

08:30

16/16/08

F:HALL

EXAMS OFFICE  
USE ONLY

University of the Witwatersrand, Johannesburg

Course or topic No(s)

LAWS2001

Course topic names(s)  
Paper Number & title

CRIMINAL LAW

Examination / Test\* to be held during month(s) of (\*delete as applicable)

OCTOBER / NOVEMBER 2008

Year of study  
(Art & Science leave blank)

Degrees / Diplomas for which this course is prescribed  
(BSc (Eng) should indicate which branch)

LLB

Faculty/ies presenting candidates

COMMERCE, LAW AND  
MANAGEMENT

Internal examiner(s)  
and telephone extension number(s)

PROF. T. MOSIKATSANA	78475
MR. J. GRANT	78486
MS. A. STAROSTA	-

External examiner(s)

PROF S LÖTTER

Special materials required (graph/music/drawing paper maps, diagrams, tables, computer cards, etc)

COURSE OUTLINE ATTACHED

Time allowance

Course no: LAWS2001      Hours: 2

Instructions to candidates  
Examiners may wish to use this space to indicate, inter alia, the contribution made by this examination or test towards the year mark, if appropriate

1. Write the name of your lecturer on your script.
2. Answer ALL questions.

Internal Examiners or Heads of Departments are requested to sign the declaration overleaf

### QUESTION 1

Jabu is a municipal worker who reads water and electricity meters. He requires actual entry onto the premises to enable him to read the meters.. One Thursday afternoon Jabu arrives at 40 Pine Grove at 18:10., He rings the intercom numerous times. Dylan, , who has been residing at 40 Pine Grove for 5 years, hears the intercom but ignores it because he suspects that it might be pesky donation seekers. Since Pine Grove has recently been subjected to numerous violent robberies Dylan, as a rule, does not answer the intercom after 18h00 for safety reasons. Jabu rings the intercom at least 8 times. When it becomes evident that Jabu will not gain lawful entry onto the premises, he weighs up his options. The gate at 40 Pine Grove is fairly low and there is no electric fencing. However,,there is a sign that says “Enter at own risk”. To get to the meter Jabu would have to jump over the gate and walk between the house and a high concrete wall. This constitutes a narrow driveway that passes the main bedroom. Jabu enters the premises.

Jabu is wearing a blue overall with the logo of the City of Johannesburg on the front of the overall. While he is reading the meter, Jabu gets a call from a co-employee. Dylan is watching TV in his bedroom, barely awake. While dozing off, Dylan hears faint footsteps and then a muffled whispering. He also hears someone saying “I just have 2 more hits then I’m good to go”. Dylan fears for his life. He looks out of the window and sees the back of a large man in an overall holding a screwdriver. Dylan panics. Although his house is fitted with burglar bars, and his bedroom door is locked, Dylan worries that he may have left the back door open. Dylan retrieves his firearm from the electronic safe in his bedroom. The safe can only be opened by punching in a lengthy password He carefully opens his bedroom window and aims at the trespasser. At this moment, Dylan’s girlfriend drives into the driveway. Fearing that the trespasser will harm her, Dylan fires 8 shots at Jabu. When Dylan goes outside, he sees Jabu lying on the ground with his City of Johannesburg logo clearly visible on the front of his overall.

Forensic evidence shows that the first shot hit Jabu’s right shoulder, the force of which made him turn around and drop his screwdriver. The other 7 shots were fired directly into Jabu’s chest. Dylan is charged with murder.

Dylan approaches you, a criminal defence attorney to defend him in this matter. During the consultation Dylan alleges the following::

- he was merely acting in self-defence when he shot Jabu;
- he had every right to believe he was under an unlawful attack;
- since he had just woken, he was not thinking clearly;
- that the situation was, in any event, one of necessity in which he chose the lesser of two evils;
- he was entitled to ignore the door bell;
- Further, Jabu had consented to his death by entering the premises even though there was a sign saying: ENTER AT YOUR OWN RISK.

Taking account and addressing each of these allegations, consider critically whether Dylan may successfully raise the defenses of:

1. Self-defence;
2. Necessity; and
3. Consent.

**(20 marks)**

## QUESTION 2

Bob and Pete, two males, meet one night in a tavern. They fall instantly in love but since Bob is conservative and concerned about contracting HIV he refuses to engage in sexual intercourse with Pete until they have dated for at least 6 months, have both been tested for HIV and can present one another with HIV negative certificates. Pete knows that he is HIV positive and conceals this from Bob. Seven months into their relationship Bob presents Pete with a certificate indicating that he is HIV negative and asks Pete to take the test. Pete goes to Dr Doyl, the doctor he used to see when he was a student and who provided Pete with false medical certificates with which Pete secured deferred exams.

Pete tells Dr Doyl that he is HIV positive, but needs a certificate indicating that he is HIV negative so that his boyfriend would be prepared to engage in sexual intercourse with him. Dr Doyl gives Pete the certificate for which Pete pays R2000-00. Pete shows Bob the certificate as a result of which Bob allows Pete to have anal sexual intercourse with him. Bob contracts HIV.

Excluding a discussion of attempted murder, and in separate answers, critically discuss the criminal liability of:

(a) Pete

(10 marks)

(b) Dr Doyl

(10 marks)

**Should the students not be given an indication of the possible crimes that they could have committed? If left open-ended the student's answers could be "all over the place".**

## QUESTION 3

Beauty asks her mother, Mrs. Johnson to buy her a dress for the matric dance. Mrs. Johnson has no money. She takes R2 000 out of her employer's till with the aim of paying it back later.

Mrs. Johnson enters a fashion store and buys Beauty a dress for R1 500. As she is leaving the store she sees a beautiful bracelet on the floor. She kicks it out of the way with the idea to retrieve it from outside the store. The security guards observe her and arrest her at the door.

Mrs. Johnson sends Beauty the dress by mail. Beauty receives a consignment note, instructing her to fetch the parcel at the post office, which is 20 kilometers from the school. Beauty is aware that the school matron is attending a conference out of town. She takes the school matron's car without permission, to go and fetch her parcel. She hopes to return the car before the matron returns from the conference.

