

# **Tutorial Letter 102/2/2016**

## **Criminal Law: Specific Offences**

**CRW2602**

**Semester 2**

**Department of Criminal and Procedural Law**

This tutorial letter contains important information about your module.

Bar code

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**DEAR STUDENT**

We trust that you have already familiarised yourself with the first tutorial letter, as well as with the Study Guide and prescribed texts. Note that all tutorial letters are very important and should be read carefully.

In this tutorial letter, we discuss the format of the examination paper which you will be writing in November 2016. In order to assist you with preparation for these exams, we provide you with the exam paper written last year in November.

Feedback to the questions in the November 2015 paper is provided. The feedback also serves as an example of how we expect students to answer if similar types of questions were to be asked.

We also alert you to a new development in criminal law and provide you with information regarding your tutorial letters.

**1 Format of the October/November 2016 Examination Paper**

The format of the examination paper for the October/November 2016 examinations will in essence be the same as that of previous exam papers.

**2 Example of a previous examination paper**

Below we provide you with an example of a previous examination paper and feedback on the paper. Please take note that this exam paper as well as other past exam papers for this course are also available online for you to download from *myUNISA*.

If this is the first year that you have enrolled for this module you will find it difficult to understand the answers and the feedback on the examination paper. However, once you have studied all the different topics dealt with in the examination paper, the questions and the feedback will make sense. We therefore recommend that you do not read the feedback until you have studied the relevant topics. If you were registered for this course previously you will find the feedback valuable, since you have been exposed to the topics already. If you have previously failed this course, and you are now repeating the module, you should read both the answers and the feedback carefully, to enable you to see where you went wrong in the examination.

**CRW2602**

( 471716)

October/November 2015

**CRIMINAL LAW: SPECIFIC CRIMES**

Duration : 2 Hours

100 Marks

EXAMINERS :

FIRST :

PROF L JORDAAN  
PROF C VAN DER BIJL  
MR RD RAMOSA

DR N MOLLEMA

SECOND :

Closed book examination.

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

**THIS PAPER CONSISTS OF EIGHT (8) PAGES PLUS INSTRUCTIONS FOR COMPLETION OF A MARK READING SHEET.**

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

**PART A (MULTIPLE CHOICE QUESTIONS)**

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

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

**QUESTION 1**

- (a) An act which is calculated to cause the serious disruption of a banking service is included in the definition of 'terrorist activities' as defined in section 1 by the *Protection of Constitutional Democracy against Terrorist and Related Activities Act 33 of 2004*.
  - (b) *Dolus eventualis* is an insufficient form of intention in the crime of terrorism.
  - (c) Compulsion is a ground of justification to the crime of terrorism.
- (1) Only statement (a) is correct.
  - (2) Only statement (b) is correct.
  - (3) Only statements (a) and (b) are correct.
  - (4) Only statements (a) and (c) are correct.
  - (5) All the statements are correct.

**QUESTION 2**

- (a) The crime of public violence may also be committed in a private place.
  - (b) No actual disturbance of the public peace and order, or no actual infringement of the rights of another is required for the crime of public violence to be committed.
  - (c) The crime of public violence is committed by participants who **must act in concert**.
- (1) Only statement (a) is correct.
  - (2) Only statement (b) is correct.
  - (3) Only statement (c) is correct.
  - (4) Only statements (a) and (c) are correct.
  - (5) All the statements are correct.

**QUESTION 3**

- (a) Because potential prejudice is sufficient to constitute fraud, it is not possible to be convicted of attempted fraud.
  - (b) In the crime of fraud, the misrepresentation may only be done by a positive act.
  - (c) Fair comment on the outcome of a case or on the administration of justice in general does not constitute contempt of court.
- (1) None of the statements is correct.
  - (2) Only statements (a) and (b) are correct.
  - (3) Only statement (b) is correct.
  - (4) Only statement (c) is correct.
  - (5) Only statements (a) and (c) are correct.

