LECTURE NOTES/OVERVIEW

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CRW2602
SPECIFIC CRIMES
CHAPTERS: 1 - 16

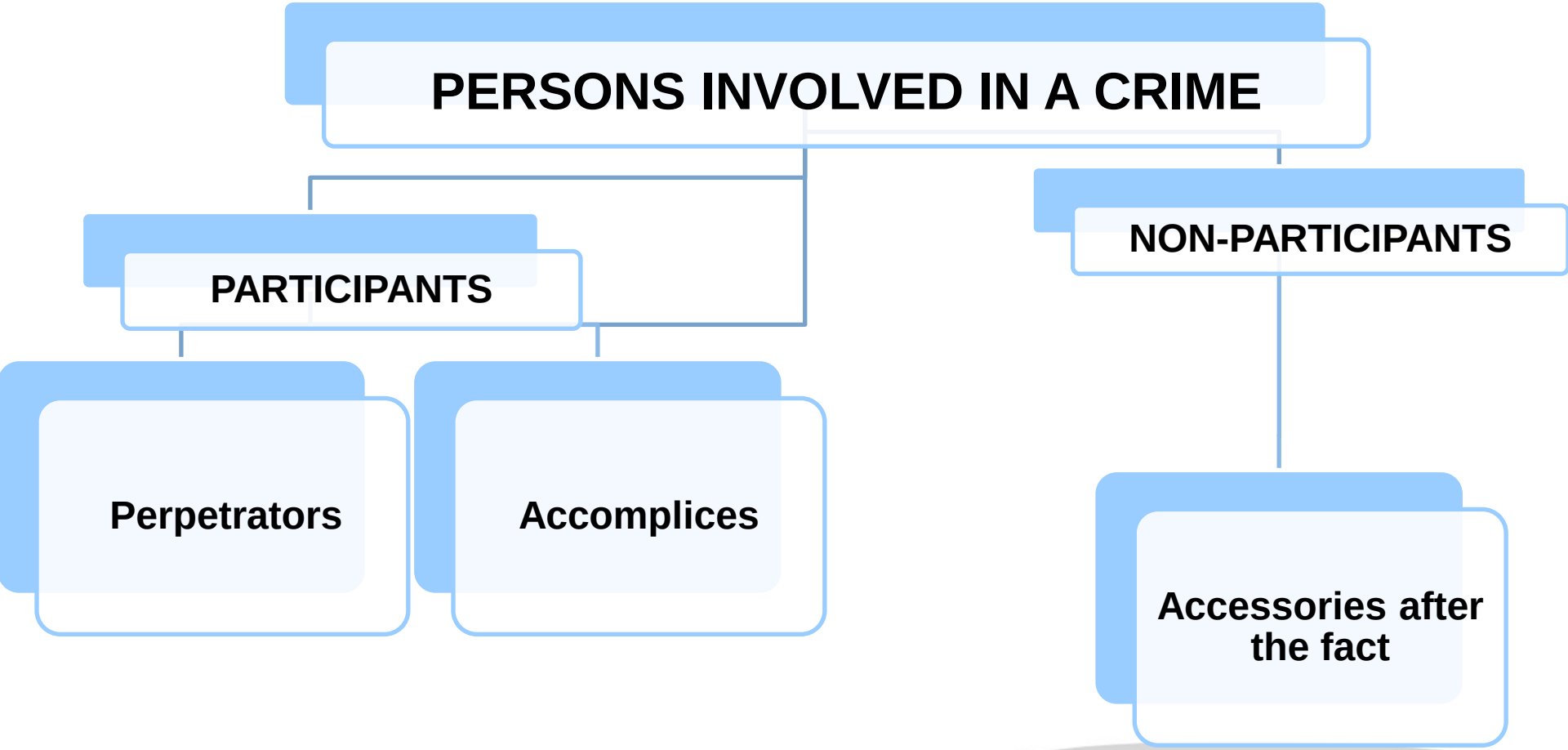
Part 1

- **GENERAL PRINCIPLES**
- Perpetrators
- Accomplices
- Accessories after the fact
- Attempt, conspiracy and incitement

Part 2

- **SPECIFIC CRIMES**
- Crimes against state; admin of justice
- Crimes against the community
- Crimes against the person
- Crimes against property

STUDY UNIT 1
INTRODUCTION
(SG: 1 – 19)



What is a participant?

- Anyone who FURTHERS the commission of the crime

- A non-participant does not further the commission of the crime eg. accessory after the fact

Definition of a Perpetrator

- A person is a perpetrator if:

1. His **conduct**, the **circumstances** in which it takes place and the **culpability** with which it is carried out are such that he satisfies the requirements for liability contained in the definition of the offence

OR

Definition of a perpetrator

2. If although his own conduct does not comply with that required in the definition of the crime, he **acted** together with **one or more persons** and the **conduct** required for a conviction **is imputed to him** by virtue of the principles relating to the doctrine of **common purpose**

Definition of an accomplice

- A person is an accomplice if:

1. Although he does not comply with all the requirements for liability set out in the definition of the crime, and
2. Although the conduct required for a conviction is not imputed to him in terms of the doctrine of common purpose, he engages in conduct whereby he **furthers** the commission of the crime by someone else.

Difference between direct/ indirect perpetrator

- Irrelevant for purposes of determining liability
- Direct: own hands to commit a crime
- Indirect: uses someone else to commit a crime
- Co-perpetrator: is a perpetrator where several persons commit the crime together

Doctrine of common purpose

If two or more people, having a common purpose to commit a crime, act together in order to achieve that purpose, the **acts** of each of them in the execution of such a purpose **are imputed to the others**

Proof of common purpose?

- Prior agreement
- Active association and participation in a common criminal design

Cases!!! You must know in detail:

- *Thebus*
- *Safatsa*
- *Mgedezi*
- *Molimi*

Mgedezi

- If no proof of a previous agreement between the perpetrators, the following requirements must be met to be found guilty based on common purpose:

1. Must have been present at the scene of the crime (not a passive spectator)
2. Must have been aware of the assault on Y
3. He must have intended to make common cause with others
4. He must have performed an act of association
5. He must have had the intention to kill or to contribute to the death

When can active association result in liability?

- Y must still be **alive** and be at a stage before the mortal wound is inflicted (*Motaung*)

- Liability based on active association has been declared constitutional (*Thebus*)

What if the conduct differs from the conduct in the initial mandate?

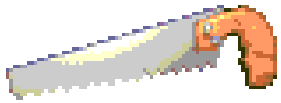
- *Molimi*: may not be imputed unless each of the latter **knew or foresaw** the possibility that it might be committed and **reconciled** themselves to that possibility.

Disassociation/ withdrawal from common purpose

1. There must be a clear and unambiguous intention to withdraw
2. X must perform a positive act of withdrawal
3. The type of act required for an effective withdrawal depends upon a number of circumstances
4. The withdrawal must take place before the events have reached the commencement of the execution
5. The withdrawal must be voluntary

Joiner-in (*Motaung*)

- A joiner-in associates himself with another's common purpose at a stage when the lethal wound has already been inflicted



1. The injury must not hasten X's death
2. The victim must still be alive
3. There must not be a previous conspiracy or common purpose

SELF ASSESSMENT

- A is the leader of a drugs syndicate. Y, a member, decides to sever his ties with the syndicate, and to join another syndicate. Avenging the defection, A cuts Y's throat. Mortally wounded, Y collapses. B, who previously had supplied drugs to Y, appears on the scene and, furious because Y owes him money, shoots Y in the stomach. (B had not agreed beforehand with A to kill Y.) The bullet wound does not hasten Y's death. Y dies as a result of the wound to his throat. A needs help to get rid of the corpse. For this purpose he calls in the aid of C, who had agreed before the murder to help A to get rid of the corpse, and D who had no such agreement with A. Together they drag the body to a secluded beach and dump the body in the ocean.

