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CRIMINAL LAW: SPECIFIC CRIMES (CRIMINAL LAW 201)

Duration : 2 Hours

100 Marks

EXAMINERS :

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**THIS PAPER CONSISTS OF EIGHT (8) PAGES PLUS INSTRUCTIONS FOR
 COMPLETION OF A MARK READING SHEET.**

**THE QUESTIONS IN THIS PAPER COUNT A HUNDRED MARKS. THE PAPER CONSISTS
 OF TWO PARTS, MARKED A AND B. YOU MUST ANSWER BOTH PARTS A AND 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 ANSWER BOOK ITSELF. 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 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.

[TURN OVER]

Question 1

- (a) If X bribes Z to murder Y and Z in fact murders Y, X is known as an indirect perpetrator.
- (b) The doctrine of common purpose states that where two or more people, having a common purpose to commit a crime, act together in order to achieve that purpose, the **liability** of one of them is imputed to the others.
- (c) In *Motauung* 1990 (4) SA 485 (A) it was held that the "joiner-in" could be convicted of murder.
- (1) Only statement (a) is correct.
- <(2) Only statement (b) is correct.
- (3) Only statement (c) is correct.
- (4) Only statements (b) and (c) are correct.
- (5) None of the statements is correct.

Question 2

- (a) An accomplice is a person who unlawfully and intentionally furthers the commission of an offence.
- (b) An accessory after the fact is not a participant to a crime because his/her conduct does not further the commission of the crime.
- (c) A mere spectator to a deed of murder, who fails to report the murder to the police, may be convicted as an accomplice to the murder.

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

Question 3

- (a) In *W* 1976 (1) SA 1 (A) the court held that a person who has sexual intercourse with a dead woman, while believing she is alive and had not consented, may be convicted of attempted rape.
- (b) Conspiracy is a statutory crime in South African law.
- (c) If the incitement does not come to Y's knowledge, X cannot be convicted of incitement but may be found guilty of attempted incitement.
- (1) Only statement (a) is correct.
- <(2) Only statement (b) is correct.
- (3) Only statement (c) is correct.
- (4) All the statements are correct.
- (5) Only statements (a) and (b) are correct.

[TURN OVER]

Question 4

- (a) In *Mei* 1982 (1) SA 301 (A) the court held that the mere placing of stones in a road at a spot where a group of people assemble, does amount to violence, and therefore does constitute public violence.
- (b) For statutory perjury at least one of the two statements must be made in the course of a legal proceeding.
- (c) The crime of common-law perjury is only committed if the false declaration is made in the course of a legal proceeding.
- (1) Only statement (a) is correct.
- (2) Only statement (b) is correct.
- (3) Only statement (c) is correct.
- (4) Only statements (a) and (b) is correct.
- (5) Only statements (a) and (c) are correct.

Question 5

- (a) The mere refusal to co-operate with the police in obtaining evidence against oneself or another amounts to defeating or obstructing the course of justice.
- (b) Where an editor of a newspaper is charged with contempt of court on the ground of having published information in his newspaper concerning a pending case which tends to influence the outcome of the case, it is sufficient if the state proves culpability in the form of negligence.
- (c) If X absent-mindedly wears his pyjamas to court, he is not guilty of contempt of court *in facie curiae* because intent is lacking.
- (1) Only statement (a) is correct.
- (2) Only statement (b) is correct.
- (3) Only statement (c) is correct.
- (4) Only statements (a) and (b) is correct.
- (5) Only statements (b) and (c) are correct.

[TURN OVER]

Question 6

- (a) X can be charged and convicted with corruption in terms of the Prevention and Combating of Corrupt Activities Act 12 of 2004 even if, under compulsion, he received money from Z on Y's behalf, which constitutes payment for Y's influential role in a bidding process which Z's company won.
- (b) If X, a policeman, tells Y that he will arrest her (Y) unless she has sexual intercourse with him, but she refuses, X may nevertheless be convicted of extortion.
- (c) In *Solomon* 1986 (3) SA 705 (A) the court held that the crime of "dealing in drugs" is intended to punish activities which involve the furnishing of drugs as well as activities in the acquiring of drugs.
- (1) Only statement (a) is correct.
(2) Only statement (b) is correct.
(3) Only statement (c) is correct.
*(4) Only statements (a) and (c) are correct.
(5) None of the statements is correct.

