



**FACULTY:** LAW

**SUBJECT:** CRIMINAL LAW

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**DATE:** 1 December 2016

**DURATION:** 08H30 –11H30 (3 hours)

**WEIGHT:** 50:50

**MARKS:** 100 marks

**EXAMINER:** PROFESSOR MM WATNEY

**PAGES:** 14 pages (including this page)

**INSTRUCTIONS:**

- **YOU ANSWER ALL THE QUESTIONS ON AN ANSWERING PAPER.**
- **PLEASE WRITE YOUR SURNAME, INITIALS AND STUDENT NUMBER ON THE ANSWERING PAPER.**
- **The answering paper must be handed in alphabetically.**
- The question paper is handed in separately to the answering paper.
- Good luck with the examination.

## QUESTION 1

### SET OF FACTS

The accused, a 49 year old married man allegedly raped a co-worker, a 24 year old who was employed as a secretary at the company. The offence occurred in December 2015 after the year-end function.

The accused who was the victim's boss at the time, gave the victim a lift home. She alleges that she went into her flat to get him some documents that she had printed earlier the day. He followed her into the flat and proceeded to force her to have sexual intercourse with him. She indicated that she did not consent to having sexual intercourse with the accused. The J 88 served as evidence of the rape. It indicated that there were abrasions on the private parts of the victim.

The accused alleges that the victim had invited him into her flat. They had some drinks at the function although they were not intoxicated. He also alleges that she was eager to have sexual intercourse and indicated that she liked it "rough". This had not been the first time that they had sexual intercourse. After the intercourse, he indicated to her that this would be their last time of being sexually intimate as he had decided to work at his marriage. She did not take kindly to the latter comment and they had a huge fight whereupon he left.

The next day he was arrested for rape.

YOU REPRESENT THE ACCUSED.

You enter a plea of not guilty on behalf of your client in terms of section 115 of the *Criminal Procedure Act 51 of 1977*.

Answer the following questions on the answering sheet:

1.1 Define criminal law. (2)

1.2 Indicate when a criminal prosecution will be instituted? (3)

- 1.3 If the incident happened 10 years ago and the victim brought the case only now, would a prosecution still be instituted? Provide a brief answer. (2)
- 1.4 Provide the elements of the crime, rape in tabular format. (5)
- 1.5 May you argue that since the sentence of rape is not outlined in the specific legislation dealing with sexual offences, that your client cannot be prosecuted and even if he is prosecuted, cannot be convicted as there is no sentence provided for in the specific legislation? (5)

Assume that on 20 November 2016 the accused was convicted of rape.

On behalf of your client you propose that your client should not serve a prison sentence but compensate the victim. The accused is prepared to give the victim a monetary amount of R500 000 and a new car to the value of approximately R380 00. The victim has indicated that as she is now a full-time student, she would be happy to accept such compensation.

- 1.6 Discuss sentencing with reference to the following:
- 1.6.1 Indicate which legislation governs sentencing for a conviction on rape; (1)
- 1.6.2 How many years of imprisonment should be imposed in accordance with the specific legislation? (1)
- 1.6.3 Define fully the aims (purposes) of sentence. (5)
- 1.6.4 Discuss whether the court will deviate from the prescribed prison sentence. (5)
- [29]

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## QUESTION 2

### SET OF FACTS

A and B used to be best friends but their friendship did not end amicably. Out of revenge A creates a Facebook profile using the identity of B. On the wall of the Facebook A makes derogatory remarks about people that both A and B know. B is shocked when one of her friends living in London, England contacts her regarding an alleged remark on 'her' Facebook profile. She discovers that a Facebook profile has been created in her name and that some unflattering photographs of her have been posted. B is very upset and hurt by what she has read on this Facebook profile. She has also heard that elsewhere on the Internet photographs of her have been posted and that A referred to her in her blog as a "deceitful rat who similar to the outbreak of the great plague during the middle ages spread pestilence where ever she goes."

