



<b><u>FACULTY</u></b>	: Law
<b><u>DEPARTMENT</u></b>	: Public Law
<b><u>CAMPUS</u></b>	: APK
<b><u>MODULE</u></b>	: CRL 41 YO CRIMINAL LAW
<b><u>SEMESTER</u></b>	: SECOND SEMESTER
<b><u>EXAM</u></b>	: MAIN EXAMINATION 2021

<b><u>DATE</u></b>	: 26 October 2021	<b><u>SESSION</u></b>	12.30 – 16.30
<b><u>ASSESSOR(S)</u></b>	: Prof MM Watney		
<b><u>MODERATOR</u></b>	: Prof E Fourie		
<b><u>DURATION</u></b>	: 4 hours	<b><u>MARKS</u></b>	: 70

NUMBER OF PAGES: 13 PAGES (INCLUDING THIS PAGE)  
INSTRUCTIONS:

1. **Please ensure that your surname, initials, student number and email address are on the answer paper.**
2. **Please answer all the questions on the answer paper.**
3. **Please ensure your answer paper is legible.**
4. Please do not type your answers in bold and capital letters.
5. **Email your answer paper to [mwatney@uj.ac.za](mailto:mwatney@uj.ac.za)**
6. **Please submit only ONE answer paper.**
7. Attach a read receipt if you require proof that it was received.
8. If you have any enquiries during the exam, please email me.
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10. Good luck with the examination.

## QUESTION 1

### MULTIPLE CHOICE QUESTIONS

- 1.1 The prosecutor must prove the case against the accused \_\_\_\_\_ (standard of proof). (1)
- beyond a reasonable doubt
  - on all probabilities.
  - beyond all doubt.
  - in accordance with the criminal justice system.
- 1.2 On 16 August 2012 the South African Police Service (SAPS) killed 34 miners and injured 70 miners injured. It is referred to as the Marikana massacre. It is alleged that it was the most lethal use of force by South African security forces against civilians since 1976. The massacre has been compared to the 1960 Sharpeville massacre. In 2020 the advocate representing the victims, Adv Dali Mpofi said the following: "For us, as Africans, we have a saying *ityala aliboli* (a crime does not go stale)." Indicate what this statement means and whether it has any significance within the context of the criminal law. (1)
- No, it is not relevant within the context of the criminal law. Criminal law is based on either the common law or legislation and not on cultural statements/beliefs. What it does mean, is that prosecution of the offenders has not been implemented.
  - Yes, it is relevant within the ambit of criminal law. It means that prescription exists in the Indigenous Law. This statement reflects decolonisation and our legal system must be decolonised. It also indicates that certain crimes do not prescribe and that prosecution may be implemented after a long period of time.
  - The statement may to some extent reflect decolonisation as our legal system must embrace all cultures, religions and languages etc, but it has no relevance on criminal law or the criminal justice system. Criminal Law originates from the Roman-Dutch Law influenced by the English Law.
- 1.3 A was summoned to appear in court as a witness. On the day that A had to appear in court, he was in hospital for an emergency operation. A warrant for

his arrest is issued. He is charged for contempt of court and his defence is \_\_\_\_\_.

(1)

- a. Necessity due to being in hospital.
- b. Impossibility due to being in hospital.
- c. Empathy and sympathy from the court for his absence due to being in hospital.
- d. Absence of official capacity due to being in hospital.

1.4 The police uses a robot for law enforcement purposes. It is equipped with surveillance technology and face recognition technology. Unbeknown to the police, the robot was hacked and weaponised. It kills two civilians. On which principle is criminal liability of the robot based?

(1)

- a. Free will and therefore the robot cannot be held criminally liable.
- b. Free will and as the robot acted out of its own accord, it should be held criminally liable.
- c. Free will of the person(s) who hacked the robot and they will be held criminally liable as they had free will.
- d. The robot had a free will. Cyber-physical objects such as a robot or a self-driving car should be held liable for unlawful acts otherwise there will be no law and order in society which is increasingly based on technology.

