

SPECIFIC CRIMES – CRW2602

UNIT 3 CRIMES AGAINST PUBLIC WELFARE

LEARNING OUTCOMES

CONSIDER THE POSSIBLE LIABILITY OF AN ACCUSED OF CRIMES OF:

- ❑ **CORRUPTION**
- ❑ **EXTORTION**
- ❑ **USE OR POSSESSION OF DRUGS**
- ❑ **DEALING IN DRUGS**
- ❑ **UNLAWFUL POSSESSION OF ARMS OR AMMUNITION**
- ❑ **ROAD TRAFFIC OFFENCES**

CORRUPTION

WHAT IS THE EFFECT OF CORRUPTION ON A COUNTRY?

- ERODES MORAL VALUES
- ERODES TRUST IN AUTHORITIES AND AUTHORITATIVE ORGANS
- LEADS TO MALFUNCTIONING OF THE PUBLIC AND PRIVATE SECTORS
- PROVIDES A BREEDING GROUND FOR ORGANISED CRIMES



CORRUPTION

- ❑ PREVIOUSLY: COMMON LAW OFFENCE AS BRIBERY
- ❑ FROM 1992: STATUTORY CRIME

**CORRUPTION IS PUNISHED IN TERMS OF THE PROVISIONS OF THE
*CORRUPTION ACT 94 OF 1992***

GENERAL AND SPECIFIC CRIMES OF CORRUPTION

THE 2004 ACT CREATES:

- ▣ GENERAL, BROAD AND ALL-ENCOMPASING OFFENCE OF CORRUPTION
- ▣ SPECIFIC CORRUPT ACTIVITIES



GENERAL CORRUPTION: ACT

SECTION 3 OF THE ACT:

ANY PERSON WHO DIRECTLY OR INDIRECTLY –

- 1) **ACCEPTS ANY GRATIFICATION FROM ANY OTHER PERSON** OR
- 2) **GIVES ANY GRATIFICATION TO ANY OTHER PERSON**

THE PERSON ABOVE SHOULD ACCEPT OR GIVE THE GRATIFICATION FOR THE PERSON TO ACT IN A MANNER THAT AMOUNTS TO THE ILLEGAL EXERCISE OF ANY DUTIES

- DISTINGUISH BETWEEN CORRUPTION COMMITTED BY THE GIVER (X) AND CORRUPTION COMMITTED BY THE RECIPIENT (Y)

COMMITTED BY THE RECIPIENT (Y)

ELEMENTS OF THE CRIME:

- THE ACCEPTANCE BY Y
- OF GRATIFICATION
- IN ORDER TO ACT IN A CERTAIN WAY (THE INDUCEMENT)
- UNLAWFULNESS
- INTENTION

THE ACCEPTANCE

THE ACCEPTANCE OF THE GRATIFICATION CAN BE DONE NAMELY BY:

- ▣ **AGREEING TO ACCEPT A GRATIFICATION OR**
- ▣ **OFFERING TO RECEIVE A GRATIFICATION**

ACTIVITY

IN YOUR OPINION IS THE FOLLOWING BEHAVIOUR A GROUND OF DEFENCE FOR Y:

1. HE DID NOT ACCEPT THE GRATIFICATION PERSONALLY – HE SENT A MIDDLEMAN
2. HE DID NOT LATER PERFORM THE ILLEGAL ACT THAT HE WAS INDUCED TO PERFORM
3. THE CORRUPT ACTIVITY BETWEEN X AND Y WAS UNSUCCESSFUL
4. THE STATE DID NOT SUFFER PREJUDICE AS A RESULT OF X AND Y'S CONDUCT
5. Y ACCEPTED THE GRATIFICATION BUT HE DID NOT HAVE THE POWER TO DO WHAT X WISHED HIM TO DO

THE ACCEPTANCE

THE FOLLOWING BEHAVIOUR WILL NOT BE AN EXCUSE FOR Y'S BEHAVIOUR (IT WILL NOT PROVIDE A GROUND OF DEFENCE)

- ❑ Y DID NOT ACCEPT THE GRATIFICATION **DIRECTLY** (IN PERSON) – HE USED A MIDDLEMAN
- ❑ Y DID NOT IN ACTUAL FACT LATER PERFORM THE ACT WHICH X HAD INDUCED HIM TO PERFORM – THE CRIME WASN'T COMPLETED
- ❑ THE CORRUPT ACTIVITY BETWEEN X AND Y WAS UNSUCCESSFUL
- ❑ NEITHER THE STATE NOR THE PRIVATE ENTERPRISE CONCERNED WITH THE TRANSACTION **DID NOT** SUFFER PREJUDICE AS A RESULT OF THE CONDUCT
- ❑ Y DID NOT HAVE THE POWER OR THE RIGHT TO DO WHAT X WISHED HIM TO DO

THE GRATIFICATION

THE FOLLOWING IS REGARDED AS GRATIFICATION:

- ❑ MONEY
- ❑ A GIFT
- ❑ A LOAN
- ❑ PROPERTY
- ❑ THE AVOIDANCE OF LOSS
- ❑ THE AVOIDANCE OF A PENALTY (A FINE)
- ❑ EMPLOYMENT, A CONTRACT OF EMPLOYMENT OR SERVICES
- ❑ ANY FOREBEARANCE TO DEMAND ANY MONEY
- ❑ ANY FAVOUR OR ADVANTAGE OF ANY DESCRIPTION
- ❑ ANY RIGHT OR PRIVILEGE
- ❑ SEXUAL FAVOURS
- ❑ GIVING INFORMATION
- ❑ * NOT LIMITED TO TANGIBLE OR PATRIMONIAL BENEFITS

INDUCEMENT (act that leads someone to do something)

- ❑ Y MUST ACCEPT THE GRATIFICATION AS AN INDUCEMENT TO ACT IN A CERTAIN WAY - HE MUST HAVE A CERTAIN AIM IN MIND WITH THE ACCEPTANCE

THE AIMS CAN BE ACTING IN A MANNER THAT AMOUNTS TO:

- ❑ **ILLEGAL, DISHONEST, UNAUTHORISED, INCOMPLETE OR BIASED EXERCISE OF ANY POWERS, DUTIES OR FUNCTIONS**
- ❑ **THE MISUSE OR SELLING OF INFORMATION**
- ❑ **ABUSE OF A POSITION OF AUTHORITY / THE VIOLATION OF A LEGAL DUTY / BREACH OF TRUST**
- ❑ **AN UNJUSTIFIED RESULT**
- ❑ **ANY OTHER IMPROPER INDUCEMENT TO DO OR NOT DO ANYTHING**

GENERAL PRINCIPLES OF THE AIMS

- ACT MUST BE PRESENT (THIS INCLUDES AN OMISSION)
- IRRELEVANT WHETHER Y PLANS TO ACHIEVE THESE AIMS PERSONALLY OR MAKES USE OF A MIDDLEMAN
- IT IS SUFFICIENT IF Y ONLY HAS **ONE** OF THESE AIMS IN MIND WHEN ACCEPTING THE GRATIFICATION
- IRRELEVANT WHETHER Y ACCEPTS FOR HIS OWN BENEFIT OR FOR THE BENEFIT OF SOMEONE ELSE
- IRRELEVANT WHETHER Y HAD THE POWER TO ACT IN THE MANNER IN WHICH HE WAS REQUESTED

UNLAWFULNESS

Y'S CONDUCT MUST BE AGAINST THE GOOD MORALS OR LEGAL CONVICTIONS OF THE SOCIETY

Y HAS THE FOLLOWING GROUNDS OF JUSTIFICATION:

- ❑ IF Y ACTED **UNDER COMPULSION**
- ❑ IF Y IS A PERSON **USED AS A POLICE TRAP**
- ❑ WAITERS OR PORTERS THAT RECEIVE A REASONABLE **TIP FOR SERVICES** WHICH THEY PERFORMED SATISFACTORILY
- ❑ **GIFTS** OF REASONABLE PROPORTION BY EMPLOYEES ON OCCASIONS SUCH AS MARRIAGE OR RETIREMENT OR COMPLETION OF A ROUND NUMBER OF WORK

