

MEMO SECOND PAPER 2019 JANUARY CRIMINAL LAW

QUESTION 1: 29 marks

1.1 2 marks

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 3 marks

1. When the conduct complies with the 5 elements of a crime;
2. When the accused may be linked to the crime;
3. Where there is a reasonable possibility of success.

1.3 2 marks

Yes, may prosecute.

No prescription

1.4 5 marks

Must be complete

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

1.5 5 marks

No can still be charged and convicted (1)

Prins case (1) and facts (1)

Sentencing legality: even if not in specific legislation MIN SENTENCING ACT (1) can still be found in the

CRIMINAL PROCEDURE ACT. (1)

1.6 12 marks

1.6.1 Minimum sentencing Act (1)

1.6.2 Retribution, rehabilitation, prevention, deterrence and restorative justice DEFINE (5)

1.6.3 10 years (part III) (1)

1.6.4 **5 MARKS**: NO with motivation (1) Seedat case and facts (2) : restorative justice (1); given an imprisonment sentence (1)

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. (5)

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

Define each of the crimes. (3)

- 2.6 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.
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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)

3.2. 2 mark

Robbery

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.

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 7 MARKS

NO (1)

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: Culpable homicide (1) 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