- Briefly discuss:

- (i) the criminal liability of B, referring to authority /4/
- (ii) the criminal liability of C /2/
- (iii) the criminal liability of D /2/

(8)

Answer:

(b) (i)The answer to this question is found in SG 1.3.5

- B is a joiner-in, because:
  (1) the bullet wound he inflicted on Y did not hasten Y's death;
  (2) Y was still alive at the time;
  (3) there was no previous conspiracy to murder (common purpose).
- B can be convicted of attempted murder, and not murder (*Motaung* 1990 (4) SA 485 (A)), because to hold B liable for murder in these circumstances would amount to holding him responsible *ex post facto* for his acts.

(ii) The answer to this question is found in SG 2.3.3 (2)

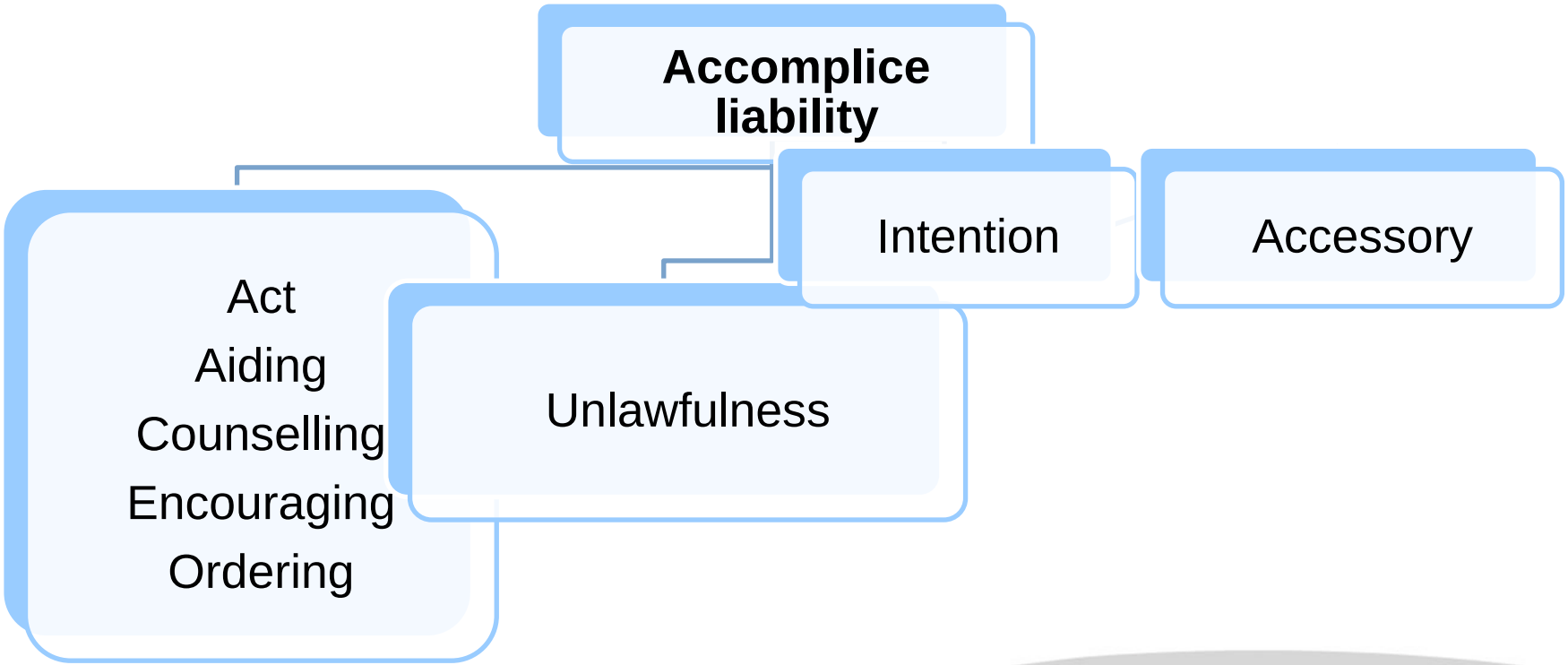
- Since C agreed prior to the commission of the crime to render assistance, he is regarded as a perpetrator since his conduct, culpability and personal qualities accord with the definition of murder. (C can also according to the *Williams* case be an accomplice to murder.)

(iii) The answer to this question is found in SG 2.3.2 – SG 2.3.3

- D is an accessory after the fact. D unlawfully and intentionally engaged after the commission of the crime in conduct that is intended to enable the perpetrator or accomplice to evade liability for the crime, or to facilitate such a person's evasion of liability.

STUDY UNIT 2
ACCOMPLICES AND ACCESSORIES

(SG 20 – 26)



Accessory nature

- There must be a perpetrator in order to be found guilty of this crime
- Can one be an accomplice to murder 
- *Williams* case and criticism by Snyman
- i.e can you actually further a victim's death without also causing it 
- See also *Safatsa* – common purpose and co-perpetrators

Accessories after the fact

- Is not a participant. Why 
- She does not further the crime
- Only in the picture AFTER the crime is committed and helps the perpetrator to evade liability

What is the definition of an accessory after the fact?

Definition of accessory after the fact

A person is an accessory after the fact to the commission of a crime if, after the commission of the crime, she unlawfully and intentionally engages in conduct intended to enable the perpetrator of or accomplice to the crime to evade liability for her crime, or to facilitate such a person's evasion of liability

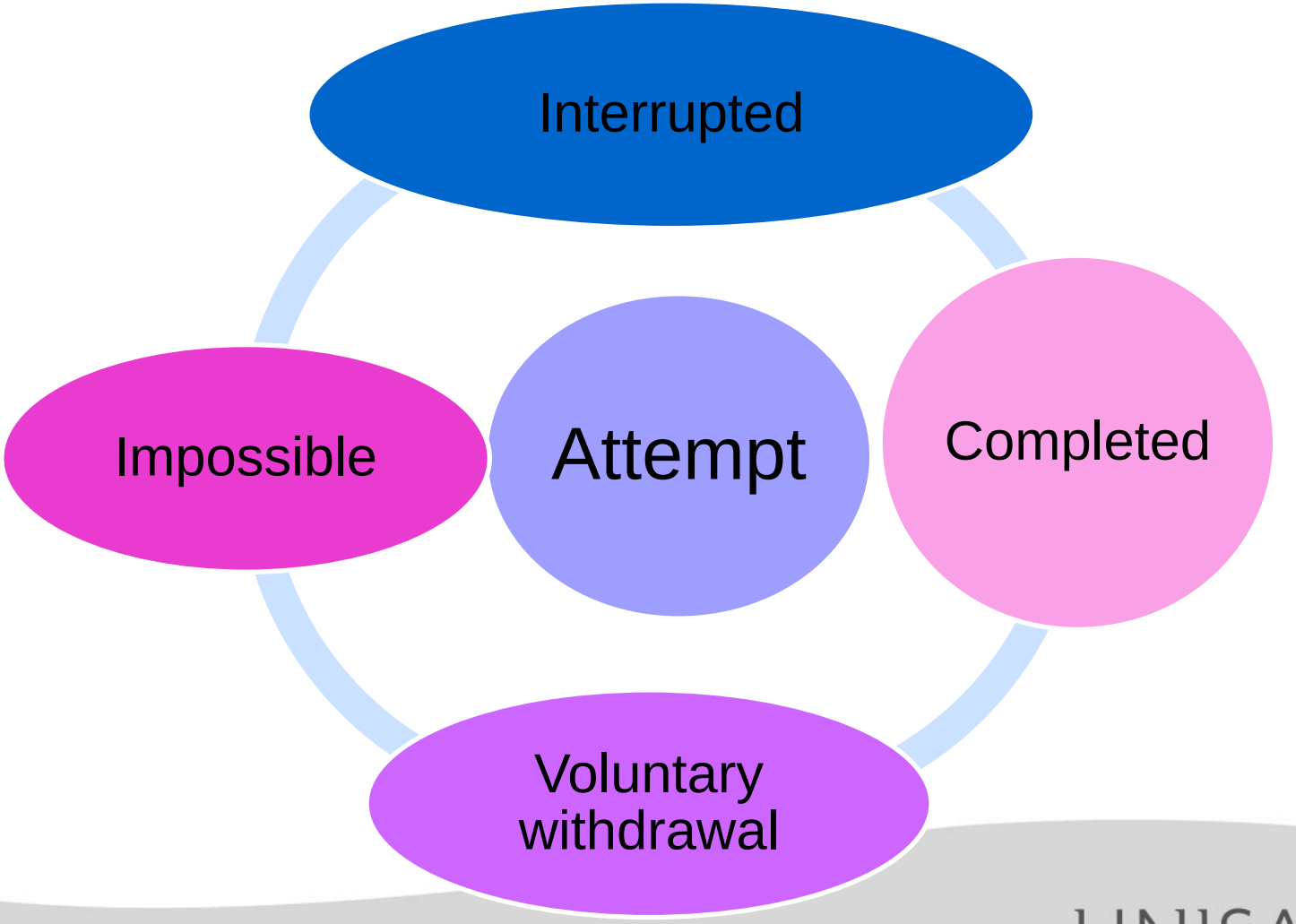
Did you get the definition correct?