#### QUESTION 4

- (a) Common law abduction can also be committed in respect of a minor male person.
  - (b) 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 the person.
  - (c) Murder is legally defined as the unlawful killing of another human being which includes the killing of a foetus.
- (1) Only statement (a) is correct.
  - (2) Only statement (b) is correct.
  - (3) Only statements (a) and (b) are correct.
  - (4) Only statements (a) and (c) are correct.
  - (5) All these statements are correct.

#### QUESTION 5

- (a) X cleans his revolver but does not know that there is a bullet in one of the chambers. Thinking that there are no bullets in the revolver, he points the gun at Y and pulls the trigger. The gun goes off and Y is killed by the gunshot. **X will be convicted of murder because he was negligent.**
  - (b) The speed limit on a public road outside an urban area is 120km/h.
  - (c) The crime of driving with excessive alcohol in the blood can also be committed if one is not driving but is **merely occupying the driver's seat** of a car whilst the engine is running, and whilst having a concentration of alcohol in the blood of 0.05 grams per 100 millilitres or more.
- (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 the statements are correct.

#### QUESTION 6

- (a) Reckless driving includes inconsiderate driving which might give rise to a risk of harm to others.
  - (b) A police officer who responds to an emergency and causes a motor vehicle collision while crossing a red robot can **never** be convicted of negligent driving.
  - (c) The crime of inconsiderate driving can be committed negligently or where there are no other road users present.
- (1) Only statement (a) is correct.
  - (2) Only statement (b) is correct.
  - (3) Only statements (a) and (b) are correct.
  - (4) Only statements (a) and (c) are correct.
  - (5) Only statements (b) and (c) are correct.

**QUESTION 7**

- (a) In the case of *S v Nkosi* 2012 (1) SACR 87 (GNP) it was held that the mere assumption of control over property **which belongs to someone else is insufficient** for the crime of **attempted theft**.
- (b) If X assists Y to commit suicide (mercy killing) he will not be convicted of the crime of murder under South African law.
- (c) The building or structure required in the crime of housebreaking with intent to commit a crime may only be an immovable structure which is or might ordinarily be used for human habitation.
- (1) Only statement (a) is correct.  
 (2) Only statement (b) is correct.  
 (3) Only statements (a) and (c) are correct.  
 (4) All these statements are correct.  
 (5) None of the statements is correct.

**QUESTION 8**

- (a) *Crimen iniuria* always involves at least three parties.
- (b) The uttering of words constituting vulgar abuse may constitute the crime of *crimen iniuria*.
- (c) Culpability in the form of negligence is sufficient for the crime of assault.
- (1) Only statement (a) is correct.  
 (2) Only statement (b) is correct.  
 (3) Only statements (a) and (b) are correct.  
 (4) Only statements (a) and (c) are correct.  
 (5) All the statements are correct.

**QUESTION 9**

- (a) For a conviction of assault with the intent to cause grievous bodily harm, it is not required that the victim had in actual fact suffered grievous bodily harm.
- (b) X can only be convicted for the crime of assault if the state proves that X applied force to Y's body directly.
- (c) It is a requirement for the crime of receiving stolen property that X must touch the property in order to qualify as an act of receiving.
- (1) Only statement (a) is correct.  
 (2) Only statement (b) is correct.  
 (3) Only statements (a) and (b) are correct.  
 (4) Only statements (a) and (c) are correct.  
 (5) All the statements are correct.

## QUESTION 10

- (a) The threat of violence in the crime of robbery must always be expressly uttered to satisfy a conviction of robbery.
- (b) If X assaults Y and after Y falls to the ground, X sees Y's valuable watch and takes it for himself, X is guilty of robbery.
- (c) The crime of malicious injury to property cannot be committed in respect of immovable property.
- (1) Only statement (a) is correct.  
(2) Only statement (b) is correct.  
(3) Only statements (a) and (b) are correct.  
(4) All the statements are correct.  
(5) None of the statements is correct.
- Sub-total: [30]**

## PART B

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

### QUESTION 1

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

- (i) Name the elements of the crime of robbery and discuss whether the grabbing of a cellphone from a person's hand amounts to robbery or merely to theft.