1.5 A, a 25 year old male, tested positive for HIV 2 years ago. He has numerous male friends and have had sexual encounters with some of his male friends prior to entering into an exclusive sexual relationship with B. B tested positive for HIV. B who was in an inclusive sexual relationship with A for approximately 14 months and who did not have HIV prior to the relationship, informed A whereupon A said to him "we now have a special bond". B broke off the relationship and laid a charge of attempted murder. Indicate which statement is correct.

(1)

- a. A did not have a legal duty to disclose his status to his friends and cannot be charged.
- b. A had a moral duty to disclose his status and he should be prosecuted based on the moral convictions of society.
- c. A did not have a legal duty to disclose his status nor can he be prosecuted. Criminal law is based on free will and B voluntary had a sexual relationship with A.
- d. A did not have a legal duty to disclose it. However, he did have a sexual relationship with B who may not have consented to it had he known the HIV status of A. He may be prosecuted and the prosecution will be based on the fact that there was conduct and A should have foreseen that the disease may be transmitted and reconciled himself with this fact.

1.6 The test applicable to determine *culpa* is \_\_\_\_\_.

(1)

- a. subjective.
- b. predominantly subjective, but the conduct of the accused is measured against that of the reasonable person.
- c. objective.

- d. predominantly objective, but the court will take into account what the accused was subjectively thinking at the time of the commission of the crime.
- 1.7 In *S v Jahaar* 2010 (1) SACR 23 (SCA) the adult victim was hijacked by 2 offenders and forced to accompany them in his car on a return trip from Cape Town to Mossel Bay and back. Apparently, the ordeal lasted 2 days. Which crimes were committed? (1)
- Theft of his car and abduction.
  - Robbery and abduction.
  - Theft of his car and kidnapping.
  - Robbery and kidnapping.
- 1.8 An accused stood trial for rape. The parents of the accused approached the victim of the rape and offered her R2 000 if she withdrew the charges of rape against the accused (their son). They also threatened her that if she did not withdraw the charge, her family may suffer as a result of her decision. Which crime(s), if any, did the parents of the accused commit? (1)
- The parents committed no crime; they acted out of love for their son, the accused.
  - Extortion and defeating the ends of justice.
  - Corruption and contempt of court.
  - Contempt of court.
- 1.9 This question concerns criminal liability within the context of the Fourth Industrial Revolution (4IR). One now have devices and computers which can perform tasks that require intelligence similar to human intelligence. Some of these devices may have the ability by means of deep learning to think for itself and act upon this acquired ability. Why is criminal liability of a device/computer relevant within the context of the Fourth Industrial Revolution (4IR)? (1)
- Questions relating to the criminal accountability of for example drones and whether it can manifest itself in the subjectivity of *dolus* will be relevant in an age in which technology increasingly dominates society in all spheres
  - Questions relating to the criminal accountability of for example drones and whether it can manifest itself in the objectivity of *dolus* will be relevant in an age in which technology increasingly dominates society in all spheres.
  - Questions relating to the criminal accountability of for example drones will manifest itself mainly in the subjectivity of *culpa* will be relevant in an age in which technology increasingly dominates society in all spheres. It manifests itself mainly in respect of the subjectivity of *culpa* and is relevant in respect of the Fourth Industrial Revolution.
- 1.10 A ended her relationship with B and B (ex boyfriend) decided to take revenge on A for ending their relationship. B went in a chat room on the Internet and indicated that A (former girlfriend) desired to be raped. B pretended (masqueraded) as A and indicated that it was her (A's) fantasy to be 'raped' by

a stranger. B gave all A's particulars. A never gave consent to B to post such a notice nor had she ever expressed that she harboured such a fantasy. C read the post, went to A's house and raped A. Indicate which statement is the most correct. (1)

- a. A can be charged for incitement to commit rape. Incitement will be a statutory offence.
- b. A cannot be charged for any crime. He has the constitutional right of free speech and he could not foresee that C would rape B.
- c. A may be charged with common purpose to commit the crime, rape. He is a perpetrator.
- d. A can be charged with the common purpose to commit rape. He is an accomplice as he aided in the commission of the crime.

