



<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 2019

<b><u>DATE</u></b>	: 21 November 2019	<b><u>SESSION</u></b>	: 8.30 – 11.30
<b><u>ASSESSOR(S)</u></b>	: Prof MM Watney		
<b><u>MODERATOR</u></b>	: Dr E Fourie		
<b><u>DURATION</u></b>	: 3 hours	<b><u>MARKS</u></b>	: 100

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NUMBER OF PAGES: 18 PAGES (INCLUDING THIS PAGE)

INSTRUCTIONS:

1. Please write your surname, initials and student number on the answering paper.
2. Answer all the questions on the answering paper.
3. The answering paper must be handed in alphabetically.
4. The question paper is handed in separately to the answering paper.
5. Good luck with the examination.

## QUESTION 1

Read the following extract from a media statement which the spokesperson for the NPA issued on 2 August 2019 (available at <https://www.npa.gov.za/sites/default/files/media-releases/>).

"A Gugulethu couple were convicted for the brutal murder of former Naspers Financial Director, Frederik Johannes Wiese.

On 1 August 2019, Nomfundo Mtshawu and her boyfriend, Vuyolwethu Mgemane were respectively sentenced by the Western Cape High Court after they were convicted on 21 May 2019 on charges of murder, housebreaking with intent to rob and robbery with aggravating circumstances.

Mtshawu, 34, pleaded not guilty on murder and robbery with aggravating circumstances. She placed herself at the crime scene telling the court that she and her boyfriend decided to visit the suburbs to look for places where they can get money, as they needed to buy clothes for a funeral. She told the court that on the morning of 4 August 2017, they identified the house of the deceased, in Higgovale, Cape Town to break into and rob.

At the time, the 80 year- old Wiese was alone in the house, as his wife had gone to the shops. The couple bludgeoned the deceased until he died and took cellular phones, reading glasses, wrist watches, food, wine, backpacks, cutlery, cash, a black patch containing a silver napkin, bank and retail cards. His wife discovered his body on her return from the shops and a patrolling local security van heard her screams. The couple was later arrested in Gugulethu.

During the trial, Advocate Maresa Engelbrecht argued that the accused showed no remorse and no respect for the law. 'This was an extremely serious crime. The deceased was robbed and murdered in his own house where he is supposed to be safe. His wife came across his body. Society demands proper sentences in matters like these. There is an unacceptable high level of violent crimes in our communities,

especially involving children, women and older people. They target the vulnerable ones. Given the circumstances of this case, any sentence imposed must serve as a deterrent and must protect societal interest,' she argued."

**You must provide a legal opinion on the media statement with reference to the following questions:**

- 1.1 Define criminal law. (2)
- 1.2 The accused was convicted *inter alia* for the crime, robbery with aggravated circumstances.
  - 1.2.1 Briefly define robbery with reference to two unlawful acts (interest). (2)
  - 1.2.2 Define with reference to case law how grievous bodily harm is established with reference to robbery with aggravating circumstances. (3)

'Aggravating circumstances' in relation to the offence of robbery are defined in s 1(1)(b) of the CPA to mean:

  - '(i) the wielding of a firearm or any other dangerous weapon;
  - (ii) the infliction of grievous bodily harm'; or
  - (iii) a threat to inflict grievous bodily harm; by the offender or an accomplice on the occasion when the offence is committed, whether before or during or after the commission of the offence.'
  - 1.3 Provide in tabular format the elements of murder with reference to the elements of a crime in general. (5)
  - 1.4 Why do you think the accused was not charged for housebreaking with the intent to commit murder? (1)
  - 1.5 Assume the post mortem (J 88) revealed that the victim at 80 years of age had died of a heart attack which was triggered by being beaten with an object over the head and body. He had severe wounds covering his body. Motivate whether the heart attack served as a *novus actus interveniens*. (3)
  - 1.6 Define the jurisdiction of the court of first instance. (3)

1.7 Discuss fully which sentence may be imposed. Please keep question 1.8 hereafter in mind. (5)

1.8 Indicate when a court may deviate from the prescribed minimum prison sentence with reference to the relevant court case that may provide guidance for such deviation. (5)

