



UNISA

DEPARTMENT OF CRIMINAL AND PROCEDURAL LAW

CRIMINAL LAW MODULE ONE (CRW101-U)

TUTORIAL LETTER 103/3/2003

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1 FORMAT OF THE EXAMINATION PAPER FOR THE MAY AND OCTOBER EXAMINATIONS

The format of the examination paper for the **May/June examination** this year will be similar to that of the October/November 2002 paper, the only difference being that Part B must not be answered in an answer book, but on the paper itself. The examination is a **fill-in paper**. The paper will still count a total of 100 marks, with Part A consisting of multiple-choice questions and counting 30 marks, and Part B consisting of direct or problem-type questions and counting 70 marks.

The format of the examination paper for the **October/November examination** will be exactly the same as the format of the paper for the **October/November 2002** examination, which is discussed in this tutorial letter.

2 NO GROUP VISITS WILL TAKE PLACE

There will be no group visits (ie lectures given by lecturers) in any of the modules in Criminal Law this year - not even in Pretoria.

3 COMMENTARY ON THE EXAMINATION PAPER WRITTEN IN OCTOBER/NOVEMBER 2002

We now proceed to give you the correct answers to the multiple-choice question in part A of the October/November 2002 examination, as well as references to the applicable parts in the study guide and the prescribed book where you would find the answers. We also comment briefly on the questions in part B of the examination paper.

Students who have enrolled for this module for the first time will not be able to understand the answers and the commentary on the examination paper properly until they have studied the different topics dealt with in the examination paper. It may be better for these students not to read the commentary until they have studied the relevant topics later on in the semester. Those students who studied this course last year will find this commentary valuable, as they will already have studied most of the work. Students who wrote this paper in October 2002 but failed, and who are now repeating the module, should carefully read the answers as well as the commentary, to see what mistakes they made in the examination.

To enable you to follow the discussion of the answers which follows, we first reprint the examination paper.

THIS PAPER CONSISTS OF 8 PAGES PLUS INSTRUCTIONS FOR THE COMPLETION OF A MARK READING SHEET.

THIS PAPER IS TO BE WRITTEN BY STUDENTS WHO ARE WRITING THE EXAMINATION IN THIS MODULE FOR THE FIRST TIME AS WELL AS BY STUDENTS WHO, FOR ANY REASON, ARE WRITING A RE-EXAMINATION IN THIS MODULE.

THE QUESTIONS IN THIS PAPER COUNT A HUNDRED MARKS. THE PAPER CONSISTS OF TWO PARTS, MARKED A AND B. YOU MUST ANSWER BOTH PART A AND PART B. PART A CONSISTS OF TEN MULTIPLE CHOICE QUESTIONS. EACH QUESTION COUNTS THREE MARKS, WHICH MEANS THAT THE QUESTIONS IN PART A COUNT A TOTAL OF THIRTY MARKS. IN PART B, THE ANSWERS TO THE QUESTIONS MUST BE WRITTEN IN THE EXAMINATION SCRIPT. THE QUESTIONS IN PART B COUNT SEVENTY MARKS.

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 MUST 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 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 statements are followed by five 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.

SECTION A**Question 1**

- (a) The absolute theory of punishment is retrospective in nature, as one looks into the past at the crime which has already been committed.
 - (b) The efficacy of the theory of punishment known as general deterrence depends directly upon the severity of the punishment imposed upon the criminal.
 - (c) The reformatory theory of punishment implies that there should be a precise balance between the damage caused by the commission of the crime and the period of imprisonment imposed upon the accused.
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 2

- (a) The *ius certum* principle, which forms part of the principle of legality, implies that nobody ought to be convicted of a crime, unless the kind of act performed by him had been recognised by the law as a crime already at the time of its commission.
 - (b) Before one can assume that a provision in an act had created a crime, it must be clear that the provision contains a criminal norm.
 - (c) The *ius strictum* principle implies *inter alia* that a court is not authorised to extend a crime's field of application by means of analogy to the detriment of the accused.
1. Only statement (a) is correct.
 2. Only statement (c) is correct.
 3. Only statements (a) and (c) are correct.
 4. Only statements (b) and (c) are correct.
 5. All the statements are correct.