When Beauty arrives at the post office, she is instructed to look for her parcel in the store room. She immediately identifies and takes it without surrendering the consignment note and signing for the parcel. She puts it in the back of the car and drives off. On her way back to school she drives into a tree causing extensive damage to the car. She abandons the car, hoping no one will notice she had taken it. She takes a taxi to the school.

The next day, the postmaster calls the school. He informs the matron that Beauty has taken the parcel without surrendering the consignment note and signing for it. He also informs her that Beauty was driving the matron's car.

- (a) Discuss Mrs. Johnson's criminal liability in respect of the R2, 000 she took out of the till and the bracelet she was observed kicking out of the store.

**(10 marks)**

- (b) Excluding liability for malicious damage to property, discuss Beauty's criminal liability in respect of the matron's car and the parcel she took from the post office.

**(10 marks)**

**[TOTAL for this paper: 60 marks]**

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**Criminal Law 2008:**  
Laws 2001

**Information and Outline**

**General**

The course is taught in two double lecture periods per week for the entire academic year. Teaching is done through discussion as well as formal lecturing. Students are therefore expected to prepare for each class by reading the material indicated by the lecturer in advance. The basic material is to be found in the prescribed text book and in the law reports. Other material will be referred to from time to time throughout the year.

Because we will not have enough time to cover all the topics on the course outline in class, certain topics are designated 'self-study'. This means that you will not be lectured on these topics, but are expected to study them by yourselves. You are free, and are encouraged, to consult your lecturer on these topics in her or his consultation hours. The self-study topics may be examined in the exams.

**Lecturers and Class Allocation**

Students have been divided into four groups according to surnames. **You are REQUIRED, without exception, to attend the class of the lecturer to whom you have been assigned.** No personal preferences will be accommodated. You are subject to ejection, at any time, from any class to which you have not been allocated. Furthermore, lecturers will mark only the exam scripts of students allocated to their respective classes.

The lecturers in the course are as follows:

**James Grant** (Course Coordinator)

(Class allocation: Student numbers ...00-24)

(Room no LB 44; office tel: 011717-8486; e-mail: [grantj@law.wits.ac.za](mailto:grantj@law.wits.ac.za))

**Prof Tshepo Mosikatsana**

(Class allocation: Student numbers ...25-49)

(Room no LB 111A; office tel: 011717-8475; e-mail: [mosikatsanat@law.wits.ac.za](mailto:mosikatsanat@law.wits.ac.za))

**Alina Starosta**

(Class allocation: Student numbers ...50-74)

(Law Clinic; office tel: 011717-8532)

**Wandisile Mandlana**

(Class allocation: Student numbers ...75-99)

(Office tel: 011 669 95 62; Email: [w.Mandlana@bowman.co.za](mailto:w.Mandlana@bowman.co.za))

**Mark Allocation**

The final mark for the course is calculated thus:

Two 50% exams (2 hours each; one mid-year and one end-of-year; closed-book exams).

## Sources

### Prescribed

1. Jonathan Burchell and John Milton *Principles of Criminal Law* revised 3 ed (2006)  
(Note: please be careful to purchase the revised 3<sup>rd</sup> ed (2006); several copies of the unrevised 3<sup>rd</sup> ed (2005) are still for sale at book stores and look almost identical);

### OR

2. C R Snyman *Criminal Law* 4 ed (2002) (in English)  
(Note: the new 5<sup>th</sup> ed (2008) is due for release in March 2008)

### Recommended

1. Jonathan Burchell *Cases and Materials on Criminal Law* 3 ed (2007);
2. E M Burchell and P M A Hunt *South African Criminal Law and Procedure Vol 1 — General Principles of Criminal Law* 3 ed (1997) by J M Burchell;
3. P M A Hunt *South African Criminal Law and Procedure Vol II — Common-Law Crimes* 3 ed (1996) by J R L Milton;
4. J C de Wet and H L Swanepoel *Strafreg* 4 ed (1985)
5. P J Visser and M C Maré *General Principles of Criminal Law Through the Cases* 3 ed (1990).

## Outline and Reading List

The cases which appear in bold are important cases. Individual lecturers may state the importance of other cases in their classes.

### A INTRODUCTION

Burchell chaps 1-7  
or Snyman chap I

### B THE ACTUS REUS

#### B.1 Conduct

Burchell 178, 179 (section I), 185-208  
or Snyman 51-54, 59-61

- B.1.1 **Minister van Polisie v Ewels** 1975 (3) SA 590 (A)
- B.1.2 R v Achterdam 1911 EDL 336
- B.1.3 S v Brick 1973 (2) SA 571 (A)
- B.1.4 R v Chenjere 1960 (1) SA 473 (FC)
- B.1.5 R v Eustace (2) 1948 (3) SA 859 (T)
- B.1.6 S v A 1993 (1) SACR 600 (A)
- B.1.7 S v Fernandez 1966 (2) SA 259 (A)
- B.1.8 S v Gaba 1981 (3) SA 745 (O)
- B.1.9 S v Govender 2004 (2) SACR 381 (SCA)
- B.1.10 Silva's Fishing Corporation v Maweza 1957 (2) SA 256 (A)

#### B.2 Voluntariness

Burchell chap 9  
Or Snyman 55-58

- B.2.1 R v Dhlamini 1955 (1) SA 120 (T)
- B.2.2 R v Schoonwinkel 1953 (3) SA 136 (C)
- B.2.3 R v Victor 1943 TPD 77
- B.2.4 S v Chretien 1981 (1) SA 1097 (A)
- B.2.5 S v Goliath 1972 (3) SA 1 (A)
- B.2.6 S v Johnson 1969 (1) SA 201 (A)
- B.2.7 S v Kok 2001 (2) SACR 106 (SCA)
- B.2.8 S v Mahlinza 1967 (1) SA 408 (A)
- B.2.9 S v Trickett 1973 (3) SA 526 (T)
- B.2.10 S v Van Rensburg 1987 (3) SA 35 (T)