[29]

## **QUESTION 2**

### **Set of facts:**

In March 2019 the SABC news reported "Road rage is increasing in South Africa. With the advent of social media, these outrages are often captured for posterity. Aggressive, fast and reckless driving are also on the increase. This is found particularly in urban areas where traffic congestion and urgency are contributing factors. It's just not hijacking and accidents that motorists are fearful of, road rage has become a major threat" (<http://www.sabcnews.com/sabcnews/road-rage-has-become-a-major-threat-in-sa/>).

On 29 August 2019 Meekaefele Mosooa was acquitted on a murder charge by the High Court. Mosooa shot dead motorcyclist, Douglas Pearce after an alleged road rage incident in Johannesburg five years ago. Both the accused and the victim were armed. Mosooa said he shot Pearce in self-defence which the court accepted. The court indicated that the accused had not exceeded the boundaries of self-defence.

**Answer the following questions with reference to the given set of facts:**

2.1 Which element does self-defence exclude? (1)

2.2.1 Define the specific test the court used in this case to determine if the accused acted in self-defence. (2)

2.2.2 Indicate how decolonisation may impact on the above-given test. (1)

- 2.3 Discuss briefly why the accused was convicted in the case of *S v Eadie* 2002(1) SACR 663. (2)
- 2.4 The court found that the accused had not exceeded the boundaries of private defence. Briefly explain what this means. (1)
- 2.5 If the accused had acted in road rage, the court would have convicted him of murder.
- 2.5.1 Provide a road rage court case (not the *Eadie* case referred to at question 2.3 above) where the court found that the accused had not acted in private defence. (1)
- 2.5.2 The court also found in the above-given case that the accused had not acted in putative private defence. Define putative private defence. (2)
- 2.5.3 Explain briefly the form of fault applicable to murder. (6)

**[16]**

### **QUESTION 3**

#### **Set of facts:**

The accused (a South African) was employed at CAPITEC as a financial planner. The accused advised clients of CAPITEC on six occasions to transfer money into his private bank account for investment purposes. The accused had a bank account in Sydney, Australia. He transferred almost all the money to this off-shore bank account. He misappropriated the money for his own personal use. The accused was arrested at OR Tambo airport as he was about to leave South Africa for Australia.

At the police station the accused was questioned on the whereabouts of the money taken from the bank. Three policemen used an instrument to administer electric shocks to elicit the information from the accused. One of the complainants was present and observed the questioning. He also encouraged them to use more forceful electric shocks. The accused could not endure the pressure exerted on him and disclosed where the money was. Approximately R4 million was recovered.

He is charged and pleaded guilty to 6 counts in the total amount of R9 800 000.

You are the presiding officer.

**Answer the following questions with reference to the given set of facts:**

- 3.1 The defence argues that this is not an example of cybercrime.
- 3.1.1 Define cybercrime fully. (3)
- 3.1.2 Explain very briefly the possible impact of the Fourth Industrial Revolution (4IR) on cybercrime. (2)
- 3.1.3 Motivate whether you will accept the given set of facts as an example of cybercrime. (1)
- 3.2 Provide 6 differences between cybercrimes and physical crimes. (6)
- 3.3.1 For which two crimes will the accused be charged? (2)
- 3.3.2 May the accused be convicted for the crimes provided at question 3.3.1 above? (4)
- 3.4 At sentencing, you must take note of *Van der Walt v S* (2003) JOL 10974 (T). Indicate the relevance of this case. (2)
- 3.5 Assume the accused forced one of the clients at gun point to transfer money to his bank account. Which crime has been committed? (1)
- 3.6 B, a financial advisor at another banking institution, FNB was aware of A's conduct but did not disclose it to the police. He approached A who paid so-called 'hush money' into his account in return for his 'silence'. Motivate whether B committed a crime. (2)
- 3.7 You as the presiding officer ask the prosecutor to address the court on the conduct of the police and complainant during the questioning of the accused which resulted in the recovery of a large amount of the money taken. What do you think the prosecutor's response will be? (2)

**[25]**

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## QUESTION 4

## MULTIPLE CHOICE QUESTIONS

- ❖ Please take note:
- Provide only ONE answer for each question.