Can you be an accessory to a crime committed by yourself?

- In principle no! There has to be a perpetrator as it is an accessory crime.
- Exception: See *Gani* and *Jonathan* cases
- Is this crime really necessary?

- overlaps with the crime of defeating or obstructing the course of justice.

STUDY UNIT 3
ATTEMPT, CONSPIRACY AND INCITEMENT
(SG 27 – 40)



1. Completed attempt

- Where X does everything to complete the attempt but the crime is not completed

Eg. X shoots at Y but misses

2. Interrupted attempt

X's actions are no longer preparatory but are acts of execution when they are interrupted

Rule:

Objective test used and distinguishes between acts of preparation and acts of execution

If it is merely preparation = no attempt

If acts of consummation = attempt

Eg. X wants to commit arson and pours the petrol but just as he is about to light the match he is caught by a policeman

See *Schoombie* case

3. Attempt to commit the impossible

- In this case the means used cannot bring about the desired result eg X wants to murder Y and uses vinegar to the deed as he think it is poisonous

OR

- The crime cannot be committed because of impossibility relating to the object eg. X wants to murder Y and shoots him in the head but Y is already dead due to a stroke.

- A subjective test is applied – the law seeks to punish X's evil state of mind.

See Davies case

What is a putative crime?

- It is a crime which does not exist
- You must therefore distinguish between a:

Mistake about the law	Mistake about the facts
Not a punishable attempt if you are mistaken about the law = putative crime	Is a punishable attempt if you are mistaken about the facts (*Davies*)

4. Voluntary withdrawal

This is where X's actions have already reached the stage when they qualify as acts of execution when X of his own accord, abandons his criminal plan of action

Eg. X places poison into Y's porridge and then throws it away before giving it to Y.

See Hlatwayo case

PS: Is there such a thing known as negligent attempt?

NO!!! Why? You cannot intend to be negligent

Self test/ Activity

- Discuss the type of attempt known as attempt to commit the impossible as well as the circumstances under which attempt to commit the impossible is **not** punishable (in other words the exception/s to the rule that attempt to commit the impossible is punishable). (10)

ANSWER

- The answer to this question is found in SG 3.2.6**.** You were required to discuss the **attempt to commit the impossible.** Before 1956, uncertainty whether this type of attempt was **punishable or not** or whether an **objective or a subjective test** should be employed. Using an objective test (considering the facts only from the outside); X would **never be guilty** of attempt because what he is trying to do cannot objectively result in the commission of an offence. If, however, one employs a subjective test, X can be convicted of attempt, because according to this test what is decisive is **X's subjective state of mind**; e.g. ***Davies* case**.

- In this case concerning an attempt to commit the former crime of abortion where the foetus was already dead, though thought to be alive; the court adopted a **subjective** approach. It was immaterial whether the impossibility of achieving the desired end was attributable to the wrong means employed by X, or to the fact that the object in respect of which the act is committed is of such a nature that the crime can never be committed in respect of it.

- The law seeks to punish X's "evil state of mind"; not any harm which might have been caused by X's conduct.
- Although the general rule is that attempts to commit the impossible are punishable, this rule is limited to cases where the impossibility originated from X's mistaken view of the **material facts** (such as *Davies* case), and that it does not apply where the impossibility originated from X's **mistaken view of the law**.
- If X thinks that the type of act he is committing is punishable whereas the law in fact does not penalise that type of act, X's conduct does not qualify as a punishable attempt. This is a **"putative crime"** – a crime which does not actually exist, but which X thinks does exist and can never be punishable.

Conspiracy

- Statutory crime (S 18(2)(a) of the Riotous Assemblies Act 17 of 1956)

- Definition: Any person who conspires with any other person to aid or procure the commission of or to commit any offence shall be guilty of an offence

- There must be a meeting of the minds
- The act of conspiracy thus consists into entering an agreement to commit a crime
- Must be more than one party
- Negotiation is not yet a conspiracy

Incitement

- Statutory crime (S 18(2)(b) of the Riotous Assemblies Act 17 of 1956)
- Definition: Any person who incites, instigates, commands or procures any person to commit any offence shall be guilty of an offence

- As in the case of conspiracy X should only be charged with incitement if there is no proof that the crime to which he incited Y has been committed
- There does not have to be an element of persuasion (*Nkosiyana*)

- Can be committed in respect of a police trap
- Whether Y can be persuaded is immaterial
- If the incitement does not come to Y's knowledge, X can be guilty of attempted incitement

STUDY UNIT 4
CRIMES AGAINST THE STATE
(SG 44 – 48)

Public violence:

Definition: Public violence is the unlawful and intentional performance of an act or acts by a number of persons, which assumes serious proportions and is intended to disturb the public peace and order by violent means, or to infringe the rights of another

- Must be joint action i.e. A number of persons acting in concert (common purpose)
- Must be violence or threats of violence
- Must be serious
- Actual disturbance not required
- Examples:

Factions fights

Rioting

Resistance to police action

STUDY UNIT 5
CRIMES AGAINST THE ADMINISTRATION OF JUSTICE (SG 49 – 63)

Perjury at common law

- Definition: consists in the unlawful, intentional making of a false declaration under oath (or in a form allowed by law to be substituted for an oath) in the course of a legal proceeding

False declaration:

1.Objective

2.Oral/ writing

3.Express or implied

Oath

1. Oath
2. Solemnly confirm
3. Warning eg children

In the course of a legal proceeding

1. Can be either a criminal or civil case
2. *Beukman*: can be a declaration outside of court if:
   - the declaration is permissible as evidence in a subsequent trial
   - the maker of the declaration foresees the possibility that it may be used in a trial

Unlawfulness:

If you make a false statement and then acknowledge it was false and tell the truth = no excuse!!

Intention:

You must know or foresee the possibility that the declaration is false

Statutory perjury

- Self study: Snyman 347 – 349.
- Contravention of section 319 (3) of Act 56 of 1955
- The state must prove that a person on two different occasions made two statements under oath and the statements conflict with each other

Defeating/obstructing the course of justice

- Self study: Snyman 338 – 343
- Definition: Unlawful and intentional engaging in conduct which defeats or obstructs the course or administration of justice
- E.g. giving false evidence to the police

What happens if you flash your car lights to warn others of a speed trap?

- *Naidoo*: Guilty
- *Perera*: Only guilty if you had reason to believe that the approaching vehicle was exceeding the speed limit

Contempt of court

- Definition: Consists in the unlawful and intentional:

1. Violation of the dignity, repute or authority of a judicial body or a judicial officer in his judicial capacity or
2. The publication of information or comment concerning a pending judicial proceeding, which has the tendency to influence the outcome of the proceeding or to interfere with the administration of justice in that proceeding.

