

ZIMBABWE EZEKIEL GUTI UNIVERSITY

FACULTY OF LAW: JANUARY 2019 SUPPLEMENTARY EXAMINATION

MODULE AND CODE: CRIMINAL LAW (LLB107)

DURATION: 3 HOURS

INSTRUCTIONS

1. You are requested, in your own interests, to write legibly.
2. You are directed to use avoid using short hand and poor grammar.
4. Please note that you must answer questions from both Section A and B.
5. During the course of your answers, you must refer to any relevant case law, legal principles and legislation that may be applicable.
6. Please note that each answer must be answered on a new.
7. You are allowed to bring into the exam unannotated legislation. Students are not allowed to lend to or borrow from, each other any exam material during the duration of the exam
8. All cellular phones and electronic devices must be switched off during the duration of the exam. Failure to comply will lead to automatic disqualification.

SECTION A

Answer 2 questions from section A.

QUESTION 1

Samantha is a 30-year-old woman who fell in love with Jonathan five years ago. She was swept off her feet and was convinced that Jonathan was her soul mate and the perfect example of the man of her dreams. Jonathan is a bank executive and has a good salary. However, in 2015 Jonathan started dating his secretary at work and he also started coming home late and drinking alcohol heavily. Concerned over her husband's conduct Samantha confronted her husband on the 10 of June 2015 when he came home late at 02:00am very drunk. In response to Samantha's inquiry Jonathan beat up Samantha by slapping her on her face and kicking her on her and body when she had fallen to the ground. Jonathan's behaviour continues until August 2015, but Samantha has never reported Jonathan to the police neither has she told anyone of her ordeal because she still loves Jonathan and she still believes that Jonathan is capable of change. On the 3rd August 2018 Jonathan comes home drunk again and beats up Samantha so badly that she flees into the couple's bedroom and she takes Jonathan's pistol that is in the gun cabinet however before Samantha can do or say anything to warn Jonathan not to continue his violent assault, Jonathan breaks the bedroom and charges towards Samantha who points the firearm and shoots Jonathan in the head causing him serious injuries. Samantha is arrested and charged with the attempted killing of Jonathan.

Discuss all the charges arising from these facts. You have been approached to represent ^{Samantha} Jonathan in his criminal trial. Identify possible defences he can raise to at least two charges and what difficulties arise in raising these defences. **[25 Marks]**

Discuss the importance of criminal law to society, making reference to specific legislation, the Constitution and case law. **[25 Marks]**

QUESTION 2

John, aged 15, as a prank throws a firecracker into the middle of a large herd of cattle belonging to Giles in order to frighten the cattle. The resultant explosion causes the cattle to stampede. During the course of this stampede, one of Giles' pedigree dairy cows falls into a nearby ravine and dies. Evidence is led, which the court accepts, that John is very immature for his age and he displays a tendency to do things without thinking about the consequences of his actions.

John has been charged with malicious damage to property, alternatively negligently causing damage to property.

Discuss the prosecution's prospects of obtaining a conviction and the possible difficulties that could be faced by the prosecution in doing so. **[25 Marks]**

QUESTION 3

Mr Robert Johnson works for a local authority in Gweru. He is in charge of the allocation of housing in the area. There is an acute shortage of housing and there are many people on the waiting list. Mrs Beauty Moyo is an attractive young woman. Recently her husband died. Mrs Moyo has two children. For a very long time she had been trying to find suitable housing for herself and her children. Six months ago, Mr Johnson allocated her a house, but only allowed her to occupy the house after she had paid him personally \$20 000. Two weeks after she moved into the house, Mr Johnson comes to visit Mrs Moyo at night time. He asks her to have sexual relations with him and when she refuses, he says he would come back again the next evening and if she continued to refuse to have sexual relations with him, he would see to it that she was immediately evicted from the house she was occupying and give the house to someone else who was more compliant. Mrs Moyo is desperate not to be evicted from the house so the next evening when Mr Johnson again threatens to have her evicted, very reluctantly she allows Mr Johnson to have sexual intercourse with her. Sometime later she discovers that Mr Johnson has infected her with HIV. She immediately goes to his office and confronts him about this. Without any hesitation, he tells her that he knew full well that he was HIV positive when he had unprotected sexual intercourse with her. He says he does not care at all that he has infected her and he is not prepared to offer her any financial assistance so that she can obtain medical treatment. When she persists in demanding that he helps her, he blurts out that she is "a whore" and tells her that she does not give assistance to whores. Mrs Moyo completely loses her temper. She picks up a letter opener and stabs Mr Johnson three times with it on the upper part of his body. Mr Johnson survives after receiving medical treatment. Mrs. Moyo tells the police that when she was stabbing Mr Johnson she intended to kill him, but that she had totally lost all her self-control and could not stop herself.

Discuss the criminal charges that are likely to be faced by Mr. Moyo and Mr. Johnson under the criminal code. Outline possible defences for each criminal charge. **[25 Marks]**

SECTION B

Answer any two (2) questions from this section.

QUESTION 4

"It is clear that the criminal law as we know it is based upon moral principles. In a number of crimes its function is simply to enforce a moral principle and nothing else. The criminalization of the smoking of marijuana is another example of the law's insistence on enforcing morality, rather than controlling behaviour that is harmful to the society."

Discuss the above quotation with reference to scholarly arguments, decided case law and legislation. **[25 Marks]**

QUESTION 5

Using decided case law, identify the most common challenges faced by the State (the prosecution) in the prosecution of sophisticated crimes in the modern age. Your answer must identify examples, make reference to case law and legislation. **[Total 25 Marks]**

QUESTION 6

When the Criminal Law (Codification and Reform) Act [Chapter 9:23] was enacted in 2004, it was seen as a milestone in the development of criminal law in Zimbabwe.

Critically discuss this view with the aid of scholarly arguments.

[Total 25 Marks]

QUESTION 7

Explain why the doctrines of *versari in re illicita* and transferred malice have been emphatically rejected in Zimbabwean law as a basis for convicting a person of murder and explain why, on the other hand, a person will be found guilty of murder if he makes a mistake as to the identity of the victim and kills one person thinking that he is someone else.

[25 Marks]