### Question 4.1

Criminal prosecution is instituted when

- a. The accused does not have a defence, the conduct complies with the definition of a crime, the accused may be linked to the crime and there is a reasonable possibility of successful prosecution.
- b. The conduct complies with the definition of a crime, the accused may be linked to the crime and there is a reasonable possibility of successful prosecution.
- c. The accused may be linked to the crime and there is a possibility of successful prosecution.
- d. The accused made a confession that he committed a crime.

### Question 4.2

Criminal law falls within the ambit of

- a. substantive private law.
- b. both private and public law.
- c. formal public law.
- d. substantive public law

### Question 4.3

*Ratio decidendi* means

- a. passing remarks.
- b. reason for the decision.
- c. a decision based on the facts of the case.
- d. comparing the rule on which the presiding officer relies for his or her conclusion with other rules.

### Question 4.4

A keeps various wild animals as pets. One of his pets is a baboon. On 12 November the neighbour's children were playing outside and the baboon fatally bit the

neighbour's child. Did A have a legal duty in accordance with the common law to control a dangerous or potential dangerous animal? Indicate which statement is correct.

- a. Yes, A did have a legal duty as A should have taken responsibility of a dangerous or potentially dangerous animal and may be convicted of culpable homicide. A was negligent by not ensuring that the baboon could not enter the neighbour's property.
- b. No, A did not have a legal duty as A cannot take responsibility of a dangerous or potentially dangerous animal and cannot be convicted of culpable homicide as A was not negligent; he is not responsible for the baboon going onto the neighbour's property.
- c. Legal duty is not applicable but the causation requirement is applicable.
- d. No, legal duty is not applicable at all as the legal convictions of society do not require that there should be such a duty.

#### Question 4.5

A, a 50 year old man, was for years emotionally and physically abused by his wife of 30 years, B (the victim). They were childhood sweethearts who got married when B fell pregnant. Over the years, B, who had been institutionalised on various occasions for mental illness, was extremely cruel to him, for example phoning his boss at work and making false allegations against B or going to his workplace and throwing a tantrum. Although his and her family urged him to divorce her, he felt morally obligated to care for B. On 1 November he reached the end of his tether when she accused him of not providing properly for her and being a weak husband. B alleged that she heard voices telling her that A had won money while gambling and that he was having an affair. A, who had never gambled and spent all his time trying to please B, strangled B in a fit of complete rage. A is prosecuted for murder.

- a. A's position is similar to that of a battered woman syndrome and in accordance with *S v Ferreira and Others* (245/03) [2004] ZASCA 29; [2004] 4 All SA 373 (SCA) he will be acquitted.
- b. A's position is similar to that of *S v Steyn* 2010 (1) SACR 411 (SCA) and he will be acquitted for acting in private defence.
- c. A will be acquitted of murder by successfully tendering provocation as a defence.



- d. A will be convicted of murder similar to that of *S v Ferreira and Others* (245/03) [2004] ZASCA 29; [2004] 4 All SA 373 (SCA) but at sentencing his treatment at the hands of the victim will provide mitigating circumstances.

#### Question 4.6

Unfortunately many crimes are committed by intoxicated accused as a result of the voluntary consumption of liquor or drugs. Indicate which statement is correct pertaining to the voluntary consumption of drugs or alcohol.

- a. If A commits a crime while intoxicated as a result of the voluntary consumption of drugs/liquor, A should be punished as intoxication should never serve as a defence.
- b. If A committed a crime while under the influence of drugs/alcohol, then A should be convicted of a crime even if the conduct of A does not comply with the elements of crime. It is reprehensible that a person consumes drugs or alcohol in excessive amounts.
- c. Regarding the commission of crimes in circumstances where the accused is intoxicated, public policy should play a bigger role than legal principle. The public do not want a “soft” approach to the criminal liability of an intoxicated accused.
- d. Intoxication during the commission of a crime may be used as a defence and legal principle will play a bigger role than public policy in determining the criminal liability. It is important that the elements of a crime must be proven pertaining to an accused who commits a crime while intoxicated.