#### B.3 Causation

Burchell chap 11  
Or Snyman 73-91

- B.3.1 Ex parte Minister van Justisie: In re S v Grotjohn 1970 (2) SA 355 (A)
- B.3.2 **Minister of Police v Skosana** 1977 (1) SA 31 (A)
- B.3.3 R v Blaue [1975] 3 All ER 446 (CA)
- B.3.4 R v Loubser 1953 (2) PH H190 (W)
- B.3.5 R v Mabile 1968 (4) SA 811 (R)
- B.3.6 S v Van As 1967 (4) SA 594 (A)
- B.3.7 R v Van den Berg 1948 (2) SA 836 (C)

- B.3.8 S v Burger 1975 (4) SA 877 (A)
- B.3.9 S v Counter 2003 (1) SACR 143 (SCA)
- B.3.10 **S v Daniëls 1983 (3) SA 275 (A)**
- B.3.11 S v Hartman 1975 (3) SA 532 (C)
- B.3.12 S v Mbambo 1965 (2) SA 845 (A)
- B.3.13 S v Mokgethi 1990 (1) SA 32 (A)**
- B.3.14 S v Ramosunya 2000 (2) SACR 257 (T)
- B.3.15 S v Williams 1986 (4) SA 1188 (A)
- B.3.16 S v Tembani 2007 (1) SACR 355 (SCA)

## C MENS REA

### C.1 General & Versari in Re Illicita

Burchell chap 29, pp 544-545, chap 37  
Or Snyman 143-158

- C.1.1 R v Churchill 1959 (2) SA 575 (A)
- C.1.2 R v Matsepe 1931 AD 150
- C.1.3 R v Wallendorf 1920 AD 383
- C.1.4 S v Bernardus 1965 (3) SA 287 (A)
- C.1.5 S v Van der Mescht 1962 (1) SA 521 (A)

### C.2 Intention (Dolus)

Burchell chaps 30 (leave out section (c) on pp 473-480) & 31  
Or Snyman 179-189 (up to section 13), 191 (section 17), 200 (section 20)

- C.2.1 R v Basson 1961 (3) SA 279 (T)
- C.2.2 R v Horn 1958 (3) SA 457 (A)
- C.2.3 R v Huebsch 1953 (2) SA 561 (A)
- C.2.4 R v Jolly 1923 AD 176
- C.2.5 R v Kewelram 1922 AD 213
- C.2.6 R v Mzwakala 1957 (4) SA 273 (A)
- C.2.7 R v Ndhlovu 1945 AD 369
- C.2.8 R v Sutherland 1950 (4) SA 66 (T)
- C.2.9 R v Z 1960 (1) SA 739 (A)
- C.2.10 S v Beukes 1988 (1) SA 511 (A)
- C.2.11 S v Campos 2002 (1) SACR 233 (SCA)
- C.2.12 S v De Bruyn 1968 (4) SA 498 (A)
- C.2.13 S v Kazi 1963 (4) SA 742 (W)
- C.2.14 S v Mini 1963 (3) SA 188 (A)
- C.2.15 S v Ngubane 1985 (3) SA 677 (A)
- C.2.16 S v Shaik 1983 (4) SA 57 (A)
- C.2.17 S v Sigwahla 1967 (4) SA 566 (A)

### C.3 Negligence (Culpa)

Burchell chap 35 (leave out sections XII, XIII and XVI)  
Or Snyman 208-221

- C.3.1 A-G Natal v Ndlovu 1988 (1) SA 905 (A)
- C.3.2 **Kruger v Coetzee 1966 (2) SA 428 (A)**
- C.3.3 R v Hedley 1958 (1) SA 362 (N)
- C.3.4 R v Lennett 1917 CPD 444
- C.3.5 **R v Mbombela 1933 AD 269**



- C.3.6 R v Meiring 1927 AD 41
- C.3.7 S v Melk 1988 (4) SA 561 (A)
- C.3.8 S v Bernardus 1965 (3) SA 287 (A)
- C.3.9 S v Burger 1975 (4) SA 877 (A)
- C.3.10 S v Mahlahela 1966 (1) SA 226 (A)
- C.3.11 S v Ngubane 1985 (3) SA 677 (A)
- C.3.12 S v Southern 1965 (1) SA 860 (N)
- C.3.13 S v Van As 1967 (4) SA 594 (A)
- C.3.14 S v Van As 1976 (2) SA 921 (A)
- C.3.15 S v Van der Mescht 1962 (1) SA 521 (A)
- C.3.16 Balkwell v S [2007] 3 All SA 465 (SCA) – death from assault foreseeable

C.4 Mistake of Fact

Burchell 502-503

Or Snyman 189-191

C.4.1 R v Mbombela 1933 AD 269

C.4.2 S v De Blom 1977 (3) SA 513 (A)

C.5 Aberratio Ictus

Burchell 507-511

Or Snyman 195-200

C.5.1 R v Koza 1949 (4) SA 555 (A)

C.5.2 R v Kuzwayo 1949 (3) SA 761 (A)

C.5.3 R v Longone 1938 AD 532

C.5.4 S v Mavhungu 1981 (1) SA 56 (A)

C.5.5 S v Mkansi 2004 (1) SACR 281 (T)

C.5.6 S v Mtshiza 1970 (3) SA 747 (A)

C.5.7 S v Raisa 1979 (4) SA 541 (O)

C.5.8 S v Tissen 1979 (4) SA 293 (T)

C.6 Mens Rea in Relation to Unlawfulness & Mistake of Law

Burchell chap 32 & pp 502-507 & 541-543

Or Snyman 200-208, 220-221

C.6.1 R v Hele 1947 (1) SA 272 (E)

C.6.2 R v Sachs 1953 (1) SA 392 (A)

C.6.3 R v Werner 1947 (2) SA 828 (A)

C.6.4 S v Claasens 1992 (2) SACR 434 (T)

C.6.5 **S v De Blom 1977 (3) SA 513 (A)**; R C Whiting 'Changing the face of mens rea' (1978) 95 *SALJ* 1

C.6.6 S v De Ruiter 2004 (1) SACR 332 (W)

C.6.7 S v Du Toit 1981 (2) SA 33 (C)

C.6.8 S v International Computer Broking and Leasing 1996 (3) SA 582 (W)

C.6.9 S v Longdistance (Natal) (Pty) Ltd 1990 (2) SA 277 (A)

