

**CRW1501**

May/June 2013

**INTRODUCTION TO THE GENERAL PRINCIPLES OF CRIMINAL LAW**

Duration 2 Hours

100 Marks

**EXAMINERS****FIRST**

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**Closed book examination**

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This paper consists of four (4) pages.

Answer all four questions

**QUESTION 1**

This question consists of five (5) questions marked 1.1 to 1.5 which appear below. Each question contains three statements marked (a) to (c). Some of the statements are correct and some are incorrect. You must decide which of the statements is/are correct. The three statements are followed by five allegations. Each of them alleges that a certain statement or combination of statements is correct. You must decide which allegation accurately reflects the conclusion you have reached and write down only the corresponding number in your answer book (either 1, 2, 3, 4 or 5). NB: you do NOT have to use a mark reading sheet to answer this question. You MUST answer in your answer book.

**1.1**

- (a) The general rule in criminal matters is that the onus is on the state to prove the accused person's guilt on a balance of probabilities
- (b) The state must prove that the accused person's conduct and state of mind complied with at least two of the elements of the crime with which he or she is charged
- (c) It is the state (or prosecution) that has to prove beyond reasonable doubt that an accused is guilty

**[TURN OVER]**

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

**1.2**

- (a) Well-known grounds of justification are private defence, necessity and culpability
- (b) Examples of people who lack criminal capacity are mentally ill persons and young children
- (c) In the case of a crime it is the private party who institutes action whereas in the case of a delict it is the state that prosecutes

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

**1.3**

- (a) The principle of legality is based on principles of constitutional democracy and equity as contained in the Constitution
- (b) A court of law must interpret the wording in the definition of a crime narrowly
- (c) Courts can create new crimes

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

**1.4**

- (a) The perpetrator of a criminal act must be a human being
- (b) Merely thinking of doing something unlawful is not punishable
- (c) A human being cannot be punished if he commits a crime through the agency of an animal

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

**[TURN OVER]**

## 1.5

- (a) X's act is the factual cause of Y's death if it is a *conditio sine qua non* of Y's death
- (b) An act is a *conditio sine qua non* for a situation if the act cannot be thought away without the situation (Y's death) disappearing at the same time
- (c) X's act is a *factual cause of Y's death* if it can be justified as reasonable and fair in terms of policy considerations
- (1) Only statement (a) is correct
- (2) Only statement (b) is correct
- (3) Only statements (a) and (b) are correct
- (4) Only statement (c) is correct.
- (5) Only statements (b) and (c) are correct

(2)  
[10]

## QUESTION 2

- 2.1 Name and discuss the points of difference between a crime and a delict [6]
- 2.2 List the rules that are contained in the principle of legality [5]
- 2.3 "An omission to act is only punishable if there is a legal duty upon a person to act positively" List and very briefly discuss the instances in which a person has a legal duty to act positively [16]
- 2.4 Define the theory of causation known as *novus actus interveniens* [3]  
[30]

## QUESTION 3

- 3.1 Can X rely on consent as a ground of justification in the following examples? Explain your answer
- 3.1.1 X is a police officer. He arrests Y, an attractive young woman, on a minor charge and takes her to the police station. X promises to release Y if she has sex with him. Y agrees and they have sex [2½]
- 3.1.2 X is a young body builder. He threatens to stab Y, a frail old woman, with a knife if she does not hand her handbag over to him. Y meekly hands the bag over to X. [2½]
- 3.2 In the case of *S v Mostert* 2006 (1) SACR 560 (N), the court applied the principle in section 199(6) of the Constitution of the Republic of South Africa, 1996, that the defence of obedience to orders will be successful provided that the orders were not manifestly unlawful. Discuss with reference to the requirements of this defence [6]
- 3.3 X, a well-built, 30 year old man is returning home from the supermarket carrying a bag containing his weekly groceries. He is approached by Y, a slightly-built 16 year old boy. Y grabs hold of the bag and tries to steal it. X retaliates by pulling a gun out of his trouser pocket and shoots Y in the chest. Y dies instantly. Can X successfully rely on private defence on a charge of murder? Discuss with reference to the requirements of the defence in private defence [10]

[TURN OVER]

- 3.4 Distinguish between absolute and relative compulsion, and indicate which of the two constitutes necessity [4]
- 3.5 List some of the interests that can be protected when invoking private defence as a ground of justification [5]  
[30]

**QUESTION 4**

- 4.1 Briefly explain the meaning of "culpability" as an element of criminal liability [3]
- 4.2 Explain the difference between the concepts of "criminal capacity" and "intention" [4]
- 4.3 Define the three forms of intention and illustrate each by means of a short, simple example. [8]
- 4.4 "Where there is no direct proof of intention, a court may infer or find that an accused acted intentionally from indirect proof. List some of the factors that a court could take into consideration when trying to prove intention [4]
- 4.5 Suppose X wants to kill his enemy, Y, by throwing a javelin at him. X throws the javelin at Y but just as the javelin leaves X's hand, Z runs out from behind a bush in front of Y and the javelin strikes and kills Z. Could X be found guilty of murdering Z? What about X's criminal liability in relation to Y? Explain [6]
- 4.6 Briefly explain the concept of the "reasonable person" [5]  
[30]

**TOTAL: 100 MARKS**