YOU MUST GIVE LEGAL ADVICE REGARDING THE FOLLOWING ASPECTS:

- 2.1 Define the role of criminal law? (2)
- 2.2 How does globalization impact on criminal law with reference to the given set of facts? (2)
- 2.3 Which two crimes may possibly have been committed in the set of facts? Briefly define each crime. (4)
- 2.4 Explain which constitutional rights with reference to the specific sections have been affected in the given set of facts? (4)
- 2.5 If A is now living in Sydney, Australia, may A still be prosecuted? In your answer draw a distinction between national, transnational and international crimes and define each term. (4)

Her fiancée, C, sees the Facebook profile. C is a high-strung man who battles with anger issues. On the Facebook profile her status indicates that she is single. He is so severely provoked by this posting that he attacks A in a fit of rage by hitting her in the face with his fists and kicking her. A is so severely injured that she loses eyesight in one eye.

- 2.6 If C is prosecuted for assault with the intent to commit grievous bodily harm, may C use provocation as a defence? Discuss the relevant element with reference to case law. (5)

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### **QUESTION 3**

#### **SET OF FACTS**

A group of 5 men and 2 women entered a bank (financial institution) situated in a shopping centre. They entered the financial institution by walking through an open door. They ordered everyone at gun point to lie down on the floor. The accused demanded that the money in the safe be handed over. They also indicated that they would not tolerate any opposition and indicated that if the money was not handed over, a bomb would be detonated within a second after they had left the bank. They strapped an alleged bomb onto one of the people in the bank. It was estimated that approximately R5 million was handed over. They put the money in shopping bags in a shopping trolley. They proceeded to detonate canisters with sleeping gas which caused everyone to become drowsy. They pushed the trolley out of the bank as if nothing was amiss. Unfortunately, one of the bank cashiers suffered from asthma and had a severe asthma attack. He died as nobody was able to assist him.

The police received a tip from an informant and they are arrested.

At the police station the accused were 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 them. The bank manager was present and observed the questioning. He also encouraged them to use more forceful electric shocks as the bank could not afford the loss of the money which indirectly also affect the bank customers. The accused could not endure the pressure exerted on them and disclosed where the money was. Approximately R4 million was recovered.

They are charged with housebreaking with the intent to rob the bank; robbery of the bank money and murder.

YOU ARE THE PRESIDING OFFICER.

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

The accused objects to the charge of housebreaking with the intent to rob the bank.

- 3.1 Define housebreaking in your answer and indicate whether you will uphold or reject the objection. Motivate your answer. (3)

The accused object to the charge of robbery and argues it should be theft.

- 3.2 Briefly define robbery with reference to two unlawful acts (interest). (2)

- 3.3 What will you as presiding officer decide in respect of whether the conduct constitutes robbery or theft in respect of the bank money? (1)

The accused object to the murder charge and argue that the asthma attack acted as a *novus actus interveniens*.

- 3.4 Would you as presiding officer agree with the defence or not? Indicate a clear yes or no and motivate your answer with reference to case law. (4)

- 3.5 Would you as the presiding officer convict the accused on the murder charge. Discuss. (7)

- 3.6 You as the presiding officer ask the prosecutor to address the court on the conduct of the police and bank manager 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? (3)

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## QUESTION 4

### MULTIPLE CHOICE QUESTIONS

❖ Please take note:

- Give only ONE answer for each question.
- ANSWER THE MULTIPLE CHOICE QUESTIONS ON YOUR ANSWERING PAPER.

#### Question 4.1

In *S v Jahaar* 2010 (1) SACR 23 (SCA) the adult victim was hijacked by 2 offenders and forced to accompany them in his car on a trip from Cape Town to Mossel Bay and back. Apparently the ordeal lasted 2 days. Which crimes were committed?

- a. Theft of his car and abduction;
- b. Robbery and abduction;
- c. Theft of his car and kidnapping;
- d. Robbery and kidnapping.

#### Question 4.2

An accused stood trial for rape. The parents of the accused approached the victim of the rape and offered her R2 000 if she withdrew the charges of rape against the accused (their son). They also threatened her that if she did not withdraw the charge, her family may suffer as a result of her decision. Which crime(s), if any, did the parents of the accused commit?

- a. The parents committed no crime; they acted out of love for their son, the accused.
- b. Extortion and defeating the ends of justice;
- c. Corruption and contempt of court;
- d. Contempt of court.