#### Question 4.7

When a crime is reported

- a. The police must open a docket and allocate it a case number.
- b. The police must open a docket and allocate it a CAS number.
- c. The prosecutor must open a docket and allocate it a case number.
- d. The police and prosecutor must together open a docket and allocate it a CAS number.

#### Question 4.8

A and B had marital problems. B had an affair with A’s friend, C. Everyone knew about it and discussed it behind A’s back. B told A that she had ended the affair with C. One day A saw B and C in B’s car and they were kissing each other. He walked to his office

where he kept a gun and shot C dead. A is charged for murder. Indicate which statement is correct.

- a. He can use provocation as a defence to exclude criminal capacity.
- b. He can use provocation to exclude unlawfulness.
- c. He cannot use provocation as a defence to exclude criminal capacity or during sentencing. People should be able to control their emotions.
- d. He can use provocation at sentencing for mitigation purposes.

#### Question 4.9

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. He is charged for contempt of court and his defence is:

- a. Impossibility due to being in hospital.
- b. Necessity due to being in hospital.
- c. Empathy and sympathy due to being in hospital.
- d. Official capacity due to being in hospital.

#### Question 4.10

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:

- 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 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.

#### Question 4.11

*Mens rea* refers to

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

#### Question 4.12

An accused, X, sees a group of people attacking an alleged thief who has allegedly stolen cellphones. The group stab the thief (deceased). The accused, X, throws a brick at the alleged thief. X is angry because a week prior to this incident his cellphone was stolen and he has not been able to recover his phone nor can he afford a new phone. X is tired of thieves not being arrested. The alleged thief dies. The post mortem (J88) shows that the thief was dying at the time that the accused threw a brick at him. Indicate which statement is correct.

- a. The accused may be convicted on a charge of murder.
- b. The accused may be convicted on a charge of attempted murder.
- c. The accused cannot be convicted as the thief was already dying when he threw the brick.
- d. The accused should not be charged as he acted out of anger at the loss of his own phone. Emotional stress justifies his conduct.

#### Question 4.13

Four accused decided that they want to rob a shop at a shopping centre. During the robbery there is a shoot-out between the police and the robbers. One of the robbers run into a shop and takes a by-stander as a hostage. A member of the public sees the robber taking the person hostage and fires at the robber but the bullet kills the hostage. The prosecutor prosecutes the four accused with murder. You are the presiding officer and make the following judgement:

- a. All the accused had *dolus eventualis* and are convicted of murder.
- b. If the four accused had not decided to commit robbery, the victim would not have died and therefore all the accused are convicted of murder since there is a link between the conduct of the group and the death of the hostage.
- c. All the accused had common purpose to commit murder and are convicted on the charge of murder.

- d. The accused who had taken the hostage acted on a frolic of his own and only that accused may be convicted on a charge of murder. The other three accused cannot be convicted of murder of the hostage.

#### Question 4.14

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

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

#### Question 4.15

A (former boyfriend of B) went on a chat room and indicated that B (former girlfriend of A) desires to be raped. A gave all her personal particulars, such as her home address and her cell phone number. C rapes B. Indicate which statement is correct.

- a. A can be charged as an accomplice and incitement to commit rape.
- b. A cannot be charged with any crime. He has a constitutional right of free speech and he could not foresee that C would rape B.
- c. A can be charged with the common purpose to commit 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.