Question 7

- (a) According to the Sexual Offences and Related Matters Amendment Act 32 of 2007, X may be convicted as a perpetrator of the offence of compelled rape even though X did not perform an act of sexual penetration.
- (b) The crime of rape created in the Sexual Offences and Related Matters Amendment Act 32 of 2007 is a formally defined crime.
- (c) Common-law abduction is committed only if the intention to marry or to have sexual intercourse with the minor exists at the time of the removal of the minor.
- (1) Only statement (a) is correct.
(2) Only statement (b) is correct.
(3) Only statement (c) is correct.
*(4) Only statements (a) and (c) are correct.
(5) Only statements (b) and (c) are correct.

[TURN OVER]

Question 8

- (a) X cleans his revolver but does not know that there is a bullet in one of the chambers. Thinking that there are no bullets in the revolver, he points the gun at Y and pulls the trigger. The gun goes off and Y is killed by the gunshot. **X will be convicted of murder because he was negligent.**
- (b) X may only be convicted of assault with the intent to do grievous bodily harm if the victim had in fact been seriously injured.
- (c) It is a crime to unlawfully and intentionally point an unloaded firearm at a person without good reason to do so.

- (1) All the statements are correct.
- (2) None of the statements 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 9

- (a) The crime of *crimen iniuria* protects a person's physical integrity.
- (b) It is not possible for a parent to be convicted of kidnapping of his/her own child.
- (c) A person can never commit theft in respect of his/her own thing.

- (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) Robbery can be committed even if there is no actual violence against Y.
- (b) The prejudice required for a conviction of fraud must be of a patrimonial nature.
- (c) For a conviction of the crime of malicious injury to property, it is required that the perpetrator's conduct be accompanied by an evil or malicious motive.

- (1) Only statement (a) is correct.
- (2) Only statement (b) is correct.
- (3) Only statement (c) is correct.
- (4) All of the statements are correct.
- (5) None of the statements is correct.

SUB-TOTAL: [30]

[TURN OVER]

PART B

THIS PART CONSISTS OF THREE QUESTIONS. EACH QUESTION IS SUBDIVIDED INTO A NUMBER OF SUB-QUESTIONS. YOU MUST ANSWER ALL THREE QUESTIONS. NOTE THAT YOU HAVE A CHOICE IN CERTAIN OF THE SUB-SECTIONS. 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) Z and Y are on honeymoon in South Africa. In the course of a severe quarrel between Z and Y, Y threatens to reveal that Z had committed fraud. Z decides that the only way in which he can assure Y's silence, is to murder her. He drives Y to a deserted beach with the intention of shooting and killing her. On the way to the beach, the car is hijacked by X1 and X2. X1 shoots Y in the head while X2, who also has a gun in his hand, is standing next to X1, encouraging him to kill Y. Z jumps out of his car with his pistol in his hand. X1 and X2 sees the pistol and the two of them run away together. Z sees that Y is still alive, recognises an opportunity, and fires a shot at Y which hits her in the leg. Y dies, but according to the post-mortem examination the shot fired by Z did not hasten Y's death.

- (i) Discuss Z's possible criminal liability in respect of Y. (5) ✓
- (ii) Discuss the possible criminal liability of X2 in respect of Y in view of the fact that X2 did not himself fire the shot that caused Y's death. (5) ✓

(b) NOTE THE CHOICE YOU HAVE IN THIS QUESTION

In terms of section 18(2)(a) of the Riotous Assemblies Act 17 of 1956, it is a crime to conspire with someone else to commit a crime. Name the requirements for a conviction of the crime of conspiracy.

