

**SURNAME:** \_\_\_\_\_

**INITIALS:** \_\_\_\_\_

**STUDENT NUMBER:** \_\_\_\_\_

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<b>50</b>

**QUESTION 1**

**SET OF FACTS**

\_\_\_\_\_ %

The accused, a taxi driver, transported 14 school children to school. The accused had been transporting the children to and from the school for the past year and a half. He knew the children and they felt like his own children.

At a railroad crossing the warning light was on indicating that a train was oncoming and cars were stationary waiting for the train to pass. According to witnesses the accused bypassed the queue of stationary cars by entering the lane for oncoming traffic. He then, despite the boom gate being lowered and the warning light indicating an oncoming train, bypassed the boom gate and entered the train crossing.

It was allegedly not the first time the accused had acted in such a manner but in the past he had always succeeded in crossing the rail road successfully. However, on this fateful day, the taxi was hit by the train.

A witness stated that the warning light of the oncoming train is switched on as soon as the train leaves the last station whereupon the boom gate closes which prohibits traffic from entering the railroad crossing until the train has passed. The train also has its main lights on and sounds a siren 400 metres from the crossing to warn traffic of the train.

As a consequence of the collision between the train and the taxi, 10 children died instantly and 4 children sustained serious internal as well as external injuries. The accused escaped the collision unscathed.

The accused was prosecuted in the Western Cape High Court, Cape Town. The state prosecuted the accused on 10 counts of murder, in the alternative, culpable homicide as well as 4 counts of attempted murder, in the alternative, assault with the intent to do grievous bodily harm.

The accused pleaded not guilty. The accused averred the following: firstly that he could not remember how the collision had occurred and secondly that if he had caused the accident, his conduct did not comply with the elements of the crimes charged. The High Court rejected his allegation of memory loss and convicted him on ten counts of murder and four counts of culpable homicide.

The accused then lodged an appeal against the convictions and sentence of the High Court to the Supreme Court of Appeal.

**YOU MUST PROVIDE A LEGAL OPINION REGARDING THE FOLLOWING QUESTIONS:**

1.1 On which case is the synopsis of facts based? **(1)**

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1.2 Assume the accused acknowledged that he was the driver of the taxi on that fateful day, but that due to memory loss, it was not possible for him to recall what happened on the day. Would this defence have been accepted by the court? Provide in your answer a yes or no, refer to the relevant element, requirement and one case. **(4)**

Yes or no:

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Discussion:

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1.3 The Supreme Court of Appeal set aside the ten convictions of murder and replaced it with ten convictions of culpable homicide. The four convictions of attempted murder were set aside.

Discuss with reference to the relevant element for criminal liability why the Supreme Court of Appeal replaced the convictions of murder with culpable homicide. **(10)**

➤ Please take note: You do not have to refer to case law in your discussion.

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- 1.4 Assume the court stated that by applying the doctrine of *versari in re illicita* the accused is guilty of culpable homicide because prior to getting into his car, he had consumed liquor. Briefly discuss this statement. **(3)**

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- 1.5 Discuss the approach of authors to the element discussed at the above-given question 1.3 pertaining to the murder charge;

1.5.1 Provide the author;

1.5.2 Indicate the approach;

1.5.3 Define the approach briefly; and

1.5.4 Refer to one reported case (and facts) that supports each approach to the discussed element.

**(6)**

Element: \_\_\_\_\_

<b>Author:</b>	_____	_____
<b>Approach:</b>	_____ _____	_____ _____
<b>Define the approach and indicate which is applied in the South African criminal courts</b>	_____ _____ _____ _____	_____ _____ _____ _____
<b>Case law and briefly provide the facts of the case:</b>	_____	_____

[24]

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**QUESTION 2**  
**SET OF FACTS**

On 12 May 2022 Mrs Moya Shabalala (hereafter referred to as the accused) killed her husband, Shadrack (hereafter referred to as the deceased).

Prior to his death, the couple had been separated for a few months. The accused and their two children, respectively 16 and 12 years old, were staying with her mother. Prior to the killing, the accused obtained an interdict against the deceased in terms of the *Domestic Violence Act* 116 of 1998. The interdict was obtained as the deceased not only emotionally but also physically abused her and the children for many years. She had seen a psychologist on a few occasions as she was suffering from depression and low self-esteem as a result of the domestic abuse. She also experienced feelings

of guilt that the marriage had not been successful and blamed herself for not trying harder to please the deceased.

On 29 May 2022, the deceased invited the accused and children over to their former marital home for a family get-together. He had not seen the children since the granting of the domestic violence interdict. The accused thought it would be good for them to have a family gathering and to talk about the future. She had been experiencing some health issues and was concerned about the future of the children in case something happened to her. Since moving out of the marital home, the deceased had not been paying maintenance for the children and she was battling financially to support them.

