

**ZIMBABWE EZEKIEL GUTI UNIVERSITY**

**FACULTY OF LAW: NOVEMBER 2018 EXAMINATION**

**MODULE AND CODE: CRIMINAL LAW (LLB 107)**

**TIME: 0900 HOURS**

**DURATION: 3 HOURS**

**28 NOVEMBER 2018**

**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 this section.**

**Please answer question 1 which is compulsory and either question 2 or 3.**

**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 3<sup>rd</sup> 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 door and charges towards Samantha who points the firearm and shoots Jonathan in the head causing him to die immediately. Samantha is arrested and charged with the murder of Jonathan.

You have been approached to represent Samantha in her criminal trial, what defences can Samantha raise to this charge of Murder and what difficulties arise in raising these defences.

**[25 Marks]**

**Question 2**

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

### QUESTION 3

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 and justify the likelihood of conviction of John? <sup>negl.</sup> Would your answer be any different if John is not very immature but acts as expected for his age? **[25 Marks]**

### QUESTION 4

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.

- (i) Identify and discuss the main elements of those crimes committed by Mr Johnson and Mrs Moyo. **(15 marks)**
- (ii) Identify the main possible defences applicable to those crimes, using case law and legislation **(10 marks)**

**SECTION B: Answer any two (2) questions from this section.**

### **QUESTION 5**

"[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 statement, making reference to scholarly arguments, decided case law and legislation. **[25 Marks]**

### **QUESTION 6**

With reference to case law, scholarly arguments and legislation critically discuss the view that in Zimbabwe, involuntary intoxication can be a full defence whereas voluntary intoxication is at most a partial defence. **[Total 25 Marks]**

### **QUESTION 7**

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 8**

- (i) 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. **(13 marks)**
- (ii) 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. **[12 Marks]**

**TOTAL FOR PAPER: 100 MARKS**