

**(Theories of punishment)**

**1 S v Zinn 1969**

*Principles dealt with:*

1. Combination theory of punishment.
2. Using crime, criminal and interests of society to determine punishment.
3. Weighing severity of crime, criminal's personal circumstances & interests of society determines punishment.

*Outline:*

Appellant committed multiple instances of fraud over 8 years and was sentenced to 15 years in jail.

*Outcome:*

Sentence reduced to 12 years.

**(Principle of legality)**

**2 S v Francis 1994**

*Principles dealt with:*

1. Whether or not an act is a crime if it is not explicitly stated as such in a statute

*Outline:*

Accused absconded from treatment facility and was charged under an Act promulgated in 1971. A later act of 1992, however, repealed the 1971 act and did not contain any criminal sanction or norm. Thus no criminal act was committed.

*Outcome:*

Conviction of accused was repealed.

**(The requirement of an act)**

**3 R v Dhlamini 1955**

*Principles dealt with:*

1. Automatism

*Outline:*

Accused dreamt he was being attacked and killed another person who happened to be nearby.

*Outcome:*

Accused was found not guilty.

**4 S v Henry 1999**

*Principles dealt with:*

1. Sane/ Insane Automatism
2. Court's circumspection when dealing with this defence

*Outline:*

Divorced appellant drove to his ex's house and killed her and her mother after an argument. Appellant said he heard zinging noises and could not remember shooting his ex. Appellant raised defence of sane automatism.

*Outcome:*

Appellant's appeal was dismissed.

## **(Omission)**

### **5 Minister van Politie v Ewels 1975**

*Principles dealt with:*

1. Omissions
2. Legal duty to act positively if the legal convictions of the society require him to do so

*Outline:*

Plaintiff was assaulted in a police station by an off-duty policeman. Other policemen could easily have stopped the assault, but did not. Plaintiff claimed damages for the assault from the Minister of Police.

Police appealed the initial finding for the plaintiff.

*Outcome:*

Appellant's (Police's) appeal was dismissed: police should assist members of the public.

## **(Impossibility)**

### **6 S v Leeuw 1975**

*Principles dealt with:*

1. Defense of impossibility
2. Placing of a positive duty by regulation/law is a requirement for using defense of impossibility.
3. Objective impossibility of compliance with relevant legal position (inconvenience or difficulty does not constitute impossibility)

*Outline:*

X drove a vehicle without a license and due to his being a restricted person found it difficult to obtain a driver's license. He was convicted of driving without a license and appealed against the decision.

*Outcome:*

Appeal was dismissed: no positive duty was placed on X to drive a motor vehicle and difficulty/inconvenience is not objectively impossible.

## **(Causation)**

### **7 S v Daniels 1983**

*Principles dealt with:*

1. Factual causation (But-for X's act, Y would have been alive at the time)
2. *Conditio sine qua non*
3. Considerations of fairness and legal policy by courts

*Outline:*

X shot Y in the back. Before Y died, Z killed Y by shooting him in the head.

*Outcome:*

Second appellant's (Z's) appeal was upheld due to lack of sufficient evidence by the state.

## 8 S v Mokgethi 1990

*Principles dealt with:*

1. Factual and legal causation
2. *Novus actus interveniens*

*Outline:*

X shot Y, a bank teller into a paraplegic state. Y recovered and resumed work, but was told to move around often in order not to develop pressure sores. Y didn't do this, got pressure sores and died.

X was then convicted of murder in regional court. He appealed on the grounds that he should not have been convicted of murder as there was not a sufficient causal connection between the bullet wound and Y's death. Argument: bullet was the factual cause of death, it was not the legal cause.

*Outcome:*

**Van Heerden, JA**

Judge upheld the appeal confirming that if only the *conditio sine qua non* test has been complied with, at most there is factual causation. Only if there has been compliance with the criterion which further restricts the operation of the *sine qua non* test can there be legal causation.

X was sentenced to 10 years for attempted murder and not murder.

**(Unlawfulness – general)**

## 9 S v Fourie 2001

*Principles dealt with:*

1. Unlawfulness
2. *Boni mores* used to determine unlawfulness
3. Grounds for justification

*Outline:*

X was caught speeding. He defended his actions by stating that he was on his way to court and to serve the state and had he not speeded, he would have been late. The magistrate said that was fine.

*Outcome:*

On review, the magistrate's verdict was overturned and X was found guilty.

**(Private defence)**

## 10 R v Patel 1959

*Principles dealt with:*

1. Private defence
2. Grounds for justification
3. Justifiable homicide
4. Private defence by a 3<sup>rd</sup> party,

*Outline:*

X shot and killed a man who was hitting X's brother with a hammer. X was found guilty of homicide and appealed on the grounds of private defence.