Question 3

- (a) Conduct can only be voluntary if it is intentional.
 - (b) The decision in *Goliath* deals with a situation in which there was absolute force.
 - (c) A legal duty to act positively can only arise by virtue of a statute, and not in terms of the provisions of common law.
1. Only statement (a) is correct.
 2. Only statement (b) is correct.
 3. Only statements (a) and (b) are correct.
 4. Only statements (b) and (c) are correct.
 5. All these statements are incorrect.

Question 4

- (a) The mere fact that an act corresponds to the definitional elements of a crime means that the act is unlawful.
 - (b) A person may act in private defence to protect a third person even if there is no family or protective relationship between himself and the third person.
 - (c) The principle that the law does not concern itself with trifles can exclude the unlawfulness of the act.
1. Only statement (b) is correct.
 2. Only statement (c) is correct.
 3. All three statements are correct.
 4. Only statements (a) and (b) are correct.
 5. Only statements (b) and (c) are correct.

Question 5

- (a) X acts out of necessity if he shoots and kills a vicious dog which is about to attack him.
 - (b) If X acts in putative private defence his conduct is not unlawful.
 - (c) According to our present law parents are entitled to inflict moderate and reasonable corporal punishment on their children to maintain order and discipline.
1. Only statements (a) and (c) are correct.
 2. Only statement (b) is correct.
 3. Only statements (a) and (b) are correct.
 4. Only statement (c) is correct.
 5. All three statements are correct.

Question 6

- (a) Criminal capacity relates to a person's mental abilities, whereas culpability relates to the presence or absence of a blameworthy state of mind.
 - (b) In the decision of *Kavin* the accused's defence that he lacked criminal capacity as a result of mental illness was rejected by the court on the ground that he acted slowly and deliberately rather than on an irresistible impulse.
 - (c) The conative element of criminal capacity deals with X's self-control and is present if X has the ability to conduct himself in accordance with his appreciation of the wrongfulness of his act.
1. Only statement (a) is correct.
 2. Only statements (a) and (c) are correct.
 3. All these statements are correct.
 4. Not one of these statements is correct.
 5. Only statement (c) is correct.

Question 7

- (a) The cognitive component of intention means that X must have knowledge of the act, the circumstances set out in the definitional elements and the culpability requirement.
 - (b) In order to prove that X acted with *dolus eventualis*, it is sufficient for the prosecution to prove that X ought to have foreseen the possibility of the forbidden consequence ensuing.
 - (c) One of the requirements for the existence of direct intention (*dolus directus*) is that X must have the motive to commit the relevant act or to cause the relevant result.
1. Only statement (a) is correct.
 2. Only statement (b) is correct.
 3. Only statements (a) and (b) are correct.
 4. Not one of the statements is correct.
 5. Only statement (c) is correct.

Question 8

- (a) Evidence of provocation may sometimes serve to confirm the existence of intention to commit the crime with which X is charged.
 - (b) If X is charged with assault to do grievous bodily harm and it appears from the evidence that he was provoked, the provocation may have the effect that X will not be found guilty of assault with intent to do grievous bodily harm but of common assault only.
 - (c) In the decision of *Ngubane* the court held that it is wrong to assume that proof that X acted intentionally excludes the possibility of a finding that he acted negligently.
1. Only statements (a) and (b) are correct.
 2. Only statements (a) and (c) are correct.
 3. Only statements (b) and (c) are correct.
 4. Only statement (b) is correct.
 5. All three statements are correct.

Question 9

- (a) Vicarious liability is not limited to statutory crimes, but may be found also in common-law crimes.
 - (b) Involuntarily intoxication may afford an accused a complete defence.
 - (c) One of the findings of the court in the decision of *Chretien* was that the specific intent theory in connection with intoxication must be rejected.
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. Only statements (b) and (c) are correct.