While seated at the dining room table during lunch they had a terrible fight. Early in the morning the accused had started to drink liquor. He called her a 'slut' who despite her fading looks was on the 'prowl' for another husband, grabbed her by the hair and punched her twice in the stomach whereupon she grabbed a knife from the table and stabbed him fatally. He died on the scene before the police and ambulance arrived. The post mortem report (J 88) stated that he had died of a knife wound that severed an artery causing him to bleed to death.

The accused is charged with murder and in the alternative, culpable homicide.

On 1 June 2022 the attorney representing the accused entered a plea of not guilty on her behalf.

The prosecutor alleges that the accused took the law into her own hands and applied excessive force. The prosecutor argues the following:

- If the accused felt her life was in danger she would not have visited him, but she voluntarily went to the home of the deceased accompanied by her children.
- The accused visited the deceased with the motive of killing him.
- During the alleged assault she could have phoned the police for assistance.
- Her conduct complies with the elements of murder, namely the unlawful and intentional killing of a person.

The defence denies that the conduct of the accused was unlawful. The defence refers to a Medical Research Council study which indicates that in South Africa, on average, three woman a day are killed by their husbands, boyfriends or long-term partners.

**YOU ARE THE PRESIDING OFFICER.**

On 18 June 2022 you have to give judgment regarding the defence to the main charge of murder and the alternative charge of culpable homicide.

2. Discuss critically your judgment with reference to the:

- Relevant element applicable to the set of facts;
- Do not define the element;
- Specific case applicable to the set of facts;
- Defence tendered;
- Do not provide the requirements for this defence;
- Test used to determine whether the accused complies with this defence; and
- Conclusion in respect of the charges.

**(8)**

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2.2 Would the judgment given at question 2.1 be different if it is based on a specific approach to crime prevention, detection, commission and prosecution? Provide a yes or no and refer in your answer to the approach of authors pertaining to crime prevention, detection, commission and prosecution. **(3)**

Yes or no: \_\_\_\_\_

Motivation for your answer:

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2.3 Briefly indicate why the accused did not use the same defence as was raised in *S v Liebenberg* Case Number: CC 90/2014? **(2)**

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**[13]**

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**QUESTION 3**  
**SET OF FACTS**

Agnes (the accused) has been working as a live-in home helper (domestic worker) for the same employer for the past 5 years. She never asked her employer the source of his income nor was she interested in how her employer, Mr Mokgethi, earned his living.

She is a single mother of a 15 year old boy who lived with her in the housekeeper's apartment. Her highest academic qualification is grade 10. She has basic reading and literacy skills.

When she started working for her employer, he opened a bank account in her name into which he paid her monthly salary. Over the years his 'own' salary would now and then be paid into her account. He would then ask her to withdraw it after a month or two and hand him the cash. She was 'rewarded' for the use of her bank account by getting the interest on the money paid into her account. She never questioned the legality of this practice as she trusted her employer.

Her employer is arrested for extortion. It transpires that he blackmailed various people by receiving payments for not disclosing their 'secrets', for example one married celebrity was having an extra-marital affair and he blackmailed this celebrity. The money was paid into the account of the accused whereupon the accused would withdraw the money at a later stage and hand it over to the employer.

The accused is arrested as an accomplice. It is alleged that she participated in the extortion by providing her bank account to the employer into which the money obtained from the extortion was paid.

**YOU REPRESENT THE ACCUSED.**

- 3.1 Briefly discuss, with reference to case law, the defence that you will tender in court. **(4)**

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On the day of the arrest of the accused, her distraught 15 year old son took the computer, ipad and iphone of the employer. He pawned it for money which he planned on using to cover his travel expenses to his grandparents. The employer laid a charge of theft for which the boy was arrested.

3.2 Refer to the element and the test is used to determine whether the boy can stand trial for theft. **(3)**

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Assume the grandfather (68 years old) decided to confront the employer whom he considered a good boss to his daughter. He wanted to know why the employer had involved his innocent daughter in the commission of the crime and laid a charge of theft against his grandson. The grandfather bought some 'muti' which allegedly would have 'awoken' the conscience of the employer to confess what motivated him to involve the accused in the commission of the crime and to lay a charge against the boy. The grandfather put it in the employer's drink but unfortunately, immediately after

drinking it, the employer had an adverse reaction similar to a heart attack and died. The post mortem report (J 88) reveals the employer died of poisoning.

- 3.3 The grandfather (accused) is charged with murder. You argue that the accused may only be convicted of culpable homicide. You acknowledge that there is a link between the conduct and the consequence, but you argue that his mistake in respect of the muti (not knowing that the 'muti' was such severe poison) serves as a defence to the murder charge. Very briefly discuss this defence. **(5)**

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**TOTAL: 50**

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