C.6.10 S v Martin 2001 (2) SACR 271 (C)

C.6.11 S v Motleleni 1976 (1) SA 405 (A)

C.6.12 S v Ntuli 1975 (1) SA 429 (A)

C.6.13 S v Rabson 1972 (4) SA 574 (T)

C.6.14 S v Tshwape 1964 (4) SA 327 (C)

C.6.15 *S v Waglines (Pty) Ltd* 1986 (4) SA 1135 (N)

C.7 Qualification of the Contemporaneity Principle & Mistake as to the Causal Sequence

Burchell 473-480 & chap 37

Or Snyman 147-8, 191-195

C.7.1 *R v Chiswibo* 1961 (2) SA 714 (FC)

C.7.2 *R v Thabo Meli* [1954] 1 All ER 373 (PC)

C.7.3 ***S v Goosen 1989 (4) SA 1013 (A)***; Andrew Paizes "Mistake as to the causal sequence" and "mistake as to the causal act": Exploring the relation between mens rea and the causal element of the actus reus' (1993) 110 *SALJ* 493

C.7.4 ***S v Masilela 1968 (2) SA 558 (A)***

C.8 Mens Rea in Statutory Offences

Burchell chap 33, pp 537-540 & 545-551

Or Snyman 242-247

C.8.1 *A-G Natal v Ndlovu* 1988 (1) SA 905 (A)

C.8.2 ***Amalgamated Beverage Industries Natal v Durban City Council 1994 (3) SA 170 (A); 1994 (3) SA 646 (A)***

C.8.3 *R v H* 1944 AD 121

C.8.4 *S v Arenstein* 1964 (1) SA 361 (A)

C.8.5 ***S v Coetzee 1997 (3) SA 527 (CC)***

C.8.6 *S v De Blom* 1977 (3) SA 513 (A)

C.8.7 *S v Du Toit* 1981 (2) SA 33 (C)

C.8.8 *S v Gampel Bros & Barnett* 1978 (3) SA 772 (A)

C.8.9 *S v Jassat* 1965 (3) SA 423 (A)

C.8.10 *S v Melk* 1988 (4) SA 561 (A)

C.8.11 *S v Ngwenya* 1979 (2) SA 96 (A)

C.8.12 *S v Oberholzer* 1971 (4) SA 602 (A)

C.8.13 *S v Qumbella* 1966 (4) SA 356 (A)

C.8.14 *S v Unverdorben* 1990 (2) SACR 30 (T)

C.8.15 *S v Waglines (Pty) Ltd* 1986 (4) SA 1135 (N)

D CRIMINAL CAPACITY

Burchell chap 24

Or Snyman 158-163

D.1 Youth (Self-Study)

Burchell chap 25 & pp 511-512

Or Snyman 176-179

D.1.1 *A-G Tvl v Add Mag Jhb* 1924 AD 421

D.1.2 *R v Albert* (1895) 12 SC 272

D.1.3 *R v Dikant* 1948 (1) SA 693 (O)

D.1.4 *R v K* 1956 (3) SA 353 (A)

D.1.5 *S v Makete* 1971 (4) SA 214 (T)

D.1.6 *S v Mohlobane* 1969 (1) SA 561 (A)

D.1.7 *S v Ngobese* 2002 (1) SACR 562 (W)

D.2 Insanity (Self-Study)

Burchell chap 26 & p 512

Or Snyman 167-176

D.2.1 A-G for Northern Ireland v Bratty [1961] 3 All ER 523 (HL)

D.2.2 R v Hay (1899) 16 SC 290

D.2.3 R v Holliday 1924 AD 250

D.2.4 R v Kemp [1957] 1 QB 399

D.2.5 R v Kennedy 1951 (4) SA 431 (A)

D.2.6 R v Koortz 1953 (1) SA 371 (A)

D.2.7 R v Kumalo 1956 (3) SA 238 (N)

D.2.8 S v Kavin 1978 (2) SA 731 (W)

D.2.9 S v Mahlinza 1967 (1) SA 408 (A)

D.2.10 S v McBride 1979 (4) SA 313 (W)

D.2.11 S v Mnyanda 1976 (2) SA 751 (A)

E SPECIAL FACTORS BEARING ON MENS REA OR CRIMINAL CAPACITY

E.1 Intoxication

Burchell chap 27 & pp 512-513

Or Snyman 221-234

E.1.1 R v Bourke 1916 TPD 303

E.1.2 R v Fowlie 1906 TS 505

E.1.3 R v Pethla 1956 (4) SA 605 (A)

E.1.4 R v Vermeulen 1953 (4) SA 231 (T)

E.1.5 **S v Chretien 1981 (1) SA 1097 (A)**; Criminal Law Amendment Act 1 of 1988; Andrew Paizes 'Intoxication through the looking-glass' (1988) 105 *SALJ* 776

E.1.6 S v Engelbrecht 1966 (1) SA 210 (C)

E.1.7 S v Hartyani 1980 (3) SA 613 (T)

E.1.8 S v Jassane 1973 (4) SA 658 (T)

E.1.9 **S v Johnson 1969 (1) SA 201 (A)**

E.1.10 S v Johnson 1970 (3) SA 535 (C)

E.1.11 S v Lange 1990 (1) SACR 199 (W)

E.1.12 S v Mbele 1991 (1) SA 307 (W)

E.1.13 S v S 1961 (4) SA 792 (N)

E.1.14 S v September 1996 (1) SACR 325 A

E.1.15 S v V 1979 (2) SA 656 (A)

E.1.16 S v Wilson 1968 (4) SA 477 (A)

E.2 Provocation, emotional stress and other forms of non-pathological incapacity

Burchell chap 28 & pp 513-514

Or Snyman 163-167, 235-240

E.2.1 R v Butelezi 1925 AD 160

E.2.2 R v Krull 1959 (3) SA 392 (A)

E.2.3 R v Thibani 1949 (4) SA 720 (A)

E.2.4 S v Arnold 1985 (3) SA 256 (C)

E.2.5 S v Bailey 1982 (3) SA 772 (A)