#### Question 4.16

The following facts are similar to *S v Mogaradmedi* unreported case number: A 165/2013. A (the accused) had been practising as a sangoma for the past 10 years. As part of his final initiation, he had to obtain the genital organ of a close female relative. He therefore lured his younger sister, (the deceased) to his home under the false pretence that he would conduct a ritual for their incarcerated brother. He waited for the deceased to fall asleep whereupon he hit her twice on the head with an axe. He stabbed her with a knife in the chest and waited for her to pass away. He then cut off the deceased's genital organ with an axe. He was charged with murder. The court:

- a. Found that in terms of section 31 of the Constitution which protects “cultural, religious and linguistic communities” that the accused cannot be held criminally liable for a muti murder;
- b. Concluded that in terms of section 31 of the Constitution which protects “cultural, religious and linguistic communities” that even if the accused is convicted as charged, a sentence of imprisonment cannot be imposed for a muti murder;
- c. Convicted the accused for murder and imposed life imprisonment as this was a premeditated and planned killing;
- d. Convicted the accused for murder, but found that the fact that the accused practised as a sangoma a substantial and compelling circumstance for not imposing a sentence of life imprisonment as the court had to be sensitive to “cultural, religious and linguistic communities” within a multi-cultural South Africa.

#### Question 4.17

Henry is not happy that his girlfriend, Lerato is pregnant. She refuses to go for an abortion since it is against her religious beliefs. She is 7 months pregnant when they have a fight and he violently punches her in the stomach with his fists. She has a miscarriage but also suffer internal haemorrhage which almost causes her death. Did he commit a crime?

- a. Yes, Henry committed the crime of attempted murder of Lerato and similar to *S v Mshumpa* 2008 (1) SACR 126 (E) he cannot be charged with murder of the foetus.
- b. Yes, Henry committed the crime of murder of the foetus and attempted murder of Lerato and similar to *S v Masiya* 2007 SACR 435 (CC) the definition of murder has been extended to include the killing of a foetus.
- c. Yes, the accused is guilty of the murder of the unborn child and attempted murder of the mother, similar to *S v Mshumpa* 2008 (1) SACR 126 (E);
- d. Yes, the accused committed the crime of assault of Lerato.

#### Question 4.18

A (a poor and jobless person) is approached by a final year medical student (B) and offered R10 000 for his kidney. A consents to the removal of the kidney. May B (the medical student) be prosecuted for trafficking in kidneys?

- a. No, B cannot be charged in terms of the *Prevention and Combatting of Trafficking in Persons Act 7* of 2013 as A gave consent for the removal of the kidney.
- b. Yes, B can be charged in terms of the *Prevention and Combatting of Trafficking in Persons Act 7* of 2013 as no person can give permission to be injured.
- c. Yes, B can be charged in terms of the *Sexual Offences Act 32* of 2007.
- d. Not one of the above-given answers.

#### **Question 4.19**

Anna works in a game reserve. The game rangers report to her on a daily basis where different animals such as lions, elephants, rhino and other animals have been sighted. She has been approached by a syndicate that are involved in the poaching of rhino for the rhino horn. The syndicate wants her to disclose to them the last sighting of rhino every day. She will be paid for the information. She is busy typing an email to the contact person of the syndicate when her boss walks in. He has been "tipped off" of her involvement and tells her to put her hands on the desk. He walks to the computer and sees the message that she was typing. Did she commit a crime?

- a. No, she committed no crime since the conduct was not completed. The email was never sent;
- b. Yes, she committed the crime of incitement in terms of the *Riotous Assemblies Act 17* of 1956;
- c. Yes, she committed the crime of conspiracy in terms of the *Riotous Assemblies Act 17* of 1956;
- d. None of the above.

#### **Question 4.20**

Anna feels that she has no discourse but to poison her boss before he contacts the police. She puts some rat poison in his tea. He is about to drink the tea when the police arrives. Anna is so overcome with emotion that she confesses to the poison in his tea.

- a. Anna will not be charged with any crime since she made a confession and her boss never drank the tea;
- b. Anna will be charged with assault;
- c. Anna will be charged with murder;

- d. Anna will be charged with attempted murder.

#### Question 4.21

A sets fire to his own house and claims from the insurer the value of the property. The insurer investigates the fire and it is clear from the evidence collected that it was intentionally started. No insurance payment was made. For which crimes may A be charged?

