

SCHOOL OF LAW

DEPARTMENT OF CRIMINAL AND PROCEDURAL LAW

CRIMINAL LAW

CRW101U

TUTORIAL LETTER 202/1/2009

Dear Student

This tutorial letter contains commentary on the second compulsory assignment for CRW101U.

COMMENTARY ON ASSIGNMENT 02

The following abbreviations are used:

SG - Study Guide

Criminal Law – CR Snyman’s *Criminal Law* 5th edition (2008)

Important advice for answering problem-type questions:

The purpose of asking problem-type questions in this module is to test students' understanding of the general principles for criminal liability; primarily (but not exclusively) the four elements of criminal liability: the act, compliance with definitional elements, unlawfulness and culpability (see SG 1.7). Students must be able to, firstly, **identify the element** that is called into question in the factual scenario. To do 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. Students have also been provided a ***sequence of investigation into the presence of the elements*** (SG 1.7.3) to enable them to identify the element correctly and speedily, and to enable them 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)***. Students 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 minimize 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 been asked of you. 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", 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.

Finally, if a question asks you to determine "criminal liability", please bear in mind that a determination of criminal liability presupposes the existence of all four elements of liability.

Therefore if the element under discussion is found to be lacking then, following **the sequence of investigation** for criminal liability, we expect you to expressly indicate that it is unnecessary to investigate whether the further requirements have been complied with (SG 1.7.3) before concluding that “X is not criminally liable”. Alternatively, should you find that the element in question is present, we expect you to expressly assume the presence of the other elements before concluding that “X is criminally liable”.

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

Question 1

- (a)
- (i) The element that is called into question is **criminal capacity** [NB: the problem-type question expressly states that the effect of intoxication resulted in X lacking **the ability to appreciate the wrongfulness of his act and to act in accordance with such appreciation** (SG 7.3.1 – grey block)].

In *Chretien* it was held that **if a person is so drunk that he lacked criminal capacity at the time of the commission of the prohibited act then he is not criminally liable at all. This means that he must be acquitted of the crime charged.** (SG 12.5.2) [NB: both the case name and the legal principle is correctly provided.]

Culpable homicide cannot be committed without criminal capacity.

Given the absence of one of the components of culpability (SG 7.2.4 – grey block), **The element of culpability is lacking** and it is **unnecessary** to investigate whether **negligence** is present. Therefore **X is not criminally liable** on a charge of **culpable homicide**.

- (ii) [The elements of liability for contravention of section 1 of Act 1 of 1988 are found in SG 12.5.3(6), A1 – A4 & B1 – B3.]

If you start by listing the elements, this will help you to remember them. However it is **the application of the elements to the facts** that will award you the marks.

X **consumed** alcohol, **a substance** which impaired his faculties to such an extent that he **lacked criminal capacity**, while **knowing that the substance has that effect**. **While** in his intoxicated state, **lacking criminal capacity**, he committed **an act prohibited under penalty (the killing of another human being)**. But because he lacked criminal capacity he cannot be convicted of murder or culpable homicide. Therefore he will be found not criminally liable for these crimes.

However, X fulfils all the elements for contravening section 1. Therefore **he is criminally liable on a charge of contravention of section 1 of Act 1 of 1988.**

Kind regards

**Prof L Jordaan
Prof C van der Bijl
Dr N Mollema
Mr RD Ramosa**

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