1.11 The prosecution follows the following type of approach when deciding to prosecute: (1)

- a. Crime-control.
- b. Due process.
- c. Psychological.
- d. Victim-centred.

1.12 A is a 90 years' old granny and exceptionally wealthy. Her 4 grandchildren are the beneficiaries of her will. However, A was not prepared to help the grandchildren financially and was of the opinion that the grandchildren must generate their own money. Her 4 grandchildren do not want to wait any longer for their inheritance. Three of them, B, C and D, agree that they will poison her with cyanide. They are of the opinion that she has lived a full life. They administer the poison but unbeknown to them, E, stabs her multiple times with a knife. The J88 reveals that she was already dying at the time E stabbed the victim. B, C, D and E are charged with murder. E objects to the murder charge. Indicate which statement is correct. (1)

- a. E had common purpose to commit murder.
- b. The criminal law is opposed to retrospective responsibility and E can only be convicted for attempted murder.
- c. E will be convicted of murder, but in his own personal capacity as he committed the crime separately to B, C and D. The latter had common purpose to murder the deceased, but A was not part of that agreement.

1.13 Linda used a stolen identity document belonging to Mandisa Mkhwebula without her knowledge and took out life insurance. After 5 months of paying monthly premiums, the accused falsely declared Mkhwebula dead and prepared the necessary documents at home affairs, a funeral parlour and a doctor to enable her to institute the claim for the insurance policy to pay out. Which crime, if any, did she commit? (1)

- a. The crime of fraud against the insurance company.

- b. The crime of theft of identity.
- c. The crime of corruption.
- d. No crime against the insurance company since Linda had paid the insurance policy on a monthly basis. She merely claimed her own money.

1.14 A and B decide to commit suicide by drinking pills. A mixed the sleeping pills and gave it to B to drink. B drank it. A decided against drinking the potion and tried to revive B but B was dead. A is prosecuted for murder. (1)

- a. A and B had the same motive, namely to kill themselves and therefore A cannot be charged with a crime;
- b. A can be charged and may be convicted of murder since he had *dolus* to assist B in killing herself;
- c. A cannot be charged as B gave permission to be killed (*volenti non fit iniuria*);
- d. A can be charged but can only be convicted of culpable homicide since *dolus* was absent.

1.15 Quentin decided to kill his wife, Lerato. He prepared her favourite dessert, ice cream but added a big dose of rat poison to the ice cream. Quentin brought it to the bedroom while Lerato was in the bath. He yelled to her, "Come and eat it, before it melts." Lerato hurried to finish her hair while sitting in the bath. In her excitement, the hair dryer fell into the bath which resulted in her being electrocuted. If Quentin is prosecuted for murder, which statement is correct? (1)

- a. Quentin is guilty for the murder of his wife as long as he had the motive to kill her and he believed her death would result without further conduct on his part.
- b. Quentin is guilty of attempted murder as he had *dolus eventualis*. His motive was to kill her and that is why he placed poison in the ice cream.
- c. Quentin is not guilty of murder as Lerato's death resulted in part of her own conduct.
- d. Quentin is not guilty for the murder of his wife as long as his motive was to kill her by means of poisoning and not by means of electrocution.

1.16 *Mens rea* refers to \_\_\_\_\_. (1)

- a. guilty mind.
- b. *dolus* and *culpa*.
- c. *culpa*.
- d. blameworthiness of the accused.

1.17 When it comes to determining which sentence a court may impose, the starting point will be establishing (1)

- a. the prescribed sentence in the *Minimum Sentencing Act* 105 of 1997.
- b. whether specific legislation prescribes a sentence.
- c. the sentencing options in s 276 of the *Criminal Procedure Act* 51 of 1977.
- d. the sentencing jurisdiction of the court.