INTENTION

- INTENTION IS CLEAR FROM THE WORDING OF THE ACT:
“ACCEPT”, “AGREE”, “OFFER”
- *DOLUS EVENTUALIS* IS APPLICABLE
- IF Y ACCEPTS GRATIFICATION WITHING INTENDING TO PERFORM THE ACT WHICH HE WAS INDUCED TO PERFORM, AFFORDS HIM NO DEFENCE - FORESEE THE POSSIBILITY

CORRUPTION BY THE GIVER

- ❑ DEALS WITH THE GIVING OF GRATIFICATION BY X TO Y
- ❑ INSTEAD OF ACCEPTING GRATIFICATION – FOCUSED ON GIVING GRATIFICATION

ELEMENTS OF THE CRIME:

- ❑ THE **GIVING** BY X TO Y
- ❑ OF **GRATIFICATION**
- ❑ IN ORDER TO INDUCE Y TO ACT IN A CERTAIN MANNER
- ❑ **UNLAWFULNESS**
- ❑ **INTENTION**

ACT: GIVING GRATIFICATION

ACT CONSISTS OF GIVING GRATIFICATION TO Y

- “GIVE” INCLUDES THE FOLLOWING:
 - AGREEING TO GIVE GRATIFICATION OR TO OFFER TO GIVE IT
 - PROMISE, LEND, GRANT, CONFER OR PROCURE THE GRATIFICATION
 - TO AGREE TO LEND, GRANT, CONFER OR PROCURE THE GRATIFICATION
 - TO OFFER TO LEND, GRANT, CONFER OR PROCURE SUCH GRATIFICATION

ACTIVITY

IN YOUR OPINION WOULD X STILL HAVE COMMITTED THE CRIME OF CORRUPTION IF THE FOLLOWING OCCURS:

1. Y DOES NOT HAVE THE POWER TO DO WHAT HE WAS REQUESTED TO DO
2. Y REJECTED X'S OFFER OF GRATIFICATION
3. Y AGREED BUT LATER CHANGED HIS MIND
4. IT WAS IMPOSSIBLE FOR Y TO COMMIT THE ACT REQUESTED BY X

GIVING OF GRATIFICATION

THE FOLLOWING BEHAVIOUR WILL NOT AFFORD X A DEFENCE:
THE FACT THAT Y:

- ❑ HAD **NO INTENTION** OF DOING WHAT X HAD ASKED HIM TO DO
- ❑ Y **DID NOT DO** WHAT X REQUESTED HIM TO DO
- ❑ Y **DID NOT HAVE THE POWER** TO DO WHAT HE WAS REQUESTED TO DO
- ❑ Y **REJECTED X'S OFFER**
- ❑ Y **AGREED BUT SUBSEQUENTLY CHANGED HIS MIND**
- ❑ Y FOUND IT **IMPOSSIBLE** TO DO WHAT HE HAD UNDERTAKEN TO DO

GRATIFICATION

- THE GRATIFICATION AMOUNTS TO THE SAME FORMS OF GRATIFICATION RECEIVED BY THE RECIPIENT

INDUCEMENT (act that leads someone to do something)

- THE INDUCEMENT REQUIREMENT IS THE SAME AS FOR THE RECIPIENT

ACTIVITY

READ THE **SHAIK** CASE AND SUMMARISE:

- ▣ THE FACTS OF THE CASE
- ▣ THE LEGAL QUESTION
- ▣ THE DECISION OF THE COURT

REMEMBER WHILE READING THE CASE TO ENSURE WHETHER ALL THE ELEMENTS OF THE CRIME OF CORRUPTION IS PRESENT OR NOT

UNLAWFULNESS

- THE UNLAWFULNESS IS THE SAME AS REQUIRED BY THE RECIPIENT

INTENTION

- THE INTENTION IS THE SAME AS REQUIRED BY THE RECIPIENT

CORRUPTION: SPECIFIC PERSONS

SECTION 4 – 15: CORRUPT ACTIVITIES RELATING TO SPECIFIC PERSONS

- SECTION 4: CORRUPTION RELATING TO PUBLIC OFFICIALS
 - WIDE DEFINITION OF A PUBLIC OFFICIAL
 - EXAMPLE: POLICE OFFICER

S V SELEBI 2012 (1) SACR 209 (SCA)

FACTS:

- FORMER NATIONAL COMMISSIONER OF POLICE AND FORMER HEAD OF INTERPOL WAS CONVICTED FOR CORRUPTION IN CONTRAVENTION OF SECTION 4

ISSUE IN APPEAL:

- WHETHER SELEBI HAD RECEIVED PAYMENT FROM A PERSON (AGLIOTTO)

CORRUPTION: SPECIFIC PERSONS

S V SELEBI 2012 (1) SACR 209 (SCA)

ISSUE IN APPEAL:

- WHETHER SELEBI HAD RECEIVED PAYMENT FROM A PERSON (AGLIOTTI)
- WHETHER SELEBI HAD PROVIDED AGLIOTTI WITH ANY *QUID PRO QUO* (A FAVOUR GIVEN IN RETURN FOR ANOTHER) AS A RESULT OF SUCH PAYMENT

COURT:

PAYMENT FROM AGLIOTTI

- AT THE RELEVANT TIME A CORRUPT RELATIONSHIP EXISTED BETWEEN SELEBI AND AGLIOTTI AND THAT SELEBI HAD RECEIVED **SUMS OF MONEY AND CLOTHING** FROM AGLIOTTI
- ALLEGED THAT SELEBI RECEIVED THE "PAYMENT" IN ORDER TO ACT IN A MANNER OF SHARING SECRET INFORMATION WITH AGLIOTTI WITH REGARD TO INVESTIGATIONS CONDUCTED AGAINST HIM IN THE UK AND SA AND PROTECTED HIM FROM CRIMINAL INVESTIGATION

CORRUPTION: SPECIFIC PERSONS

S V SELEBI 2012 (1) SACR 209 (SCA)

COURT:

PAYMENT FROM AGLIOTTI

- THE ELEMENTS OF CORRUPTION WAS PRESENT IN THIS CASE
 - SELEBI ABUSED HIS POSITION OF AUTHORITY

DID SELEBI PROVIDE AGLIOTTI WITH A FAVOUR IN RETURN

- SUFFICIENT EVIDENCE THAT THE HE ACCEPTED SUCH GRATIFICATION 'IN ORDER TO ACT' IN A CERTAIN MANNER
- ONCE IT HAD BEEN PROVED THAT SELEBI HAD RECEIVED PAYMENTS FRO AGLIOTTI THE INTERFERENCE WAS IRRESISTIBLE THAT IT WAS FOR AN ILLEGAL PURPOSE
- **THUS THE PAYMENTS HAD BEEN ACCEPTED BY SELEBI WITH THE REQUISIT CORRUPT INTENTION**

CORRUPTION: SPECIFIC PERSONS

- **SECTION 6: CORRUPTION IN RELATION TO AGENTS**
 - LIMITED TO THE CORRUPTION IS AGENTS
 - EXAMPLE: CORRUPTION COMMITTED BY BUSINESSPEOPLE IN THE PRIVATE SECTOR
- **SECTION 7: CORRUPTION IN RELATION TO MEMBERS OF LEGISLATIVE AUTHORITY**
- **SECTION 8: CORRUPTION IN RELATION TO JUDICIAL OFFICERS**
 - JUDICIAL OFFICER = JUDGES AND MAGISTRATES
 - EXAMPLE: SOMEONE GIVES A JUDGE MONEY OR OFFERS HIM MONEY IN ORDER TO PERSUADE HIM TO GIVE A JUDGMENT IN FAVOUR OF A CERTAIN PERSON
 - EXAMPLE: THE JUDGE GIVES A JUDGMENT THAT DOES NOT AMOUNT TO BEING OBJECTIVE