Question 10

- (a) Because culpability is required for all common-law crimes, strict liability is found in statutory crimes only.
- (b) In South Africa corporate bodies (for instance, companies) cannot be convicted of crimes.
- (c) If the legislature, in creating an offence, is silent on the question whether culpability is a requirement for the offence, a court is still free to interpret the provision creating the offence in such a way that culpability is indeed required for a conviction.
1. Only statement (a) is correct.
 2. Only statements (a) and (c) are correct.
 3. All three statements are correct.
 4. Not one of these statements is correct.
 5. Only statement (c) is correct.

PART B

THIS PART CONSISTS OF THREE QUESTIONS. EACH QUESTION IS SUBDIVIDED INTO A NUMBER OF SUBQUESTIONS. YOU MUST ANSWER ALL THREE QUESTIONS. 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) Discuss the defence of automatism. Your answer must include
- (i) examples from the case law of cases in which this defence succeeded;
 - (ii) an explanation of the points of difference between so-called “sane” and “insane” automatism; and
 - (iii) an explanation of what is meant by “antecedent liability”. (8)
- (b) Name and discuss the requirements for successfully relying on the defence of impossibility. (6)
- (c) Discuss any **ONE** of the following judgments. You must briefly set out the facts of the case as well as the legal point decided by the court
- Zinn* 1969 (2) SA 537 (A)
De Oliveira 1993 (2) SACR 59 (A)
C 1952 (4) SA 117 (O) (5)
- (d) **NOTE THE CHOICE YOU HAVE IN THIS QUESTION**
- Define and explain the *versari* doctrine (also known as *versari in re illicita*).

OR

Discuss the effect of youthful age on criminal liability.

(6)

[25]

Question 2

- (a) X wants to murder Y, whom he dislikes, by striking him on his head with a thick metal pipe. He strikes at Y with the pipe. However, just before the blow can strike Y's head, Y jerks his head away. The blow strikes Y on his shoulder. Although Y sustains serious injury to his shoulder, he is not in mortal danger. Z, Y's friend, decides to transport Y to hospital. On the way to the hospital, Z's car passes W's car. Just as the two cars pass each other, a bomb which a terrorist had planted in W's car, explodes. Y dies in the explosion which follows. X is charged with murdering Y. In his defence, X alleges that his act was not the **cause** of Y's death - in other words, X alleges that there was not a causal connection between X's act and Y's death. Discuss the merits of his defence. (10)
- (b) Explain the meaning of the expression *aberratio ictus*. Name and explain the two opposing approaches to cases of *aberratio ictus*. Indicate which approach ought, in your opinion, to be followed, stating the reasons for why you think such an approach is the correct one. Also name the most important decision of the Appellate Division dealing with *aberratio ictus*. (9)
- (c) **NOTE THE CHOICE YOU HAVE IN THIS QUESTION**

Write notes on the "reasonable person" as this expression is used in the determination of negligence.

OR

Name and discuss the subjective factors which the court may take into account to determine negligence.

(6)

[25]

Question 3

- (a) X attends a party hosted by his friend, Y. X consumes more liquor than usual. X is fairly intoxicated when he decides to go home. He takes a leather jacket hanging on the hall stand which he thinks belongs to him. The leather jacket in fact belongs to Z and not to X. X is charged with theft of the jacket. At the trial the court finds that, although X was intoxicated at the time he removed the jacket, he did have criminal capacity. However, the court finds that X cannot be convicted of theft, because, as a result of his intoxication, he was under the impression that the leather jacket belonged to him and therefore did not have the intention to steal the jacket. Discuss whether X may nevertheless be found guilty of a contravention of the statutory crime created in section 1 of Act 1 of 1988, that is the offence sometimes referred to as "statutory intoxication". In your answer you must briefly state what the provisions of this section are. (7)

(b) NOTE THE CHOICE YOU HAVE IN THIS QUESTION

X is a soldier. In the course of military operations Z, who is X's superior officer, orders him (X) to shoot Y if Y refuses to answer certain questions. Y refuses to answer questions and X shoots and kills him. X is subsequently charged with having murdered Y. As a ground of justification for his conduct he relies on the fact that, in killing Y, he was merely obeying an order from a superior officer. (Note that he does not rely on compulsion or necessity as a defence.) Discuss the relevant rules relating to obedience to orders as a ground of justification.

