

SCHOOL OF LAW

DEPARTMENT OF CRIMINAL AND PROCEDURAL LAW

CRIMINAL LAW

CRW101-U

Tutorial Letter 102/2007

Dear Student

- 1 FORMAT OF THE EXAMINATION PAPER FOR THE
OCTOBER/NOVEMBER EXAMINATIONS**
- 2 NO GROUP VISITS**
- 3 COMMENTARY ON THE EXAMINATION PAPER WRITTEN IN
OCTOBER/NOVEMBER 2006**
- 4 NUMBER OF TUTORIAL LETTERS**

1 FORMAT OF THE EXAMINATION PAPER FOR THE OCTOBER/NOVEMBER EXAMINATIONS

The format of the examination paper for the October/November 2007 examinations will in essence be the same as that of the October/November 2006 paper.

2 NO GROUP VISITS

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 2006

Below we provide you with the October/November 2006 examination paper, as well as the correct answers to the questions in this paper.

Students who have enrolled for this module for the first time will not fully understand the answers and the commentary on the examination paper before they have studied the different topics dealt with in the examination paper. We recommend that these students not read the commentary until they have studied the relevant topics. However, students who took this course last year will find the commentary valuable, since they will have dealt with most of the work already. Students who wrote this paper in October 2006, but failed and are now repeating the module, should read both the answers and the commentary carefully, to see where they went wrong in the examination.

To enable you to follow our commentary on the questions, we have reprinted the examination paper.

CRIMINAL LAW FIRST MODULE

UNIVERSITY EXAMINATIONS

UNIVERSITEITSEKSAMENS

**CRW101-U**

(471119)

October/November 2006

CRIMINAL LAW 101

Duration : 2 Hours

100 Marks

EXAMINERS :

FIRST :

PROF K ALHEIT

ADV LC COETZEE

ADV MA RAMOLOTJA

MR GP STEVENS

SECOND :

PROF L JORDAAN

THIS PAPER CONSISTS OF 7 PAGES PLUS INSTRUCTIONS FOR COMPLETION OF A MARK READING SHEET.

**This examination question paper remains the property of the University of South Africa
and may not be removed from the examination venue.**

THE QUESTIONS IN THIS PAPER COUNT 100 MARKS. THE PAPER CONSISTS OF TWO PARTS, MARKED A AND B. YOU MUST ANSWER BOTH PARTS A AND B. PART A CONSISTS OF 10 MULTIPLE CHOICE QUESTIONS. EACH QUESTION COUNTS 3 MARKS, WHICH MEANS THAT THE QUESTIONS IN PART A COUNT A TOTAL OF 30 MARKS. IN PART B, THE ANSWERS TO THE QUESTIONS MUST BE WRITTEN IN THE EXAMINATION SCRIPT. THE QUESTIONS IN PART B COUNT 70 MARKS.

PART A

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 HAVE TO 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) Conduct can only be voluntary if it is willed.
 - (b) The general criterion to determine whether there is a legal duty on someone to act positively is the legal convictions of the community.
 - (c) The term "conduct" as used in criminal law does not include a voluntary human omission.
- (1) Only statement (a) is correct.
 - (2) Only statement (b) is correct.
 - (3) Only statements (a) and (b) are correct.
 - (4) None of the statements is correct.
 - (5) Only statement (c) is correct.

Question 2

- (a) In order to qualify as a *novus actus interveniens*, an occurrence must be unexpected, abnormal, or unusual.
 - (b) A mistake need **not** be reasonable or material to exclude intention.
 - (c) In the case of **formally defined crimes**, the definitional elements proscribe a certain type of conduct which causes a specific condition.
- (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) None of these statements is correct.

Question 3

- (a) Antecedent liability rules out the defence of automatism.
 - (b) The mere fact that an act corresponds to the definitional elements of a crime means that the act is unlawful.
 - (c) One of the requirements for the existence of direct intention (*dolus directus*) is that X must have an evil motive to commit the relevant act or to cause the relevant result.
- (1) Only statement (c) is correct.
 - (2) Only statements (b) and (c) are correct.
 - (3) Only statements (a) and (c) are correct.
 - (4) Only statement (b) is correct.
 - (5) Only statement (a) is correct.