CORRUPTION: SPECIFIC PERSONS

- **SECTION 9: CORRUPTION RELATING TO MEMBERS OF THE PROSECUTING AUTHORITY**
 - A PERSON GIVES A PROSECUTOR MONEY IN ORDER TO PERSUADE THE PROSECUTOR TO DESTROY OR HIDE THE DOCKET OF THE PROSECUTION'S CASE
 - CAN OVERLAP WITH THE OFFENCE OF DEFEATING OR OBSTRUCTING JUSTICE
- **SECTION 10: RECEIVING / OFFERING UNAUTHORISE GRATIFICATION BY A PARTY TO AN EMPLOYMENT RELATIONSHIP**
 - LIMITED TO CORRUPTION COMMITTED IN AN EMPLOYMENT RELATIONSHIP
 - EXAMPLE: AN EMPLOYER ACCEPTS GRATIFICATION AS INDUCEMENT TO PROMOTE ONE OF HER EMPLOYEES

CORRUPTION: SPECIFIC PERSONS

- **SECTION 13: CORRUPTION RELATING TO THE PROCURING OF TENDERS**
 - LIMITED TO CORRUPTION COMMITTED IN ORDER TO PROCURE A TENDER
 - EXAMPLE: X GIVES Y AN AMOUNT OF MONEY. Y'S TASK IS TO DECIDE TO WHOM A TENDER SHOULD BE AWARDED. THE MONEY IS GIVEN IN ORDER TO PERSUADE Y TO ACCEPT X'S TENDER
- **SECTION 15: CORRUPTION RELATING TO SPORTING EVENTS**
 - LIMITED TO CORRUPTION COMMITTED IN THE CONTEXT OF SPORTING EVENTS
 - EXAMPLE: X, WHO BETS MONEY ON THE OUTCOME OF SPORTING EVENTS GIVES MONEY TO Y WHO IS A SPORTSMAN IN ORDER TO PERSUADE Y TO MANIPULATE THE GAME IN SUCH A WAY THAT THE MATCH HAS A CERTAIN OUTCOME

FAILURE TO REPORT CORRUPT ACTS

- ❑ **SECTION 34: A PERSON IN A POSITION OF AUTHORITY, WHO KNOWS, OR OUGHT TO HAVE KNOWN THAT CERTAIN CRIMES HAVE BEEN COMMITTED MUST REPORT THE OFFENCE TO A POLICE OFFICER**
- ❑ **LONG LIST OF PERSONS OF AUTHORITY:**
 - ❑ **INCLUDES PARTNER IN A PARTNERSHIP**
 - ❑ **ANY PERSON WHO IS IN CONTROL OF THE BUSINESS OF AN EMPLOYER**
- ❑ **FORM OF CULPABILITY**
 - ❑ **INTENTION OR NEGLIGENCE**

EXTORTION

DEFINITION

EXTORTION IS THE **UNLAWFUL AND INTENTIONAL ACQUISITION OF A BENEFIT** FROM SOME OTHER PERSON BY **APPLYING PRESSURE** TO THAT PERSON WHICH INCLUDES HER TO PART WITH THE BENEFIT

ELEMENTS OF THE CRIME:

- ❑ THE ACQUISITION OF
- ❑ A BENEFIT
- ❑ BY APPLYING PRESSURE
- ❑ A CASUAL LINK (BETWEEN THE PRESSURE AND THE ACQUISITION OF A BENEFIT)
- ❑ UNLAWFULNESS
- ❑ INTENTION

THE PERPETRATOR

- ROMAN-DUTCH LAW = PUBLIC OFFICIAL
- **TODAY: THE CRIME CAN BE COMMITTED BY ANY PERSON AND NOT ONLY AN OFFICIAL**

EXERTION OF PRESSURE

- ❑ X MUST ACQUIRE THE BENEFIT BY BRINGING **PRESSURE** TO BEAR ON Y **AND**
- ❑ Y MUST GIVE WAY UNDER THE STRESS OF THE PRESSURE
- ❑ FORS OF PRESSURE:
 - ❑ THREATS
 - ❑ INSPIRING OF FEAR
 - ❑ INTIMIDATION
 - ❑ THREAT OF PHYSICAL INJURY (OVERLAPS WITH ROBBERY)
 - ❑ DEFAMATION
 - ❑ DISMISSAL FROM EMPLOYMENT
 - ❑ ARREST / PROSECUTION
 - ❑ HARM TO A THIRD PERSON
- ❑ THE THREAT MAY BE EITHER EXPLICIT OR IMPLICIT

THE BENEFIT

- ❑ BEFORE 1989: LIMITED TO A PATRIMONIAL BENEFIT
- ❑ FROM 1992: ANY ADVANTAGE OR BENEFIT OF A PATRIMONIAL OR NON-PATRIMONIAL NATURE
- ❑ EXAMPLE OF NON-PATRIMONIAL:
 - ❑ Y THREATENS X UNLESS SHE HAS SEXUAL INTERCOURSE WITH HIM HE WILL SHOW PHOTOGRAPHS OF HER IN THE NUDE TO HER PARENTS
 - ❑ X FOUND GUILTY OF ATTEMPTED EXTORTION
 - ❑ BENEFIT = SEXUAL SATISFACTION
- ❑ **THE CRIME WILL NOT HAVE BEEN COMPLETED UNTIL THE BENEFIT HAS BEEN HANDED TO X**

CAUSATION

- ❑ THERE MUST BE A CASUAL CONNECTION BETWEEN THE APPLICATION OF PRESSURE AND THE ACQUISITION OF THE THING
- ❑ IF THE BENEFIT IS HANDED OVER NOT BECAUSE OF PRESSURE EXERTED BY X - MERELY ATTEMPTED EXTORTION

UNLAWFULNESS

- THE PRESSURE / INTIMIDATION MUST HAVE BEEN EXERTED UNLAWFULLY
- NOTE THE WAY IN WHICH X EXERCISED THE PRESSURE AND WHAT HE INTENDED THEREBY
- EXAMPLE:
 - ACCEPTABLE: POLICE OFFICIAL TO INFORM AN ACCUSED THAT HE INTENDS PROSECUTING HIM
 - UNLAWFUL: IF THE POLICE OFFICIAL STATES THAT HE WILL PROSECUTE THE ACCUSED **UNLESS** HE PAYS HIM A SUM OF MONEY

INTENTION

- INTENTION IS REQUIRED
- X MUST INTEND HIS WORDS AS A THREAT OR INTEND THAT THEY SHOULD GIVE RISE TO FEAR **AND**
- HE MUST HAVE THE INTENTION OF ACQUIRING THE BENEFIT WHILE FULLY REALISING THAT HE IS NOT ENTITLED TO IT

ACTIVITY

CONSIDER WHETHER THE CRIME OF EXTORTION WAS COMMITTED BY X IN THE FOLLOWING INSTANCES:

1. X THREATENS TO SUE Y IF HE DOES NOT PAY BACK THE MONEY HE OWES HIM. Y DOES IN FACT OWE X MONEY AND HAS FAILED TO PAY HIS DEBT FOR A CONSIDERABLE TIME, DESPITE DEMANDS BY X. Y, AFRAID OF THE LEGAL COSTS THAT HE MAY INCUR, IMMEDIATELY PAYS HIS DEBTS TO X
2. X TELLS Y THAT HE WILL HIRE SOMEBODY TO BREAK INTO HIS HOUSE AND STEAL HIS PROPERTY IF HE DOES NOT PAY BACK THE MONEY HE OWES HIM. Y, FEELING AFRAID, PAYS HIM IMMEDIATELY
3. X IS Y'S BOSS AT WORK. HE TELLS Y THAT SHE WILL NOT GET A PROMOTION UNLESS SHE HAS SEXUAL INTERCOURSE WITH HIM. Y REFUSES AND LAYS A CHARGE WITH THE POLICE

DRUG OFFENCES



DRUGS ARE DIVIDED INTO THREE CATEGORIES

- 1) DEPENDENCE-PRODUCING SUBSTANCES (STERIODS)**
- 2) DANGEROUS DEPENDENCE-PRODUCING SUBSTANCES (COCA LEAF, MORPHINE AND OPUIM)**
- 3) UNDESIRABLE DEPENDE-PRODUCING SUBSTANCES (DAGGA, HEROIN AND MANDRAX)**

THE USE OR POSSESSION OF DRUGS

DEFINITION

IT IS AN OFFENCE FOR ANY PERSON **UNLAWFULLY AND INTENTIONALLY** TO **USE** OR HAVE IN THEIR **POSSESSION** AND DEPENDENCE PRODUCING SUBSTANCE