OR

Name and discuss the requirements for successfully relying on consent as a ground of justification. (8)

- (c) Explain the meaning of the "principle of contemporaneity" in culpability. Refer also to case law. (5)

[20]**Total: [100]****ANSWERS TO PART A (MULTIPLE-CHOICE QUESTIONS)**

NB: The following abbreviations are used hereunder:

SG - Study Guide

Criminal Law - CR Snyman *Criminal Law* 4th edition (2002)

Question 1

- (a) This statement is correct. SG p 3.
- (b) This statement is incorrect. SG p 6 at 1.2.5.2.
- (c) This statement is incorrect. It is the theory of retribution, and not the reformatory theory, that requires such an equal or precise proportion. See SG p 4.

Therefore, option **(1)** is correct.

Question 2

- (a) This statement is incorrect. It is the *ius acceptum* principle, and not the *ius certum* principle, which implies the principle set out in the question. SG p 23.
- (b) This statement is correct. SG p 25.
- (c) This statement is correct. SG p 27.
Therefore, option **(4)** is correct.

Question 3

- (a) This statement is incorrect. See the discussion in the SG p 32 at 3.3.3.
- (b) This statement is incorrect. The decision in *Goliath* deals with a situation in which there was relative force. See SG pp 33 & 77 - 78.
- (c) This statement is incorrect. See SG p 38.

Therefore, option **(5)** is correct.

Question 4

- (a) This statement is incorrect. See SG p 60 at 5.2.1.
- (b) This statement is correct. See SG p 64 at paragraph (b).
- (c) This statement is correct. See *Criminal Law* pp 137-138.

Therefore, option 5 is correct.

Question 5

- (a) This statement is correct. See SG p 64 at 5.3.2 (1) (a) (iii), as well as the set of facts under “Activity” and “Feedback” on p 77.
- (b) This statement is incorrect. If X acts in putative private defence, the act is indeed unlawful, but X may evade liability due to lack of intention. See SG p 131 at 10.6.1.
- (c) This statement is correct. See SG p 84 at 6.5.3.

Therefore, option **(1)** is correct.

Question 6

- (a) This statement is correct. See SG pp 93 - 94 at 7.3.2.
- (b) This statement is incorrect. This defence was accepted by the court. See SG pp 105 - 106, especially the last paragraph on p 105.
- (c) This statement is correct. See SG p 94.

Therefore, option **(2)** is correct.

Question 7

- (a) This statement is incorrect. See SG p 111 at 9.2.
- (b) This statement is incorrect. See SG p 114, last paragraph.

- (c) This statement is incorrect. See SG 112 at 9.4.1 (under “Remark”), as well as p 118 at 9.10. X’s motive is irrelevant for the purpose of determining liability.

Therefore, option **(4)** is correct.

Question 8

- (a) This statement is correct. See the summary in the SG p164. See also *Criminal Law* p 238 paragraph (c).
- (b) This statement is correct. See SG p 165 paragraph (4); *Criminal Law* p 238.
- (c) This statement is correct. See SG p 145 at 11.7.

Therefore, option **(5)** is correct.

Question 9

- (a) This statement is incorrect. See *Criminal Law* pp 247-248; SG p 175, paragraph numbered (1) under “Vicarious Liability”.
- (b) This statement is correct. See SG p 152 at 12.3.
- (c) This statement is correct. See SG p 155 at 12.5.2, point (3) of Summary.
Therefore, option **(5)** is correct.

Question 10

- (a) This statement is correct. See SG p 168 at 14.1.2.
- (b) This statement is incorrect. See SG pp 173 -174.
- (c) This statement is correct. See SG p 168 at 14.1.2.

Therefore, option **(2)** is correct.

ANSWERS TO PART B

Note that the commentary which follows should not be construed as model answers. It contains for the most part the outlines of the answers as well as the references to the relevant parts of the study guide in which the topic forming the subject of the question is discussed.

Question 1

- (a) **AUTOMATISM** - SG pp 34 - 36

A person acts in a state of automatism if he acts in a mechanical fashion. Examples of such instances are reflex movements such as heart palpitations or a sneezing fit and

somnambulism (see p 34 second paragraph). A person who acts in a state of automatism does not act voluntarily.