**OR**

- (ii) Discuss the two components of intention required for the crime of terrorism. (8)

- (b) X buys himself a brand new Porsche. While he drives away from the dealer's shop he smokes a joint of dagga. The police stop him and he (X) is arrested. He is charged with the crime of driving under the influence of intoxicating liquor or drugs with a narcotic effect. X raises the defence that dagga is not a narcotic drug. Explain whether X may be found guilty of this crime with specific reference to the requirement of the 'act'. (7)

- (c) Discuss **ONE** of the following cases:

*S v Gardener and Another* 2011 (1) SACR 570 (SCA)

**OR**

*S v Sibiya* 1955 (4) SA 247 (A) (6)



- (d) Merely name four (4) additional offences created in the *Firearms Control Act 60* of 2000, other than the unlawful possession of a firearm or ammunition. (4)  
[25]

## QUESTION 2

- (a) X works for Y who is a shop owner. Y is in possession of an electricity vending machine that issues pre-paid electricity vouchers on behalf of the ABC company. X provides vouchers for electricity to his friends free of charge. Y finds out and tells X that he will not report him to the ABC company if he (X) provides him (Y) with 20% of the proceeds of the vouchers sold. X agrees. ABC company finds out about the scheme when an audit is done of all the vouchers issued. X is charged with the crime of theft. It is alleged that he has unlawfully and intentionally stolen electricity. The state argues that electricity can be an object of the crime of theft as the crime of theft is no longer limited to movable corporeal property. X avers as his defence that electricity is not property that is capable of being stolen.

### ANSWER ALL THREE QUESTIONS BELOW:

- (i) Fully discuss the property requirement for the crime of theft. In your answer you must also discuss the exceptions to the requirements. (7)
- (ii) Discuss whether X can be found guilty of the crime of theft for stealing electricity with reference to case law. (5)
- (iii) Can Y be found guilty of the crime of extortion? Discuss. (5)
- (b) **NOTE THE CHOICE YOU HAVE IN THIS QUESTION**
- (i) Define the crime of contempt of court.
- OR**
- (ii) Define the crime of corruption. (4)
- (c) Merely state the legal interest(s) protected by each one of the following crimes without any discussion thereof:
- (i) Corruption. (1)
- (ii) Pointing of a firearm. (1)
- (iii) Kidnapping. (2)

[25]

### QUESTION 3

- (a) X kidnaps Y from his work at gunpoint. X commands Y to climb into the boot of her car and she drives to a remote area. X orders Y to drink some drugs which he (Y) does out of fear. X also threatens to kill Y if he (Y), does not have sexual intercourse with her (X). He (Y) submits and has sexual intercourse with her. Discuss whether X is guilty of the following crimes.
- (i) The crime of rape in terms of section 3 of the *Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007*. (6)
  - (ii) *Crimen iniuria* and/ or assault. (4)
- (b) Write down the missing words or phrases in your **examination book**:
- (i) The two defences that may be raised by X in the crime of consensual penetration of children are that both X and Y are ..... and that Y deceived X about his or her..... (2)
  - (ii) Sexual assault is defined in s 5(1) as a person (X) who unlawfully and intentionally..... (2 words) a complainant (Y) without the .....of Y. (2)
  - (iii) It is a sexual offence to engage persons .....years or older in sexual services for financial or other reward. (1)
  - (iv) A person who engages the services of a child (with or without his or her consent) for sexual favours or any type of reward is guilty of the crime of ..... (2 words) of a child. (1)
  - (v) A person who influences or encourages a child to engage in a sexual act or who diminishes the child's resistance to such act commits the crime of ..... (2 words) of children under the age of 18 years. (1)
  - (vi) The two parties in the crime of corruption are known as the ..... and the ..... (2)
  - (vii) The crime of malicious injury to property also includes damaging one's own .....(1/2) property with the intention of claiming the value of the property from the .....(1/2) (1)

[20]

**Sub-total: [70]**

**TOTAL: [100]**

### 3 Feedback and self assessment

Below follows the feedback on the previous exam paper provided above. We find that most students provide very superficial answers in the examination. Therefore we advise that you actually complete the given examination paper on your own as a form of **self-assessment**. Test yourself whether you are able to identify the relevant sections of the work. Plan and structure your answers in accordance with the duration of time provided. Determine the length of your answer with reference to the marks allocated to each question. Then compare your answers with those provided in the feedback. This exercise will enable you to know exactly what is expected of you in the examination.