- The reason for the crime's existence:

 - to protect the administration of justice

Distinguish between:

Contempt *in facie curiae*	**Contempt *ex facie curiae***
Committed in the presence of a judicial officer Eg: shouting at witnesses in cross-examination	Actions/ remarks outside of court eg: failure to comply with a court order, publications which scandalise the court, a summoned witness who does not appear in court

- Fair comment: is not contempt of court if bona fide, in reasonable terms and in the proper administration of justice

- Some forms of the crime of contempt of court:

1. Contempt of court in facie curiae
2. Commentary on pending cases
3. Scandalising the court
4. Failure to comply with a court order

What is the position regarding the press and the publication of information on pending cases?

Commentary on pending cases	Liability of a newspaper editor
The press may not publish information regarding the merits of a case which did not form part of the evidence while the case is still in progress (*sub iudice*) Eg. may not give opinion on the guilt of an accused.	Intention is a requirement BUT intention OR negligence is sufficient to hold a newspaper editor liable (*Harber* case) - Reason: the press influences public opinion and therefore has a heavier responsibility

STUDY UNIT 6
CRIMES AGAINST PUBLIC WELFARE
(SG 64 – 91)

Corruption

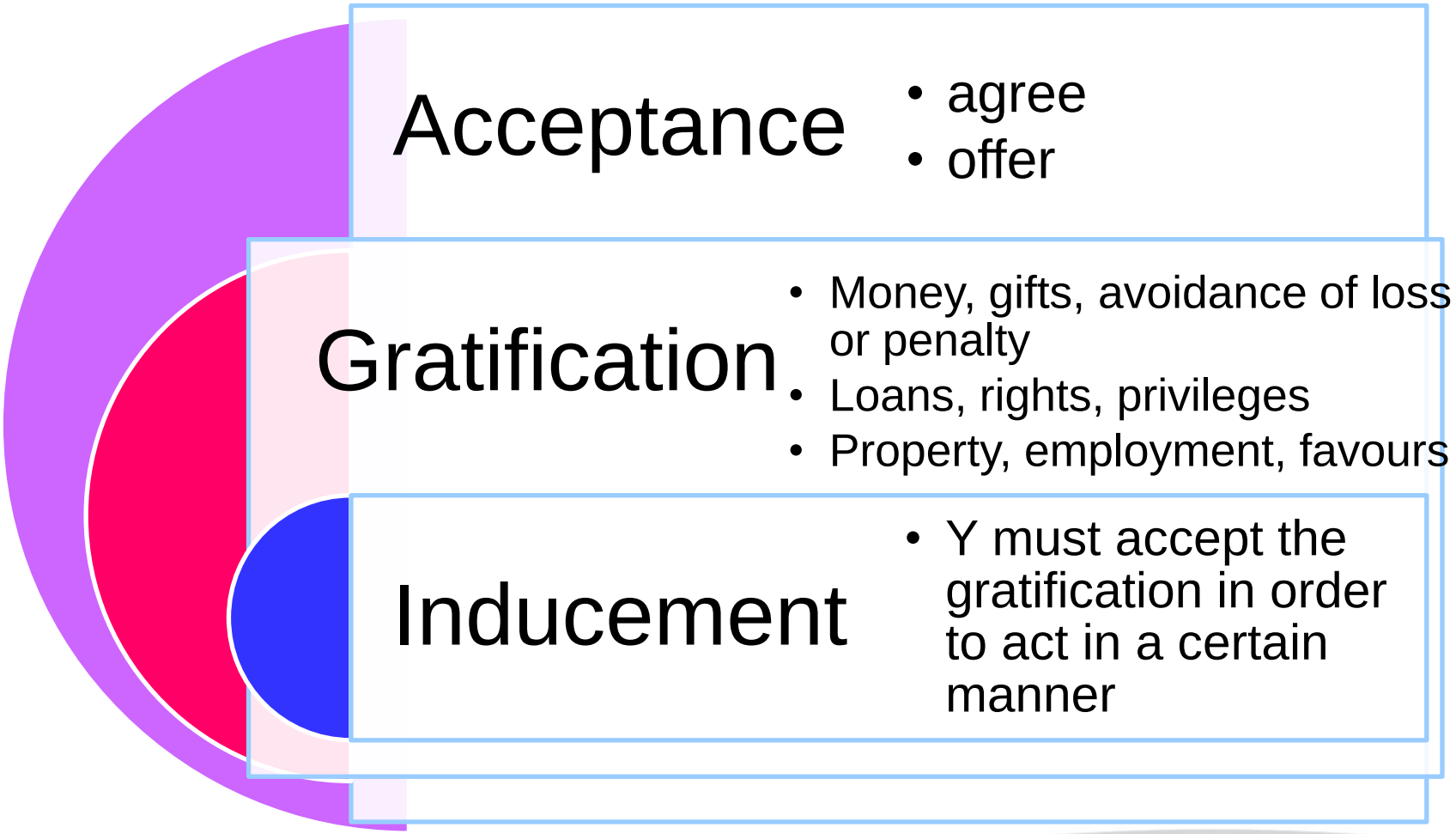
- Definition: Anyone that unlawfully and intentionally

(a) accepts any gratification from any other person OR

(b) Gives any gratification to any other person

In order to act in a manner that amounts to the illegal exercise of any duties, is guilty of the offence of corruption

The crime by the recipient [(a) of the definition]



In General

- Act includes omission
- Y can use a middle man
- It is irrelevant whether Y accepts it for his own benefit or for someone else
- Whether Y did not in actual fact have the power to act in a certain manner affords Y no defence
- A person used as a police trap does not act unlawfully
- Intention is required

? Activity/ Self assessment: 

- What considerations afford Y no defence? See SG 69!
- What are the aims envisaged by the legislature? See SG 70!
- What are the penalties for corruption? See SG 72!

The crime by the giver [(b) of the definition]

Giving

- Offer or agree to give eg *Shaik* case
- Promise, lend, grant or procure, agree to lend

Gratification

- Money, gifts, avoidance of loss or penalty
- Loans, rights, privileges
- Property, employment, favours

Inducement

- X must give the gratification in order for Y to act in a certain manner

?

Activity/ Self assessment:

What considerations afford X no defence? See SG 73!


Party to employment relationship
Public officials
Agents
Prosecuting authority members
CORRUPTION RELATING TO CERTAIN PERSONS
Tenders
Judicial officers
Sporting events
Legislative authority members

Failure to report corrupt acts

- Section 34 of the Prevention and Combating of Corrupt Activities Act 12 of 2004 makes it an offence to not report crimes of corruption set out in this act
- Intention or negligence is sufficient.

Study detail on corruption in SG 66 – 76!!!

Extortion

- Definition: is the unlawful and intentional acquisition of a benefit from some other person by applying pressure to that person which induces her to part with the benefit

LOOK (Note: additional element: causal link between the pressure and the acquisition of the benefit)

In General

- The pressure placed by X on Y can take the form of threats, the inspiring of fear and intimidation
- The benefit can be:

Patrimonial	**Non-patrimonial**
Money or economic value	Any advantage can be extorted (See s1 of the General Law Amendment Act 139 of 1992 Eg. Threatening to show nude photos of Y

Drug Offences

- The use or possession of drugs:

Definition: it is an offence for any person unlawfully and intentionally to use or have in her possession any dependence-producing substance or any dangerous dependence-producing substance or any undesirable dependence-producing substance

(S4 of the Drugs and Drugs Trafficking Act 140 of 1992)

In General

- Possession consists of two elements

Physical/ corporeal element

Mental element

- Possess = storing, keeping, having in custody or under control or supervision
- The presumption of possession is no longer valid and the prohibition of use/ possession of dagga = constitutional
- There are 2 ways the state must prove the element of possession

As an owner	**Keeping it for/ on behalf of someone else**
Possessio civilis	*Possessio naturalis*

Dealing in drugs

- Definition: it is an offence unlawfully and intentionally to deal in any dependence-producing substance or any dangerous dependence-producing substance or any undesirable dependence-producing substance

Unlawful possession of firearms or ammunition

Unlawful possession of a firearm

Definition: Any person who possesses a firearm without a licence, permit or authorisation issued in terms of the Act for that firearm, commits an offence

What is a firearm?