- (i) *Dlamini's case* - X killed Y while under influence of the nightmare.
Mkize's case - X killed Y while he was having an epileptic fit.
Du Plessis's case - an experienced driver had a mental "blackout".

See SG pp 34 - 35

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| <p>(ii) sane automatism
 onus on state to prove
 the act was voluntary</p> <p>if X's defence is successful,
 he leaves the court a free
 man</p> | <p>insane automatism
 onus is on X to prove that
 he suffered from mental illness</p> <p>if defence is successful, X is
 dealt with in terms of section
 78 (6) of the Criminal Procedure
 Act 51 of 1977</p> |
|---|--|

See SG p 35

- (iii) Antecedent liability: X knows that he suffers from epileptic fits or that, because of some illness or infirmity he may suffer a "black out", but nevertheless proceeds to drive a motor-car, hoping that these conditions will not occur while he is sitting behind the steering wheel, but they nevertheless do occur. He can then not rely on the defence of automatism. He can be held liable for certain crimes requiring negligence, for example culpable homicide. His voluntary act is then performed when he proceeds to drive the car while still conscious. SG pp 35 - 36. See also *Victor's case* - SG p 36.

- (b) **DEFENCE OF IMPOSSIBILITY** - SG pp 40 - 41

X's omission must be voluntary in order to result in criminal liability. An omission is voluntary if it is possible for X to perform the positive act.

1. The legal provision which is infringed must place a positive duty on X. The conduct which forms the basis of the charge must consist in an omission. The defence will succeed, for example, if X has failed to comply with a legal provision which placed a positive duty on him to attend a meeting or to report for military duty.
2. It must be objectively impossible for X to comply with the relevant legal provision. It must have been impossible for any person in X's position to comply with the law. It must have been absolutely (not merely relatively) impossible to comply with the law. The test is objective (in the opinion of reasonable people in society).
3. X must not himself be responsible for the situation of impossibility. X cannot rely on impossibility if he himself is responsible for the circumstances in which he finds himself.

(c) CASE DISCUSSION

In order to earn full marks in case discussions, a student should state the following:

1. the facts of the case
2. the legal question to be answered in that case
3. the conclusion reached by the court
4. the reason for that conclusion

The three cases mentioned in the question appear on the following pages of the *Criminal Law Case Book*:

1. *Zinn* - p 15
2. *De Oliveira* - p 176
3. *C* - p 104

(d) FIRST CHOICE - THE VERSARI DOCTRINE - SG pp 172 - 173

Definition: The doctrine holds that if a person engages in unlawful (or merely immoral) conduct, he is criminally liable for all the consequences flowing from such conduct, irrespective of whether there was in fact any culpability on his part in respect of such consequences.

An example of the application of the doctrine is the following: If X lawfully shoots at a wild bird and the bullet accidentally hits Y, of whose presence X is unaware, X lacks culpability. If, however, X shoots at somebody else's fowl, or hunts on somebody else's land without his permission, and the bullet hits Y (of whose existence X is unaware) X is guilty of murder for he has engaged in an unlawful act and is liable for all the consequences flowing from it.

This doctrine was rejected in the case of *Bernardus* 1965 (3) SA 287 (A). The Appeal Court held that the doctrine was in conflict with the requirement of culpability.

SECOND CHOICE - YOUTH - *Criminal Law* pp 176 - 179; SG p 109.

Criminal capacity may be completely absent because of an accused's youthful age. There is an irrebuttable presumption that a child who has not yet completed his or her seventh year of life, lacks criminal capacity. There is a rebuttable presumption that a child between the ages of seven and fourteen years lacks criminal capacity. The closer the child approaches the age of fourteen years, the weaker the presumption that the child lacks criminal capacity. The test to determine whether a child between the ages of seven and 14 years has criminal capacity is the same as the general test for criminal capacity.

Question 2

- (a) This question deals with causation. See SG pp 47 - 58. In order to find that there is a causal link between X's act and Y's death, X's act must be both the factual and the legal cause of Y's death.

