

MEMO SECOND PAPER 2021 CRIMINAL LAW

QUESTION 1: 10 marks

1.1 Why was the accused prosecuted? (3)

- I. The conduct of the accused complied with the 5 elements of a crime.
- II. The accused was linked to the crime.
- III. There was a reasonable possibility of success.

1.2. Briefly define robbery with reference to two unlawful acts (interest). (2)

It consists of 2 unlawful acts. Theft with assault

- i. The taking of property (amounts to theft); and
- ii. Performing a violent act or threat of violence on a person.

1.3 Define with reference to case law how grievous bodily harm is established with reference to aggravated robbery. (3)

Case law: *Raboko* (1)

Facts of case (1)

- (1) Grievous bodily harm: depend on weapon used and circumstances; does not have to be life threatening.

1.4 Discuss when a court may will deviate from the prescribed prison sentence with reference to the relevant court case. (2)

Case law: *Malgas* case (1)

Weigh above to see if there are substantial and compelling circumstances (1 mark) for deviation.

QUESTION 2 19 marks

To protect 1) safety and security of people and also

2) feelings/protect people against themselves

2.2 Which crimes have been committed in the set of facts? Define each crime. (4)

- i. Fraud (1) DEFINE (1) and
- ii. criminal defamation (1) DEFINE (1)

2.3 Which constitutional rights are affected by above-given crimes? (4)

SECTION 14 (1) Right to privacy (1) and

SECTION 10 (1) right to dignity (1)

2.4 If A is now living in Sydney, Australia, can A be prosecuted? In your answer draw a distinction between national, transnational and international crimes. (4)

Jurisdiction – A is in Australia maybe extradition/deportation (1)

Define each of the terms. (3)

2.5 1 5 MARKS

Provocation is not a ground of justification DURING TRAIL (1) only during sentencing (1). CANNOT say excluded CRIMINAL CAPACITY (1) *Eadie* (facts) (1) does not exclude criminal capacity during trail and *Mnisi* (facts) (1) but only during sentencing. Also not exclude UNLAWFULNESS as private defence.

2.5.2 1 mark NO

QUESTION 3: 18 marks

3.1 3 marks

Housebreaking with intent

Define (1) It is where A a) unlawfully and b) intentionally c) breaks into and d) enter e) a building or structure with the intention to commit a crime in it.

Not (1) housebreaking – no force (1)

3.2 2 marks

Robbery (1 marks) *Sishuba* case (1 marks)

3.3 4 MARKS

NO (1) *Tembani* case (1) : causation not broken (1) ; take victim as you find him (1)

3.4 7 MARKS

Motivation:

dolus:

knowledge of unlawfulness (1)

dolus directus (1)

dolus indirectus (1)

dolus eventualis (1)

Subjective and not objective

Is lungile or Goosen or not one of them applicable? Not one of them

Conclusion: NO (1)

Culpa: (negligence)

Culpable homicide (1)

Would the reasonable person have foreseen it? (1)

3.5 2 marks

Statutory crime: Torture Act (1)

Both involved (1)

Policemen: 1. Any person who commits torture, attempts to commit torture or incites, instigates commands or procures any person to commit torture is guilty of an offence of torture and is on conviction liable to imprisonment including imprisonment for life.

Bank manager: 2. Any person who participates in torture or who conspires with a public official to aid or procure the commission of or to commit torture, is guilty of offence of torture and is on conviction liable to imprisonment including imprisonment for life.

QUESTION 4 23 MARKS

4.1 d

4.2 b

4.3 b

4.4 b

4.5 c

4.6 c

4.7 b

4.8 c

4.9 b

4.10 d

4.11 a

4.12 b

4.13 b

4.14 d

4.15 c

4.16 d

4.17 d

4.18 b

4.19 b

4.20 c

4.21 c

4.22 a

4.23 c