"any device manufactured or designed to propel a bullet or projectile through a barrel or cylinder by means of burning propellant"

(s1 of The Firearms Control Act 60 of 2000)

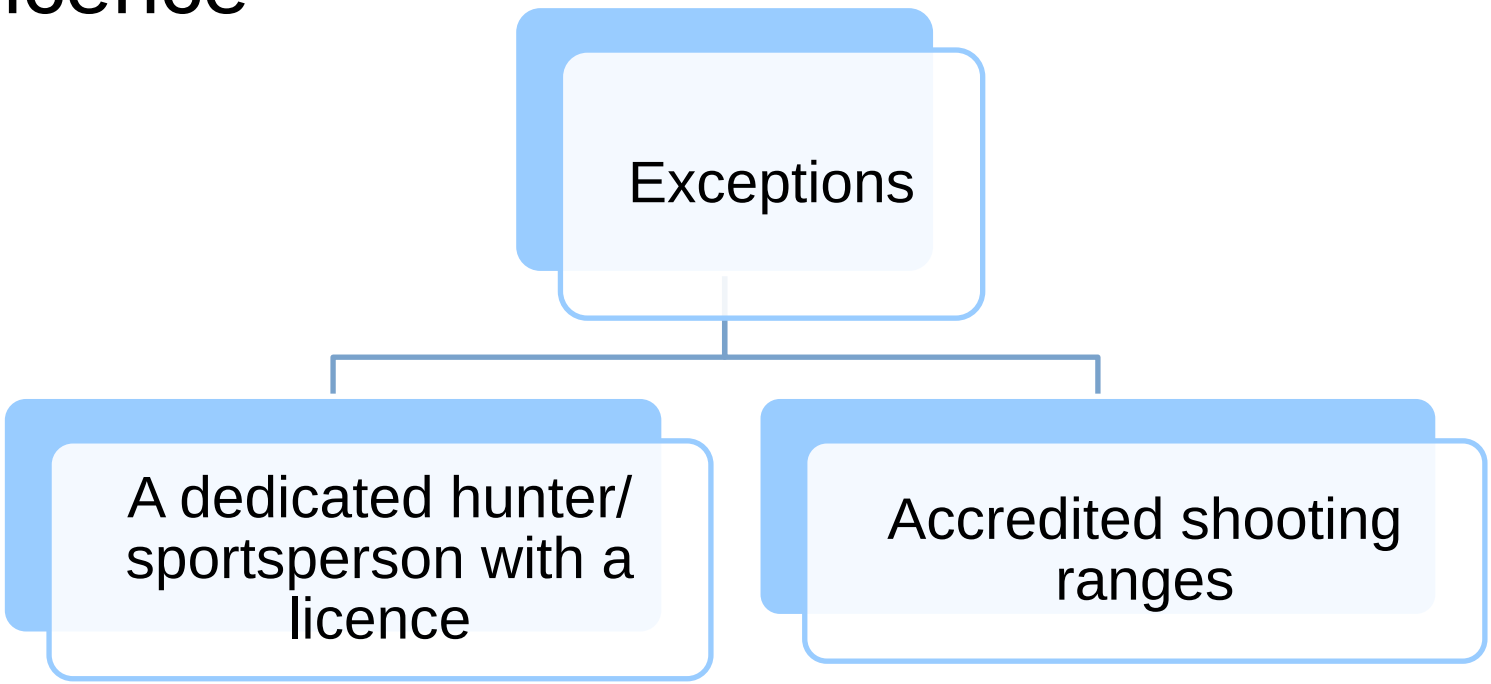
Self study: There are a number of other offences in the act – have a look at pp 87-88!!!

Unlawful possession of ammunition

- S90 provides that no person may possess any ammunition unless she:

1. Holds a licence in respect of the firearm.
2. Holds a permit to possess ammunition
3. Holds a dealers licence/gunsmiths licence etc
4. Is otherwise authorised to do so

- Section 91(1) provides that the holder of a licence to possess a firearm may not possess more than 200 cartridges for each firearm in respect of which she holds a licence



STUDY UNIT 7
SEXUAL CRIMES
(SG 92 – 121)

- The Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 has revamped the laws on sexual offences

Rape is now defined as:

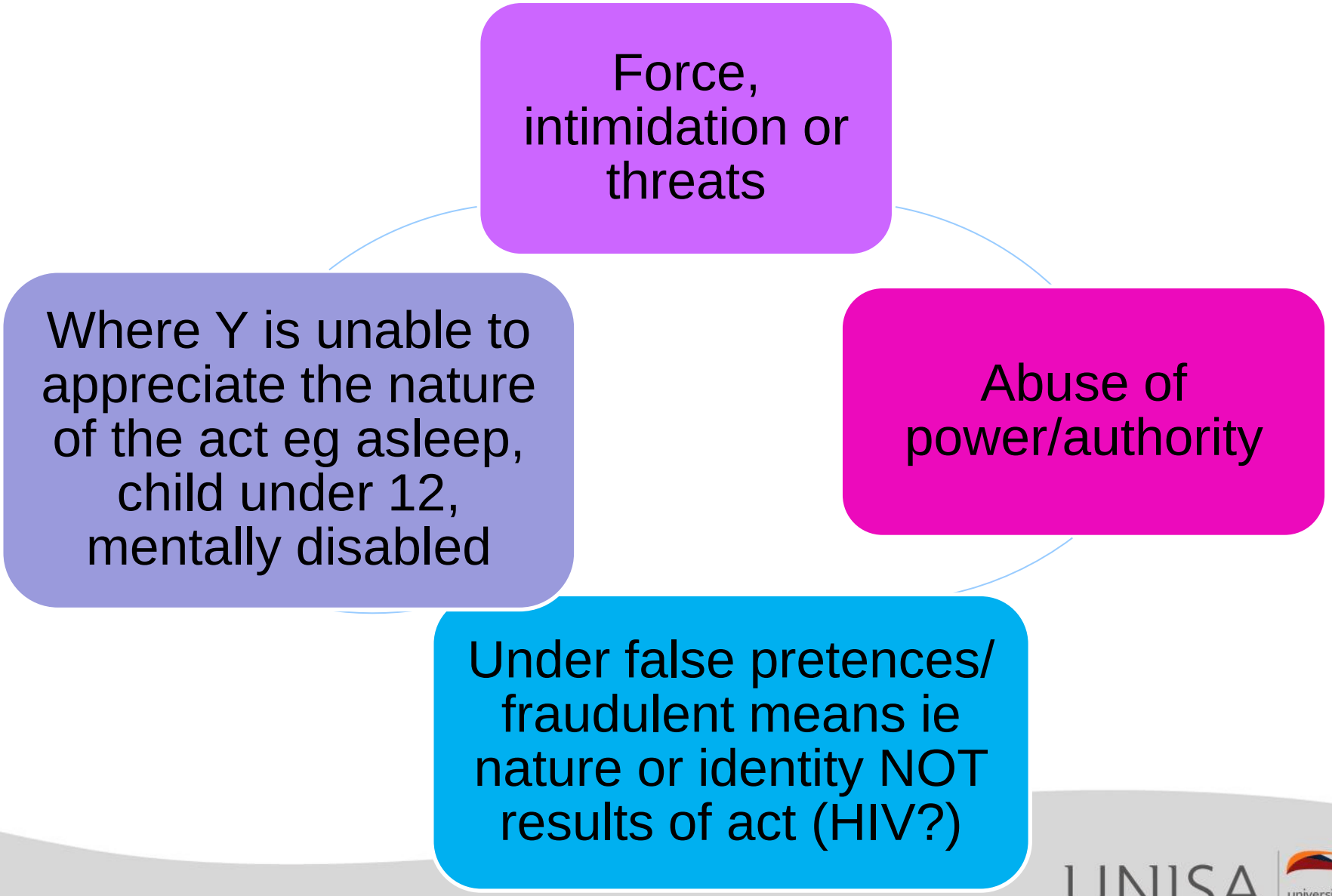
Any person (X) who unlawfully and intentionally commits an act of sexual penetration with a complainant (Y) without his/ her consent is guilty of the offence of rape (s3)

In General

1. Sexual penetration is very broad and includes penetration of genital organs, a person's anus or mouth and includes penetration by genital organs, part of the body of one person, objects and the genital organs of animals (see p 98 for more detail)
2. Consent is defined as:

"voluntary or uncoerced agreement"

- Consent will be invalid if due to:



? Self assessment/ Activity

- Define rape (See SG 95-96)
- Who can be a perpetrator of rape and who can be a victim? (See SG 95 – 96)
- When is consent deemed to be invalid? (See SG 96 – 99)
- When can imprisonment for life be imposed? (See SG 100)
- Can a lesser sentence for rape be imposed then the prescribed one? (See SG 100 -101)

Compelled rape

Definition:

Any person (X) who unlawfully and intentionally compels a third person (Z) without his/ her (Z's) consent to commit an act of sexual penetration with a complainant (Y) without (Y's) consent is guilty of the offence of compelled rape.

