



ZIMBABWE EZEKIEL GUTI UNIVERSITY

FACULTY OF LAW

EXAMINATION PAPER

COURSE CODE : LLB 109
COURSE TITLE : Criminal Law
DURATION : 3 Hours
LEVEL : 1.2
DATE :

INSTRUCTIONS TO CANDIDATES:

1. Answer four questions. Answer two questions in section A and two questions in Section B.
2. Read carefully.
3. Write legibly.
4. Begin each answer to a full question on a fresh page.
5. Names, characters, places and incidents used in this paper are products of the author's imagination or are purely fictitious. Any resemblance to actual events or locales or persons, living or dead, is entirely coincidental.

SECTION A

Answer at least two questions from this Section.

Question 1

“Criminal Law should not be applied as if it were a blueprint for saintliness, but rather in a manner in which it can be obeyed by reasonable persons.”

Discuss whether this is the approach that is adopted in Zimbabwe when dealing with the defences of compulsion and private defence, and the test for negligence in relation to the crime of culpable homicide.

[25 marks]

Question 2

“Our Criminal law is meant to criminalise the exercise of basic democratic and human rights under the disguise of protecting state security or public order. In order to defeat our political opponents, our parliament must always focus on promulgating vague and embarrassingly ill-defined security and public order crimes because these laws are wide open to our political use as the ruling Nazi Extremist Party. Our *Gestapo* Police Force must arrest, detain and terrorize all political activists and our local courts must always create new crimes or extend existing crimes. It is better to convict the innocent political detainee than to free an opposition supporter.”

Extract from the Minutes of Hitler’s Cabinet Meeting (1939) MacMillan History Press, London.

Required:

Critically discuss the above quoted views in light of the Zimbabwean statutes regulating criminal law.

[25 marks]

Question 3

- a) Discuss the main reasons for codifying the Criminal Law of Zimbabwe and will this Code make the criminal law more accessible to ordinary people? (10)

b) Assume there is a new criminal offence which reads: “Any Facebook Account or Whatsapp Messenger user who either publishes or, allows to be published on his or her Status update, Facebook wall or Whatsapp Group any statement which is false shall be guilty of a criminal offence, whether or not the Facebook User or Whatsapp Group Administrator knows or has any reason to believe that the statement is false, and the Facebook User or Whatsapp Group Administrator shall be liable to imprisonment for up to two years with hard labour.” (15)

Required:

Does this offence require the State to prove intention or negligence on the part of the Facebook User or Whatsapp Group Administrator and does this offence comply with the principle of legality? [Total 25 marks]

Question 3

a) Discuss the circumstances under which it is lawful in Zimbabwe to kill in defence of property when there is not also a threat to life of the person who causes death? (10)

b) Discuss the proposition that if a woman or girl could have a lawful abortion on socio-economic or psychological grounds, there would be a drastic reduction in cases of infanticide. (15)

Question 4

a) Usually for the defence of provocation to apply in a case of murder the accused person must respond immediately to the provocation received. However, our courts recognise that provocation can be cumulative and that the incident that finally sparks the action that causes death can be of a relatively minor nature.

Discuss the accuracy of this statement and comment upon why it is that provocation is only a partial and not a complete defence. [25 marks]

Section B

Answer two questions from this Section.

Question 5

Chipo Moyo, who is aged 13, thinks that she does not have HIV. For some time her boyfriend, Devious Dube, aged 15, has been urging her to have sexual relations with him. She finally decides to have sexual relations with him but first asks him whether he has HIV. He assures her that he has recently had an HIV test and that the result was that he did not have HIV. In fact he had been tested and had been informed that he had HIV. Knowing that he had HIV he has consensual sexual intercourse with Chipo.

Some time later Devious and Chipo get into an argument. During this argument Devious blurts out that he had HIV when he had sexual relations with her. Chipo is horrified because she believes that Devious has infected her with HIV. In a complete rage she goes to the kitchen and grabs a knife which she uses to stab Devious three times on the upper part of his body. She is then restrained by some friends of Devious who call an ambulance. Devious is taken to hospital where a doctor is able to save his life.

In her statement to the police, Chipo admits that when she attacked Devious with the knife, she intended to kill him but she says that she was unable to control herself because she was in a complete rage.

When Chipo is tested for HIV the test fortunately establishes that she was not infected by HIV by Devious.

Required:

What is the criminal liability, if any of Chipo and Devious?