ELEMENTS OF THE OFFENCE:

- ❑ **POSSESSION OR USE OF**
- ❑ **A DRUG AS DESCRIBED IN THE ACT**
- ❑ **UNLAWFULNESS**
- ❑ **INTENTION**

ACT: USE OR POSSESSION

USING DRUGS:

- ❑ “USE” = SELF-EXPLANATORY INCLUDES: SMOKING, INHALATION, INJECTION OR INGESTION OF DRUGS

POSSESSION OF DRUGS:

- ❑ POSSESSION CONSISTS OF TWO ELEMENTS:
 - ❑ A PHYSICAL OR CORPOREAL ELEMENT (*CORPUS / DETENTIO*)
 - ❑ A MENTAL ELEMENT (*ANIMUS*)
- ❑ **THE PHYSICAL ELEMENT:**
 - ❑ AN APPROPRIATE DEGREE OF PHYSICAL CONTROL OVER A THING
 - ❑ CONTROL CAN BE ACTUAL OR CONSTRUCTIVE (CONTROL THROUGH SOMEBODY ELSE)

ACT: USE OR POSSESSION

▣ THE MENTAL ELEMENT:

- ▣ THE INTENTION WITH WHICH SOMEBODY EXERCISES CONTROL OVER AN ARTICLE
- ▣ X MAY EXERCISE CONTROL OVER THE ARTICLE **AS IF HE IS THE OWNER OF THE ARTICLE = ORDINARY POSSESSION** (*POSSESSIO CIVILIS*)
- ▣ X MAY EXERCISE CONTROL OVER THE ARTICLE WITH THE INTENTION OF **KEEPING IT FOR SOMEBODY ELSE = BROADER POSSESSION** (*POSSESSIO NATURALIS*)

ACT: USE OR POSSESSION

POSSESSION IN THE ACT:

- POSSESS INCLUDES:
 - KEEPING,
 - STORING
 - HAVING IN CUSTODY
 - OR UNDER CONTROL OR SUPERVISION

- THE PROVISION IS WIDE ENOUGH TO COVER SITUATIONS IN WHICH A PERSON HAS CUSTODY OVER AN ARTICLE ON **BEHALF OF SOMEBODY ELSE**

ACT: USE OR POSSESSION

- IF THE STATE CHARGES X WITH HAVING POSSESSED A DRUG – THERE ARE TWO WAYS IN WHICH THE STATE MAY PROVE THE ELEMENT OF POSSESSION
 1. PROVING X EXERCISED CONTROL OVER THE DRUG AS AN **OWNER** (FOR HIMSELF)
 2. PROVING X DID NOT EXERCISE CONTROL OVER IT AS AN OWNER BUT HE KEPT IT FOR OR ON **BEHALF OF SOMEBODY ELSE**

ACTIVITY

Z POSSESSES A QUANTITY OF MANDRAX TABLETS. HE GOES TO HIS FRIEND, X AND ASKS X WHETHER HE MAY LEAVE THE MANDRAX TABLETS IN X'S CARE WHILE HE (Z) GOES OVERSEAS, BECAUSE HE IS AFRAID THAT THE POLICE MIGHT FIND THE TABLETS IN HIS (Z'S) HOUSE WHILE HE IS OVERSEAS. X AGREES. X AND Z PLACE THE TABLETS IN A BOX UNDER THE FLOORBOARDS OF X'S HOUSE. WHILE Z IS OVERSEAS, THE POLICE SEARCH X'S HOUSE AND FIND THE MANDRAX TABLETS. X IS CHARGED WITH HAVING POSSESSED THE TABLETS.

HER DEFENCE IS 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 OF HAVING POSSESSED THE TABLETS?

ACT: USE OR POSSESSION

PROHIBITION UPON USE OR POSSESSION OF DAGGA DECLARED CONSTITUTIONAL

PRINCE V PRESIDENT, CAPE LAW SOCIETY 2002 (2) SA 794 (CC)

- IT WAS ARGUED THAT PROHIBITING THE USE OR POSSESSION OF DRUGS WAS IN CONFLICT WITH THE CONSTITUTIONAL RIGHT TO FREEDOM OF RELIGION
- REASON: IT DID NOT GRANT RASTAFARIANS THE RIGHT TO USE AND POSSESS DAGGA FOR RELIGIOUS PURPOSES
- THE CC HELD THAT SUCH A PROHIBITION CANNOT BE JUSTIFIED BECAUSE IT WOULD UNDERMINE THE GENERAL PROHIBITION AGAINST THE POSSESSION OF DAGGA

UNLAWFULNESS

THE GROUNDS OF JUSTIFICATION:

- X WAS A PATIENT WHO ACQUIRED OR BOUGHT THE DRUG FROM A MEDICAL PRACTITIONER, DENTIST, VETERINARIAN OR PHARMACIST
- X WAS A MEDICAL PRACTITIONER, DENTIST, VETERINARIAN, PHARMACIST OR WHOLESALE DEALER IN PHARMACEUTICAL PRODUCTS WHO BOUGHT OR COLLECTED THE DRUGS IN ACCORDANCE WITH THE *MEDICINES AND RELATED SUBSTANCES ACT* 101 OF 1965

INTENTION

- INTENTION IS THE REQUIRED FROM OF CULPABILITY
- A PERSON WHO WAS UNAWARE THAT DAGGA WAS IN THEIR POSSESSION CANNOT BE FOUND GUILTY OF THE OFFENCE

DEALING IN DRUGS

DEFINITION

IT IS AN OFFENCE **UNLAWFULLY AND INTENTIONALLY** TO DEAL IN ANY
DEPENDENCE-PRODUCING SUBSTANCE (INCLUDES ALL THREE
CATEGORIES)

ELEMENTS OF THE OFFENCE:

- ❑ TO DEAL IN
- ❑ THE **DRUG** AS DESCRIBED IN THE ACT
- ❑ **UNLAWFULNESS**
- ❑ **INTENTION**

ACT: DEALING IN

- ❑ PURPOSE: PUNISH THOSE WHO MAKE DRUGS AVAILABLE TO USERS
- ❑ THE FOLLOWING WITH REGARD TO DRUGS ARE PROHIBITED
 - ❑ TRANSSHIPMENT
 - ❑ IMPORTATION
 - ❑ CULTIVATION
 - ❑ COLLECTION
 - ❑ MANUFACTURE
 - ❑ SUPPLY
 - ❑ PRESCRIPTION
 - ❑ ADMINISTRATION
 - ❑ SALE
 - ❑ TRANSMISSION
 - ❑ EXPORTATION

ACT: DEALING IN

SOLOMON 1986 (3) SA 705

IT IS NOT THE LEGISLATURE'S INTENTION THAT A PERSON WHO PURCHASES DRUGS FOR HIS OWN USE SHOULD BE CONVICTED ON THE GROUNDS OF "SALE" OR "SUPPLY". IN THIS CASE THE PERSON SHOULD ONLY BE CONVICTED ON THE GROUNDS OF USE OR POSSESSION

- ❑ THE POSITION WILL BE REGARDED AS THE SAME IF THE PERSON MAKES USE OF AN AGENT TO ACQUIRE HIS DRUGS FOR HIM
- ❑ **ONLY PEOPLE SELLING, PRODUCING, MANUFACTURING AND DISTRIBUTING DRUGS SHOULD BE CHARGED FOR DEALING IN DRUGS**

ACT: DEALING IN

- MOST OF THE PRESUMPTIONS REGARDING DRUGS HAVE BEEN DECLARED UNCONSTITUTIONAL
- STILL IN SOME CASES IF A PERSON IS FOUND IN POSSESSION OF LARGE QUANTITIES OF DAGGA AND HE IS UNABLE TO FURNISH A REASONABLE ACCEPTABLE EXPLANATION THERE MIGHT BE SUFFICIENT CIRCUMSTANTIAL EVIDENCE TO MAKE AN OFFENCE THAT HE HAS BEEN DEALING IN THE DRUGS

MATHE 1998 (2) SACR 225 (O)

THE POLICE FOUND X ALONE IN A MOTOR VEHICLE WHICH CONTAINED 131 KILOGRAMS OF DAGGA. HE FAILED TO GIVE AN EXPLANATION IN COURT AND WAS THUS CONVICTED OF DEALING IN DAGGA