Sexual assault

Definition: A person (X) who unlawfully and intentionally sexually violates a complainant (Y) without the consent of Y or inspires a belief in a complainant (Y) that Y will be sexually violated is guilty of the offence of sexual assault (s5)

Note: Sexual violation includes a number of acts which cause direct or indirect contact - see SG p104-107!!!

Compelled sexual assault

Definition: A person who unlawfully and intentionally compels a third person to commit an act of sexual violation with a complainant (Y) without his/ her consent, is guilty of the offence of compelled sexual assault (s6)

See the definition of compelled self-sexual assault in SG p108!!!

- Sexual offences against persons 18 years or older include:

1. Forcing such persons to witness sexual offences, sexual acts with another or self-masturbation
2. Flashing
3. Exposure or display of child pornography
4. The engagement of such persons in sexual services

See SG 109 – 110!!!

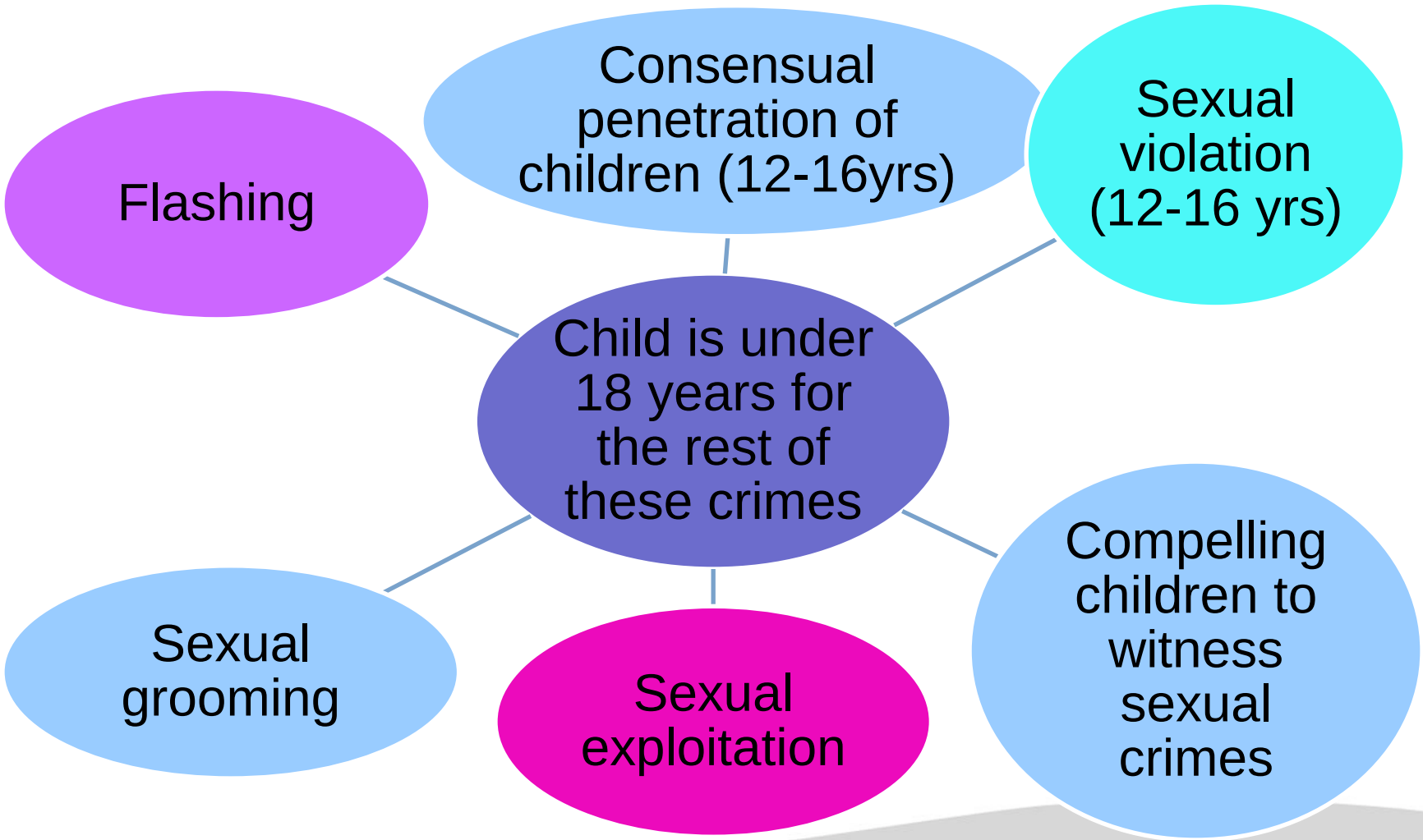
Incest

- Definition: Persons who may not lawfully marry each other on account of consanguinity (blood relationship), affinity (by marriage) or an adoptive relationship and who unlawfully and intentionally engage in an act of sexual penetration with each other are despite their mutual consent to engage in such act guilty of the offence of incest

Self study: See the definition of bestiality

SG pp 111 - 112

Sexual offences against children
See detail in SG pp 112 – 116



Consensual penetration (Statutory rape) (Child:12 – 16 years)

Two defences:

- X deceived about his or her (Y's) age (reasonable)
- X and Y both children and age difference not more than 2 years

Other sexual offences include:

1. Offences against the mentally disabled
2. A failure to report sexual offences against children and mentally disabled persons
3. Trafficking in persons for sexual purposes
4. Attempt, conspiracy and incitement to commit sexual offences

(See SG pp117 – 118 for detail)

STUDY UNIT 8
BIGAMY AND ABDUCTION
(SG 122 – 127)

Bigamy:	Common law Abduction:
Is committed if a person who is already married is unlawfully and intentionally a party to a marriage ceremony purporting to bring about a lawful marriage between him/herself and somebody else	If a person unlawfully and intentionally removes an unmarried minor from the control of his/ her parents or guardian, without their consent, intending that he or she, or somebody else, may marry or have sexual intercourse with the minor

STUDY UNIT 9
CRIMES AGAINST LIFE
(SG 130- 133)

Murder:	Culpable homicide
Is the unlawful, intentional causing of the death of another human being Can a foetus be murdered? See *Mshumpa* case Must life imprisonment always be imposed?	Is the unlawful, negligent causing of the death of another human being 

STUDY UNIT 10
CRIMES AGAINST BODILY INTEGRITY
(SG 134 -144)

Assault

- Definition: A person commits assault if he/ she unlawfully and intentionally

1. applies force, directly or indirectly, to the person of another, or
2. inspires a belief in another person that force is immediately to be applied to her

In General

1. The application of force can be direct (e.g. punching someone) or indirect (eg. setting a dog on another person)
2. Includes the inspiring of fear in another
3. Can attempted assault be committed?
   Yes. Eg if Y does not understand the threat or is oblivious to it
4. What is assault with the intent to commit grievous bodily harm? See Snyman 461 – 462!
5. What is assault with intent to commit another crime? See Snyman 462 – 463!