[25 marks]

Question 6

Mr Tamuka Moyo is fast asleep in his house. His wife is sleeping by his side and his three young children are asleep in a separate bedroom. He is woken in the middle of night by the sound of breaking glass and he believes that an intruder has come into his house. He grabs a baseball bat and goes looking for the intruder. It is dark inside the house so Mr Moyo takes with him a small torch. He enters a room and shines his torch inside. Right in front of him he sees a large man. He panics and lashes out at the figure with his baseball bat, hitting him on the head. The intruder falls to the ground. Mr Moyo is not sure whether the intruder has been knocked unconscious so he hits him twice more on the head with the bat. These further blows are heavy blows. He then ties up the intruder and calls the police.

The police respond quickly and take away the injured intruder who is later identified as a notorious thief, Sam Danger. Sam is taken to a police station. The Member in Charge, Inspector Luke Ncube, sees that Sam is in a very bad state but instead of ordering that he be taken to a nearby hospital, he orders that Sam be placed in a cell. Several hours later, Sam dies in the cell. The medical evidence discloses that had Luke ordered that Sam be taken for medical treatment when he was first brought to the police station, he could have been treated for his injuries and he would probably have survived.

When Sam's brother, George, learns of the death of Sam, he vows to exact vengeance against Mr Moyo. He takes a tin of petrol to Mr Moyo's house intending to set fire to the house and thereby cause the death of Mr Moyo and his family members inside the house. He pours petrol on the outside of the house and is about to strike a match and set fire to the house when he is spotted by a security guard whom Mr Moyo has employed to guard the house after the incident with the intruder. The guard shouts at George. George drops the box of matches without setting fire to the petrol and runs away.

Required:

Discuss the criminal liability of Mr Moyo, Inspector Ncube and George?

[25 marks]

Question 7

One evening Thabani Ndlovu goes to a party with his wife, Lisa. During the course of the party he has been heavily smoking strong dagga commonly known as “skunk” or “cheese”. It is clear to his friends that he is not in a fit state to drive his car and they try to stop him from driving home but he insists that he is perfectly capable of driving. On the way home, Thabani encounters a police road block. The police signal for him to stop. Realising that if he stops the police are likely to arrest him for driving under the influence of drugs, he does a U turn in front of the road block in order to get away from the police. One of the police officers fires a warning shot in the air to warn him to stop. Thabani hears the warning shot but continues to drive away from the road block. The police officer then fires a second shot aiming at the tyres of the vehicle. However, the shot ricochets off the stony road and penetrates the back window of the vehicle. The bullet hits and kills Lisa who is sitting in the passenger seat.

Thabani is then arrested by the police. Two days later he is released on bail. Lisa’s father, Patrick, is horrified by what has happened to his daughter and he blames Thabani for his death. On the evening that Thabani is released from custody, he goes to Thabani’s house intending to tell him what a dreadful thing he has done. Before he goes to the house he has been drinking heavily, having consumed five stiff brandies over a short period of time. When he arrives at the house he is enraged because he discovers Thabani in bed with a young woman. He is incensed that Thabani is sleeping with a young woman immediately after he has caused the death of his own wife. Patrick picks up a knife that is lying on the dinner table and plunges the knife into Thabani’s back. He then regrets what he has done and calls an ambulance. Thabani is rushed to hospital and, after treatment, he recovers from his injuries.

Required:

Discuss the criminal liability of Thabani and Patrick?

[25 marks]

Question 8

Jane Capitalist owns a clothing store. She has lost a lot of her stock due to theft. One day she catches a sixteen year old girl, Mercy Lightfingers, trying to sneak out of a store with several items

of clothing concealed on her person. At first Jane is inclined to call in the police, but then she decides to exact her own punishment upon the culprit. She offers the girl the alternative of being handed over to the police or to undergo a punishment that Jane will inflict upon her. Mercy opts reluctantly for the second option. Jane takes Mercy to a storeroom and tells her to hold out her hands so that she can beat them with a ruler. Mercy tries to plead with Jane not to do this to her but Jane again threatens to bring in the police if she does not undergo this punishment. Eventually Mercy holds out her hands and Jane strikes her four hard blows with the ruler on each hand. As an additional punishment Jane then locks Mercy in the storeroom for one hour, having turned off the light in the storeroom so that Mercy will be in the dark.

When Mercy is released she reports what has happened to her to her parents. Her father, Brian, is beside himself with rage about what had been done to his daughter by Jane. He immediately rushes to Jane's store and enters the store. Without saying anything to her, he goes up to Jane and slaps her hard across her face. He then demands monetary compensation for what she did to his daughter. Terrified Jane goes to the till and takes out one hundred billion dollars and hands this over to Brian. Brian pockets the money and departs, warning Jane that if she ever lays a finger on his daughter again he will come back and kill her.

Required:

Discuss the crimes, if any, that have been committed by Jane and Brian?

[25 marks]

END OF QUESTION PAPER