The following abbreviations are used:

**SG - Study Guide**

***Criminal Law - CR Snyman Criminal Law 6<sup>th</sup> ed 2014 (the prescribed book)***

***Case Book - CR Snyman Criminal Law Case Book 5<sup>th</sup> ed 2013***

#### PART A (MULTIPLE-CHOICE QUESTIONS)

##### Question 1

- (a) This statement is correct. See SG 1.2.2 (vi).
- (b) This statement is incorrect. See SG 1.2.7. *Dolus eventualis* is a sufficient form of intention.
- (c) This statement is correct. See SG 1.2.6.

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

##### Question 2

- (a) This statement is correct. See SG 1.3.4.
- (b) This statement is correct. See SG 1.3.4.
- (c) This statement is correct. See SG 1.3.4.

You should, therefore, have chosen option (5) since all the statements are correct.

##### Question 3

- (a) This statement is incorrect. See SG 10.1.7. The Appellate division in **Heyne** 1956 (3) SA 604 (A) has held that attempted fraud is in fact possible where a misrepresentation has been made by X, but which has not yet come to Y's attention as in the case where a letter containing a misrepresentation has been lost in the post.
- (b) This statement is incorrect. See SG 10.1.3 (3). The misrepresentation in the crime of fraud can also be committed by an omission where there is a legal duty on X to disclose a fact.
- (c) This statement is correct. See SG 2.4.6.

You should, therefore, have chosen option (4) since only statement (c) is correct.

#### Question 4

- (a) This statement is correct. See SG 7.4.6.
- (b) This statement is incorrect. See SG 7.4.8. For the crime of abduction to be completed, it is not required that the marriage or sexual intercourse should have taken place, as all that is required is the intention on the part of X to commit either one of these acts..
- (c) This statement is incorrect. See SG 5.2.1 and the *Mshumpa*-case in *Casebook* 264. The legal definition speaks to the unlawful and intentional causing of the death of another **human being** and a foetus is excluded from this definition.

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

#### Question 5

- (a) This statement is incorrect. See SG 5.2.1 and SG 6.2.7. X would be convicted of the crime of culpable homicide if he is negligent as the crime of murder requires the element of intention.
- (b) This statement is incorrect. See SG 3.6.2.4. The speed limit on a public road outside an urban area is 100km/h.
- (c) This statement is correct. See SG 3.6.6.

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

#### Question 6

- (a) This statement is correct. See SG 3.6.3.
- (b) This statement is incorrect. See SG 3.6.2.5 and SG 3.6.3.3 (Activity and feedback). A police officer who responds to an emergency and causes a motor vehicle collision while crossing a red traffic light, can be convicted of negligent driving if he does not drive with 'due regard' for the safety of other road users. See also *S v Groep* 2002 (1) SACR 538 (E).
- (c) This statement is incorrect. See SG 3.6.4.3 and 3.6.4.5. This crime can be committed negligently but other road-users had to be present on the road at the time in order for this offence to have been committed.

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

#### Question 7

- (a) This statement is incorrect. See SG 8.6.1.2; 8.6.1.3 and *Casebook* 251-252. The mere assumption of control over property which belongs to someone else is insufficient for completed theft, but it is sufficient to amount to the crime of attempted theft.
- (b) This statement is incorrect. See SG 5.2.1. X complies with the definition of murder which is the unlawful and intentional causing of the death of another person.
- (c) This statement is incorrect. See SG 12.4 and Summary (5). The structure may be any movable or immovable property that is or might ordinarily be used for human habitation, or any immovable structure which is, or might be used for storage or housing of property.

You should, therefore, have chosen option (5) since none of these statements is correct.

**Question 8**

- (a) This statement is incorrect. See SG 7.2.4. *Crimen iniuria* involves only two parties whereas the crime of defamation involves three parties.
- (b) This statement is correct. See SG 7.2.7.3.(5)
- (c) This statement is incorrect. See SG 6.1.9. The crime of assault is an intentional crime and can take the form of direct intention, indirect intention or *dolus eventualis*.