- E.2.6 S v Campher 1987 (1) SA 940 (A)
- E.2.7 S v Dlodlo 1966 (2) SA 401 (A)
- E.2.8 S v Eadie 2002 (3) SA 719 (SCA)**
- E.2.9 S v Kensley 1995 (1) SACR 646 (A)
- E.2.10 S v Kok 2001 (2) SACR 106 (SCA)
- E.2.11 S v Laubscher 1988 (1) SA 163 (A)
- E.2.12 **S v Mokonto 1971 (2) SA 319 (A)**
- E.2.13 S v Nursingh 1995 (2) SACR 331 (D)
- E.2.14 S v Potgieter 1994 (1) SACR 61 (A)
- E.2.15 S v Scholtz 2006 (1) SACR 442 (E)
- E.2.16 **S v Wiid 1990 (1) SACR 561 (A)**

## F GROUNDS OF JUSTIFICATION

### F.1 General

- Burchell chap 12
- Or Snyman 92-101
- F.1.1 Clarke v Hurst NO 1992 (4) SA 630 (D)
- F.1.2 R v Britz 1949 (3) SA 293 (A)
- F.1.3 R v Ndhlovu 1945 AD 369
- F.1.4 S v Swanepoel 1985 (1) SA 576 (A)

### F.2 Private Defence

- Burchell chaps 13 & 14, pp 514-516
- Or Snyman 102-113
- F.2.1 Coetzee v Fourie 2005 (1) SACR 382 (SCA)
- F.2.2 **Ex parte Minister van Justisie: In re S v Van Wyk 1967 (1) SA 488 (A)**
- F.2.3 Mugwena v Minister of Safety and Security [2006] 2 All SA 126 (SCA)
- F.2.4 R v Hele 1947 (1) SA 272 (E)
- F.2.5 R v Hope 1917 NPD 145
- F.2.6 R v Mathlau 1958 (1) SA 350 (A)
- F.2.7 R v Mhlongo 1960 (4) SA 574 (A)
- F.2.8 R v Patel 1959 (3) SA 121 (A)
- F.2.9 R v Stephen 1928 WLD 170
- F.2.10 R v Van Vuuren 1961 (3) SA 305 (E)
- F.2.11 R v Zikalala 1953 (2) SA 568 (A)
- F.2.12 S v Bailey 1982 (3) SA 772 (A)
- F.2.13 S v De Oliveira 1993 (2) SACR 59 (A)
- F.2.14 S v Engelbrecht 2005 (2) SACR 41 (W)
- F.2.15 S v Joshua 2003 (1) SACR 1 (SCA)
- F.2.16 S v Mogohlwane 1982 (2) SA 587 (T)
- F.2.17 S v Mokonto 1971 (2) SA 319 (A)
- F.2.18 S v Ntuli 1975 (1) SA 429 (A)
- F.2.19 S v T 1986 (2) SA 112 (O)
- F.2.20 Govender v S [2007] 3 All SA 580 (SCA) – force only before attack ended

### F.3 Necessity, Duress and Compulsion

Burchell chap 15 & p 517

Or Snyman 113-123

- F.3.1 Abbott v R [1976] 3 All ER 140 (PC)
- F.3.2 Lynch v DPP [1975] 1 All ER 913 (HL)
- F.3.3 R v Dudley & Stephens (1884) 14 QBD 273
- F.3.4 R v Canestra 1951 (2) SA 317 (A)
- F.3.5 R v Garnsworthy 1923 WLD 17
- F.3.6 R v Howe [1987] 1 All ER 771 (HL)
- F.3.7 R v Mahomed 1938 AD 30
- F.3.8 R v Werner 1947 (2) SA 828 (A)
- F.3.9 S v Adams; S v Werner 1981 (1) SA 187 (A)
- F.3.10 S v Alfeus 1979 (3) SA 145 (A)
- F.3.11 S v Bailey 1982 (3) SA 772 (A)
- F.3.12 S v Bradbury 1967 (1) SA 387 (A)
- F.3.13 **S v Goliath 1972 (3) SA 1 (A)**
- F.3.14 S v Kibi 1978 (4) SA 173 (E)
- F.3.15 S v Mandela 2001 (1) SACR 156 (C)
- F.3.16 S v Peterson 1980 (1) 938 (A)
- F.3.17 S v Pretorius 1975 (2) SA 85 (SWA)

F.4 Impossibility (Self-Study)

Burchell chap 16

Or Snyman 61-63

- F.4.1 Attorney-General v Grieve 1934 TPD 187
- F.4.2 R v Canestra 1951 (2) SA 317 (A)
- F.4.3 R v Close Settlement Corporation 1922 AD 294
- F.4.4 R v Jetha (1929) 50 NPD 91
- F.4.5 R v Mostert 1915 CPD 266
- F.4.6 S v Mafu 1966 (2) SA 240 (E)

F.5 Consent

Burchell chap 20

Or Snyman 123-128

- F.5.1 **Clarke v Hurst NO 1992 (4) SA 630 (D)**
- F.5.2 R v Brown [1993] 2 All ER 75
- F.5.3 R v McCoy 1953 (2) SA 4 (SR)
- F.5.4 S v Collett 1978 (3) SA 206 (RA)
- F.5.5 S v Robinson 1968 (1) SA 666 (A)
- F.5.6 S v Sikunyana 1961 (3) SA 549 (E)
- F.5.7 South African Law Commission Report: Project 86: Euthanasia and the Artificial Preservation of Life (November 1998)
- F.5.8 Stoffberg v Elliot 1923 CPD 148

G CRIMINAL LIABILITY OF ARTIFICIAL PERSONS

G.1 Liability under s 332 of the Criminal Procedure Act

Burchell chap 39

Or Snyman 249-252

- G.1.1 Ex parte Minister van Justisie: In re S v SAUK 1992 (4) SA 804 (A);  
Andrew Paizes 1992 AS 511

- G.1.2 R v Bennett & Co (Pty) Ltd 1941 TPD 194
- G.1.3 R v Booth Road Trading Co (Pty) Ltd 1947 (1) PH K48 (N)
- G.1.4 R v Levy 1929 AD 312
- G.1.5 R v Markins Motors (Pty) Ltd 1959 (3) SA 508 (A)
- G.1.6 R v Van Heerden 1946 AD 168
- G.1.7 R v Wege 1959 (3) SA 268 (C)
- G.1.8 **S v Coetzee 1997 (3) SA 527 (CC)**
- G.1.9 S v Klopper 1975 (4) SA 773 (A)