Pointing of a firearm (S120(6) of the Firearms Control Act 60 of 2000

- Definition: it is an offence to point:
- (a) any firearm, an antique firearm or an airgun, whether or not it is loaded or capable of being discharged, at any other person, without good reason to do so; or
- (b) anything which is likely to lead a person to believe that it is a firearm, an antique firearm or an airgun at any other person, without good reason to do so.

ⓘ A firearm means any device manufactured or designed to propel a bullet or projectile through a barrel or cylinder by means of burning propellant.

STUDY UNIT 11
CRIMES AGAINST DIGNITY, REPUTATION AND FREEDOM OF MOVEMENT (SG 145-154)

Crimen iniuria

Definition: is the unlawful, intentional and serious infringement of the dignity or privacy of another

What is the difference between *crimen iniuria* and criminal defamation?

Crimen iniuria	**Criminal defamation**
1. Violations of a person's dignity and privacy = punishable	1. Violations of a person's good name or reputation is punishable (publication does not have to be in print – it must come to the attention of people other than Y)
2. 2 parties involved	2. 3 parties involved

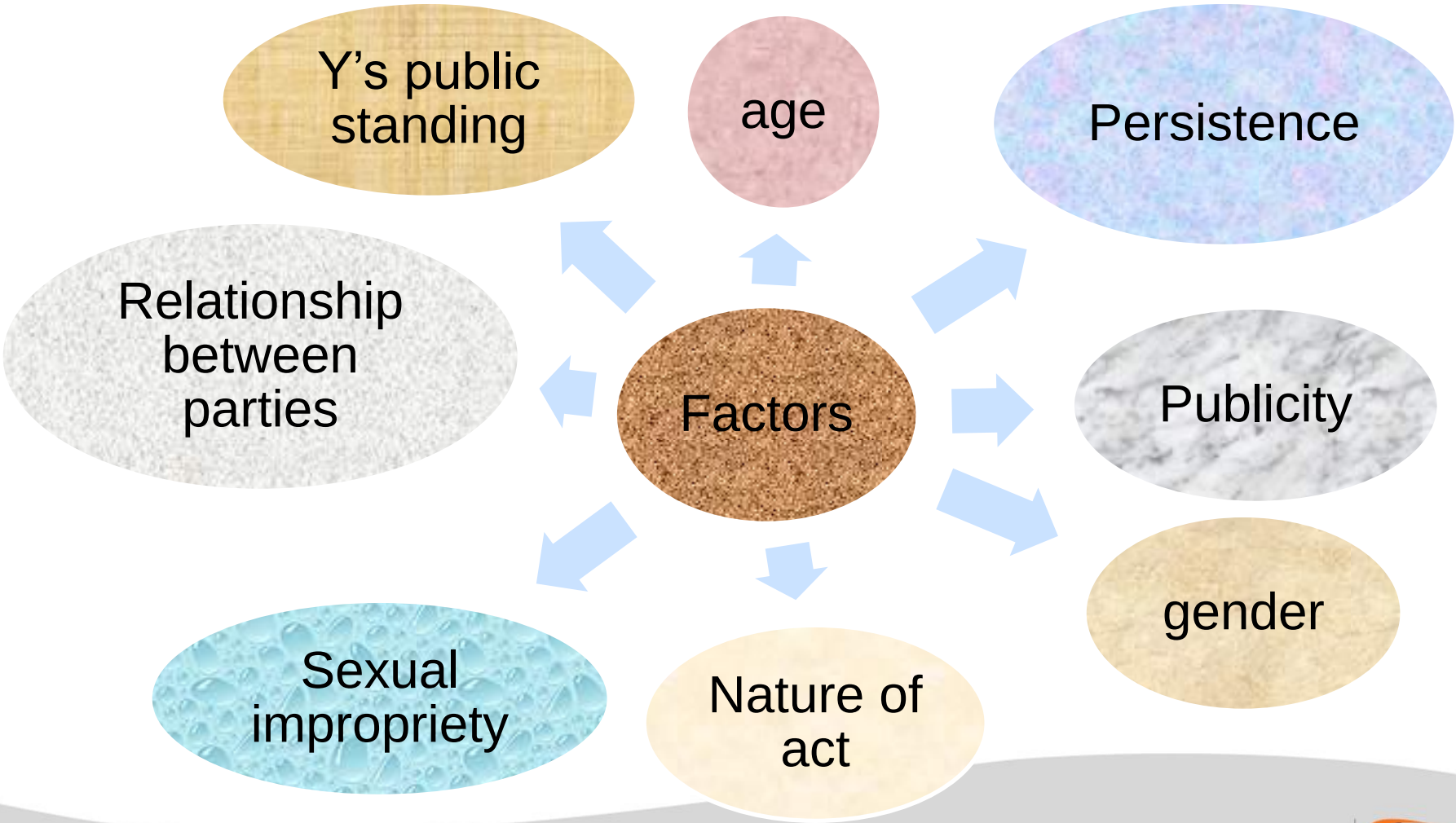
Crimen inuria: In General

- Dignity = self-respect, mental tranquility
- Privacy can be infringed without Y being aware of the infringement eg X watches Y undressing
- Can lead to a civil claim and criminal prosecution
- Subjective and objective elements of infringement:

Subjective	**Objective**
With the infringement of dignity Y must be aware of X's offending behaviour and feel degraded or humiliated by it (differs from the rule for privacy i.e. need not be aware of X's conduct) Exception: children/mentally disabled	X's conduct must offend at least the feelings of a reasonable person i.e. not a hypersensitive person

- The infringement must be serious
- Grounds of justification are consent, necessity, official capacity

Factors to take into account are:



Criminal defamation

Definition: Is the unlawful and intentional publication of matter which concerns another which tends to seriously injure his reputation

Kidnapping

Definition: Unlawful and intentional depriving of a person of his or her freedom of movement and if such a person is a child, the custodians of their control over the child.

STUDY UNIT 12
THEFT
(SG 156 – 171)

- Definition: Theft is the unlawful, intentional appropriation of movable, corporeal property which:

(1) Belongs to, and is in the possession of another

(2) Belongs to another but is in the perpetrator's own possession, or

(3) Belongs to the perpetrator but is in another's possession and such other person has a right to possess it which legally prevails against the perpetrator's own right of possession

Provided that the intention to appropriate the property includes an intention permanently to deprive the person entitled to the possession of the property, of such property

Different forms of theft

- **Removal of property**

Removes property belonging to someone else and appropriates it

- **Embezzlement**

X appropriates another's property already in X's possession (SG12.7)

- **Arrogation of possession**

X removes her own property which is in the lawful possession of another (SG 12.8)

Act of appropriation

1. Depriving the lawful owner of her property

- Negative component (excluding Y from the property)

- AND

2. Exercising the rights of an owner in respect of the property

- Positive component (X's actual exercise of the rights of an owner in respect of the property)

In General

1. Fine line between attempted and completed theft

Ask: When X was caught had Y lost control over the property and had X gained control over the property?

2. The property must be movable, corporeal (see exceptions SG 161), available in commerce

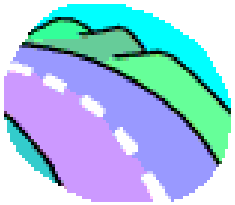
3. Unlawfulness: consent is a ground of justification

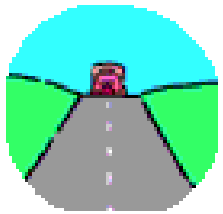
4. Intention to appropriate and to permanently deprive the owner of her property

5. It is not required that X keep the property for himself

Is temporary deprivation of property theft?