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

**Question 9**

- (a) This statement is correct. See SG 6.1.11.
- (b) This statement is incorrect. See SG 6.1.6 and 6.1.7. Assault can also take the form of indirect application of force or inspiring fear that force may immediately be applied upon another. An example of indirect force is where X sets his vicious dog on Y.
- (c) This statement is incorrect. See SG 9.2.1 *SUMMARY* (10) and *Criminal Law* 514. X need not necessarily touch the property when he receives it.

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

**Question 10**

- (a) This statement is incorrect. See SG 9.1.5. The threat of violence in the crime of robbery may be express or implied.
- (b) This statement is incorrect. See SG 9.2 *SUMMARY* (3). The crimes of assault and theft are committed. For robbery there must be a causal connection between the violence (or threats of violence) and the acquisition of the property.
- (c) This statement is incorrect. See SG 11.2.3. The property must be corporeal and may be movable or immovable.

You should, therefore, have chosen option (5) since none of these statements is correct.

**PART B****Important advice for answering problem-type questions:**

The purpose of asking problem-type questions in this module is to test your understanding of the various specific crimes. This requires knowledge and understanding of ***the definitions*** of these crimes.

The second step in answering a problem-type question is to **discuss the legal principles** that are relevant to providing the answer to the problem. Most of the legal principles discussed in this module come from ***court decisions (case law)***. You must therefore make reference to a decided case(s) whenever a legal principle is stated.

You are reminded that even if you fail to remember the name of a case, you can simply state: “It has been decided” or “According to a decision” when stating the principle. Please note, however, that the discussion of an incorrect principle will not be credited, irrespective of whether the case reference (name) is appropriate. In other words, referring to the correct case name will not award you a mark if it is done to support an inappropriate legal principle. Students who do this merely indicate to the lecturer that they do not understand what the cited case actually decided.

The third step in answering a problem-type question is to **apply the relevant legal principles to the facts** of the problem. Students often combine the second and third steps when answering problem-type questions. In other words, they would discuss the principle(s) while applying it to the facts. There is nothing inappropriate about doing this. However, the chances of omitting a relevant principle (if there is more than one) are greater when adopting this approach. To minimise this possibility we would advise the separation of the second from the third step. Another advantage of discussing the legal principle(s) before applying them to the facts is that you can more easily identify the relevant facts at the stage of discussing the principle(s). This will enable you to address as many relevant facts as possible and prepare you for a more in-depth analysis at the stage of application.

The final step in answering a problem-type question is to **provide a conclusion** to the problem. Please ensure that you have addressed the question(s) that has (have) been asked. If, for example, the question requires you to determine the criminal liability of X on a charge of murder, then your conclusion should state either “X is criminally liable of murder”, or “X is not criminally liable on a charge of murder”. If the question requires you to determine whether X caused Y’s death, then your conclusion should state either “X caused Y’s death”, or “X did not cause Y’s death”, et cetera. Please note also that in order for your conclusion to have any basis it must be a deduction of your reasoning.

## **QUESTION 1**

(a)(i) **SG 9.1.2 and 9.1.7**

- Theft of property
- Use of actual violence or threats of violence
- Causal connection between the violence and acquisition of the property
- Unlawfulness
- Intention

Discussion: Yes - the court has held that the grabbing of a cell phone amounts to robbery in the *Salman*-case, as it is sufficient that any force is applied to the person of a victim, however slight, that amount to a physical intervention necessary for dispossession.

**OR**

(ii) **SG 1.2.7**

It is required that the act is performed with an intention, or an act which by **its nature and context, can reasonably be regarded as being intended, directly or indirectly** to

## FIRST COMPONENT

- threaten the **unity and territorial integrity** of the Republic
- **intimidate or cause feelings of insecurity** within the public or a segment of the public, including economic security, or to **cause feelings of terror, fear or panic in a civilian population** or
- unduly compel, intimidate, force, coerce, induce or cause a person a government, the public or a segment of the public or a domestic or an international organization or intergovernmental organization **to do or to abstain or refrain from doing any act, or to adopt or abandon a particular standpoint, or to act in accordance with certain principles.**

and

## SECOND COMPONENT

It is required that the act be committed, directly or indirectly, in whole or in part, for the **purpose of the advancement of an individual or collective, political, religious, ideological or philosophical motive, objective, cause or undertaking.**