*Outcome:*

Appeal was allowed, conviction & sentence set aside

## 11 Ex parte die Minister van Justisie: in re S v Van Wyk 1967

*Principles dealt with:*

1. Private defence used as defence when protecting property

*Outline:*

X rigged a shotgun by a window to protect his property after numerous break ins. Someone broke in and was shot and killed by the rigged gun. He then used private defence to justify his actions and was acquitted. The Minister of Justice then put certain questions to the appellate division:

1. Whether someone can rely on private defense when protecting property
2. Assuming (1) is positive, whether limits of private defence had not been exceeded in the above case

*Outcome:*

First question was answered positively by all 5 judges.

In second question, 3/5 judges held that the limits had not been exceeded.

## 12 S v Mogohlwane 1982

*Principles dealt with:*

1. Private defence used as defence when protecting property
2. Requirements of private defence: Attack must not yet be completed

*Outline:*

Y stole a bag of stuff from X. X ran home, got a knife and killed Y. The court had to decide whether or not it was private defence due to the long period in which it happened.

*Outcome:*

The court found that the act of running home and killing Y was part of the same act of private defence.

**(Necessity)**

## 13 S v Goliath 1982

*Principles dealt with:*

1. Necessity
2. Compulsion as an act of necessity

*Outline:*

Y threatened to kill X if X did not help kill Z. X could not run away or Y would have killed X. Y was convicted of murder and X was acquitted, but the state appealed to the appellate on a question of law.

The question asked was whether compulsion could ever be a complete defence to a charge of murder.

*Outcome:*

**Rumpff, AJ**

All 5 judges held that compulsion is a valid defence to a charge of murder.

**(Consent)**

**14 R v C 1952**

*Principles dealt with:*

1. Consent

*Outline:*

X thought Y her husband was having intercourse with her when in fact it was not. In the act she turned on her back for the sake of convenience.

*Outcome:*

**Grobler, AJ:**

Y was found guilty of rape: woman must not only have a mental state of willingness to commit act, but also willingness to commit it with a specific man.

**(Obedience to orders)**

**15 Queen v Smith 1900**

*Principles dealt with:*

1. Obedience to orders

*Outline:*

X shot a man on his superior's orders. He was charged with murder and the question was whether he could rely on the defence that in killing the man he was merely following orders.

*Outcome:*

**Solomon, JP:**

X was found not guilty as the order given him was not considered by the court to be manifestly unlawful.

**(Mental illness)**

**16 S v Kavin 1978**

*Principles dealt with:*

1. Mental Illness

*Outline:*

X was depressed and killed his wife, daughter and son, believing they would be reunited in Heaven. X was obviously mentally ill.

*Outcome:*

Accused was remanded to a mental institution.

(Intoxication)

## 17 S v Chretien 1981

*Principles dealt with:*

1. Intoxication

*Outline:*

X drank a lot at a party, got into his car and mowed down some people, killing 1 and injuring 5. X was found not guilty of murder but was convicted of culpable homicide for the 1 person he killed, due to the fact that he was intoxicated and thus lacked intent. On the 5 counts of attempted murder, X was found not guilty due to his intoxication. The state was unhappy with the outcome and reserved the following question of law to be answered by the appellate division: whether the trial court was correct "in holding that the accused on a charge of attempted murder could not be convicted of common assault where the necessary intention for the offence charged had been influenced by the voluntary consumption of alcohol." Thus: the state wanted X found guilty on the charge of common assault (which required intent) for the counts of attempted murder.

*Outcome:*

### **Rumpff, CJ**

The judge found that the court *a quo* was correct in not finding X guilty of assault. The decision was criticized because this meant a sober person could be punished more harshly for a crime than an intoxicated one.

As a result of the criticism, the Criminal Law Amendment Act 1 of 1988 was passed.

(Criminal incapacity)

## 18 S v Eadie 2002

*Principles dealt with:*

1. Non-Pathological Criminal Incapacity
2. Sane automatism
3. Provocation

*Outline:*

Y provoked X into an act of road rage. Both X and Y were drunk. X killed Y with a hockey stick. He was convicted of murder. He appealed using the defence of NPCI.

*Outcome:*

Judge dismissed appeal: judge sees no difference between NPCI and sane automatism. Important because the case disallows using NPCI when provoked or under emotional stress.

(culpability)

## 19 S v Masilela 1968

*Principles dealt with:*

1. Culpability
2. *Mens rea*
3. Principle of contemporaneity

*Outline:*

X and another strangled Y and, believing him dead, set his house on fire. Turns out that Y was not dead and that the fire killed him. X and another were then convicted of murder. They appealed on the basis that they lacked culpability: the act of burning down the house killed Y, but they had no intention of killing Y with this act.

*Outcome:*

Judge turned down appeal: found that strangling and burning were part of the same

## 20 S v Goosen 1989

*Principles dealt with:*

1. Mistake relating to the chain of causation

*Outline:*

X drove a car with Z & W. They stopped Y in a Mercedes and killed him. The manner of killing was unforeseen. The matter was appealed, stating that X acted without intention due to a mistake relating to the chain of causation.

