may operate as grounds of justification. The fact that Y is aware of the falsehood is no defence, as we saw above. As any fraudulent misrepresentation is obviously unlawful, unlawfulness does not play an important role in this crime.

Intent

X's intent must relate to all the requirements of the crime. This means apart from the intention relating to unlawfulness (i.e. awareness of unlawfulness) X's intent must cover the following:

- a) The intent relating to the requirement of misrepresentation means that X must know or at least foresee the possibility, that the representation she is making is untrue.**

- b) The intent relating to the requirement of prejudice means that X must know, or at least foresee the possibility, that Y may suffer actual or potential prejudice as a result of the misrepresentation or falsehood.**

- There is a distinction between an intention to deceive and an intention to defraud.**
 - The intention to deceive means an intention to make somebody believe that something, that is false.**
 - The intention to defraud means the intention to induce somebody to embark on a course which is prejudicial to her.**

MALICIOUS INJURY TO PROPERTY:

Define the crime of malicious injury to property. (3)

Definition: Malicious injury to property consists in unlawful and intentionally

- 1. Damaging property belonging to another person or**
- 2. Damaging one's own insured property with the intention of claiming the value of the property from the insurer.**

HOUSEBREAKING:

Discuss the intention requirement in the crime of housebreaking with intent to commit a crime.

(5)

Definition: Housebreaking with intent to commit a crime consists in unlawfully and intentionally breaking into and entering a building or structure, with the intention of committing some crime in it.

Intention

Two components:

1. **X must have the intention of unlawfully breaking into and entering the house or structure.**
2. **X must also have the intention of committing some other crime inside, such as robbery for example.**

Housebreaking without such an intention may, depending on the circumstances, be punishable as malicious injury to property.

Name and explain the two components of the intention required for the crime of housebreaking. (3)

Two components:

1. **X must have the intention of unlawfully breaking into and entering the house or structure. Such intention will be absent if, for example, she believes that she is breaking into her own house, or that she is committing the act of housebreaking to save someone inside or with the owners consent.**
2. **X must also have the intention of committing some other crime inside, such as robbery for example.**

Housebreaking without such an intention may, depending on the circumstances, be punishable as malicious injury to property.

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**

Discuss the element 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.

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.

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

FILL-IN SECTION:

Write down the missing phrases.

- (i) The crime *crimen iniuria* is committed by infringing a person's dignity or _____
- (ii) Forgery is a form of the crime of _____
- (iii) Theft by false pretence can be regarded both as a form of _____ and as a form of _____
- (iv) Malicious damage to property consists of the unlawfully and intentionally damaging property belonging to another person, or damaging _____
- (v) In *Sithole* 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) **ones 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 structure and the intention of committing some other crime inside the building or structure.**

Fill in the missing word or words to complete the following phrases.

- (i) In the case of criminal defamation, violations of a person's _____ or _____ are made punishable.
- (ii) The elements of kidnapping are the _____ of _____ which takes place unlawfully and intentionally.
- (iii) If X plants a listening-in device in Y's house and listens to Y's private conversations. X commits the crime of _____.

- (iv) Incest is the unlawful and intentional sexual intercourse between male and female persons who are prohibited from marrying each other because they are related within the prohibited degrees of _____, _____ or _____. (Note there are three places where words are missing.)
 - (v) For the crime of fraud to be committed, an intention to _____ is required as opposed to mere intention to _____.
- (10)

- (i) **Good name; reputation**
- (ii) **Deprivation; bodily freedom**
- (iii) **Crimen iniuria**
- (iv) **Affinity, consanguination; blood**
- (v) **Defraud; deceive**

Fill in the missing words:

- (i) Child stealing is merely a form of the crime of _____
- (ii) Arson cannot be committed in respect of _____ property.
- (iii) Apart from contravening section 14(1)(a) of the Sexual offences Act 23 of 1957, a male who has sexual intercourse with a girl under the age of twelve also commits the crime of _____.
- (iv) To spy on someone who is undressing amounts to the crime of _____.

(4)

- (i) **Kidnapping**
- (ii) **Movable**
- (iii) **Rape**
- (iv) ***Crimen iniuria***

Fill in the missing words 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 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 either be _____ 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 property of the insurer**
- (viii) **immovable**

IDENTIFY THE SPECIFIC CRIMES:

Merely state, without a 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 a parent to consent to marriage of their minor children as well as to exercise control over where they stay.**

Name the crimes that X commits in the following instances:

- (i) X threatens Y that he will tell Y's husband that she (Y) is having an affair with him (X) unless she gives him R20 000. Y is afraid and gives X the money.
- (ii) X, a prison warden tells Z, a prisoner, that he will help him escape if he (Z) pays him R5 000 once he is out of prison.
- (iii) X, a policeman, forces Y, a suspect, to drink his (Y's) own urine.
- (iv) X lays a false criminal charge against Y at a police station.
- (v) X tells Y that he will stab her with a knife if she does not hand over her purse. Y, who is terrified, runs away without handing over the purse.
- (vi) X breaks a window of a house with the intention to enter the house and steal inside but is apprehended before actually entering the house.
- (vii) X exposes his private parts to Y (a 30-year-old woman) in the street without Y's consent.
- (viii) X keeps cocaine in his house, not to use for himself but to give to his friends when he entertains them.

(10)

- (i) Extortion**
- (ii) Corruption**
- (iii) Assault**
- (iv) Defeating/obstructing the course of justice**
- (v) Robbery**
- (vi) Breaking and entering**
- (vii) Crimen Iniuria**