(b) **SG 3.6.5.3**

Section 65(1) in actual fact prohibits two different acts:

- Driving of a vehicle while under the influence.
- Occupying a driver's seat with the engine of the vehicle running while under the influence.
- Even if a person is in a stationary vehicle they can be found guilty.
- 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** (*Lloyd 1929 EDL 270*).
- "**Skill**" refers to the **driver's physical powers**, and is diminished or impaired when the driver's vision, judgment or muscular coordination is affected (*Donian 1935 TPD 5*).
- "**Judgment**" refers to the **driver's mental powers**, which are deemed to be impaired or diminished if the intoxicating liquor or drug causes him to be euphoric or over-optimistic.
- The driver must have been **under the influence at the time** of driving the vehicle (*Lombard 1967 (4) SA 538 (A)*).
- Alcohol usually refers to ethyl alcohol and the drug referred to should have a **narcotic effect and need not be a narcotic drug per se** (*Whitehead 1970 (1) SA 25 (T)*). Any substance or remedy which has an effect resembling that of a narcotic drug is included and not merely pharmaceutical narcotics.
- **Yes, X can be convicted of the offence.**

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

*S v Gardener and Another* 2011 (1) SACR 570 (SCA) - *Casebook* pp. 260-263.

Facts: Two chief executive officers of company A failed to disclose their interests in company B to the board of company A. Company A had bought shares in company B and as a result of this transaction X and Y secured substantial profits. They were charged with fraud and duly convicted.

Legal question: On appeal the questions before the court were whether they had the intention of defrauding company A and whether their failure to disclose their interests resulted in actual or potential prejudice to the company.

Reasons for the judgment:

The court upheld the conviction of fraud and found that the conduct of X and Y was potentially prejudicial to company A since, *inter alia*, it precluded company A from considering the advantages and disadvantages of the sale and induced company A to raise the finance and pay X and Y for their interest in company B.

Moreover, their conduct was **deliberate since it was done to avoid proper consideration of the transaction by the board in the self-interest of X and Y** (para 57).

In considering the **intention to cause prejudice, the court deemed it unnecessary to be more specific as to the nature of that prejudice.**

The court stated (at para 58) that when company directors directly withhold information material to the affairs of their company from the board of directors there is, in the absence of an explanation for such conduct which may reasonably be true, a case of fraudulent non-disclosure. That is because the company can only make decisions through a board that is properly informed.

**OR**

*S v Sibiyi* 1955 (4) SA 247 (A) – *Casebook* 244 – 250.

Facts: X removed Y's car without his consent and took a joyride in it, intending to return it to Y. However the car overturned and landed in a donga. When the police arrived at the scene, X was still standing near the car (he did not abandon the car). X was convicted of theft.

Legal question: Does *furtum usus* (the mere temporary use of another's property without the intention of permanently depriving the owner) amount to theft in South African law?

Reasons for the judgment:

The Appellate Division held that Sibiyi had not committed theft because he did not have the **intention to deprive Y permanently of the property.**

Following English law, our courts have held that the perpetrator must have the intention permanently to deprive the owner of his property.

However, if X intends to deprive Y only temporarily of his property, then he still respects and recognizes Y's right to the property throughout and does not have an intention to deprive Y permanently of the property – as required for theft.



An important qualification to the rule that *furtum usus* does not constitute theft is that where the perpetrator uses the thing of another with the intention to use it only temporarily but then abandons it, taking no measures to ensure its return to its owner, he commits theft.

(d) **SG 3.5.4**

- 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 to 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 **public place**.
- To **lose** a firearm owing to a **failure to lock it away in a safe**, strong room or safe or owing to failure to keep the keys to the safe, strong room or device in safe custody.
- The pointing of a firearm (SG 6.2).