Question 4

- (a) As guardians of good morals (*custodes morum*) our courts are obliged to punish immoral and dangerous conduct.
 - (b) According to South African law, corporate bodies cannot be convicted of crimes.
 - (c) Because the possibility of death as a result of an assault is always reasonably foreseeable and the reasonable person would have guarded against this possibility, the person committing assault will **always** be convicted of culpable homicide if the victim died.
- (1) Only statement (c) is correct.
 - (2) None of the statements is correct.
 - (3) Only statements (b) and (c) are correct.
 - (4) Only statement (b) is correct.
 - (5) Only statement (a) is correct.

Question 5

- (a) In *Chretien* 1981 (1) SA 1097 (A) the court rejected the “specific intent theory” with regard to intoxication.
 - (b) If X encourages the severely depressed Y to commit suicide by giving her a loaded pistol to shoot and kill herself, he can never be convicted of Y’s murder if she voluntarily takes the pistol and kills herself.
 - (c) The “triad in *Zinn*” refers to the crime, the criminal, and the punishment.
- (1) Only statements (a) and (b) are correct.
 - (2) Only statement (c) is correct.
 - (3) Only statement (a) is correct.
 - (4) Only statement (b) is correct.
 - (5) Only statements (a) and (c) are correct.

Question 6

- (a) Necessity **always** stems from an unlawful human act.
 - (b) The **cognitive** component of criminal capacity is present if X has the ability to conduct himself in accordance with his appreciation of the wrongfulness of his conduct.
 - (c) Vicarious liability applies only to statutory crimes.
- (1) Only statement (a) is correct.
 - (2) Only statement (b) is correct.
 - (3) Only statements (a) and (c) are correct.
 - (4) None of these statements is correct.
 - (5) Only statement (c) is correct.

Question 7

- (a) An act in obedience to an unlawful order can only be justified if the order is **not** manifestly unlawful.
 - (b) The reasonable person is a figment of the imagination of the *bonus paterfamilias*.
 - (c) In materially defined crimes requiring negligence it must be proved that X was negligent in the causing of a result.
- (1) Only statement (a) is correct.
 - (2) Only statements (a) and (b) are correct.
 - (3) All the statements are correct.
 - (4) Only statements (a) and (c) are correct.
 - (5) Only statements (b) and (c) are correct.

Question 8

- (a) Putative private defence is a defence excluding culpability and not a defence excluding the element of unlawfulness.
 - (b) In *Mtshiza* 1970 (3) SA 747 (A) the court approved the **transferred intent approach** in respect of cases involving *aberratio ictus*.
 - (c) The test for *dolus eventualis* is whether a person **ought to have foreseen** the possibility of a consequence ensuing.
- (1) Only statements (a) and (b) are correct.
 - (2) None of these statements is correct.
 - (3) Only statement (a) is correct.
 - (4) Only statement (b) is correct.
 - (5) Only statements (a) and (c) are correct.

Question 9

- (a) The words “mental illness” in section 78(1) of the Criminal Procedure Act 51 of 1977 refer to a **pathological** disturbance of the mental faculties.
 - (b) In *Eadie* 2002 (1) SACR 663 (SCA) the court held that the defence of non-pathological criminal incapacity resulting from provocation or emotional stress amounts to the defence of sane automatism.
 - (c) Children younger than 14 years are **irrebuttably** presumed to lack criminal capacity.
- (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 statement (c) is correct.

Question 10

- (a) In terms of the *ius strictum* principle crimes should be defined clearly and not vaguely.
- (b) Where doubt exists concerning the interpretation of a widely formulated criminal provision in an act, the provision should be interpreted in favour of the accused.
- (c) The preventive theory overlaps the deterrent and the reformatory theories since all these theories aim to prevent the commission of crimes.
- (1) Only statement (a) is correct.
(2) Only statement (b) is correct.
(3) Only statements (a) and (c) are correct.
(4) Only statements (b) and (c) are correct.
(5) Only statement (c) is correct.

[30]**PART B**

THIS PART CONSISTS OF THREE QUESTIONS. EACH QUESTION IS SUBDIVIDED INTO A NUMBER OF SUBDIVISIONS. YOU MUST ANSWER ALL THREE QUESTIONS, WITH THEIR SUBDIVISIONS. 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) X and his friends are on a hunting trip in the Bushveld. One night after drinking too many beers around the camp fire, they decide to shoot at the hyenas howling in the dark. One of X's shots hits and kills Y, the hunting guide who is busy cleaning his rifle. X is charged with murder in respect of Y. The court finds that although X was not so intoxicated that he lacked criminal capacity, he was intoxicated enough not to have formed any intention to cause Y's death. Of what crime(s) can X be convicted in respect of Y's death, if any? Discuss in full with reference to authority.
- (b) **NOTE THE CHOICE THAT YOU HAVE IN THIS QUESTION**

Discuss whether the view that "ignorance of the law is no excuse" still finds application in our law.