- 1.18 A, B, C and D are in a bar on a Friday night. There is a fight between B and D and B stabs D with a broken beer bottle. A who does not know B, C or D, intervenes by grabbing D with the consequence that B is able to fatally stab D. C, a friend of both B and D, watches the fight and killing without intervening. The bartender phones the police. Indicate which statement is correct. (1)
- A, B and C are perpetrators as they had the common purpose to commit murder.
  - A and B are perpetrators and C is an accomplice to the murder of D as C had a legal duty to prevent the killing of D.
  - B is a perpetrator and A is an accomplice to murder, but C cannot be an accused as he did not participate in the murder.
  - A and B are perpetrators, but C cannot be an accused as he did not participate in the murder.
- 1.19 Criminal law must be primarily studied, understood and applied against the background of (complete). (1)
- The Constitution of South Africa.
  - Decolonisation as it grants access to all South Africans and protects all South Africans.
  - Digitalisation and the Fourth Industrial Revolution as society now lives, work and socialise in a technological-driven world.
  - Globalisation as the criminal law of a country must be harmonised with the criminal law systems of other countries.
- 1.20 On 1 October 2021 Amos Shabalala was at his house. He was sitting outside on his patio when 4 armed men (hereafter referred to as accused) walked up to him, held him at gun point and demanded that he hand over his car key as well as any money he had on the property. The accused loaded the electrical equipment of the main house into the car. They then went to a granny flat on the property and loaded a television set belonging to Mr. Shabalala into the car. Assume they forced Mr. Shabalala to give them his credit card as well as his credit card pin number. They withdrew R5 000 from the ATM. Name the crime(s) they committed? (1)
- They committed money laundering and theft.
  - They committed fraud and robbery.
  - They committed fraud and theft.
  - They committed assault and fraud.

**[20]**


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## QUESTION 2

### SET OF FACTS:

A (a 32 year old married female with 2 children and practising as a lawyer at a well-known attorney's firm) went through an difficult period emotionally. During this period

she was self-destructive which culminated in her having an “affair” (sexual fling for approximately 6 months) with B (a 23 year old male who works as an escort and who is a recreational drug user).

She realised that her life was spiralling out of control and sought psychological help which assisted her in changing her behaviour and life choices. When she wanted to end this sexual liaison, B told her that she had to pay him a certain amount of money and/or be available for sexual intercourse at his request or otherwise he would release the nude photos of her as well as the WhatsApp messages that she sent to him.

B had been diagnosed with a personality disorder and his conduct is at times irrational. He bombards her with WhatsApp messages. When A blocked his number, he came to her workplace and told her that if she did not unblock him, he would contact her husband and release the photos as well as the WhatsApp messages.

A noticed a drone hovering over her house on a few occasions when she left in the morning for work and when she returned home in the afternoon. Her husband, C, was upset by the drone and told her that he would report it to the police as the use of the drone was an invasion of their privacy and he wanted to know who was the one who was using the drone to “spy” on them. A tried to make it off as nothing, but she realised that B was taking photos and profiling them. She started to fear for her and her family’s life.

The photos that B took of her are extremely lewd photos and some were taken when she was clearly intoxicated. The WhatsApp messages are not the type of communication one would want others to read. If these photos and/or messages are released on social media, to her husband and employer, she stands to lose a lot. However, B will not cease to make these threats unless she takes legal steps.

Answer the following questions with reference to the provided set of facts:

- 2.1 Briefly discuss the following supposition (statement): The set of facts does not fall within the ambit of the purpose of the criminal law. (2)
- 2.2 Which legal advice will you provide to A to address her legal position? (6)

A had no choice but to disclose the affair to her husband, C. C was understandably very upset and distraught by this disclosure. He had always been a devoted and faithful hard-working husband. A said to C that she would rather kill herself than have the photos etc. being disclosed.

In the heat of the argument, C took the gun (registered in his name) out of the safe, put bullets in the gun, threw the gun at her and said to her that she could do whatever she wanted as he was done with the marriage. The neighbours and children overheard the argument.



He walked out of the bedroom. Approximately 10 minutes later, he heard a gunshot and found her dead. The J88 revealed that she had died from a gunshot wound to her head and had died instantly.

C is charged with murder.

2.3 Why was a judicial inquest not instituted? Only one answer. (1)

The defence of C is that he did not pull the trigger and therefore he cannot be held responsible for her death. The deceased was responsible for her own death. He should therefore be acquitted.