## QUESTION 2

(a)(i) **SG 8.6.2**

For property to be capable of being stolen, it must be

- **movable**
- **corporeal**,
- be capable of forming **part of commerce** - meaning it should **not** be a *res communes* - things belonging to everybody, nor *res derelictae* - abandoned property, nor *res nullius* - things belonging to nobody
- the property must **belong to someone else**
- **except** in the case of the arrogation of possession.

(ii) **SG 8.6.2 (2) and Casebook 252-256** - *Ndebele* 2012 (1) SACR 245 (GSJ).

- Yes. X can be convicted for stealing electricity.
- In *Ndebele* it was held that the courts have moved away from the physical handling of the property to a more abstract requirement of appropriation such as the manipulation of credit.
- There need not be physical removal but rather the deprivation of a characteristic and depriving the owner of a characteristic.
- Energy by electricity consists of electrons and the characteristic attached to electrons is energy which is consumed and is capable of theft.
- In the *Mintoor*-case it was held that electricity cannot be stolen.

(iii) **SG 3.3.**

- Yes. X can be found guilty of the crime of extortion.
- Extortion 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.
- Y applied pressure upon X, in the form of intimidation/threat of exposure, that he will not report him to the ABC company if X provides him with 20% of the proceeds from the vouchers X sells.

- There must be a **causal connection between the application of pressure and the acquisition of the thing**. It can be inferred that at the time when the scheme is exposed through an audit of all the issued vouchers, Y had already acquired 20% of the proceeds from the vouchers sold by X. Y acquired this benefit **as a result** of the intimidation/threat that he had placed upon X (ie. that Y would report him to the ABC company unless he complied with his request).
- See *Ex parte Minister of Justice: In re S v Jen S v Von Mollendorff* 1989 (4) SA 1028 (A).
- The benefit in this case is patrimonial and Y puts pressure on X in order to obtain this benefit. If Y already acquired the benefit he can be convicted of completed extortion.

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

**(i) SG 2.4.1.**

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.

**OR**

**(ii) SG 3.2.4.**

Corruption is defined as:

Anyone that

- (a) accepts any gratification from any other person, or
- (b) gives any gratification to any other person

in order to act in a manner that amounts to the illegal exercise of any duties, is guilty of the offence of corruption.

**(c)(i) SG 3.2.1** Corruption – trust in the authorities and authoritative organs/ or protects moral values / or preserves public welfare.

**(ii) SG 6.2.3** Pointing of a firearm – evils surrounding firearms/ the arousal of fear in the mind of Y of being struck by the bullet / physical integrity of a person.

**(iii) SG 7.5** Kidnapping - Freedom of movement and a parent's custody/ control over a child.

**QUESTION 3****(a)(i) SG 4.2.2.1 and 4.2.2.2**

Yes, X will be guilty of the crime of rape.

A female can be the perpetrator and the male the victim as the definition provides that any person who unlawfully and intentionally commits an act of sexual penetration with a complainant without their consent is guilty of the crime of rape.

Consent means voluntary and uncoerced agreement.

Consent is invalid in this case as Y submits to the intercourse due to force, intimidation or threats or where the victim is in an altered state of consciousness such as being under the influence of drugs.

**(ii) SG 6.1.5; 6.1.6, 6.1.7 and 7.2.7.3(4)**

X is guilty of both *crimen iniuria* and assault.

Assault is committed as there is an unlawful and intentional **direct application of force to person of Y**. This occurred through the rape of Y.

There is also unlawful and intentional **indirect application of force by forcing Y to consume the drugs**.

*Marx* 1962 (1) SA 848 (N) – alcohol was given to children to drink and they became sick – the fact that it was internal rather than external was irrelevant.

A 1993 (1) SA 600 (A) – in this case a policeman forced Y to drink his own urine –it was held the forced drinking of any substance constitutes assault.

There is also the unlawful and intentional inspiring of fear (of a belief) upon Y that force is immediately to be applied to him. By wielding a gun in her hand and by threatening to kill Y if Y did not have sexual intercourse with her, there was a threat of **immediate and unlawful violence** upon **the person** of Y. Y **subjectively believed** that X intended to carry out her threat and submitted to every command out of fear.