*Outcome:*

Bizarrely, the court upheld the appeal and X's sentence was reduced and the original sentence for murder was set aside.

## 21 S v Ngubane 1985

*Principles dealt with:*

1. Negligence & Intention
2. *Dolus eventualis*
3. Unconscious and conscious negligence

*Outline:*

X pleaded guilty to culpable homicide after stabbing a woman to death, but from the questioning, the judge realized that it was murder and not culpable homicide. X was then found guilty of murder. According to law, the original charge of culpable homicide could not be changed during the trial and the matter was thus appealed. The Appellate thus had to decide whether or not X could be convicted of culpable homicide if X did not have intention.

*Outcome:*

**Jansen, JA**

Through some tortuous logic, the judge arrives to the conclusion that it is indeed possible to act negligently (which is required for culpable homicide) without having intention.

Various criticisms are raised.

## 22 S v Mtshiza 1970

*Principles dealt with:*

1. *Aberratio ictus*
2. Consequences of *aberration ictus*

*Outline:*

X and Y consumed a lot of liquor together. They got into a fight and while trying to stab Y, X stabbed Z and killed him. X was convicted of culpable homicide and sentenced to 10 years' imprisonment & 8 strokes.

*Outcome:*

**Holmes, J.A.**

The original sentence was put aside and a new sentence of 5 years' imprisonment was given: judge refused to implement *versari in re illicita* doctrine.

Holmes delivered the minority judgment, but it has been used several times since indicating the court's inclination to follow his lead.

Holmes described the types of charges that could be brought on *aberration ictus*:

1. X will normally always be guilty of attempted murder in respect of Y – that is, the person she wished to, but did not, kill.
2. X's liability in respect of the person actually struck by her blow:
  - a. If she had foreseen that Z would be struck and killed by the blow, and had reconciled herself to this possibility, she had *dolus eventualis* in respect of Z's death and is guilty of murder in respect of Z.
  - b. If X had not foreseen the possibility that her blow might strike and kill someone other than Y, or, if she had foreseen such a possibility but had not reconciled herself to this possibility, she lacked *dolus eventualis* and therefore cannot be guilty of murder.
  - c. Only if it is established that both intention (in these instances mostly in the form of *dolus eventualis*) and negligence in respect of Z's death are absent on the part of X, will X be discharged on both a count of murder and one of culpable homicide



## 23 S v De Blom 1977

*Principles dealt with:*

1. Mistake relating to law

*Outline:*

X was charged with contravening an obscure foreign exchange law with regards to exporting jewelry out of the country and pleaded ignorance of the law. She was convicted and appealed.

*Outcome:*

**Rumpff, HR**

Defence of ignorance of the law was upheld and the conviction was set aside.

"If, owing to ignorance of the law, X did not know that her conduct was unlawful, she lacked *dolus*; if *culpa* was the required form of culpability, her ignorance of the law would have been a defence if she had proceeded, with the necessary caution, to acquaint herself with what was expected of her"

## 24 S v De Oliveira 1993

*Principles dealt with:*

1. Mistake relating to a ground of justification
2. Putative private defence

*Outline:*

X lived in an area where many housebreaks occurred. He thought someone was trying to break into his house, when in fact they were just trying to gain the maid's attention. He fired 6 shots directly at the men without firing a warning shot, killing one of them. He was convicted of murder and attempted murder and here appealed on the basis that the state had not proved beyond a reasonable doubt that he had subjectively had the necessary intent to commit the crimes.

*Outcome:*

**Smalberger, JA**

The appellant was held to have had the necessary intention to kill in the form of *dolus eventualis* and his appeal failed.

## 24 S v Lungile 1999

*Principles dealt with:*

1. Necessity/Coercion
2. Common purpose
3. *Dolus eventualis*
4. *Novus actus interveniens*
5. Negation of mistake relating to the chain of causation

*Outline:*

X and Y robbed a store. A policeman walked in and started shooting at them. During the course of the shooting, a shop assistant was killed. X used as defence (1) to (3), saying he was coerced and thus acted out of necessity, did not have a common purpose with Y because he ran away when the shooting started and did not have *dolus* because he could not foresee the killing of the assistant. Y said that the shooting of the assistant by the policeman was a *novus actus interveniens*. *Goosen* was never brought up, even though the events could have been defended using the case.

*Outcome:*

**Olivier, JA:**

1. There was no compulsion as X was never threatened (essential elements in the crime of coercion)
  2. There was common purpose as X joined the gang and went along with the robbery (*Bradbury* 1967)
  3. *Dolus eventualis* was inferred as inescapable due to circumstances (in PE main street, broad daylight, across from a police station, etc)
  4. The shooting of the assistant was not a *novus actus* because it was not abnormal and completely independent of the actions of the accused.
  5. Snyman takes another jab at the *Goosen* decision.
- The accused's sentences were upheld.