- No! *Furtum usus* is not a form of theft (but section 1 of Act 50 of 1956 creates an offence where property is unlawfully removed for temporary use). There must be an intention to permanently deprive the owner of her property (*Sibiya* case)





Self assessment

- X is a doctor who takes possession of four microscopes belonging to the Botswana government without their consent. He intends to return the microscopes to them if they will drop certain charges against him. Explain whether X commits theft with regard to the general requirements of liability for theft. (6)

? ? ? Did you answer this question correctly **? ? ?**

Answer: Theft includes the unlawful and intentional appropriation of moveable corporeal property which belongs to another but which is in the perpetrators own possession (embezzlement)(1). Must be an act of appropriation where the lawful owner is deprived of the property(1) and the rights of an owner are exercised in respect of the property(1). Unlawfulness means the owner must not consent and there must be no grounds of justification (1). There must be the intention to permanently deprive the owner of his or her property. *Furtum usus* is no longer a form of theft ito *Sibiya*.(1) After *Sibiya* the legislature created an offence ito section 1 of Act 50 of 1956 which punishes the unlawful removal of another's property for temporary use.(1) This case above in the problem question is an exception to the rule in section 1 Act 50 of 1956 *(Van Coller*). X is not guilty as lacks the intention to deprive the owner of the full benefit of the ownership (1) - See SG 165 d2. (6)

STUDY UNIT 13
ROBBERY AND RECEIVING STOLEN PROPERTY
(SG 172 – 179)

Definition: Robbery consists in theft of property by unlawfully and intentionally using:

1. Violence to take the property from another or
2. Threats of violence to induce the other person to submit to the taking of the property

Study:

Ex parte Minister of Justice: in re R v Gesa; R v de Jongh

In General

1. There must be a causal link between the violence/ threats of violence AND the acquisition of property
2. If X steals something from Y and uses violence to retain the property = theft + assault
3. The violence does not have to precede the acquisition but there must be a close connection between the theft and violence that it can be seen as one and the same act
4. Is handbag snatching robbery?
   (*Sithole* case – SG 13.1.7)
5. Does the property have to be on the victim's person or in her presence?
   (*Ex parte Minister van Justisie: in re S v Seekoei* SG 13.1.8.)

Self study

- Punishment for robbery (SG 13.1.9)
- Receiving stolen property (Snyman pp 521 – 523)

- Definition: A person commits the crime of receiving stolen property knowing it to be stolen if he unlawfully and intentionally received into his possession property knowing at the time that he does so that it has been stolen

STUDY UNIT 14
FRAUD AND RELATED CRIMES
(SG 180 -188)

Fraud

- Definition: is the unlawful and intentional making of a misrepresentation which causes actual prejudice or which is potentially prejudicial

In General

A mere false promise as to the future is not a misrepresentation

Express/ Implied

Misrepresentation (deception by means of a falsehood)

Commissio or omissio

(omission: must be a legal duty by statute or other considerations)

Can be in any form

eg writing or nod of the head

Meaning of prejudice

1. Can be actual or potential
2. Can be proprietary or non-proprietary in nature
3. “Potential” means:

- Risk of prejudice or likely to prejudice (need not be a probability but only a possibility)
- Must not be too remote or fanciful
- Need not necessarily be suffered by representee
- It is irrelevant whether Y was misled by the prejudice or not
- As potential prejudice is sufficient it is unnecessary to require a causal link between the misrepresentation and the prejudice

Self assessment

- What is the difference between intention to deceive and intention to defraud? SG 14.1.6
- Is there a crime such as attempted fraud? Yes. See SG 14.1.7 and *Heyne* case.
- Discuss the elements of unlawfulness and intent in the crime of fraud. See SG 14.1.5. and 14.1.6.
- In the crime of fraud, the misrepresentation may be made through either a *commissio* (a positive act) or an *omissio* (omission). Discuss. SG 14.1.3
- What is the definition of forgery and uttering?

Unlawful and intentional making of a false document to the actual or potential prejudice of another!
Snyman on pp 540 – 543!

- Define theft by false pretences. SG 14.3.1
- You must be able to explain what theft by false pretences is. SG 14.3.3.

STUDY UNIT 15
CRIMES RELATING TO DAMAGE TO PROPERTY (SG 189 – 192)

Malicious injury to property

Definition: it consists in unlawfully and intentionally

(1) Damaging property belonging to another person

(2) Damaging one's own insured property with the intention of claiming the value of the property from the insurer

In General

1. The property must be corporeal and can be movable or immovable
2. Damage includes the total or partial destruction of the property
3. The unlawfulness can be justified by statutory provisions, necessity, official capacity, consent by the owner
4. There must be intention

Arson

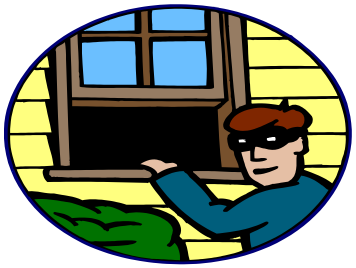
Definition: A person commits arson if he unlawfully and intentionally sets fire to:

(a) Immovable property belonging to another or

(b) His own immovable insured property, in order to claim the value from the insurer

STUDY UNIT 16
HOUSEBREAKING WITH THE INTENT TO COMMIT A CRIME
(SG 193 – 198)

Housebreaking with the intent to commit a crime



Definition: consists in unlawfully and intentionally breaking into and entering a building or structure, with the intention of committing some crime in it.

In General

1. It is not a requirement that actual damage be caused
2. There only needs to be the removal or displacement of an obstacle which bars entry to the building and which forms part of the building itself
3. A building or structure can be any structure which might be used for human habitation (immovable or movable) or for the storage or housing of property (immovable only)
4. It must be unlawful
5. X must have the intention to unlawfully break into and enter the house or structure and must have the intention of committing some other crime inside

Self Assessment

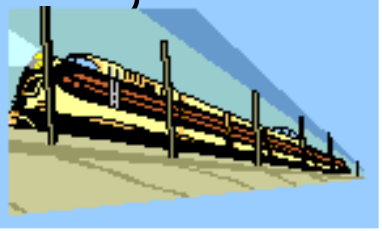
A, B and C are criminals who break into all sorts of structures with the aim to steal. One December evening they hit on a wealthy neighbourhood where most of the inhabitants are on vacation. A breaks into a store-room of a private residence and removes some gardening equipment. B breaks the window of a car which is parked further down the road, and removes the radio. In the next block, C breaks into a caravan which is parked under a shelter. He removes all the bedding from the caravan. A, B and C are apprehended by the police. Can A, B and C, respectively, be successfully prosecuted for **housebreaking with the intent to commit theft**? (5)

Answer: See SG 16.4

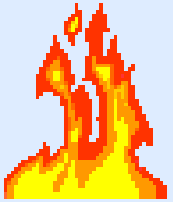
- The principle advocated by De Wet & Swanepoel and Snyman: If the structure or premises is used for the storage of goods, it must be immovable (1), but if it is used for human habitation, it does not matter whether it is movable or immovable (1).
- A can be convicted, the store-room being used for the storage of goods and being immovable (1).
- B cannot be convicted, the car being neither immovable, nor used for human habitation (1).
- C can be convicted. The courts accepts that a caravan does qualify as a structure, even if the breaking-in takes place at a time when nobody is living in it (*Madyo*; *Temmers*), but that it does not qualify if, although it cannot be moved, it is used merely for the storing of goods (*Jecha*). (1) (5)

Mix and match the cases!

Column A	Column B
1. Williams	a. General principles and common purpose 
2. Safatsa	b. Prisoners, murder, accessories after the fact 
3. Lungile	c. Liquor sales, fraud 
4. Motaung	d. Porridge, caustic soda, voluntary withdrawal 

5. Thebus	e. Train, broken bottle, accomplice to murder 
6. Molimi	f. Funeral, joiner in 
7. Jonathan	g. Abortion, attempt to commit the impossible 
8. Hlatwayo	h. Petrol bombs, burning house, common purpose 

9. Schoombie	i. Robbers, run into shop, hostage, common purpose 
10. Davies	j. Hijacking, shooting, death of unborn baby (murder?) 
11. Nkosiyana	k. Constitution, cross-fire, common purpose 
12. Sibiya	l. Theft and Robbery, handing over due to threat 

13. Ex Parte Minister of Justice: in re R v Gesa, De Jongh	m. Incitement, police trap 
14. Heyne	n. Arson, interrupted attempt 
15. Mshumpa	o. Joy-ride, *furtum usus* 
PS: These notes are merely supplementary and must be used in conjunction	 **with all your prescribed material!!!**

THANK YOU FOR ATTENDING THE CLASS!