X's act is the factual cause of Y's death if it can be proven that if it were not for his (X's) act, Y's death would not have occurred. In this set of facts, it is clear that if X had not struck Y with a metal pipe, Z would not have taken him (Y) to the hospital, and they would not have been caught in the explosion. Therefore, X's act is a *conditio sine qua non* for Y's death. This is the so-called "but-for- test". This means X's act qualifies as the factual cause of Y's death. See SG pp 49 - 50.

Is X's act also the legal cause of Y's death? X's act is the legal cause of Y's death if in terms of policy considerations it is reasonable and fair that X's act is deemed to be the cause of Y's death. Students could have referred to the cases of *Mokgethi* and *Daniëls*.

Students should have briefly discussed the three theories of legal causation (SG pp 51-53 at 4.3.3.4).

The explosion was clearly a *novus actus interveniens*. Therefore there was no legal causation and consequently no causal link between X's act and Y's death.

(b) **ABERRATIO ICTUS** - SG pp 125 - 130

Aberratio ictus means the going astray of the blow. It is not a form of mistake. X has pictured what he is aiming at correctly, but through lack of skill, clumsiness or other factors he misses his aim, and the blow or shot strikes somebody or something else.

The two opposing approaches to cases of *aberratio ictus* are the transferred culpability approach and the concrete culpability approach. We shall first consider the transferred culpability approach. X intends to shoot and kill Y. The bullet strikes a pole, ricochets and strikes Z who is a few paces away, killing him (Z). According to this approach, X will be guilty of murder since he intended to kill a person. The fact that the actual victim of X's act proved to be some somebody different from the one he wished to kill, ought not to afford him any defence, because X's intention to kill Y is transferred to his killing of Z.

We next consider the concrete culpability approach. According to this approach, X can only be guilty of murder if it can be proved that X knew that his blow might strike Z and if he had reconciled himself to this possibility. X's intention of killing Y cannot serve as a substitute for the intention to kill Z. In order to determine whether X had the intention to kill the person who was actually struck by the blow, the question is not simply whether he had the intention to kill a person, but whether he had the intention to kill that particular (concrete) person who was actually struck by the blow.

The concrete culpability approach is to be preferred for the following two reasons:

First, this approach is more in accordance with the subjective test for intention than the transferred culpability approach.

Secondly, the transferred culpability approach amounts to an application of the doctrine of *versari in re illicita*. Students should briefly have explained this doctrine. The most important case dealing with *aberratio ictus* is *Mtshiza*. This was one of the prescribed cases and students could have discussed this case.

(c) FIRST CHOICE - REASONABLE PERSON

The answer to this question is clearly stated in the SG pp 140 - 141 at 11.5.2.

SECOND CHOICE - NEGLIGENCE

The test for negligence is in principle objective, namely the foreseeability of the result or circumstances by the reasonable person. However, this rule is subject to the following subjective factors:

1. Children: the test is that of a reasonable child.
2. Experts: here the test is that of a reasonable expert.
3. Where an accused has more knowledge of a particular situation than the reasonable person.

See SG p 144 - 145

Question 3

- (a) This “problem-type question” deals with the effect of intoxication on liability, and more particularly with the provisions of section 1 of Act of 1998, which deals with the crime sometimes referred to as “statutory intoxication”. This topic is set out in SG 156 - 160 under 12.5.3.

In your answer you should briefly have set out the provisions of this section. As stated in SG 159, it is not expected of students to know the precise wording of this rather long and involved provision. It is sufficient to set out the simplified version of the section printed in the grey box in SG 158.

In this set of facts X was not so drunk that he lacked criminal capacity. This means that the case did not fall into category (2) of the “meter” appearing in SG 157. The intoxication only excluded his intention, and therefore his case fell into category (3) of the “meter” appearing in SG 157. The section applies only to cases falling in categories (1) and (2) of this “meter”. It is not applicable to a situation such as in the present set of facts in which the accused did have criminal capacity, but to cases falling into category (3) of the “meter”. This principle is explained in the last paragraph of SG 157.

As a result, the answer to the question is that X cannot be convicted of “statutory intoxication”. Neither is he guilty of theft under common law. This fact is mentioned in the description of the set of facts in the question. X is therefore not guilty of any crime.