UNLAWFULNESS

GROUNDS OF JUSTIFICATION:

- COERCION (FORCE / THREATS)
- X WAS A PATIENT WHO ACQUIRED OR BOUGHT THE DRUG FROM A MEDICAL PRACTITIONER, DENTIST, VETERINARIAN OR PHARMACIST
- X WAS A MEDICAL PRACTITIONER, DENTIST, VETERINARIAN, PHARMACIST OR WHOLESALE DEALER IN PHARMACEUTICAL PRODUCTS WHO BOUGHT OR COLLECTED THE DRUGS IN ACCORDANCE WITH THE *MEDICINES AND RELATED SUBSTANCES ACT* 101 OF 1965

INTENTION

- CULPABILITY IN THE FORM OF INTENTION IS REQUIRED FOR THIS OFFENCE

UNLAWFUL POSSESSION OF FIREARMS OR AMMUNITION

- AUTHORITY: THE *FIREARMS CONTROL ACT* 60 OF 2000 (FCA)

FIREARM	PROHIBITED FIREARM
LETHAL WEAPON	WEAPONS OF WAR SUCH AS CANNON AND A ROCKET LAUNCHER
CAN BE LICENSED	CANNOT BE LICENSED (A FEW EXCEPTIONS EXIST)
MAXIMUM SENTENCE: 15 YEARS IMPRISONMENT	MAXIMUM SENTENCE: 25 YEARS IMPRISONMENT

UNLAWFUL POSSESSION OF A FIREARM

DEFINITION:

ANY PERSON WHO **POSSESSES A FIREARM WITHOUT A LICENSE, PERMIT OR AUTHORISATION** ISSUED IN TERMS OF THE ACT FOR THAT FIREARM, COMMITS AN OFFENCE

ELEMENTS OF THE OFFENCE:

- ❑ THE POSSESSION OF
- ❑ A FIREARM
- ❑ UNLAWFULNESS
- ❑ CULPABILITY

POSSESSION

- ❑ THE WORD “POSSESS” IS NOT DEFINED IN THE ACT
- ❑ POSSESSION REFERS TO THE PHYSICAL CONTROL OVER THE ARM WITH THE INTENTION OF POSSESSING IT:
 - ❑ EITHER AS THE OWNER
 - ❑ ON BEHALF OF ANOTHER

FIREARM

DEFINITION:

ANY DEVICE MANUFACTURED OR DESIGNED TO PROPEL A BULLET OR PROJECTILE THROUGH A BARREL OR CYLINDER BY MEANS OF BURNING PROPELLANT

- DEFINITION INCLUDES:
 - THE BARREL OR
 - FRAME OF THE DEVICE

UNLAWFULNESS

- ❑ NO GROUND OF JUSTIFICATION
- ❑ MUST HAVE A LICENCE, PERMIT OR AUTHORISATION
- ❑ THE FOLLOWING PEOPLE ARE EXEMPTED FROM THE PROHIBITION OF POSSESSION OF FIREARMS:
 - ❑ SA NATIONAL DEFENCE FORCE
 - ❑ SA POLICE SERVICES
 - ❑ DEPT OF CORRECTIONAL SERVICES

CULPABILITY

- THE ACT DOES NOT SPECIFY WHETHER INTENTION OR NEGLIGENCE IS REQUIRED FOR THE LIABILITY
- IF THE ACCUSED INTENTIONALLY POSSESSED A FIREARM WITHOUT A LICENSE, THE STATE MUST ALSO PROVE THAT THE ACCUSED HAD KNOWLEDGE OF THE UNLAWFULNESS
 - IF THE WEAPON WAS BEING HELD INNOCENTLY THE PERSON WILL RECEIVE THE BENEFIT OF THE DOUBT

KWANDA 2013 (1) SACR 137 (SCA)

X WAS THE DRIVER OF THE VEHICLE – CONVEYING HIM AND TWO OTHER TO ROB A BANK

A MAN CARRYING AN AK47 AND AMMUNITION WAS SEATED NEXT TO HIM – ARRESTED BEFORE ROBBERY

COURT: COULD X BE CONVICTED OF THE UNLAWFUL POSSESSION OF A FIREARM

INSUFFICIENT EVIDENCE THAT X WAS AWARE OF THE FIREARM EVEN THOUGH X WAS AWARE THAT SOME OF HIS CO-ACCUSED POSSESSED FIREARMS – NOT SUFFICIENT TO PROVE INTENTION

UNLAWFUL POSSESSION OF AMMUNITION

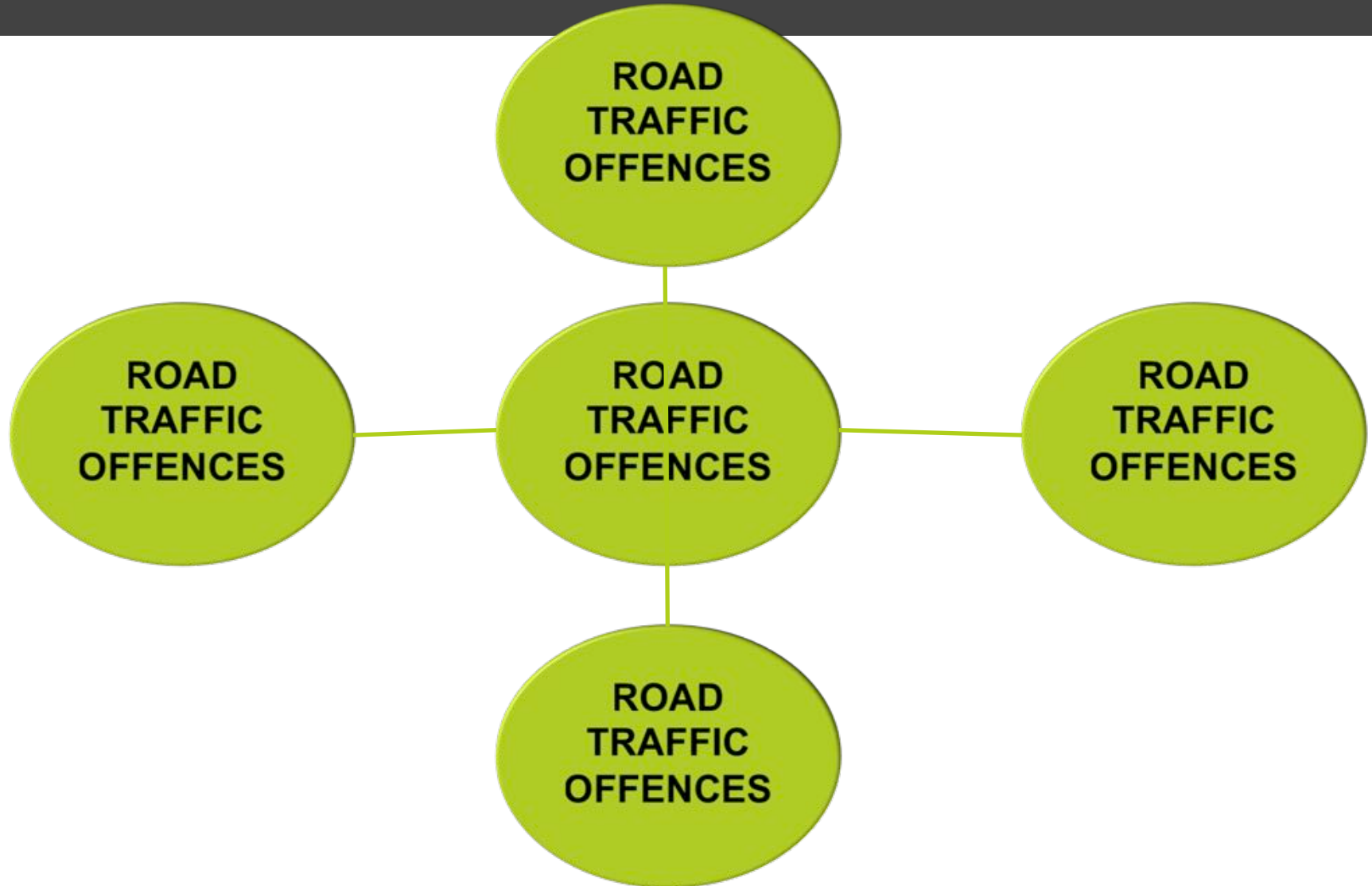
NO PERSON MAY POSSESS AMMUNITION UNLESS HE:

- HOLDS A **LICENCE**
 - HOLDS A **PERMIT**
 - HOLDS A **DEALER'S LICENCE**
 - IS **OTHERWISE AUTHORISED TO DO SO**
-
- A PERSON MAY NOT POSSESS MORE THAN 200 CARTRIDGES FOR EACH FIREARM. EXCEPTIONS:
 - A DEDICATED HUNTER OR DEDICATED SPORTS-PERSON
 - THE HOLDER OF A LICENCE TO POSSESS A FIREARM IN RESPECT WITH AMMUNITION BOUGHT AND DISCHARGED AT AN **ACCREDITED SHOOTING RANGE**
-
- **NONE OF THE ABOVE APPLY TO THE MENTIONED OFFICIALS**

OTHER OFFENCE CREATED IN THE ACT

- TO BE AWARE THAT SOMEBODY ELSE POSSESSES A FIREARM ILLEGALLY AND TO **FAIL TO REPORT THIS TO THE POLICE**
- TO CAUSE BODILY INJURY TO A PERSON OR DAMAGE PROPERTY BY **NEGLIGENTLY USING A FIREARM**
- TO HANDLE A FIREARM WHILE **UNDER THE INFLUENCE OF A SUBSTANCE WHICH HAS AN INTOXICATING OR NARCOTIC EFFECT**
- TO **DISCHARGE** A FIREARM IN A BUILT-UP AREA OR A PUBLIC PLACE
- TO LOSE A FIREARM OWING TO **FAILURE TO LOCK IT AWAY IN A SAFE**

ROAD TRAFFIC OFFENCE



INTRODUCTION

- ❑ AUTHORITY : ROAD TRAFFIC ACT 93 OF 1996
- ❑ ROAD TRAFFIC OFFENCES = CRIMES AGAINST PUBLIC WELFARE
- ❑ ACT MAKES IT AN OFFENCE FOR ANY PERSON TO:
 - ❑ EXCEED THE SPEED LIMIT
 - ❑ ENGAGE IN RECKLESS, NEGLIGENT OR INCONSIDERATE DRIVING
 - ❑ DRIVE WHILE UNDER THE INFLUENCE OF ALCOHOL OR DRUGS
 - ❑ DRIVE WHILE HAVING AN EXCESS OF ALCOHOL IN ONE'S BLOOD OR ONES' BREATH

EXCESS OF THE SPEED LIMIT

- ▣ READ SECTION 59 OF THE NRTA

- ▣ ELEMENTS OF THE OFFENCE:
 - ▣ DRIVING
 - ▣ VEHICLE
 - ▣ PUBLIC ROAD
 - ▣ IN EXCESS OF THE SPEED LIMIT
 - ▣ UNLAWFULNESS
 - ▣ CULPABILITY

ACT: DRIVING

DEFINITION: DRIVER

ANY PERSON WHO DRIVES OR ATTEMPTS TO DRIVE ANY VEHICLE OR WHO RIDES OR ATTEMPTS TO RIDE ANY PEDAL CYCLE OR WHO LEADS ANY DRAUGHT, PACK OR SADDLE, ANIMAL OR HERD OR FLOCK

DRIVE IS NOT DEFINED – BEARS THE ORDINARY MEANING

- DRIVING – MUST CONSTITUTE A VOLUNTARY ACT
- OFFENCE WOULD NOT BE COMMITTED IF A PERSON ACTS INVOLUNTARILY FROM AN ACT OF AUTOMATISM / EPILEPTIC FIT
- **ROOYEN** 1968 (1) SA 641 (T) – WORD DRIVE WAS EXAMINED
 - X WHO WAS UNDER THE INFLUENCE OF ALCOHOL PUSHED HIS VEHICLE BY PRACTISING CONTROL OVER STEERING WHEEL AND HANDBRAKE FROM OUTSIDE THE VEHICLE
 - COURT: HE HAD CONTROL OF THE VEHICLE – WHETHER THE VEHICLE MOVES BY FORCE / GRAVITY OR A RESULT OF BEING PUSHED IS IRRELEVANT

ACT: DRIVING

- ***EKSTRAAL:*** IF SOMEONE SITS BEHIND THE STEERING WHEEL OR CONTROLS THE STEERING WHEEL WHILE A VEHICLE IS BEING TOWED IT WILL BE REGARDED AS DRIVING
- ***MAKHUBELA:*** DRIVERS WITHOUT A LICENCE WILL ALSO FALL UNDER THIS OFFENCE – **AN OFFENCE OF ATTEMPTING TO DRIVE DOES NOT EXIST**

ACT: VEHICLE

DEFINITION: VEHICLE

A DEVICE DESIGNED OR ADAPTED MAINLY TO TRAVEL ON WHEELS OR
CRAWLER TRACKS

INCLUDES A DEVICE THAT IS CONNECTED WITH A DRAW-BAR TO A
BREAKDOWN VEHICLE

MAY ALSO COVER A PEDAL CYCLE

**DEVICES THAT TRAVEL ON RAILS WILL BE EXCLUDED FROM THE
DEFINITION – A TRAIN IS EXCLUDED**

ACT: PUBLIC ROAD

DEFINITION: PUBLIC ROAD

ANY ROAD / STREET / THOROUGHFARE OR ANY OTHER PLACE WHICH IS
COMMONLY USED BY THE PUBLIC

INCLUDES:

THE VERGE OF ANY SUCH ROAD , STREET OR THOROUGHFARE
ANY BRIDGE, FERRY OR DRIFT TRAVERSED BY ANY SUCH ROAD ETC
ANY OTHER WORK OR OBJECT FORMING PART OF OR CONNECTED WITH
OR BELONGING TO SUCH ROAD ETC

- THERE ARE TWO REQUIREMENTS FOR A R/S/T TO QUALIFY AS A PUBLIC ROAD:
 - IT MUST BE COMMONLY USED BY THE PUBLIC OR A SECTION OF THE PUBLIC
 - THE PUBLIC OR A SECTION OF THE PUBLIC MUST HAVE A RIGHT OF ACCESS TO IT
 - **COETZEE**: PARKING LOT THAT IS RESERVED FOR ROADHOUSE CUSTOMERS DID NOT QUALIFY AS PUBLIC ROAD

SPEED LIMIT

- THREE GENERAL SPEED LIMITS EXIST:
 - A PUBLIC ROAD WITHIN AN URBAN AREA (**60KM/H**)
 - A PUBLIC ROAD OUTSIDE AN URBAN AREA (**100KM/H**)
 - A FREEWAY (**120KM/H**)
- THE ACT DOES NOT STIPULATE WHAT TYPE OF EVIDENCE IS NECESSARY TO PROVE THAT THE SPEED LIMIT HAS BEEN EXCEEDED
- GENERAL PRINCIPLE: **ONUS RESTS ON THE STATE** TO PROVE THAT THE VEHICLE EXCEEDED THE SPEED LIMIT AND THAT THE TIMING DEVICE USED TO MEASURE THE SPEED WAS ACCURATE
- INTEREST PROTECTED: **PHYSICAL SAFETY OF THE GENERAL PUBLIC**

UNLAWFULNESS

- ❑ CERTAIN DRIVERS ARE PERMITTED TO EXCEED THE GENERAL SPEED LIMITS:
 - ❑ DRIVERS OF AN AMBULANCE
 - ❑ FIRE-FIGHTING VEHICLE
 - ❑ RESPONSE VEHICLE
 - ❑ RESCUE VEHICLE
 - ❑ EMERGENCY MEDICAL RESPONSE VEHICLE WHO ARE CARRYING OUT THEIR DUTIES
 - ❑ TRAFFIC OFFICER OR SAPS WHO ARE AUTHORISED
- ❑ MUST STILL DRIVE WITH **DUE REGARD** TO THE SAFETY OF OTHER VEHICLES

UNLAWFULNESS

S V GROEP 2002 (1) SACR 538 (E)

