

## MEMO NOVEMBER 2018 CRIMINAL LAW

### **QUESTION 1: 25 MARKS**

**1.1 Why was criminal proceedings implemented and not a judicial inquest? (1)**

There is a suspect.

**1.2 Define *dolus eventualis*. (2)**

I. Foresee the consequence; and

Ii. Reconcile with the consequence.

**1.3 Type of accused: PERPETRATOR(1)**

**Why were all of them prosecuted for murder and robbery? (1)**

COMMON PURPOSE

**1.4.1 Provide the elements of the crime, murder with specific reference to the elements of a crime in general. (5)**

Elements of a crime in general	Elements of the crime, murder
1 LEGALITY	COMMON LAW(1)
2 CONDUCT	KILLING OF A PERSON (1)
3 UNLAWFULNESS	(1)AGAINST COMMON LAW AND NO DEFENCE: AGAINST BONI MORES
4 CRIMINAL CAPACITY	(1)DISTINGUISH BETWEEN RIGHT AND WRONG AND ACT IN ACCORDANCE
5 FAULT	(1)DOLUS

**1.4.2 Which requirement of which element does not have to be proven? Keep your answer at question 1.3 in mind. (2)**

Element: CONDUCT

Requirement: CAUSATION CONDUCT IMPUTED

**1.5 Provide full particulars with reference to the relevant legislation applicable where all the accused were convicted for murder. (6)**

Section 51 (1) part 1 (1) of schedule 2 (1) of the Min Sentencing Act (1) life imprisonment (1) and may deviate if compelling and substantial facts (1)

**1.6 Would you as presiding officer accept the argument that *S v Molimi* 2006 (2) SACR 8 (SCA) is applicable? Give the facts and judgment of the *Molimi* case briefly. (5)**

**Facts 1 mark** Robbery at shopping centre : one accused took a person as hostage and during shoot-out that person killed. **All 2 accused charged for robbery.**

**Judgement 2 marks**: Court found the other 2 robbers did not (1) have *dolus eventualis* to kill the hostage but the accused who took the hostage did have *dolus eventualis* (1); **the accused had gone on a frolic of his own and the other accused could not foresee it nor reconcile with it.**

**Will you accept the reliance of the defence on the *Molimi* case? 2 marks**

Yes or no: NO (1)

Motivation for above-given answer:

**All the accused were in the room where the shoot-out took place. The accused had *dolus eventualis*. Facts not similar to *Molimi* case. (1)**

**1.7 Would you as presiding officer uphold the appeal or dismiss the appeal? (2)**

**Dismiss (1)**

Motivation for above-given answer:

Accused had *dolus eventualis* (1) all armed: all in same room: all knew what was going on.

**[25]**

## **QUESTION 2: 37 marks**

**2.1 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.

## **2.2 2 marks**

- 1) to protect the safety and security of society and
- 2) to protect people against themselves including their feelings/emotions

## **2.3 4 marks**

Open a DOCKET (1)

Give it a CRIME ADMINISTRATIVE NUMBER (CAS) (1)

J 88 (1) provides medical evidence (1)

## **2.4 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.

## **2.5 2 marks**

Yes, may prosecute.

No prescription

## **2.6 5 marks**

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

## **2.7 5 marks**

**1 mark: NO** do not agree with supposition: can still be charged and convicted (1)

**2 marks:** *Prins* case (1) and facts (1): **accused charged for sexual assault in terms of the Sexual Offences Act but no sentence in the Sexual Offences Act.**

**2 marks:** Sentencing legality: even if not in specific legislation MIN SENTENCING ACT (1) **where rape is defined BUT EVEN IF NOT IN SPECIFIC OR MIN SENTENCING ACT it can still be found in the general legislation, CRIMINAL PROCEDURE ACT. (1)**

## **2.8 1 mark**

It is where A a) unlawfully and b) intentionally c) engage in conduct that d) defeats or obstructs e) the course of administration of justice.

## **2.9.1 9 marks**

- **Facts of the case (1) Accused took a lamp to the victim's house where he raped her annually and vaginally.**
- **Prescribed sentence for rape is 10 years (1) Minimum Sentencing Act (1)**
- **Court may deviate from prescribed sentence if THERE EXIST COMPELLING AND SUBSTANTIAL CIRCUMSTANCES (1) that warrant deviation.**
- **Define restorative justice (1):** To put the accused in the position that the accused was prior to the commission of the crime.
- **Regional court/Trial court:** imposed 7 years (1)
- In *Seedat* the **High Court** deviated from the and imposed compensation of R 100 00 (1)
- **Supreme Court of Appeal:** 4 years (1)
- **Conclusion: The High court was NOT correct to deviate in the *Seedat* case from imprisonment as rape is serious (1)**

## **2.9.2 1 marks**

Should be **NO (1)** as here was **NO conviction** and therefore no restorative justice. Restorative justice applicable at sentencing.

## **2.10 3 marks**

**DECOLONISATION: Definition:** It is the transformation of society to be inclusive of all people in South Africa irrespective of race, gender, sexual origin, religion etc (1)

**ACQUIT (1)****Motivation:****One of 2 answers:****One can withdraw a charge before it goes on trial. (1) OR****the accused did not have intention to defeat the administration of justice (1)****QUESTION 3 13 MARKS****3.1 9 MARKS**

Grigor (1) – facts (1) – unlawfulness element (1) – private defence (1)– unsuccessful  
defence – see question 3.3 hereafter.

Eadie (1)– facts (1) – criminal capacity element (1) – provocation (1) – unsuccessful

1 mark for unsuccessful

**3.2 2 marks**

Yes globalisation.

Globalisation is communication and conducted committed across border etc

**3.3 2 mark**

Crimen iniuria and define

**3.4 The accused is convicted on murder. Why do you think the accused was convicted?**  
(1)

Dolus eventualis

**QUESTION 4 25 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 b

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