#### Question 4.3

In *S v Msomi* 2010 (2) SACR 173 (KZP) the court heard an appeal against a rape conviction. The appellant and a certain Mkhize forced the 15-year-old complainant into their taxi, and took her to a secluded place, where Mkhize tried to rape her. When she resisted and tried to escape, the appellant recaptured her and took her back to Mkhize, who violently raped her. The appellant sat in the taxi while the rape was taking place. The court, having accepted the veracity of the complainant's version of events, was required to assess the appellant's participation in respect of the crime of rape.

- a. The appellant was a co-perpetrator, since he forced the complainant into the car and took her to Mkhize to rape her;
- b. The appellant was an accomplice, since he assisted Mkhize;
- c. The appellant was an accessory after the fact, since he merely assisted Mkhize and did not commit the crime;
- d. The appellant was a joiner-in, since he sat in the car while Mkhize raped the complainant.

#### Question 4.4

A is a witness in a court case who has already given evidence. While in court, A texted on her mobile (cell) phone to B, another witness waiting outside the court, some of the questions the defense posed to her. Did A, the witness commit a crime?

- a. No, A was merely communicating with B. It constitutes freedom of expression;
- b. Yes, A is guilty of defeating the ends of justice;
- c. Yes, A is guilty of perjury;
- d. Yes, A is guilty of contempt of court.

#### Question 4.5

Quentin wanted to murder his wife Maude. He prepared her favorite dessert, ice cream, but added a fatal dose of poison. Quentin brought it to Maude's bedroom while she was in the bathroom. He yelled to her, "I brought you some ice cream! Don't let it melt!" Maude hurried to finish drying her hair. In her excitement, she dropped the hair dryer in the bath and was electrocuted. If Quentin is prosecuted for murder, which statement is true?

- a. Quentin is guilty of murder since he had the motive of killing his wife and he believed that death would result without further conduct on his part;
- b. Quentin is guilty of murder since his conduct was the cause without which Maude's death would not have occurred;
- c. Quentin is not guilty of murder since Maude's death resulted from her own conduct;
- d. None of the above-given answers.

#### Question 4.6

In *S v Steyn* 2010 (1) SACR 411 (SCA) the accused was charged with murder.

- a. The accused cannot be found guilty since she was a battered (abused) woman and may use the "battered woman syndrome" as her defence during trial similar to *S v Ferreira and Others* 4 ALLSA 373 (SCA) (1 April 2004);
- b. The accused cannot be found guilty since she acted in private defence unlike *S v Ferreira and Others* 4 ALLSA 373 (SCA) where the murder was pre-meditated;
- c. The accused can be found guilty but during sentencing the "battered woman syndrome" may be used as mitigation of sentence similar to *S v Ferreira and Others* 4 ALLSA 373 (SCA) (1 April 2004);
- d. The accused can be found guilty but during sentencing the "battered woman syndrome" may be used in mitigation of sentence similar to *S v Maieane* (92/2008) [2008] ZAFSHC 115 (26 May 2008).

#### Question 4.7

A blows up an ATM and absconds with R20 000. A may be charged with:

- a. Arson and theft;
- b. Malicious damage to property and theft;
- c. Fraud and theft;
- d. Malicious damage to property and fraud.

#### Question 4.8

In October 2012 the soccer team, Moroka Swallows won a soccer game against Sundowns at the Dobsonville stadium. Some soccer supporters of Mamelodi Sundowns were so annoyed by their team losing that they went on a rampage by breaking the fence at the Dobsonville stadium, storming the pitch and throwing vuvuzelas at the coach of Sundowns, Johan Neeskens. The Premier Soccer League (PSL) laid criminal charges against the Sundowns fans. For which crimes, if any, will they be charged?

- a. Trespassing in terms of the common law;



- b. Statutory trespassing and malicious damage to property;
- c. Statutory trespassing, malicious damage to property and assault;
- d. No crime has been committed; it is a delictual matter which should be dealt with by means of the civil law.

