

CRW2601 Group Discussions 5 March 2011

Summary

This feedback letter is a summary of the matters discussed during the group discussions conducted by the Criminal Law lecturers on 5th March. The purpose of this letter is to inform students, who could not attend any of the lectures, of the matters that were discussed and the content of the study material that was covered during the lectures. WE WOULD LIKE TO EMPHASISE THAT THE TOPICS CHOSEN FOR DISCUSSION AT THE GROUP DISCUSSIONS ARE NOT MORE IMPORTANT THAN ANY OTHER TOPIC COVERED IN THE MODULE. NO EXAMINATION "TIPS" WERE GIVEN TO STUDENTS WHO ATTENDED ANY OF THE LECTURES!

First of all, the format of the **examination paper** for May/June 2011 was discussed. The format is exactly the same as the format of the examination paper in the October/November examination. Students were informed that this examination paper as well as commentary on the paper can be found in Tutorial letter 103 which students will receive soon. Tutorial letter 103 is already on *MyUnisa* and has been posted to students. The lecturers reiterated that **multiple choice questions (MCQs)** are short, straight-forward questions. These questions are statements in either a positive or negative form. MCQ statements should be taken as they are – nothing more should be read into each statement. The question to consider is whether each statement as expressly worded/phrased is correct. If the correctness of a statement is dependent on a word, this will be indicated by making that word "bold". Lecturers do not want to trick students with these questions; these are merely another method for testing basic knowledge of the subject. As such, students should know the content of all the Study Units as well as the prescribed sections in Snyman (where it is said "Study this section from Snyman *Criminal Law*"). Students who "spot" (leave out certain study areas) will not pass. Students can prepare themselves for these MCQ questions by themselves answering the questions in the October/November 2010 examination paper (which are reprinted in Tutorial letter 103) and by studying, especially, the "Summaries" and "Test Yourself" segments of the Study Guide.

The lecturers pointed out that it is very important to know the basic **definitions** of the general principles of criminal law. When answering any question which requires application, for example, a problem-type question, you must be able to define concepts such as criminal capacity, intention (and its forms), and negligence. Since this Study Guide focuses mainly on **criminal liability** and **its four elements**, you must know each one of the elements very well. Also know the sequence of investigation into the elements of criminal liability. You will have to use this sequence every time you have to determine whether X is guilty of a crime or not. The theories of punishment were discussed and the importance of these theories in determining an appropriate sentence to be imposed on a convicted accused, emphasised. It is important for students to understand each theory and its criticisms, as well as to be able to compare and contrast the theories with one another. The **Masiya-case**, which concerns both the *ius praeivum* and *ius strictum* rules of the principle of legality, was also discussed. Students need to understand how each of these rules was applied in the context of the *Masiya-case*. Please note that the extension of the rape definition could not apply to Masiya (the accused) because it was extended after the commission of the crime by the accused. Some students felt that the Court did violate the principle of legality as it extended the crime's field of

application. It was explained that this situation was very exceptional and that the Court made use of provisions in the Bill of Rights which empower them to develop the common law in order to promote the values enshrined in the Constitution.

In factors which exclude the **voluntariness of the act**, sane and insane automatism (3 differences) were touched on. It is important to understand sane automatism as it features again in the discussion of the *Eadie* case which is one of your prescribed cases and which is discussed under the defence of non-pathological criminal incapacity (NPCI) later in the Study Guide (Study Unit 7). Antecedent liability was discussed. (Please note – antecedent liability is only applicable in cases of crimes requiring negligence). Liability for omissions, the principles and cases were also discussed in detail.

Much time was spent on the requirement of **causation**. Causation concerns materially-defined crimes, so know the difference between this type and formally-defined crimes. In materially-defined crimes (result/consequence crimes), X has to be both the factual cause as well as the legal cause of Y's death to be held liable. To determine the factual cause, one uses the *conditio sine qua non* test – the “but for” test. If you took X out of the picture, would Y still have died? If the answer is “no” then X is the factual cause of Y's death. To determine legal causation, one has to look at policy considerations. Here there are three specific tests which may be applied, e.g. the individualisation theories, the theory of adequate causation and the *novus actus interveniens* theory (know their definitions!). All three theories may be used by the courts as part of applying the “flexible criterion” of policy considerations. Students experienced difficulty applying these theories, especially in factual situations such as in the *Grotjohn*, *Daniëls*, *Mokgethi* and *Tem bani* cases. Students were advised to make a careful study of these cases. Problem-type questions with similar facts may be asked in the examination.

The **grounds of justification** were discussed as well as the element of **culpability**. Criminal capacity, the test for criminal capacity and the defences excluding criminal capacity were discussed. Here the *Eadie*-case and the defence of sane automatism were concentrated on. It was also emphasized that the defence of sane automatism does not succeed easily. Students were alerted to memorize section 78(1) of the Criminal Procedure Act 51 (its name and content!). Intention is a very important form of culpability – know the different forms of intention. Mistake which excludes intention was discussed as well as the difference between mistake and *aberratio ictus*. This is a very difficult aspect of criminal law, and students must make sure that they understand the difference. Look at the various examples in the Study Guide in order to gain the necessary insight. Students must not neglect the last chapters of the Study Guide. The chapter on negligence is very important. Students must know the definition of negligence, as well as the discussion of certain concepts e.g. “reasonable foreseeability” and “the reasonable person”.

The last subject discussed was **voluntary intoxication** and the *Chretien*-case. Because students find this topic so difficult, we give a short summary of the relevant legal principles once again. In order to understand the effect of voluntary intoxication on criminal liability, we had to go back to the sequence of the requirements for criminal liability. Before a person can be convicted of an offence the state must prove all the requirements for criminal liability. These are: an act; which complies with the definitional elements; which is unlawful and which is performed with culpability.

Culpability means that a person had criminal capacity (the **ability** to distinguish between right and wrong and to act according to such insight) and intention or negligence depending on the specific crime with which he is charged. In *Chretien* the AD held that intoxication may exclude any of the following elements, depending on the **degree** of intoxication: **the act** (that is when a person was so drunk that he could not perform a voluntary act); **criminal capacity** (that is when he was so drunk that he could not appreciate the wrongfulness of his act or act in accordance with such appreciation) or **intention** (the direction of his will at the particular result). The position after this case was that a person who was so drunk at the time of the commission of an offence that the state failed to prove any one of these particular elements, he (the accused) could be completely acquitted. The legislature thought this was unfair because then drunk people are treated better than sober people. So, to rectify the common-law position, the legislature **created a new crime: Section 1 of Act 1 of 1988**. To be convicted of this statutory crime, the state must prove certain elements. The core elements of this offence are that X was **acquitted of another offence on the basis that he had lacked criminal capacity as a result of intoxication**. X can then be found guilty of this statutory offence. So, instead of having to prove criminal capacity (as in all other offences) the state must, for a conviction of this offence, prove that X **lacked criminal capacity** and was acquitted on this basis. This crime was created in order to hold the very drunk people who committed offences liable. Unfortunately, the new statutory offence is not worded in such a way that **all drunk** people acquitted of other offences will now be found guilty of this offence. This is because it is required that X be **acquitted on the basis that he had lacked criminal capacity**. **If X was acquitted on the basis that he lacked intention only, he cannot be convicted of this offence**.

Students were advised to study the effect of provocation on liability, as well as the content of Study Unit 14.