

MEMO SECOND PAPER 2020 CRIMINAL LAW

QUESTION 1: 29 marks

1.1 Define criminal law. (2)

Criminal law defines

- 1) which conduct is a crime in terms of the common law and legislation and
- 2) the sentence that may be imposed.

1.2 The accused was convicted *inter alia* for the crime, aggravated robbery.

1.2.1 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.

1.2.2 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)

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

1.3 Provide in tabular format the elements of rape with reference to the elements of a crime in general. (5)

LEGALITY	Sexual Offences Act
CONDUCT	Penetration <u>without consent</u>
UNLAWFULNESS	Against boni mores/legal convictions of society and no ground of justification /defence
CRIMINAL CAPACITY	Distinguish between right and wrong and act in accordance
FAULT	Dolus/intent

1.4 Give and define the purpose of sentencing. (5)

Retribution, rehabilitation, prevention, deterrence and restorative justice DEFINE

1.5 Discuss fully which sentence may be imposed for rape. (7)

Section 51 (1) Part 1 (1) Schedule 2 (1) Minimum Sentencing Act (1) : life imprisonment (1) and part 3 (1): 10 years (1).

1.6 Discuss when a court may will deviate from the prescribed prison sentence with reference to the relevant court case. (5)

Case law: **Zinn** case (1)

Discussion: Triad (3 marks): seriousness of crime; interest of society and personal circumstances

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

QUESTION 2 21 marks

2.1 What is the role of criminal law? (2)

To protect 1) safety and security of people and also

2) feelings/protect people against themselves

2.2 How does globalization impact on criminal law? Refer in your answer also to the medium in which the crime was committed. (2)

Electronic medium and globalization is the across border commission of crime.

2.3 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)

2.4 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)

2.5 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)

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

Define each of the crimes. (3)

2.6 .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.**

2.6.2 1 mark NO

QUESTION 3: 20 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)

3.3 Robbery (1 marks)

3.4 4 MARKS NO (1) Tembani case (1) : causation not broken (1) ; take victim as you find him (1)

3.5 8 MARKS

Motivation:

dolus: **1 mark**

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)

Culpable homicide (1) culpa (negligence) (1)

3.6 3 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. (1 mark)

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 30 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 c

4.12 a

4.13 b

4.14 c

4.15 b

4.16 c

4.17 a

4.18 d

4.19 c

4.20 d

4.21 d

4.22 b

4.23 c

4.24 d

4.25 b

4.26 c

4.27 c

4.28 c

4.29 c

4.30 a