## H DEGREES OF PARTICIPATION IN CRIME

### H.1 Principals and Accessories

Burchell 572-574, 599-605

Or Snyman 253-259, 269-274

H.1.1 R v Jackelson 1920 AD 486

H.1.2 R v M 1950 (4) SA 101 (T)

H.1.3 R v Mbande 1933 AD 382

H.1.4 R v Megson 1931 TPD 371

H.1.5 R v Parry 1924 AD 401

H.1.6 R v Rasool 1924 AD 44

H.1.7 R v Shikuri 1939 AD 225

H.1.8 R v White 1934 CPD 60

H.1.9 S v D 1969 (2) SA 591 (RAD)

H.1.10 S v Kellner 1963 (2) SA 435 (A)

H.1.11 **S v Williams 1980 (1) SA 60 (A)**; R C Whiting 'Principals and accessories in crime' (1980) 97 *SALJ* 199

H.1.12 S v Wannenburg 2007 (1) SACR 27 (C)

### H.2 Common Purpose

Burchell 574-599

Or Snyman 259-268

H.2.1 R v Dladla 1962 (1) SA 307 (A)

H.2.2 R v Du Randt 1954 (1) SA 313 (A)

H.2.3 R v Mgxwiti 1954 (1) SA 370 (A)

H.2.4 R v Shezi 1948 (2) SA 119 (A)

H.2.5 S v Beahan 1992 (1) SACR 307 (ZS)

H.2.6 S v Dlamini 1984 (3) SA 360 (N)

H.2.7 S v Khanye [2004] 1 All SA 662 (T)

H.2.8 S v Khoza 1982 (3) SA 1019 (A)

H.2.9 S v Khoza [2006] 4 All SA 89 (N)

H.2.10 S v Madlala 1969 (1) SA 637 (A)

H.2.11 S v Malinga 1963 (1) SA 692 (A)

H.2.12 **S v Mgedezi 1989 (1) SA 687 (A)**

H.2.13 S v Molimi 2006 (2) SACR 8 (SCA)

H.2.14 **S v Motaung 1990 (4) SA 485 (A)**

H.2.15 S v Musingadi 2005 (1) SACR 395 (SCA)

H.2.16 S v Ngobozi 1972 (3) SA 476 (A)

H.2.17 S v Nhlapo 1981 (2) SA 744 (A)

H.2.18 **S v Nkwenja 1985 (2) SA 560 (A)**

- H.2.19 S v Nzo 1990 (3) SA 1 (A)
- H.2.20 **S v Safatsa 1988 (1) SA 868 (A)**
- H.2.21 S v Sibeko 2004 (2) SACR 22 (SCA)
- H.2.22 **S v Singo 1993 (2) SA 765 (A)**; Andrew Paizes 'Common purpose by active association: Some questions and difficult choices' (1995) 112 *SALJ* 561
- H.2.23 S v Thomo 1969 (1) SA 385 (A)

### H.3 Accessories after the Fact

- Burchell chap 42
- Or Snyman 274-278
- H.3.1 Ex parte Minister of Justice: In re R v Maserow 1942 AD 164
- H.3.2 R v Gani 1957 (2) SA 212 (AD)**
- H.3.3 R v Jongani 1937 AD 401
- H.3.4 R v Mlooi 1925 AD 131
- H.3.5 R v Nkai Majara [1954] AC 235 (PC)
- H.3.6 R v Pather 1927 TPD 800
- H.3.7 S v Jonathan 1987 (1) SA 633 (A)**
- H.3.8 S v Rossi-Conti 1971 (2) SA 62 (RA)
- H.3.9 S v Velumurugen 1985 (2) SA 437 (D)

## I INCHOATE OFFENCES

### I.1 Attempts

- Burchell chaps 43 & 44
- Or Snyman 279-292
- I.1.1 R v B 1958 (1) SA 199 (A)
- I.1.2 **R v Davies 1956 (3) SA 52 (A)**
- I.1.3 R v Hlatwayo 1933 TPD 441
- I.1.4 R v Katz 1959 (3) SA 408 (C)
- I.1.5 R v Nhlovo 1921 AD 485
- I.1.6 **R v Schoombie 1945 AD 541**
- I.1.7 R v Sharpe 1903 TS 868
- I.1.8 S v du Plessis 1981 (3) SA 382 (A)
- I.1.9 S v Laurence 1975 (4) SA 825 (A)
- I.1.10 S v Palmos 1979 (2) SA 82 (A)
- I.1.11 S v W 1976 (1) SA 1 (A)

### I.2 Incitement (Self-Study)

- Burchell chap 45
- Or Snyman 295-298
- I.2.1 R v Milne & Erleigh (7) 1951 (1) SA 791 (A)
- I.2.2 R v Nhlovo 1921 AD 485
- I.2.3 R v Wolff 1930 TPD 821
- I.2.4 S v Nkosiyana 1966 (4) SA 655 (A)

### I.3 Conspiracy (Self-Study)

- Burchell chap 46
- Or Snyman 292-295

- I.3.1 R v Harris (1927) 48 NLR 330
- I.3.2 R v Kaplan (1893) 10 SC 259
- I.3.3 R v S 1959 (1) SA 680 (C)
- I.3.4 S v Alexander 1965 (2) SA 818 (C)
- I.3.5 S v Basson 2000 (1) SACR 1 (T)
- I.3.6 S v Du Toit (3) 2004 (1) SACR 66 (T)