THE APPELLANT WAS A POLICE OFFICER WHO WAS CONVICTED OF
NEGLIGENT DRIVING OF A POLICE VEHICLE
SHE WAS RESPONDING TO AN EMERGENCY AND DROVE THROUGH A RED
TRAFFIC LIGHT
HELD SHE HAD NOT DRIVEN WITH DUE REGARD FOR THE SAFETY OF
OTHER ROAD USERS

S V FOURIE 2001 (2) SACR 674 (C)

REGIONAL MAGISTRATE RAISED A DEFENCE OF OFFICIAL CAPACITY WHEN
HE WAS CHARGED WITH EXCEEDING THE SPEED LIMIT
HE AVERRED THAT HE WAS ACTING IN THE INTERESTS OF THE
ADMINISTRATION OF JUSTICE BECAUSE HE WOULD HAVE BEEN LATE FOR
COURT PROCEEDINGS
ACTION WAS UNLAWFUL

CULPABILITY

- ▣ STRICT LIABILITY
- ▣ DEFENCE OF REASONABLE MISTAKE COULD STILL PERHAPS BE RAISED

RECKLESS OR NEGLIGENT DRIVING

DEFINITION: RECKLESS OR NEGLIGENT DRIVING (SECTION 63) ** MUST STUDY**

- 1) NO PERSON SHALL DRIVE A VEHICLE ON A PUBLIC ROAD RECKLESSLY OR NEGLIGENTLY
- 2) ANY PERSON WHO DRIVES A VEHICLE IN WILFIL OR WANTON DISREGARD FOR THE ASAFETY OF PERSONS OR PROPERTY SHALL BE DEEMED TO DRIVE THAT VEHICLE RECKLESSLY
- 3) THE COURT SHALL HAVE REGARD TO ALL CIRCUMSTANCES OF THE CASE INCLUDING THE NATURE, CONDITION AND USE OF THE PUBLIC ROAD UPON WHICH THE CONTRAVENTION IS ALLEGED TO HAVE BEEN COMMITTED, THE AMOUNT OF TRAFFIC WHICH AT THE RELEVANT TIME WAS OR WHICH COULD REASONABLY HAVE BEEN EXPECTED TO BE UPON THAT ROAD AND THE SPEED AND MANNER IN WHICH THE VEHICLE WAS DRIVEN

RECKLESS DRIVING

- THE ELEMENTS OF THE OFFENCE:
 - DRIVING
 - VEHICLE
 - PUBLIC ROAD
 - RECKLESSLY
 - UNLAWFULNESS
 - CULPABILITY

THE ACT

- CONSISTS IN DRIVING A VEHICLE RECKLESSLY ON A PUBLIC ROAD
- THE MEANING OF “DRIVING”, “VEHICLE” AND “PUBLIC ROAD” IS THE SAME AS ABOVE
- RECKLESSLY AND NEGLIGENTLY WILL BE DISCUSSED

DEFINITION: RECKLESSLY

IF A SUCH A PERSON DRIVES IN WILFUL AND WANTON DISREGARD FOR THE SAFETY OF PERSONS OR PROPERTY

INCLUDES INCONSIDERATE DRIVING WHICH MIGHT GIVE RISE TO A **RISK OF HARM TO OTHERS**

RECKLESS AND NEGLIGENCE

- ❑ RECKLESSNESS AND NEGLIGENCE ARE DISTINCT CONCEPTS AND ARE TREATED SEPARATELY IN THE SENTENCING PHASE
- ❑ INTENTION IN THE FORM OF *DOLUS EVENTUALIS* MAY ALSO BE PRESENT WHERE THERE IS AN APPRECIATION OF ACCEPTANCE OF RISK
- ❑ THE MANNER THE PERSON DROVE, THE SPEED AND THE AMOUNT OF TRAFFIC WILL BE CONSIDERED

VAN ZYL CASE

THE ACCUSED WAS GUILTY OF GROSS NEGLIGENCE AS THE FACTS OF THE CASE REVEAL THAT HIS EYES HAD BEEN FOCUSED ELSEWHERE FOR SUCH LONG PERIOD OF TIME THAT HIS CAR WANDERED OVER TO THE WRONG SIDE OF THE ROAD CAUSING A COLLISION WITH AN ONCOMING VEHICLE

HELD THE WORD RECKLESS INCLUDES *DOLUS EVENTUALIS* AND GROSS NEGLIGENCE

UNLAWFULNESS

- MAY BE EXCLUDED BY THE GROUNDS OF JUSTIFICATION MENTIONED ABOVE

NEGLIGENT DRIVING

- ❑ OFFENCE FOR ANY PERSON TO DRIVE NEGLIGENTLY UPON A PUBLIC ROAD
- ❑ **THE ELEMENTS OF THE OFFENCE:**
 - ❑ DRIVING
 - ❑ VEHICLE
 - ❑ PUBLIC ROAD
 - ❑ NEGLIGENTLY
 - ❑ UNLAWFULNESS
 - ❑ CULPABILITY
- ❑ **ACT CONSISTS IN DRIVING A VEHICLE NEGLIGENTLY ON A PUBLIC ROAD**

NEGLIGENT DRIVING

NEGLIGENCE IS PRESENT WHERE A REASONABLE PERSON IN THE SAME CIRCUMSTANCES WOULD HAVE FORESEEN THAT THE DRIVING COULD CREATE A RISK OF HARM TO OTHER PERSONS AND SHOULD HAVE GUARDED AGAINST SUCH RISK AN FAILED TO DO SO

- ❑ A PERSON DRIVES NEGLIGENTLY IF HE DOES NOT DRIVE WITH THE DEGREE OF CARE AND SKILL A REASONABLE MAN WOULD EXERCISE IN THE SAME CIRCUMSTANCES
- ❑ A REASONABLE PERSON WOULD NOT DRIVE LIKE A RACING DRIVER OR WITH EXCESSIVE CAUTION AND TIMIDITY
- ❑ OUR LAW DOES NOT RECOGNISE DEGREES OF NEGLIGENCE – THE SLIGHTEST DEVIATION FROM THE REASONABLE PERSON STANDARD WILL BE REGARDED AS NEGLIGENT DRIVING

NEGLIGENT DRIVING

ERWIN 1974 (3) SA 438 (C)

WHILE THE ACCUSED WAS OVERTAKING ANOTHER VEHICLE A BEE FLEW INTO HIS CAR AND STUNG HIM ON THE CHEEK HE INSTINCTIVELY PULLED HIS HEAD AWAY AND BUMPED HIS GLASSES AGAINST THE WINDOW AND ONE LENSE BROKE HE RELEASED THE STEERING WHEEL TO PROTECT HIS EYES FROM THE SOPLINTERS AND THE VEHICLE COLLIDED WITH THE CARE HE WAS OVERTAKING.

THE COURT SET A HIGH STANADRD FOR THE REASONABLE MAN AND HELD THAT HE MADE AN ERROR OF JUDGEMENT DURING AN EMERGENCY A REASONABLE DRIVER WOULD BE ABLE TO COPE WITH UNEXPECTED SITUATIONS
CONVICTED OF NEGLIGENT DRIVING

NEGLIGENT DRIVING

R V VICTOR 1943 TPD 77

X WAS CHARGES WITH RECKLESS / NEGLIGENT DRIVING AS HE HAD A COLLISION WITH ANOTHER VEHICLE AND A PEDESTRAIN AS A RESULT OF AN EPILEPTIC FIT

HE HAD PRIOR SEIZURES AND HAD INSUFFICIENT REASON TO ASSUME THAT HE WOULD NOT HAVE ANOTHER SEIZURE ON THAT DAY
WAS FORSEEABLE THAT THE SEIZURE COULD HAPPEN
FOUND GUILTY OF NEGLIGENT DRIVING - ANTECEDENT LIABILITY

UNLAWFULNESS

- NO GROUND OF JUSTIFICATION SHOULD BE PRESENTS FOR UNLAWFULNESS
- SOME OF THE DEFENCES THAT MAY BE RAISED ARE MECHANICAL FAILURE, SKIDDING OR SUDDEN EMERGENCE

CUPLABILITY

- APART OF RECKLESS OR NEGLIGENT DRIVING CAN ALSO BE FOUND GUILTY OF MURDER, ATTEMPTED MURDER OR CULPABLE HOMICIDE
- **READ THE HUMPREYS CASE ON PAGE 66 OF THE STUDY GUIDE AND SUMMARISE THE FACTS, LEGAL QUESTIONS AND JUDGMENT**

ACTIVITY

X, A POLICE OFFICER, IS IN HOT PURUIT OF A CRIMINAL WHO HAS ALLEGEDLY COMMITTED A ROBBERY. HE DRIVES THROUGH A RED TRAFFIC LIGHT AND COLLIDES WITH ANOTHER VEHICLE WHICH IS CROSSING THE INTERSECTION FROM THE SIDE OF WHICH THE TRAFFIC LIGHT IS GREEN.