2.4 In respect of C's defence, very briefly explain the presiding officer's judgement with reference to the relevant element and ONE court case. (6)

2.5 Assume the presiding officer rejected C's defence, may C be convicted of murder? Explain briefly. (5)

**(20)**

### **QUESTION 3**

#### **THE SET OF FACTS IS AN EXTRACT FROM A CHARGE SHEET:**

**IN THE REGIONAL COURT FOR THE REGIONAL DIVISION OF GAUTENG  
HELD AT THE SPECIALISED COMMERCIAL CRIME COURT:**

**Case number: SCCC**

**IN THE MATTER OF:  
THE STATE  
versus**

1. **KGAOGELO LINKY MOLEMA**  
(hereafter referred to as Accused 1)
2. **INDIGO KULANI GROUP (PTY) LTD**  
a corporate body within the meaning of section 332 of Act 51 of 1977, as represented by **SIBONGILE MANGANYI** (Accused 3) a director or servant of the said corporate body  
(hereafter referred to as Accused 2)
3. **SIBONGILE MANGANYI**  
(hereafter referred to as Accused 3)
4. **THABO CHELECHELE**  
(hereafter referred to as Accused 4)
5. **JIMMY MANGANYI**  
(hereafter referred to as Accused 5)

The criminal liability of the said Accused for the offences as set out in the charge sheet hereto, is founded on the following basis:

Accused 1, 3, 4 and 5 are criminally liable in that they, the one and / or the other, personally committed the offences set out in the charge sheet.

Accused 2 is criminally liable by virtue of the provisions of section 332(1) of Act 51 of 1977 in that Accused 2 through its director and/or servant, to wit Sibongile Manganyi (Accused 3) or through a director and/or servant unknown to the State acting in the exercise of his powers or in the performance of his duties as such director or servant or in furthering or endeavouring to further the interest of Accused 2 committed the offences as set out in the charge sheet.

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### CHARGE SHEET

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- (1) Accused 1 was appointed as Project Manager on behalf of the Municipality in respect of **Contract A – F 03-2015** (hereafter the "contract") pertaining to the compilation of the valuation roll for the period 2017 to 2021;
- (2) The said contract was advertised for tender on 27 February 2020 and the closing date for the said tender was 16 April 2020;
- (3) Accused 1's duties in relation to her role as the project manager included, but were not limited to the following:
  - Compilation of the specifications of the tender (the tender document)
  - She was the contact person for all bidders and enquiries
  - Presentation of item to Supply Chain Committees for approval
  - Evaluation of the received bids for tender from service providers
  - To identify the most qualified bid on tender
  - To prepare the report and present the same to the Bid Evaluation Committee with their recommendation
  - To make submissions relating to the awarding of this contract to the Bid Adjudication Committee
- (4) The Bid Specification Committee consisted of Accused 1, Petrus Vermeulen and Leruku;
- (5) There were 10 bidders of which eValuations scored the highest points and as a result Accused 1 had to recommend to the Bid Evaluation Committee that the said contract be awarded to eValuations;
- (6) Accused 1 however recommended a consortium of companies consisting of Indigo Kulani (Accused 2), Lutendo and A and Sons as the recommended bidder with the highest points;

- (7) The minutes of the Bid Adjudication Committee report, authored by Accused 1, also recommended the appointment of the consortium consisting of Accused 2, Lutendo and A and Sons;
- (8) The 3 companies which formed the consortium were represented as follows:  
 Accused 2: 80%  
 Lutendo: 10%  
 A and Sons: 10%
- (9) This deposit of R4 million paid by Accused 5 in respect of a property to be held by Accused 1 and which amount was eventually paid into the bank account of Accused 1 constitutes \_\_\_\_\_ ;
- (10) Neither Accused 2 nor Accused 3, 4 and 5 declared to the Municipality that they knew each other and/or that they were acquainted and/or the nature of their relationship with each other;
- (11) The declarations contained in the tender application (signed by Accused 3 and certified as being true and correct by Accused 4) falsely gave the *prima facie* impression that they had no personal relationships with anyone employed by the Municipality;
- (12) The failure of all the Accused to declare their relationship or association with each other created a conflict of interest and amounted to a misrepresentation to the Municipality which was \_\_\_\_\_ and amounted to \_\_\_\_\_;
- (13) The giving of the benefit by Accused 4 and 5 and the receiving of the benefit by Accused 1 amounted to \_\_\_\_\_.