- a. A cannot be charged for any crimes since A burned down his own house and cannot be charged for arson as it can only be committed in respect of the immovable property of another;
- b. A can be charged for fraud;
- c. A can be charged for malicious damage to property and fraud;
- d. A can be charged for arson and fraud.

#### Question 4.22

A is called as a state witness. During questioning A refuses to answer any questions put to him by the prosecutor or presiding officer. Did A commit a crime?

- a. Yes, perjury was committed;
- b. Yes, contempt of court was committed;
- c. Yes, obstruction of justice was committed;
- d. No crime was committed as A has freedom of expression which includes the right to keep quiet.

#### Question 4.23

Indicate which statement is correct pertaining to the case, *The Minister of Justice and Constitutional Development v The South African Litigation Centre* (286/150) 2016 ZASCA 15 March 2016 (the so-called Al Bashir case):

- a. The South African government could not arrest President Al Bashir as it would have infringed immunity which he enjoyed as head of a state.
- b. The South African government could not arrest President Al Bashir as it would have damaged the relations between South African and Sudan.

- c. The South African government erred in not arresting President Al Bashir because South Africa had a legal obligation as a member of the International Criminal Court (ICC) to arrest President Al Bashir.
- d. The South African government could not arrest President Al Bashir because such an arrest would result in South Africa violating the sovereignty of another country.

#### **Question 4.24**

The statement given at question 4.23 falls within the ambit of

- a. International criminal law.
- b. National law.
- c. Transnational law.
- d. National law and international criminal law.

#### **Question 4.25**

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.

- 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 intent to assist B in killing herself.
- c. A cannot be charged as B gave permission to be killed.
- d. A can be charged but can only be convicted of culpable homicide since intent was absent.

#### **Question 4.26**

The victim was raped and killed during a housebreaking with the intent to commit rape and murder. A prosecutor charged the accused with conspiracy to rape, conspiracy to murder, rape, murder and housebreaking with the intent to rape and murder.

- a. The prosecutor cannot charge the accused for incomplete and completed crimes.
- b. The prosecutor cannot convict the accused for all the crimes as it would be against the principle of multiple convictions.



- c. The presiding officer cannot convict the accused of all the crimes as it would be against the principle of multiple convictions.
- d. If the prosecutor proved all the crimes, the presiding officer may convict the accused of the crimes.

#### **Question 4.27**

Barry Scott (hereafter referred to as the accused), a 45 year old married man with 2 grown-up children, has been chatting to a 14 year old girl by means of Whatsapp messages. The accused met her on an online dating website. She clearly indicated her age to him but despite this, he continued chatting to her. His messages were predominantly sexual by nature. He arranged for them to meet on 10 August and also told her to wear something sexy in the colour red. The 14 year old girl voluntarily communicated with the accused. The mother of the 14 year old girl reported the case to the police when she saw the Whatsapp messages. On 10 August the accused was arrested. The accused may be prosecuted with the following crime(s):

- a. No crime as the communications were voluntary and online without any physical contact between them.
- b. Sexual grooming.
- c. Sexual grooming and incitement to commit rape (statutory rape) with a child;
- d. Attempt to commit (statutory) rape.

#### **Question 4.28**

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.

- a. A, B and C are perpetrators as they had the common purpose to commit murder.
- b. 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.
- c. 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.

- d. A and B are perpetrators, but C cannot be an accused as he did not participate in the murder.

#### Question 4.29

The test applicable to determine *culpa* is

- 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 crime commission.

#### Question 4.30

A (wife) approached B to kill C (husband) for the amount of R15 000. B readily agreed, but upon her departure he immediately reported the conversation to the police. When A gave B half of the amount she was arrested. Which crime did she commit if any?

- a. A committed conspiracy to commit murder.
- b. A committed no crime. B had no intention to kill B and there was no persuasion.
- c. A committed no crime as the crime was never completed. It was merely an unfulfilled request.
- d. A is the perpetrator and must be charged for murder.

**[30]**

**TOTAL: 100**

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#### Final remark:

- I wish you a happy summer holiday and a blessed 2020.