CAN X BE FOUND GUILTY OF RECKLESS OR ONLY OF NEGLIGENT DRIVING?

INCONSIDERATE DRIVING

**DEFINITION:SECTION 64 OF THE NRTA
NO PERSON SHALL DRIVE A VEHICLE ON A PUBLIC ROAD WITHOUT
REASONABLE CONSIDERATION FOR ANY OTHER PERSON USING THE
ROAD**

ELEMENTS OF THE OFFENCE:

- DRIVING
- VEHICLE
- PUBLIC ROAD
- WITHOUT REASONABLE CONSIDERATION
- CULPABILITY

INCONSIDERATE DRIVING: ACT

- “DRIVING”, “VEHICLE” AND “PUBLIC ROAD” HAVE BEEN DISCUSSED
- THE OFFENCE CAN ONLY BE COMMITTED IF OTHER ROAD-USERS ARE PRESENT ON THE ROAD AT THE TIME

“WITHOUT REASONABLE CONSIDERATION”

WITHOUT THE CONSIDERATION THAT A REASONABLE MAN WOULD HAVE SHOWN IN THE SITUATION AND CIRCUMSTANCES PREVAILING AT THE TIME

- OFFENCE IS APPLICABLE WHEN DRIVING IS CALCULATED TO EMBARRASS OR INCONVENIENCE OTHER ROAD USERS

UNLAWFULNESS

- FOR THE ACT TO BE UNLAWFUL NO GROUND OF JUSTIFICATION MUST EXIST

CULPABILITY

- THE OFFENCE CAN BE COMMITTED WITH INTENTION OR NEGLIGENCE

DRIVING UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS WITH A NARCOTIC EFFECT

**DEFINITION: SECTION 65 OF THE NRTA:
NO PERSON SHALL ON A PUBLIC ROAD –**

- A) DRIVE A VEHICLE; OR
B) OCCUPY THE DRIVER'S SEAT OF A MOTOR VEHICLE WITH THE ENGINE OF WHICH IS RUNNING WHILE UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR A DRUG HAVING A NARCOTOIC EFFECT**

ELEMENTS OF THE OFFENCE:

- DRIVING
- VEHICLE
- PUBLIC ROAD
- UNDER THE INFLUENCE OF INTOXICATING ALCOHOL / DRUGS WITH A NARCOTIC EFFECT
- CULPABILITY

ACT

- TWO OFFENCES ARE CREATED BY THIS SECTION:
 - THE DRIVING OF A VEHICLE WHILE UNDER THE INFLUENCE AND
 - OCCUPYING THE DRIVER'S SEAT WHILE THE ENGINE OF THE MOTOR VEHICLE IS RUNNING, WHILE UNDER THE INFLUENCE

- INTEREST PROTECTED: PROTECTION OF THE PUBLIC

- IT MUST BE PROVED THAT THE DRIVER WAS AFFECTED BY THE INTOXICATING LIQUOR OR DRUG TO SUCH A DEGREE THAT THE SKILL AND JUDGMENT NORMALLY REQUIRED OF A DRIVER WAS DIMINISHED OR IMPAIRED AS A RESULT
 - SKILL = THE DRIVER'S PHYSICAL POWERS
 - DIMINISHED = WHEN THE DRIVER'S VISION , JUDGMENT OR MUSCULAR COORDINATION IS AFFECTED
 - JUDGMENT = THE DRIVER'S MENTAL POWERS

ACT

- ❑ THE DRIVER MUST HAVE BEEN UNDER THE INFLUENCE AT THE TIME OF DRIVING THE VEHICLE
- ❑ ALCOHOL = ETHYL ALCOHOL
- ❑ DRUG = NARCOTIC EFFECT

UNLAWFULNESS

- THE OFFENCE WILL NOT BE UNLAWFUL IF A GROUND OF JUSTIFICATION IS PRESENT

CULPABILITY

- THE OFFENCE CAN BE COMMITTED WITH INTENTION OR NEGLIGENTLY
- CULPABILITY WILL BE PRESENT WHERE THE ACCUSED FORESEES OR OUGHT TO HAVE FORESEEN THAT HE OR SHE WOULD DRIVE A VEHICLE UNDER THE INFLUENCE
- WHERE AN ACCUSED DID NOT KNOW THAT HE WAS UNDER THE INFLUENCE OF ALCOHOL (SPIKES HIS DRINK) HE WOULD LACK CULPABILITY
- ANOTHER DEFENCE COULD BE THAT THE ACCUSED WAS IGNORANT OF COMBINED EFFECTS OF INTOXICATING LIQUOR AND NARCOTIC DRUGS

DRIVING WITH EXCESSIVE ALCOHOL IN THE BLOOD

**DEFINITION: SECTION 65 (2) OF THE NRTA:
NO PERSON SHALL ON A PUBLIC ROAD –**

- A) DRIVE A VEHICLE; OR**
- B) OCCUPY THE DRIVER'S SEAT OF A MOTOR VEHICLE WITH THE ENGINE WHICH IS RUNNING WHILE THE CONCENTRATION OF ALCOHOL IN ANY SPECIMEN OF BLOOD TAKEN FROM ANY PART OF HIS BODY IS NOT LESS THAN 0,05 GRAM PER 100 MILLILITRES, OR IN THE CASE OF A PROFESSIONAL DRIVER 0,02 GRAM PER 100 MILLILITERS**

- DRIVING
- VEHICLE
- PUBLIC ROAD
- BLOOD ALCOHOL
- CULPABILITY

BLOOD ALCOHOL

- ❑ ONE MAY NOT REFUSE TO PROVIDE A SPECIMEN OF ONE'S BREATH OR BLOOD
- ❑ THE STATE MUST PROVE USING EXPERT EVIDENCE (DISTRICT SURGEON, REGISTERED MEDICAL PRACTITIONER, A MEDICAL OFFICER OF A PRISON / REGISTERED NURSE THAT THE CONCENTRATION OF ALCOHOL EXCEEDS 0.049 GRAMS **AT THE TIME THE ACCUSED WAS DRIVING**
- ❑ MUST PROVE THE BLOOD SAMPLE IS THE BLOOD OF THE ACCUSED (CHEMICAL ANALYSIS)
- ❑ THE BLOOD ALCOHOL MUST NOT BE CONTAMINATED

BLOOD ALCOHOL

- THERE IS A PRESUMPTION THAT IF THE BLOOD SAMPLE WAS TAKEN **WITHIN TWO HOURS** AFTER THE OFFENCE AND IT WAS NOT LESS THAN 0,05 GRAMS PER 100 ML THE ALCOHOL LIMIT EXCEEDED THE PRESCRIBED LIMIT AT THE TIME OF THE OFFENCE

UNLAWFULNESS

- THE ACT WILL BE DEEMED UNLAWFUL IF NO GROUNDS OF JUSTIFICATION EXISTS

CULPABILITY

- THE OFFENCE CAN BE COMMITTED WITH INTENTION OR NEGLIGENTLY
- AUTOMATISM CAUSED BY VOLUNTARY INTOXICATION DOES NOT CONSTITUTE A VALID DEFENCE

ADDITIONAL OFFENCE RE TO DRIVING

- ▣ DUTY TO REPORT AN ACCIDENCE
- ▣ SEE PAGE 71 OF THE STUDY GUIDE

CULPABILITY

- CONSIST IN INTENTION (*DOLUS EVENTUALIS*) AND GROSS NEGLIGENCE