OR

Define the test for negligence.

(5)

(c) Briefly discuss **ONE** of the following decisions:

- (i) *De Oliveira* 1993 (2) SACR 59 (A)
- (ii) *B* 1985 (2) SA 120 (A)
- (iii) *Mogohlwane* 1982 (2) SA 587 (T) (6)

(d) X loses control of her motor vehicle while having a coughing fit and kills a pedestrian. She is charged with murder alternatively culpable homicide. You are her lawyer. What defence will you advance on her behalf at the trial? Discuss. (5)

[28]

Question 2

(a) **NOTE THE CHOICE THAT YOU HAVE IN THIS QUESTION**

Do you think the following statutory provision complies with the principle of legality? "Any person who commits an act that offends against the good morals of the nation, shall be punished." Discuss.

OR

Give a summary of the rules our courts apply in order to determine legal causation. Also refer to case law in this regard. (8)

(b) **Name** the requirements for the defence of necessity. (4)

(c) Briefly discuss the possible effects provocation may have on criminal liability. (4)

(d) X, the male coach of a woman hockey team, convinces Y, one of the team members, that the act of sexual intercourse between X and Y will improve her (Y's) game. Y subsequently has sex with X. In an ensuing rape trial X alleges that Y consented to the act. Discuss the merits of his defence. (5)

(e) Explain the meaning of vicarious liability. (3)

(f) **NOTE THE CHOICE THAT YOU HAVE IN THIS QUESTION**

Distinguish between the absolute and relative theories of punishment. (6)

OR

Distinguish between a crime and a delict. **[30]**

Question 3

Write in your answer script the number of the question followed by the missing words/phrases:

- (a) In terms of the principle of contemporaneity the element of.....must be present at the same time as the unlawful act. (1)
- (b) An act by the director of a company is deemed to be the act of the company itself if the act was performed..... (1)
- (c) The crime created by section 1 of Act 1 of 1988 is regarded as very unique because..... (1)
- (d) An omission is punishable only if there is a upon X to act positively.(1)
- (e) In the case of conscious negligence X foresees that a result will occur but decides (1)
- (f) *Aberratio ictus* means the (1)
- (g) In *Goosen* 1989 (4) SA 1013 (A) the court decided thatexcludes intention if there is a between the actual and the foreseen manner of events. (2)
- (h) The minimum requirement for *dolus eventualis* is that X must have the causing of the result and (2)
- (i) A is a provision in an act that states that certain conduct is a crime. (1)
- (j) In the case of exceeding the limits of private defence, X usually does not realize he is acting (1) **[12]**

Total: [100]

ANSWERS TO PART A OF EXAMINATION PAPER- MULTIPLE CHOICE QUESTIONS

The following abbreviations are used:

SG- Study Guide.

Criminal Law- CR Snyman's –Criminal Law 4th ed 2002 (the prescribed textbook).

QUESTION 1

- (a) This statement is incorrect. You must not confuse the term “voluntary” with the term “willed”. In order to ascertain whether there indeed was an act, you only need to determine whether the act was voluntary. See SG 3.3.4.1.
- (b) This statement is correct. See SG. 3.4.1.
- (c) This statement is incorrect. The term “conduct” when used in criminal law can include a positive act as well as an omission. See SG 3.4.

You should therefore have chosen option (2), since only statement (b) is correct.

QUESTION 2

- (a) This statement is correct. See SG 4.3.3.4(c).
- (b) This statement is incorrect. In order to exclude intention the mistake need only be material. It is not required that the mistake be reasonable. See SG 10.2 as well as 10.3
- (c) This statement is incorrect. In the case of formally defined crimes, the definitional elements prohibit a certain type of act, irrespective of the consequences thereof. See SG 4.3.1.

You should therefore have chosen option (1), since only statement (a) is correct.

QUESTION 3

- (a) This statement is correct See SG 3.3.4.2 (c) (iv).
- (b) This statement is incorrect See SG 5.2.1.
- (c) This statement is incorrect. The reason or motive behind the commission of a criminal act is irrelevant for determining the existence of intention in *any* of its forms. See SG 9.10.