#### Question 4.9

While a few people are having a barbeque at their house, 2 assailants walk through the open gate, hold the people at gun point and demand they hand over money and jewels. The assailants may be charged for:

- a. Housebreaking with the intent to commit a crime;
- b. Robbery;
- c. Theft;
- d. Statutory offence of trespassing and housebreaking with the intent to commit a crime.

#### Question 4.10

A with the help of B stole a motor vehicle and drove from Cape Town to Johannesburg where they asked C to hide the motor vehicle in his garage. A, B and C are arrested for theft of the motor vehicle.

- a. A is a perpetrator, B is an accomplice and C is an accessory after the fact regarding the commission of the crime, theft;
- b. A and B are co-perpetrators and C is an accomplice regarding the commission of the crime, theft;
- c. A and B are co-perpetrators and C is a joiner-in regarding the commission of the crime, theft;
- d. A, B, C are co-perpetrators.

#### Question 4.11

Two (2) accused held four (4) customers and two (2) bank employees in a bank at gunpoint and demanded that they hand over their money and jewellery. The accused were convicted on 6 counts of robbery and sentenced. The two accused appeal against the conviction. The court of appeal:

- a. Upholds the appeal and similar to *Maneli v State* (Case number: 494/07) SCA the court finds the accused guilty on one count of robbery;
- b. Upholds the appeal and finds the accused guilty on one count of theft of money and jewellery;
- c. Rejects the appeal and confirms the conviction on the 6 counts of robbery stating that the case of *Maneli v State* (Case number: 494/07) SCA does not find application to the given set of facts;
- d. None of the above-given answers.

#### Question 4.12

The accused used a stolen identity document belonging to Mandisa Mkhwebula without her knowledge and took out life insurance. After 5 months of paying monthly premiums, the accused declared Mkhwebula dead and prepared the necessary documents with home affairs, a funeral parlour and a doctor to enable them to institute the claim for the insurance policy to pay out. Which crime, if any, did they commit?

- a. The crime of fraud against the insurance company;
- b. The crime of theft of identity;
- c. The crime of corruption;

- d. No crime against the insurance company since they had paid the insurance policy on a monthly basis.

#### Question 4.13

In 2013 a security guard and the complainant in this case, A, shot and killed a suspected robber allegedly in private defence and in defence of property. Two policemen at the time investigated the case. They visited A at his place of employment and obtained a statement from him. Both police officers then suggested to A that he should pay them a sum of money in order for them to withdraw the case. They also threatened to arrest him and lock him up if he failed to do so. The complainant said that he did not have money but that he would speak to his employer. The employer of the complainant reported the matter to the police and a trap was set up for the policemen resulting in the subsequent arrest of the accused. Did the police officials commit an offence?

- a. No, the police officials did not commit a crime since they were caught in a police trap and entrapment exclude unlawfulness;
- b. Yes, the police officials committed extortion;
- c. Yes, the police officials committed fraud;
- d. Yes, the police officials committed corruption.

#### Question 4.14

In *Puma AG Rudolf Dassler Sport v Rampar Trading (PTY) LTD and Others* 2011 (2) SA 463 (SCA) the court found:

- a. The accused did not commit an intellectual property crime;
- b. The accused committed copyright infringement;
- c. The accused committed trademark infringement;
- d. The accused committed criminal defamation.

#### Question 4.15

A claims from the insurance company for property that were never stolen. The insurance company discovers this before payment is affected, in other words, the insurer paid no money to the claimant. A may be charged with:

- a. No crime, since the insurance company did not affect payment and suffered no damages;
- b. Fraud;
- c. Perjury;
- d. Defeating or obstructing the administration of justice.

#### 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 for 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**

A crime against humanity committed extra-territorially cannot be investigated by the South African Police Service (SAPS). This supposition (statement) is:

- a. Incorrect;
- b. Correct;
- c. Partially incorrect. The SAPS can investigate it if the perpetrator is in South Africa; and
- d. Partially correct. The SAPS can investigate it if the country in which the crimes against humanity were committed, give permission for the investigation.

**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 for 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 remarks:

- Please make sure that your **SURNAME** is written on your answering paper.
- Please hand in the answering paper separate to the question paper.
- Thank you for your hard work during the year.
- May you have a wonderful summer holiday and a prosperous 2017!