## SPECIFIC CRIMES

### J Theft

Burchell chaps 61 & 62, pp 798-805  
Or Snyman 469-500

#### J.1 Contrectatio

- J.1.1 R v Carelse and Kay 1920 CPD 471
- J.1.2 R v Makonie 1942 OPD 164
- J.1.3 R v Mapiza 1945 (1) PH H68 (C)
- J.1.4 R v Milne and Erleigh (7) 1951 (1) SA 791 (A)
- J.1.5 R v Mlooi 1925 AD 131
- J.1.6 R v Moodley (1914) 35 NLR 514
- J.1.7 R v Naidoo 1949 (4) SA 858 (A)
- J.1.8 R v Nerera 1939 SR 297
- J.1.9 R v Nhleko 1920 TPD 231
- J.1.10 R v Shangase 1960 (1) PH H123 (N)
- J.1.11 R v Strydom 1952 (2) SA 397 (T)
- J.1.12 R v Tarusika 1959 (1) R & N 51 (SR)
- J.1.13 R v Taurusarira 1945 SR 12
- J.1.14 S v Bergh 1975 (3) SA 359 (O)
- J.1.15 **S v Dlamini 1984 (3) SA 196 (N)**
- J.1.16 S v Graham 1975 (3) SA 569 (A)
- J.1.17 S v Mani 2002 (2) SACR 393 (E)
- J.1.18 S v Tau 1996 (2) SACR 97 (T)
- J.1.19 S v Van Coller (1989) 15 *Cape LJ* 281
- J.1.20 S v Verwey 1968 (4) SA 682 (A)

#### J.2 Unlawful Taking

- J.2.1 **Ex parte Minister of Justice: In re R v Gesa; R v de Jongh 1959 (1) SA 234 (A)**
- J.2.2 **Ex parte Minister of Justice: In re R v Maserow 1942 AD 164**
- J.2.3 R v Jona 1961 (2) SA 301 (W)
- J.2.4 R v Lepheana 1955 (3) SA 334 (N)
- J.2.5 S v De Jager 1965 (2) SA 616 (A)
- J.2.6 S v Graham 1975 (3) SA 569 (A)

#### J.3 Intent to Steal

- J.3.1 R v Buffel Dikgat 1928 GWL 11
- J.3.2 R v De Kock 1951 (2) SA 342 (T)
- J.3.3 R v De Ruiters 1957 (3) SA 361 (A)
- J.3.4 R v Geddes 1964 (4) SA 48 (SR,AD)
- J.3.5 R v Harlow 1955 (3) SA 259 (T)



- J.3.6 R v Hendricks 1938 CPD 456
- J.3.7 R v Kinsella 1961 (3) SA 519 (C)
- J.3.8 **R v Laforte 1922 CPD 487**
- J.3.9 R v Lahee 1941 EDL 215
- J.3.10 R v Markin's Motors 1959 (3) SA 508 (A)
- J.3.11 R v Maruba 1942 OPD 51
- J.3.12 R v Mtshali 1960 (4) SA 252 (N)
- J.3.13 R v Ndhlela 1956 (2) SA 4 (N)
- J.3.14 R v Ndukiso 1945 EDL 119
- J.3.15 R v Nqwilis 1922 EDL 113
- J.3.16 **R v Sibiyi 1955 (4) SA 247 (A)**
- J.3.17 R v Slabbett 1941 EDL 109
- J.3.18 S v De Blom 1977 (3) SA 513 (A)
- J.3.19 S v Dreyer 1967 (4) SA 614 (E)
- J.3.20 S v Johnson 1977 (4) SA 116 (RA)
- J.3.21 S v Modise 1966 (4) SA 680 (GW)
- J.3.22 S v Rantsane 1973 (4) SA 380 (O)
- J.3.23 S v Van Coller 1970 (1) SA 417 (A)

J.4 Property Capable of Being Stolen

- J.4.1 Queen v Philander Jacobs (1876) 7 Buch 171
- J.4.2 R v Albasini 1967 (4) SA 605 (RA)
- J.4.3 R v Bruigom 1933 TPD 109
- J.4.4 R v Cheeseborough 1948 (3) SA 756 (T)
- J.4.5 R v Janoo 1959 (3) SA 107 (A)
- J.4.6 R v Judelman (1893) 10 SC 12
- J.4.7 R v Manuel 1953 (4) SA 523 (A)
- J.4.8 R v Matlare 1965 (3) SA 326 (C)
- J.4.9 R v Milne and Erleigh (7) 1951 (1) SA 791 (A)
- J.4.10 R v Mofohla 1958 (2) SA 373 (SR)
- J.4.11 R v Munango 1956 (1) SA 438 (SWA)
- J.4.12 R v Pretorius 1908 TS 272
- J.4.13 R v Renaud 1922 CPD 322
- J.4.14 R v Satsky 1915 CPD 574
- J.4.15 R v Schoulides 1956 (2) SA 388 (A)
- J.4.16 R v Shandu 1927 TPD 786
- J.4.17 R v Von Elling 1945 AD 234
- J.4.18 R v Weiss 1934 AD 41
- J.4.19 R v Wilson 1961 (1) SA 431 (FC)
- J.4.20 S v Graham 1975 (3) SA 569 (A)
- J.4.21 S v Johnson 1977 (4) SA 116 (RA)
- J.4.22 S v Kimmich 1996 (2) SACR 200 (C)
- J.4.23 S v Luther 1962 (3) SA 506 (A)
- J.4.24 S v Mintoor 1996 (1) SACR 514 (C)

J.5 Continuing Offence

- J.5.1 S v Cassiem 2001 (1) SACR 489 (SCA)

K Unauthorized Borrowing (contravening s 1 of General Law Amendment Act 50 of 1956)

Burchell 809-816

Or Snyman 500-506

- K.1 R v Dunyua 1961 (3) SA 644 (O)
- K.2 R v Maarman 1959 (2) PH H217 (GW)
- K.3 R v Mtshali 1960 (4) SA 252 (N)
- K.4 R v Seeiso 1958 (2) SA 231 (GW)
- K.5 **S v Rheeder 2000 (2) SACR 558 (A)**
- K.6 S v Terblance 2007 (1) SACR 545 (C)

L Failure to Give Account of Possession of Goods Suspected of Being Stolen  
(contravening s 36 of the General Law Amendment Act 62 of 1955)

Burchell 808 (section F)

Or Snyman 513-517

- L.1 **Osman v Attorney-General, Transvaal 1998 (4) SA 1224 (CC)**
- L.2 R v Ismail 1958 (1) SA 206 (A)
- L.3 S v Mbele 2004 (2) SACR 537 (Ck)
- L.4 S v Rubenstein 1964 (3) SA 480 (A)
- L.5 S v Aube 2007 (1) SACR 655 (W)