You should have chosen option (5), since only statement (a) is correct.

QUESTION 4

- (a) This statement is incorrect. Our courts are not the guardians of morals. If there is a need to make conduct which may be viewed as immoral or dangerous to society punishable, it is the task of the legislature to declare such conduct punishable, if it wishes to do so. A court has no legislative powers. See SG 2.4.1.
- (b) This statement is incorrect. See SG 14.2.1.
- (c) This statement is incorrect. Death as a result of an assault is not always reasonably foreseeable, and it is therefore incorrect to assume that the reasonable person will always foresee that even a minor assault can cause a person's death. See SG 11.5.3(4).

You should have chosen option (2), since none of the statements are correct.

QUESTION 5

- (a) This statement is correct. See SG 12.5.2.
- (b) This statement is incorrect. See the *Grotjohn* decision discussed in SG 4.3.7.
- (c) This statement is incorrect. The "triad in Zinn". refers to the crime, the criminal and *the interests of society*. See SG 1.2.7.

You should have chosen option (3), since only statement (a) is correct.

QUESTION 6

- (a) This statement is incorrect. Unlike private defence, which always stems from an unlawful attack, necessity may also stem from chance circumstances such as natural occurrences. See SG 6.2.2
- (b) This statement is incorrect. The cognitive component of criminal capacity is present if X has the mental ability *to appreciate* the wrongfulness of his act. See SG 7.3.3.
- (c) This statement is correct. See *Criminal Law* 247.

You should have chosen option (5), since only statement (c) is correct.

QUESTION 7

- (a) This statement is correct. The test for determining whether this act is justifiable is whether the reasonable person in the position of the subordinate would have known that the order was unlawful. If the answer to this question is “yes”, then the order should be regarded as “manifestly unlawful”. See also section 199(6) of the Constitution discussed in *Criminal Law* 134.
- (b) This statement is incorrect. The reasonable person is a fictitious person whom the law creates in order to personify the objective standard of reasonableness that the law sets in order to determine negligence. See SG 11.5.2.
- (c) This statement is correct. See SG 11.5.1.

You should have chosen option (4), since only statements (a) and (c) are correct.

QUESTION 8

- (a) This statement is correct. Putative private defence is a mistake relating to the existence of a ground of justification. X *thinks* that she is acting in private defence while she is in fact acting unlawfully. Because X lacks knowledge of unlawfulness, he/she does not have intention. SG 10.6 and 10.6.1.
- (b) This statement is incorrect. In the case of *Mtshiza* the court approved the *concrete culpability* approach. See SG 10.5.4 and make sure that you understand the difference between these two approaches.
- (c) This statement is incorrect. The minimum requirement for the existence of *dolus eventualis* is an *actual contemplation* by X of the possible consequences in question. See SG 9.4.3.

You should have chosen option (3), since only statement (a) is correct.

QUESTION 9

- (a) This statement is correct. See SG 8.2.4.
- (b) This statement is correct. See SG 7.4.3.
- (c) This statement is incorrect. There exists a *rebuttable* presumption that a child between the ages of seven and fourteen years lacks criminal capacity. See *Criminal Law* 176-177.

You should have chosen option (3), since only statements (a) and (b) are correct.

QUESTION 10

- (a) This statement is incorrect. The *ius certum* principle requires that crimes be *defined* clearly. The *ius strictum* principle requires that a legal provision be *interpreted* strictly. See SG 2.7.
- (b) This statement is correct. See SG 2.7.
- (c) This statement is correct. See SG 1.2.3.

You should have chosen option (4), since statements (b) and (c) are correct.

PART B**QUESTION 1**

- (a) This question deals with the defence of voluntary intoxication. See SG 12.5. Voluntary intoxication may be a complete defence, depending on the *degree* of intoxication at the time that the offence was committed.

In 1981, in *Chretien*, the Appellate Division set out the legal position in cases of intoxication as follows:

- A person can be so drunk that he/she cannot act, leading to acquittal of any crime.
- A person can be so drunk that he/she lacks criminal capacity, leading to acquittal.
- A person can be too drunk to form intention, leading to an investigation of the person's negligence.
- A court must not lightly infer that intoxication has the above effect.