- (b) **FIRST CHOICE - OBEDIENCE TO ORDERS** - *Criminal Law* pp 132 - 135

There are two approaches to obedience to orders as a ground of justification.

The first approach is that the subordinate has a duty of blind obedience to his superior's order. According to this view an act performed in obedience to an order will always constitute a ground of justification. This view cannot be supported. For example, a subordinate is ordered by a superior to commit rape. According to this approach,

obedience to orders would be a complete defence.

In terms of the second approach, the fact that the subordinate obeyed an order is not a ground of justification. This approach cannot be supported since it implies that a subordinate must, before complying with any order issued to him, first decide for himself whether it is unlawful or unlawful.

In *Smith* the court rejected both the above approaches, and opted for a middle course: "a soldier is compelled to obey an order only if the order is manifestly lawful. If it is manifestly unlawful, he may not obey it, and if he does, he acts unlawfully". Section 199(6) of the Constitution provides that no member of any security service may obey a manifestly illegal order.

If one applies this middle course to the set of facts in the question, X will not succeed with the defence that he relied on a superior order.

SECOND CHOICE - CONSENT - SG pp 79 - 83.

1. The consent must be given voluntarily, without any coercion. Consent obtained as a result of violence, fear or intimidation is not voluntary consent. Mere submission cannot be equated with voluntary consent. The relevant case dealing with this requirement is *McCoy*.
2. Consent must be given by a person who has certain minimum mental abilities. These abilities are the ability to:
 - (i) appreciate the nature of the act to which he consents
 - (ii) appreciate the consequences of the act
3. The consenting person must be aware of the true and material facts regarding the act to which he consents. A fact is material if it relates to the definitional elements of the particular crime. For example in the crime of rape, the woman must be aware of the fact that it is sexual intercourse to which she is consenting.
4. The consent may be given either expressly or tacitly.
5. The consent must be given before the otherwise unlawful act is committed - approval given afterwards does not render the act lawful.
6. In principle consent must be given by the complainant herself. However, there is an exception, namely where a parent consents to an operation to be performed on his or her child.

(c) PRINCIPLE OF CONTEMPORANEITY - SG p 92

In order for a crime to be committed, there must have been culpability on the part of X at the very moment when the unlawful act was committed. There is no crime if culpability only existed prior to the commission of the unlawful act, but not at the moment the act was committed, or it came into being only after the commission of the unlawful act. Students could have referred to the case of *Masilela*.

4. PAGE REFERENCES TO THE NEW PRESCRIBED BOOK (CR SNYMAN *CRIMINAL LAW* 4TH EDITION)

The study guide issued to you upon registration for the year 2003, contains page reference to the old prescribed book (CR Snyman *Criminal Law* 3rd edition). Since you will now be using the new book (4th edition) for 2003, the page references in the study guide to the 3rd edition are no longer correct.

A list of the pages from both editions is provided below. This means you have to replace pages references to the 3rd edition in your study guide with the page references from the 4th edition.

3rd Edition	4th Edition
1. p. 2 at 1.2 pp 17-25	pp. 12-31
2. p. 11 at 1.4 pp 8-14	Left out
3. p. 11 at 1.4 pp 4-11	pp. 8-10
4. p. 12 at 1.5 pp. 14-17	pp. 7-12
5. p. 20 pp 34-48	pp. 39-50
6. p. 31 at 3.2 pp. 49-59	pp. 51-63
7. p. 32 at 3.3.3 pp. 52-55	pp. 55-58
8. p. 36 at 3.4 pp. 55-59	pp. 59-63
9. p. 40 at 3.4.2 pp. 57-59	pp. 61-63
10. p. 46 at 4.2	pp. 64-73
11. p. 47 at 4.3 pp. 69-87	pp. 73-91
12. p. 60 at 5.2 pp. 88-97	pp. 92-101

13. p. 63 at 5.3
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14. p. 67 at par 2
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15. p73 at 6.2
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20. p. 85 at 6.7
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21. p. 86 at 6.8
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22. p. 92 second par
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43. p. 151 at 12.2
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| 47. p. 172 at 14.1.4
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| 48. p. 173 at last paragraph
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With best wishes

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