M Robbery

Burchell chap 64

Or Snyman 506-510

- M.1 **Ex parte Minister of Justice: In re R v Gesa; R v De Jongh 1959**  
**(1) SA 234 (A)**
- M.2 **Ex parte Minister van Justisie: In re S v Seekoei 1984 (4) SA 690**  
**(A)**
- M.3 R v Edwards (1843) 1 Cox CC 32
- M.4 R v Kammusamy 1959 (1) SA 825 (N)
- M.5 R v Magao 1959 (1) SA 489 (A)
- M.6 R v Matshaba 1961 (3) SA 78 (T)
- M.7 S v Dlamini 1975 (2) SA 524 (D)
- M.8 S v Hlatswayo 1964 (2) SA 123 (T)
- M.9 S v Malinga 1962 (3) SA 589 (T)
- M.10 S v Marais 1969 (4) SA 532 (NC)
- M.11 S v Mati 2002 (1) SACR 323 (C)
- M.12 S v Moerane 1962 (4) SA 105 (T)
- M.13 S v Mofokeng 1982 (4) SA 147 (T)
- M.14 S v Mogala 1978 (2) SA 412 (A)
- M.15 S v Pachai 1962 (4) SA 246 (T)
- M.16 S v Salmans 2006 (1) SACR 333 (C)
- M.17 S v Sithole 1981 (1) SA 1186 (N)
- M.18 S v Witbooi 1984 (1) SA 242 (C)
- M.19 S v Yolelo 1981 (1) SA 1002 (A)

N Fraud

Burchell chap 66

Or Snyman 521-529

- N.1 R v Bell 1963 (2) SA 335 (N)
- N.2 R v Deale 1960 (3) SA 846 (T)
- N.3 R v Deetlefs 1953 (1) SA 418 (A)

N.4	R v Dyonta 1935 AD 52
N.5	R v Frankfort Motors (Pty) Ltd 1946 OPD 255
N.6	R v Henkes 1941 AD 143
N.7	R v Heyne 1956 (3) SA 604 (A)
N.8	R v Kruse 1946 AD 524
N.9	R v Larkins 1934 AD 91
N.10	R v Myers 1948 (1) SA 375 (A)
N.11	R v Persotam 1938 AD 92
N.12	R v Seabe 1927 AD 28
N.13	R v Sole 2004 (2) SACR 599 (Les)
N.14	R v Thabeta 1948 (3) SA 218 (T)
N.15	Re London and Globe Finance Corp Ltd (1903) 1 Ch 728
N.16	S v Boesak 2000 (1) SACR 633 (SCA)
N.17	S v Coetzee 1997 (3) SA 527 (CC)
N.18	S v Friedman (1) 1996 (1) SACR 181 (W)
N.19	S v Harper 1981 (2) SA 638 (D)
N.20	S v Heller (2) 1964 (1) SA 524 (W)
N.21	S v Kruger 1961 (4) SA 816 (A)
N.22	S v Moolman 2006 (1) SACR 432 (T)
N.23	S v Ostilly 1977 (2) SA 104 (D)
N.24	S v Schnittker 1964 (3) SA 10 (GW)
N.25	S v Tshoba 1989 (3) SA 393 (A)
N.26	S v Western Areas Ltd 2004 (1) SACR 429 (W)
N.27	S v Yengeni 2006 (1) SACR 405 (T)
N.28	S v Shaik 2007 (1) SACR 247 (SCA)

O

Rape

Burchell chap 51

Or Snyman 445-452

O.1	DPP v Morgan [1976] AC 182
O.2	R v B 1958 (1) SA 199 (A)
O.3	R v C 1952 (4) SA 117 (O)
O.4	R v Handcock 1925 OPD 147
O.5	R v K 1958 (3) SA 420 (A)
O.6	R v M 1949 (4) SA 831 (A)
O.7	R v M 1950 (4) SA 101 (T)
O.8	R v M 1953 (4) SA 393 (A)
O.9	<b>R v Swiggelaar 1950 (1) PH H61 (A)</b>
O.10	R v Williams 1931 (1) PH H38 (E)
O.11	R v Williams [1923] 1 KB 340
O.12	R v Z 1960 (1) SA 739 (A)
O.13	S v Volschenk 1968 (2) PH H283 (D)
O.14	S v W 2004 (1) SACR 460 (C)
O.15	S v Zuma 2006 (2) SACR 191 (W)
O.16	<b>S v Masiya 2006 (2) SACR 357 (T); Mayisa v Director of Public Prosecutions 2007 (2) SACR 435 (CC)</b>
O.17	<b>Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007</b> (available at <a href="http://www.info.gov.za/gazette/acts/2007/a32-07.pdf">http://www.info.gov.za/gazette/acts/2007/a32-07.pdf</a> )

P

Assault

Burchell 680-688

Or Snyman 430-434

- P.1 R v Dhlamini 1931 (1) PH H57 (T)
- P.2 S v A 1993 (1) SACR 600 (A)
- P.3 S v Marx 1962 (1) SA 848 (N)
- P.4 S v Miya 1966 (4) SA 274 (N)

Q

Assault with Intent to do Grievous Bodily Harm

Burchell 688-691

Or Snyman 435

- Q.1 S v Bergh 2006 (2) SACR 225 (N)
- Q.2 S v Erasmus 2005 (2) SACR 658 (SCA)
- Q.3 S v Mbelu 1966 (1) PH H176 (N)
- Q.4 S v Mdau 2001 (1) SACR 625 (W)
- Q.5 S v Reabow 2007 (2) SACR 292 (E)

R

Other Assaults with Intent

Snyman 436 (no discussion in Burchell)

- R.1 R v B 1958 (1) SA 199 (A)
- R.2 S v Ken 1966 (4) SA 514 (N)

S

Indecent Assault

Burchell 691-698

Or Snyman 436-439

- S.1 R v Abrahams 1918 CPD 590
- S.2 R v Curtis 1926 CPD 385
- S.3 S v A 1993 (1) SACR 600 (A)
- S.4 S v F 1982 (2) SA 580 (T)