Tutorial Letter 201/2/2016

Criminal Law: General Principles

CRW2601

Semester 2

Department of Criminal and Procedural Law

This tutorial letter contains important information about the module.
Dear Student

This tutorial letter contains feedback on the first compulsory assignment for CRW2601 which was due on 22 August 2016.

Please take note: The following abbreviations are used in the discussion below:
SG – Study Guide for CRW2601

Important advice for answering problem-type questions:

The purpose of asking problem-type questions in this module is to test your understanding of the general principles of criminal liability; primarily (but not exclusively) the four elements of criminal liability: the act, compliance with definitional elements, unlawfulness and culpability (see SG 1.5). You must be able to, firstly, identify the element that is called into question in the factual scenario. This requires knowledge and understanding of the definitions of concepts such as the requirement of a voluntary act (SG 3.3.4.1) or dolus eventualis (SG 9.4.3), which are provided in grey blocks. You have also been provided with a sequence of investigation into the presence of the elements (SG 1.5.3) to enable you to identify the element correctly and speedily, and to focus on discussing the legal principles that are relevant to the question.

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 refer 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 may 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 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 discuss the principle(s) while applying it (them) to the facts. Doing this is not wrong, but 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 you to separate the second and third step. Another advantage of discussing the legal principle(s) before applying it (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”, etc. Please also note that in order for your conclusion to have any basis, it must be a deduction of your reasoning.

Please take note of the answers in this commentary as an illustration of the above:

**ANSWER**

(Note that the answer that we give here is much longer than the answer which was required for the assignment in order to indicate all possible marks which could have been awarded for your answer.)

(i) X1 can successfully rely on the ground of justification known as **private defence** (SG 5.3)

His defensive act (squirting A and B with a water cannon) was **directed against the attackers** (A was one of the attackers). SG 5.3.3(1).

His defensive act did not cause more harm than was necessary to ward off the attack (i.e in the light of all the circumstances, **there was a reasonable relationship between the attack and the defence**), when regard is had to the:

- **location of the incident.**
- **nature, severity and persistence of the attack** perpetrated by A and B. They continuously rammed their boat into the whaling boat and indeed caused damage to it.
- **nature of the means used** to offer the defence.
nature and extent of the harm likely to be caused by the defence. A water cannon is likely to stop the efforts of A and B, but would not ordinarily lead to the death of an individual.

For more information, see Steyn 2010 (1) SACR 411 (SCA) and SG 5.3.3(3).

(ii) B cannot rely on private defence, because there was no unlawful human attack by X1 against which he could lawfully defend himself against. (SG 5.3.2)

Differently stated, to constitute private defence the origin of the situation of emergency can only be an unlawful human attack. (SG 5.3.2 and SG 6.2.2)

(iii) B may possibly raise the ground of justification known as necessity (SG 6.2) because he acted to preserve his life against the threat of drowning (a chance circumstance/inevitable evil)

Whether a person can rely on the defence of necessity if he himself was personally responsible for causing the situation of emergency is a debatable question. The opinion expressed in SG 6.2.4(4), and by Snyman (Criminal Law 118-119), is that a person should not be precluded from successfully raising this defence merely because he caused the emergency himself. The two acts, namely the creation of the danger and the attempt to escape from the dangerous situation should be separated. Snyman is of the view that to project the first unlawful act onto the second act is reminiscent of the rejected versari in re illicita doctrine.

In Goliath 1972 (3) SA 1 (A), Rumpff JA noted a general observation that when it comes to self-preservation the ordinary person values his life more than that of another. This observation also applies were the act of self-preservation is directed against an innocent victim (as in necessity). On this view, it could be argued that B can successfully rely on the defence of necessity to the charge of murder of X3.

The alternative argument is that if the creation of the emergency arose from his initial unlawful act that amounts to a crime, then he cannot raise the defence of necessity to escape liability for the crime he caused in attempting to escape the emergency situation that he created. On the charge of murder of X3, B cannot successfully rely on the defence of necessity because the emergency situation he sought to escape from arose from his initial participation in unlawfully attacking the whaling boat.
Students were awarded marks for how they justified their conclusions.

This brings us to the end of this tutorial letter. Please do not hesitate to contact us if you experience any problems with the content of the course. All of the best with the next assignment!

Kind regards

Prof N Mollema
Prof L Jordaan
Mr R Ramosa

Unisa/kr