Therefore, according to *Chretien*, intoxication could qualify as a complete defence leading to an acquittal. Because this position would result in drunken people being treated more leniently than sober people, parliament passed legislation in 1988 that criminalised drunken behaviour in terms of section 1 of Act 1 of 1988. You had to set out the elements of the offence known as "statutory intoxication" in section 1 of the Act (see SG 12.5.3(5)). Briefly stated, a person will be found guilty of contravention of section 1 of the Act if he/she was charged with an offence (eg murder) but **acquitted** of that offence on the ground that he/she had **lacked criminal capacity** as a result of intoxication.

The given set of facts states that X had criminal capacity at the time of the commission of the crime, but that he was intoxicated to such a degree that he nevertheless lacked intention. Therefore, the conclusion is as follows:

- * He cannot be convicted of murder because he lacked intention.
- * He can also not be convicted of the statutory offence created in section 1 of Act 1 of 1988. In order to be convicted of this offence, the state must prove that X had been **acquitted of murder on the ground that he lacked criminal capacity as a result of intoxication at the time of the commission of the offence**. The facts clearly state

that he was acquitted on the basis that he lacked intention, and not that he was acquitted on the basis that he lacked criminal capacity.

- * X can, however, be convicted of culpable homicide. He performed an unlawful act and had the required criminal capacity. If the state can also prove that, in causing Y's death, X was negligent, he may be convicted of culpable homicide.

Some students answered that this is a situation of *error in objecto* which excludes intention (see SG 10.3) or a situation of *aberratio ictus* (SG 10.5). This is wrong because the facts clearly state that the court found that X had lacked intention. Therefore, the question whether X had intention had already been decided by the court.

Most students find it difficult to understand the principles relating to intoxication as a defence in our law. Make sure that, after you have studied the relevant text in the study guide, you do the activity (SG p 164) on your own. Then compare your answer with the given answer. If your answer is wrong, go back to the study guide and read the relevant parts until you grasp it!

(b) OPTION 1

The answer to this question can be found in SG 10.6.2. According to the *De Blom* decision, the cliché that "every person is presumed to know the law" no longer exists in our law. In order to earn good marks, you had to discuss this case.

You also had to indicate that ignorance of the law can only be a complete defence in crimes requiring intention.

OPTION 2

The answer to this question can be found in SG 11.3.

A person's conduct is negligent if:

- a reasonable person in the same circumstances would have foreseen the possibility
- that the particular circumstance might exist, or that his conduct might bring about the particular result, and
- a reasonable person would have taken steps to guard against such a possibility, and
- the conduct of the person whose negligence has to be determined differed from the conduct expected of the reasonable person

Most students answered merely that the test for determining whether a person was negligent is the test of the reasonable man. This answer is insufficient.

(c) These cases are prescribed and discussed in the *Criminal Law Case Book*.

De Oliviera – page 178

B – page 17

Mogohlwane – page 89

(d) The answer to this question can be found in SG 3.3.4.2(c).

X can rely on the defence of sane automatism, which is a complete defence. Sane automatism means that a person did not perform a voluntary act. You had to refer to the case of *Trickett*, where the accused relied on this defence due to a momentary lapse of consciousness. Although the onus of proving that the act was voluntary is on the state, the accused must lay a foundation for this defence.

QUESTION 2

(a) OPTION 1

The answer to this question can be found in SG 2.2; 2.3; 2.4.2 and 2.6.

The principle of legality also known as the *nullum crimen sine lege* principle means that an accused may not be convicted of a crime if the conduct with which he/she is charged

- * has not been recognised by the law as a crime (*ius acceptum* principle)
- * before the conduct took place (*ius praeivium* principle)
- * in clear terms (*ius certum* principle)
- * without broadly interpreting the words in the definition (*ius strictum* principle).

A statutory provision purporting to create a crime best complies with the principle of legality if it states that the particular type of conduct is a crime, and also what punishment a court must impose after conviction.

It may be argued that the provision does not comply fully with the *ius acceptum* principle. Although it is stated that a person who commits the described act “shall be punished”, it is not stated explicitly that the conduct constitutes an offence. Therefore, there is no criminal norm present.

The *ius praeivium* principle is not at issue here because there is no mention that the provision is created with retrospective effect.

The provision clearly does not comply with the *ius certum* requirement. The prohibition of “an act that offends against good morals” is formulated in vague and unclear terms. It is impossible for the individual to know what particular conduct is prohibited. Therefore, the subject does not know what particular conduct to avoid.

Lastly, no mention is made in the provision of the punishment that should be imposed in case of a contravention of the provision. Therefore there is no criminal sanction which amounts to a violation of the *nullum poena* principle.