OR

There are a number of different ways in which the crime of assault can be committed. Briefly name and discuss the different ways in which this crime can be committed. Your answer must cover all the different subdivisions of the act of assault. (7) ✓

(c) Merely state, without any discussion, the legal interest protected by each of the following crimes:

- (i) public violence
- (ii) criminal defamation
- (iii) kidnapping

(3) ✓
[20]

[TURN OVER]

Question 2

- (a) Discuss whether X may be convicted of attempted murder in the following instances. In your answer you must indicate which form of attempt is applicable and whether it is punishable.
- (i) X intends to murder her husband Y. She puts ant poison in his food. Y eats the food, becomes sick but survives.
- (ii) X intends to murder her husband Y. She puts arsenic in his food. Z, the domestic servant, has seen what X was doing. She warns Y that his food contains poison. As a result of the warning he refrains from eating it.
- (iii) X intends to murder her husband Y. She mixes bicarbonate of soda in his food. She is under the (incorrect) impression that bicarbonate of soda is a lethally poisonous substance, similar to caustic soda. Y eats the food and his health is not impaired as a result.
- (iv) X intends to murder Y. She puts arsenic in his food. Minutes before serving his meal, she abandons her evil plan and throws away the poisoned food. (4 x 3 = 12) X
- (b) As far as the punishment for murder is concerned, legislation was passed in 1997 providing for life imprisonment to be imposed by a court in certain circumstances upon an accused found guilty of murder. Name the instances in which a court is obliged to impose such imprisonment. (In your answer you need not also discuss the circumstances in which a court is not obliged to impose such imprisonment.) (6) X
- (c) Merely state in one sentence of which crime or crimes (if any) X may be convicted in the following instances:
- (i) X, a 30-year-old schoolteacher, has sexual intercourse with one of her students, a 15-year-old boy, with his consent.
- (ii) X, a 50-year-old male, has sexual intercourse with his 25-year-old daughter with her consent.
- (iii) X, a 30-year old male, wants to have sexual intercourse with Y, a 20-year old female but knows that she will not give her consent. He puts three sleeping tablets in Y's alcoholic drink. Y falls asleep. X takes her (Y) to his room and has sexual intercourse with her while she is asleep. He videotapes their sexual activities to later show his 17-year-old friend.
- (iv) X, a 50-year-old male, unlawfully and intentionally shows his naked body to a 13-year-old girl.
- (v) X, a 50-year-old female, tells Y, a 20-year old male, that he will not get a promotion unless he has sexual intercourse with her. Y complies but does not get the promotion. (7)
[25]

[TURN OVER]

Question 3

(a) X works every day at his office on a highly sophisticated computer. X has a very old computer at home. X wants to buy a new computer but cannot afford it. One Friday afternoon, X, without permission, packs the office computer in a box and takes it home. He and his family enjoy using the office computer so much that X decides to keep it for himself permanently. On Monday morning, X goes to his employer and tells him that his office computer is gone. X suggests to his employer that somebody must have stolen the computer. He requests his employer to replace the "stolen" computer so that he (X) can carry on with his work. The employer goes to the police. X is charged with the crimes of **theft** and **fraud**. Discuss whether X's acts and the **culpability** with which they are carried out comply with the requirements of liability for each of these two offences. (10) ✓

(b) Discuss the intention requirement in the crime of housebreaking with intent to commit a crime. (5) ✓

(c) Write down the missing words or phrases in your examination book:

(i) In the case of *Naidoo 1977 (2)* SA 123 (N) it was held that if X, a motorist, flickers his lights to warn oncoming motorists about the presence of a speed trap, he commits the crime of obstruction of traffic.

(ii) The mere exercise of a benefit to another with the intention of influencing that other person to perform an act in relation to his power or duty, is sufficient for a conviction of the statutory offence of corruption.

(iii) Possession of drugs in the ordinary juridical sense requires a consciousness (corpus or detentio) and a desire (animus).

(iv) If X, intending to steal, conceals in her clothing an article offered for sale in a self-service shop and is apprehended with the article before leaving the shop, the courts accept that she can be convicted of obstruction of traffic theft.

(v) In *Sithole 1981 (1)* SA 1186 (N) the court held that the handbag snatcher commits the crime of obstruction of traffic.

(vi) Forgery is a form of the crime of fraud.

(vii) X commits theft in the form of fraud if she appropriates Y's property which is already in her (X's) possession.

(viii) X commits the crime of obstruction of traffic if he unlawfully and intentionally sets Y's car alight, and the crime of obstruction of traffic if he unlawfully and intentionally sets Y's house alight. (10) ✓

SUB-TOTAL: [70] [25]

TOTAL: 100