

ZIMBABWE EZEKIEL GUTI UNIVERSITY

FACULTY OF LAW: NOVEMBER 2019 EXAMINATION

MODULE AND CODE: CRIMINAL LAW (LLB109)

FULL-TIME

DURATION: 3 HOURS

21 NOV 2019

TOTAL MARKS: 100

INTERNAL EXAMINER: ADVOCATE WELLINGTON THOMAS PASIPANODYA

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.
3. This paper consists of FOUR (4) pages. Please ensure that you have all the pages.
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. Please answer question 1 which is compulsory and either question 2 or 3.

QUESTION 1

Betty Sithole aged 14, who is a virgin, agrees to have sexual relations with Don Devious, who is aged 17 after he promises that if she sleeps with him, he will marry her. Don then has unprotected sex with Betty, knowing that he has HIV. He infects Betty with HIV and also impregnates her. Betty finds out she is pregnant and that she has HIV. She confronts Don who denies he is the father of the child or that he has infected her with HIV. He refuses to marry her. Betty is now desperate. Her parents are dead. She has been working as a domestic worker for Mrs Mary Kachipare, who is aged 52. Betty tells Mary what has happened. Mary tells Betty that she must get rid of the baby. Mary obtains some medicine from an herbalist which the herbalist says will induce an abortion. She gives the medicine to Betty, telling her that this medicine will cause her to abort. Betty takes the medicine. However, the medicine fails to induce an abortion. Mary then strongly advises Betty to give birth in a secret place and immediately after birth she should kill the child by burying it alive. As the time to give birth arrives, Betty becomes more and more agitated. When she goes into labour she goes to a field, delivers the baby and straight away acts upon Mary's advice by burying the child alive. The baby dies of suffocation.

Using caselaw and legal arguments discuss the criminal liability of Don Devious, Betty Sithole and Mary Kachipare? **[25 Marks]**

QUESTION 2

Steve Moyo is a branch leader of an opposition political party. Recently he led an attack by party members upon the house of the local leader of the ruling party, Dave Hunzvi. The attackers threw stones at the house breaking several windows, but fortunately neither Dave nor members of his family who were inside the house at the time were injured. Dave Hunzi is extremely angry as a result of this attack so the next evening he gathers together a group of six ruling party supporters. He tells them what has happened and instructs them to go to Steve's house and teach Steve a lesson they will never forget. He gives each of the supporters a heavy stick, which he says they must use to beat Dave. Late that night, acting on the instructions of Dave, the six others proceed to Steve's house. They demand to be let into the house and when Steve refuses to let them, they threaten to set fire to the house. Steve then lets them in to avoid his house being set on fire. The men immediately start to beat Steve viciously all over the body using the sticks. Steve cries out in pain and shouts to his wife that the attackers are killing him. Steve's wife, Betty, believing that her husband will be beaten to death, grabs a pistol that Steve keeps hidden under the bed. She shouts to the assailants to stop the beating and displays the pistol. She says that she will shoot them if they do not stop beating her husband. Thinking that this is mere

bluff, the men continue to beat Steve. Betty then shoots one of the men in the leg. After this the attackers run away, carrying the wounded man. The injured man is taken to the hospital and he later recovers from his injuries.

Using caselaw and legal arguments discuss the criminal liability of Steve Moyo, Dave Hunzvi, Betty Moyo, and the six ruling party supporters? **[25 Marks]**

QUESTION 3

Miss Mary Chaste has gone to a hotel with her friend Jane Naughty. Mary has never consumed alcohol or drugs in the past. She orders an orange drink. Whilst she is out of the room, Jane Naughty decides to play a joke on Mary by putting a drug in her drink. When she comes back Mary consumes the drink without realising that the drug has been added to it. At first the drug has no perceptible effect on her. However, one hour later when she is driving home the drug starts to have a dramatic effect upon her. All of a sudden her mind is suddenly filled with strange visions and she loses control over her car. The car veers onto the wrong side of the road and collides with another car. Mary is not injured but the driver of the other car, Mr Impact, is severely injured. Straight after the accident Constable Bigfoot who is in police uniform, drives down the road on his motorcycle. He sees that there has been an accident. He goes past without stopping. He does not stop because he has been ordered by his commanding officer to proceed immediately to a house where he is to take a statement from a house owner whose house was broken into the previous night. When he gets to this house about forty-five minutes later, he uses the phone there to report the accident to his commanding officer and requests him to summon an ambulance. The commanding officer calls for an ambulance, which immediately goes to the scene of the accident, but on arrival, it is found that Mr Impact has died. The medical evidence reveals if Constable Bigfoot had called an ambulance as soon as he became aware to the accident it is very likely that Mr Impact would have survived with medical treatment.

What is the criminal liability, if any, of Jane Naughty, Mary Chaste and Constable Bigfoot? **[25 Marks]**

TOTAL FOR SECTION B: 50 MARKS

SECTION B

Answer any two (2) questions from this section.

QUESTION 4

Assume there is a new criminal offence which reads: "Any editor of a newspaper who allows to be published in his or her newspaper any statement which is false shall be guilty of a criminal offence, whether or not the editor knows or has any reason to believe that the statement is false, and the editor shall be liable to imprisonment for up to one year."

Using decided cases and scholarly arguments discuss whether this offence requires the State to prove intention or negligence on the part of the editor and discuss whether this offence complies with the principle of legality? **[25 Marks]**

QUESTION 5

In Zimbabwe wide and vague offences against the state can be used to suppress legitimate political opposition and violate basic human rights rather than to protect genuine state interests, but it is also true that a repressive offence can be expressed in specific terms and that an offence which appears at first sight not to be repressive can be applied with repressive effect if it is enforced selectively and on a discriminatory basis. Discuss these views using decided caselaw, examples and scholarly arguments. **[Total 25 Marks]**

QUESTION 6

6.1 Critically discuss the view that if a woman or a girl could have a lawful abortion on socio-economic or psychological grounds there would be a drastic reduction of cases of infanticide. **[Total 13 Marks]**

6.2 Critically discuss the view that no one is above the law, no matter how important or high ranking the person is. Anyone who commits a crime should be subject to punishment under ordinary criminal law **[Total 12 Marks]**

[TOTAL FOR QUESTION 6 IS 25 MARKS]

QUESTION 7

7.1 When dealing with the reasonableness of the action taken by the accused who was acting in self-defence or under compulsion or provocation, the court must try to place itself in the shoes of accused and must not adopt an armchair approach."

Giving selected case examples to illustrate your answer, discuss the correctness of this view. **[13 Marks]**

7.2 When dealing with the defence of self-defence the courts must be very careful to avoid adopting an armchair approach. What is the so-called armchair approach and why should the courts be careful to avoid adopting this approach?

[12 Marks]

[TOTAL FOR QUESTION 7 IS 25 MARKS]

TOTAL FOR SECTION B: 50 MARKS

TOTAL FOR PAPER: 100 MARKS