OPTION 2

This is a straightforward question. The answer to this question can be found in SG 4.3.3.3; 4.3.3.4; 4.3.4.

(b) You were required merely to name these requirements. The answer to this question can be found in SG 6.2.5 (in the grey block).

(c) The answer to this question can be found in Study Unit 13 on page 166 (Summary).

Provocation may have one of the following effects:

- Theoretically speaking it may exclude X's voluntary act. This will, however, seldom occur in practice. You had to refer briefly to the *Eadie* decision in this regard.
- It may exclude X's intention. Depending on the specific facts of the case, provocation may have the effect that, at the time of the commission of the unlawful act, X did not act with knowledge of unlawfulness. See *Criminal Law* 237-238 under paragraph (b).
- It may also have to opposite effect, that is, to confirm the existence of X's intention. Evidence of provocation is then nothing more than evidence of the initial reason for X's conduct. See *Criminal Law* 238(c).
- After conviction it may serve as a ground for the mitigation of punishment.

(d) The answer to this question can be found in S.G 6.3.2.

You had to indicate that consent does not operate as a ground of justification in the case of rape, but that the absence of consent forms part of the definitional elements of the crime. Valid consent must be given voluntarily and the consenting party must be aware of the true and material facts regarding the nature of the act to which she consents. This means that Y must be aware that it is sexual intercourse to which she is consenting. Furthermore, as stated in the case of *C*, true consent requires not only a mental state of willingness in respect of the *type of act*, but also a willingness to perform the act *with the particular man who in fact had intercourse with her*.

From the given facts it is clear that Y was aware of the nature of the act (ie sexual intercourse) to which she consented. She also did not make a mistake regarding the identity of the perpetrator. Therefore her consent is valid. X's defence may therefore be successful.

Very few students answered this question correctly. Please take note that a mere misrepresentation regarding the *consequences* of sexual intercourse does not *per se* vitiate consent. In the given set of facts Y was not misled about the nature of the act or the identity of the man. She was only misled about the result or consequences of intercourse with X. Such a misrepresentation does not vitiate consent.

(e) The answer to this question can be found in *Criminal Law* 247-248.

Vicarious liability occurs when a person is held liable for a crime committed by another person- an example would be an employer that is held accountable for the crimes committed by an employee in the course of employment. This form of liability only applies to statutory crimes.

(f) OPTION 1

The answer to this question can be found in SG 1.2.2 ; 1.2.3; 1.2.4; 1.2.5 and 1.2.6.

There is only one absolute theory and that is the theory of retribution. According to this theory, the aim of punishment is to restore the legal balance which has been disturbed by the commission of the crime. The punishment is an end in itself. According to the retributive theory, the extent of the punishment must be proportionate to the extent of the harm done.

There are three relative theories of punishment. These are the preventative, deterrent, and reformative theories. According to these theories, the aim of punishment is a means to a secondary end rather than an end in itself (as in the case of the retributive theory). The relative theories emphasise a future purpose, namely prevention, deterrence or reformation. In order to achieve these aims, the punishment imposed need not be proportionate to the extent of the harm done. The theory of retribution, on the other hand, is purely retrospective and focuses only on the crime that was committed in the past.

OPTION 2

The answer to this question is set out clearly in SG 1.8.

QUESTION 3

The answers to this question are the following:

- (a) Culpability. SG 7.2.5.
- (b) During exercising powers or in the performance of duties as a director or furthering the interests of the company. SG 14.2.2.
- (c) Lack of criminal capacity must be proved by the state. SG 12.5.3(6)(5).
- (d) A legal duty. SG 3.4.1.
- (e) Unreasonably that it will not ensue. SG 11.8.
- (f) The going astray of the blow. SG 10.5.
- (g) A mistake; material difference. SG 10.4.
- (h) Foreseen; reconciled himself with it. SG 9.4.3.
- (i) Criminal norm. SG 2.4.2.
- (j) Unlawfully. SG 11.9.

4 NUMBER OF TUTORIAL LETTERS

You will receive a total of FOUR tutorial letters this year. You received the first letter (101) on registration. This present letter is Tutorial Letter 102. The third tutorial letter (201) will provide the answers to the compulsory assignment. Tutorial letter 103 (the last one) will inform you of the latest developments in criminal law which are not discussed in your study guide.

We wish you success with your studies.

Regards

Prof L Jordaan
Adv A Ramolotja
Adv LC Coetzee
Mr RD Ramosa

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