Answer the following questions:

- 3.1 Assume the accused had unsuccessfully challenged the institution of prosecution. What would they allege? (3)
- 3.2 Why is the case number relevant? (1)
- 3.3 Explain the relevance of the court of first instance. (4)
- 3.4 Indicate and define for which crimes the accused will be charged. (4)
- 3.5 These type of crimes are referred to as \_\_\_\_\_. (1)
- 3.6 Provide the prescribed sentence that may be imposed with reference to one relevant court case that the presiding officer must take into account. (5)
- 3.7 Indicate in which medium the crime(s) were committed and what is the main characteristic of this medium. (2)

**[20]**

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## QUESTION 4

## **SET OF FACTS**

**The set of facts is based on a court case and the questions hereafter are based on the following extract from the case.**

“In the course of an armed robbery gone horribly wrong for the robbers, one of them, Mr Bongani Jabulani Skhosana, was fatally wounded by the robbery victim, Mr Dennis Sikhumbuso Ngobese, who shot Mr Skhosana.

The facts are largely common cause or uncontroverted. Gleaned from Mr Ngobese’s testimony, they are as follows. Mr Ngobese owned a coal yard in Wattville, Benoni. When he was about to close his business at around 6pm on that fateful day, a vehicle with five occupants arrived. Two of the occupants entered his office. Mr Ngobese had been busy cashing up the day’s takings in his office and he intimated to the robbers, who demanded money, that they should take the cash lying on his office desk. His suggestion to the robbers that they search him was disdainfully brushed aside, with dire consequences to the robbers. On his own accord Mr Ngobese removed his cellphones and his wristwatch and placed them on the table. The deceased entered the office after his two fellow robbers. Like them, he was in possession of a firearm which he waved around, issuing threats and eventually firing a shot which hit one of the coal yard employees, Mr Dennis Mabaso, in the elbow. Mr Ngobese described the deceased’s appearance as wild and agitated.

Mr Ngobese was lying down, as he had been instructed, when a struggle ensued between him and the deceased. In the process he grabbed the deceased’s wrist and a shot went off from the deceased’s firearm and passed Mr Ngobese’s left side. Mr Ngobese was able to draw his firearm and shot the deceased twice in his chest. Thereafter he shot back at the three robbers who were firing at him. It appears on the evidence to have been a wild shootout in that small office.

In the end, the deceased was fatally wounded, accused number one was shot in the pelvis and Mr Ngobese sustained a gunshot wound in the leg. The accused was convicted on one count of murder, two counts of robbery with aggravating circumstances and one count each for the unlawful possession of a firearm and ammunition.

The only issue before us is whether the trial court had correctly convicted the appellant of the murder of his fellow robber.

The appeal is with leave of this court. The broad thrust of the appellant's contentions is that the deceased had embarked on a 'frolic of his own' which caused his own death and that the State had failed to prove that the appellant had the requisite [element] for murder."

YOU ARE THE PROSECUTOR.

4.1 You decided not to charge the robbery victim, Mr. Ngobese for killing the robber.

If he had been charged with murder, which defence would he have raised? Provide the defence and indicate which element it would exclude. (2)

4.2 Explain very briefly why all the accused were charged with murder and the category of accused they constitute. (2)

4.3 The defence argued on behalf of the accused that *S v Molimi* 2006 (2) SACR 8 (SCA) was applicable and therefore the accused should not have been convicted of murder.

Unfortunately, the defence did not use the correct case in support of their defence.

Discuss which defence the accused should have raised with reference to case law and an academic author which substantiates the answer. (6)

**[10]**

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**TOTAL: 70**