

MEMO FIRST PAPER NOVEMBER EXAMINATION 2019

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. (2)

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.

MUST CLEARLY SHOW THE 2 INTERESTS.

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. (MUST INDICATE: DOES NOT HAVE LIFE THREATENING BUT THE COURT MUST LOOK AT SEVERITY).

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

LEGALITY	Common law
CONDUCT	Killing of a human being
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 Why do you think the accused not charged for housebreaking with the intent to commit murder? (1)

No force

1.5 Motivate whether the heart attack served as a *novus actus interveniens*? (1)
Define *novus actus interveniens*:

An abnormal/unexpected event that break the link between the conduct and consequence.

Yes or no, the heart attack served as *novus actus interveniens*. (1)

No

Motivation: (1)

Take your victim as you find it – thin skull – not unexpected/not abnormal.

1.6 Define jurisdiction (3)

Substantive, territorial and geographical jurisdiction

1.7 Discuss fully which sentence may be imposed for murder. (5)

Section 51 (1) Part 1 (1) Schedule 2 (1) Minimum Sentencing Act (1) : life imprisonment (1)

1.8 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: 16 marks

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

Unlawfulness

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

Objective test 1 mark

Court put itself in the shoes of the reasonable person and asks: was the conduct reasonable. 1 mark (DO NOT USE CULPA TEST WHERE THE COURT COMPARES THE ACCUSED CONDUCT WITH THAT OF A REASONABLE PERSON).

2.2.2 How may decolonisation impact on the test. (1)

Reasonable person – similar to that of accused.

2.3 Discuss briefly why the accused was convicted in the *S v Eadie* 2002(1) SACR 663. (2)

Facts of the case 1 mark : accused assaulted and killed the victim with a hockey stick.

Relevance of case 1 mark : Criminal capacity is not excluded by means of provocation during road rage.

2.4 The court indicated that the accused had not exceeded the boundaries of private defence. Briefly explain what this means. (1)

It means there was a balance between the attack and defence.

2.5 If the accused had acted in road rage, the court would have convicted him for murder.

2.5.1 Provide a road rage case where the court found that the accused had not acted in private defence. (1)

Grigor case

2.5.2 The court also found in the above-given case that the accused had not acted in putative private defence. Briefly define putative private defence. (2)

The accused subjectively thought he acted in private defence 1 mark which may exclude DOLUS 1 mark

2.5.3 Define the form of fault applicable to murder. (6)

1 mark Dolus consists of two components:

1 mark Knowledge of unlawfulness

3 marks One of 3 forms of dolus: dolus directus, dolus indirectus and dolus eventualis

1 mark SUBJECTIVE TEST

QUESTION 3: 25 marks

3.1 The defence argues that this is not an example of cybercrime.

3.1.1 Define cybercrime fully. (3)

Crime where data, computer program, computer storage system and computer system is the

1 MARK OBJECT OF THE CRIME

1 MARK INSTRUMENT OF THE CRIME OR

1 MARK INCIDENTAL TO THE CRIME.

MUST REFER TO ABOVE.

3.1.2 What is the impact of the Fourth Industrial revolution (4IR) on cybercrime.

Define 4IR (1)

Revolution has evolved beyond digitalisation/automation and refers to AI, cloud computing, 5G (MUST REFER TO THE LATTER).

How will it impact? (1)

More crime may be committed. MUST REFER TO CYBERCRIME – NOT TO WHY KNOWLEDGE IS RELEVANT AS THE QUESTION FOCUSES ON CYBERCRIME.

3.1.3 Motivate whether you accept the given set of facts as an example of cybercrime.(1)

Yes, cybercrime as it was committed in an **electronic medium**.

3.2 Provide 6 differences between cybercrime and physical crimes. (6)

THIS QUESTION WAS PROVIDED AND DISCUSSED IN CLASS -CHAPTER 15.

LEGAL SYSTEM IN PHYSICAL WORLD/MEDIUM	LEGAL SYSTEM IN ELECTRONIC WORLD/MEDIUM
1.Common law originates in a physical world where the emphasis is on the tangible property .	Electronic world revolves around information which is intangible.
2. A legal system is applicable in a country's national jurisdiction , e.g. SA boundaries although with globalisation the issue of extra-territorial jurisdiction and universal jurisdiction have become important .	Internet a global system and access can be gained to information on a server in a country from anywhere. Question: Does that mean that the Internet cannot be regulated? Crime committed across borders.
3.Communication normally one to one, normally face to face, e.g. fraud, rape. Crime committed in the other person's presence.	One to many, faceless 24/7 communication (CANNOT MERELY SAY FACELESS OR ONE TO MANY BUT MUST QUALIFY) e.g. money can be transferred between bank accounts any time, e.g. fraud Commission of crime may be quick, cheap, but can cause huge damage Can be committed anonymously.
4. Role players human (also intermediaries)	4. Role players – computers, e.g. servers. (USE WORD 'ROLEPLAYERS') Question: How do the police investigate crime, for example 'identity theft'/ child pornography? Here the police need the assistance of the ISP.

5. Methods of crime commission in physical world static.	5. Technology not static; creates new opportunities to commit crimes. (DO NOT ONLY SAY STATIC BUT QUALIFY/EXPLAIN STATIC)
<u>6. Crime detection (investigation) and prosecution</u> <u>It is much easier to investigate as attribution may be easier.</u> For violent crime, the equivalent chance is 46%.	6. Not only is the current wave of cybercrime largely unseen, but the chances of being successfully investigated and prosecuted for a cyber attack in the US are now estimated at 0.05% - the reason being is that it is difficult to investigate and attribution may be problematic.

3.3.1 For which two crimes will the accused be charged? (2)

Theft and fraud

3.3.2 May the accused be convicted for the crimes provided at question 3.3.1 above? (4)

No 1 mark, rule against multiple convictions 1 mark : same facts 1 mark and same evidence 1 mark.

3.4 At sentencing, you must take note of *van der Walt v S* (2003) JOL 10974 (T). What is the relevance of this case? (2)

Facts of case 1 mark

Must look at each count/charge separately – not convict on all amounts together 1 mark

3.5 Assume the accused forced at gun point one of the clients to transfer money to his bank account. Which crime has been committed? (1)

Robbery

3.6 If one of the other bank advisors was aware of A's conduct but A paid so-called 'hush money' into his account, is B guilty of a crime. Briefly explain. (2)

Corruption – explain why corruption

3.7 Did the police officials and bank manager commit a crime? (2)

Statutory crime: Torture Act (1)

YES Both involved (1) (put emphasis on both)

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 : 30 marks

1. b

2. d

3. b

4. a

5. d

6. d

7. b

8. d

9. a

10. c

11. a

12. b

13. d

14. d

15. a

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