Certain acts of assault also qualify as *crimen iniuria*. *Crimen iniuria* is also committed as there is the unlawful and intentional serious infringement of the **dignity** of another committed in the case of a rape or an assault (ie forced drinking of the drugs) and also such infringement of the **privacy of the victim** in the case of the rape.

- (b) (i) **SG 4.7.2.2** children; age (word “minor” not sufficient).
- (ii) **SG 4.3.2.1** sexually violates; consent
- (iv) **SG 4.4.1(iv)** 18 years
- (iv) **SG 4.7.4.1(a)** sexual exploitation
- (v) **SG 4.7.5** sexual grooming
- (vi) **SG 3.2.6 and SG 3.2.7** recipient/receiver/corruptee; giver/corruptor
- (viii) **SG 11.2.1** insured; insurer/insurance company/insurance

## 4 New developments in criminal law: the 2015 amendment of the Sexual Offences Act

### PLEASE ADD THE FOLLOWING DISCUSSION AT THE END OF PAR 4.7.2.2 IN STUDY UNIT 4:

The amendments required in terms of the *Teddy Bear Clinic* case are now reflected in the *Criminal Law (Sexual Offences and Related Matters) Amendment Act 5 of 2015* which came into effect on 7<sup>th</sup> July 2015. In the preamble of the Act it is stated that the **primary objective of sections 15 and 16 of the Act is to protect children who are 12 years or older but under the age of 16 from ADULT sexual predators.** Therefore, the amendment does not mean that the age of consent to sexual acts is now lowered to 12 years. In accordance with the decision in the *Teddy Bear Clinic* case the following amendments have been made:

- **Section 1** of Act 5 of 2015 now provides that a “**child**” means a **person under the age of 18 years.**
- **Section 15(1)** which deals with **consensual sexual penetration of a child** now provides that:

a person (X) who commits an act of sexual penetration with a child (Y) **who is 12 years of age or older but under the age of 16 is, despite the consent of Y, guilty of the offence** of having committed an act of consensual sexual penetration with a child, **unless X**, at the time of the commission of such act, was

- (a) **12 years of age or older but under the age of 16 years; or**
- (b) **either 16 or 17 years and the age difference between X and Y was not more than two years.**

Therefore, if X, a 15-year-old boy sexually penetrates Y, a 12-year-old girl with her consent, he does not commit an offence in terms of section 15. Also, if a 17-year-old boy sexually penetrates a 15-year-old girl with her consent he does not commit an offence in terms of section 15.

It is also provided in article 15(2) of the amendment that the institution of a prosecution for an offence referred to in subsection (1) must be authorised in writing by the Director of Public Prosecutions **if X was either 16 or 17 years of age at the time of the alleged commission of the offence and the age difference between X and Y was MORE than two years. This means that it may be open to the relevant Director of Public Prosecutions to institute a prosecution in the instance where, for example, X a 17-year-old boy had sexually penetrated a 14-year-old girl with her consent.** However, this power may be delegated.

- **Section 16** of the Act provides the same as section 15 above, except that it relates to **sexual violation instead of sexual penetration.**
- Because the position is now regulated in terms of the amended sections 15 and 16, **section 9 of Act 5 of 2015 provides for the deletion of the defence set out in section 56(2)(b).**

You are advised therefore, to **DELETE** the discussion of section 56(2)(b) under par 4.7.2.2. **“Second Defence: X and Y are both children”.**

- **Section 56(2)(a) is, however, still a valid defence.**

## 5 Group discussion classes

Please take note that no group discussion classes will be held in 2016.

## 6 Number of tutorial letters

You will receive a total of **FOUR** (4) tutorial letters this semester. You received the first letter (101) on registration. In addition to this tutorial letter (102), you will also receive a third tutorial letter (201) which will provide the answers to the first compulsory assignment. The final tutorial letter (202) will provide commentary on the second compulsory assignment.

Please note that you can also access these tutorial letters electronically on *myUNISA* (<http://my.unisa.ac.za>) under the course code **CRW2602** at the link “Official Study Material”.

We wish you success with your studies!

Regards

**Prof N Mollema**

**Prof L Jordaan**

**Mr R Ramosa**

**Prof C van der Bijl**

**unisa/kr**