

S.A.CRIMINAL LAW(SG)
TIME : 3 HOURS

NOVEMBER 2004
GRADE 12
MARKS 300

QUESTION 1

1.1 Name **FOUR** characteristics of legal rules: (given example:they regulate people's behaviour in society in a peaceful manner)

- (a) define the rights and obligations of people;
- (b) provide solutions to conflicts that may arise between people regarding their rights and obligations;
- (c) prescribe procedures (ways) by which rights can be enforced and facts may be proved;
- (d) stipulate what the legal consequences of certain events would be (e.g. birth of a child), or what the legal consequences would be if people acted in a certain way, e.g. when a crime is committed. (8)

1.2 **Missing words:**

1.2.1 (a) Human (b) prohibited (c) penalty (6)

1.2.2 (a) Unlawful (b) act (c) punishable / punished (d) State (8)

1.3 Complete the missing sentences opposite (a), (b), (c), etc. in your examination script to indicate the differences between a **CRIME** and a **DELICT**.

CRIME	DELICT
(a) Affects community interest	1. Affects private interest
(b) Forms part of public law	2. Forms part of private law
(c) State prosecutes	3. Parties institute proceedings
(d) Leads to punishment by State	4. Leads to compensation that must be paid to disadvantaged party by guilty party
(e) State prosecutes offender, irrespective of wishes of disadvantaged.	5. Disadvantaged may choose whether he wants to claim compensation from guilty party or not
(f) Trial and proceedings regulated by criminal law.	6. Trial and proceedings take place in accordance with rules of civil law
(g) Onus of proof of state is beyond reasonable doubt.	7. Onus of proof of claimant on a balance of probabilities.
8. Diminished accountability and extenuating circumstances relevant for suitable punishment.	(h) Said issues do not play a role, because only compensation is relevant.
9. Crimes prescribe after 20 years (Serious crimes never prescribe in terms of section 18 of Criminal Procedure Act.)	(i) Prescription three years after delict had been committed.

(18)

1.4 1.4.1 – (c) 1.4.2 – (b) 1.4.3 – (a) 1.4.4 – (a) 1.4.5 – (a) 1.4.6 – (a) (14)
1.4.7 – (c) [54]

QUESTION 2

2.1 Any **SEVEN** of the following requirements that must be met by consent: (**Given** in the question paper is that ‘the consent must be voluntry’)

- The consenting party must have the necessary capacity
- The person who is consenting must have the authority to do so
- Consent must be a ground of justification in the case of the particular crime
- Consent must be given before performance of the act
- Consent must be reasonable
- The act must be performed within the boundaries of consent
- Consent may be tacit or explicit
- The consenting person must have knowledge of the true and essential facts relating to the act to which he is consenting
- The consent must be relevant (14)

2.2 **True or False:** (20 marks)

- 2.2.1 True (2)
2.2.2 False – It is described in the Law of Criminal Procedure (3)
2.2.3 False- forms part of Public Law (3)
2.2.4 True (2)
2.2.5 True (2)
2.2.6 False – since 1997 (3)
2.2.7 False – can only be a crime (3)
2.2.8 True (2)
(20)

2.3 **Match the phrases:**

1 (g) 2 (i) 3 (d) 4 (h) 5 (b) 6 (e) 7 (j) 8 (f) 9 (c) 10 (l) 11 (a) 12 (k) (24)

[58]

QUESTION 3

- 3.1 **True or False:**
- | | | | |
|-------|--|-----|------|
| 3.1.1 | False – is not substituted | (3) | |
| 3.1.2 | True | (2) | |
| 3.1.3 | False – there must be penetration | (3) | |
| 3.1.4 | False – consent her is not a ground of justification | (3) | |
| 3.1.5 | True | (2) | |
| 3.1.6 | True | (2) | |
| 3.1.7 | True | (2) | |
| 3.1.8 | False | (3) | (20) |
- 3.2 A structure is **immovable** if –
- It is fixed to the ground in such a way that it is capable of becoming a permanent part of the land,
 - The fixture is effective, and
 - It is the owner's intention that it should be immovable. (6)
- 3.3 **Crimen iniuria – factors** (any **SIX** of the following)
1. Circumstances such as time and place
 2. Age and sex of the complainant
 3. Stubbornness which accompanied the conduct
 4. Degree to which the conduct takes place in public
 5. The relationship between the parties
 6. Reaction of the complainant
 7. Nature of the act (certain acts such as indecent exposure) (12)
- (No marks for 'Social status of the parties' – as it is given in the q-paper)
- 3.4 **Places where housebreaking can be committed:**
- ▲ A tentwagon, tents, cabins on ships and compartments on trains
 - ▲ A caravan, even if it was broken into when it was uninhabited
 - ▲ An immovable **display cabinet** fixed in a shop (in other words, the structure does not have to be so big that an average person can fit into it)
 - ▲ An **office** in a building, and
 - ▲ A **built-in cupboard** in a room. (12)
- [50]

QUESTION 4

- 4.1 **THREE** examples of Contempt of Court that can be committed **outside** the court:
- **Passing remarks/utterances** aimed at bringing judicial officers or the administration of justice by the courts into disrepute.
 - Any **utterance about the administration** of justice in an improper and scandalous way.
 - Any **utterances, be it orally or in writing, in which corrupt or dishonest motives or conduct is ascribed to a judge or magistrate.**
 - **Obstructing officers** of the court in the execution of their duties, or
 - When a person **falsely pretends to be an officer** of the court.
 - **Failure to comply with court orders.**
 - It constitutes contempt of court to **publish information** or comment pertaining to a case that is **pending (*sub iudice*)**, where it may affect the result of the case. (6)
- 4.2 Any **FOUR** examples that can constitute the crime culpable homicide:
- (a) Where someone was **driving a vehicle negligently** and as result, he caused an accident which led to someone's death.
 - (b) Where someone negligently injected an **overdose of medicine** into someone else, and the latter died as a result.
 - (c) Where a person did a **blood transfer** to the wrong person, and that person died.
 - (d) Where a **doctor** poorly formulated a **prescription**, and the patient subsequently died.
 - (e) Where someone failed to warn workmen that the power was switched on, and a **workman was shocked and died** as a result. (8)
- 4.3 **FOUR** forms of assault:
(‘Assault with the intention to cause grievously bodily harm’ – is given)
- (a) indecent assault
 - (b) assault with the intent to rape
 - (c) assault with the intent to rob
 - (d) assault with the intent to murder (8)
- 4.4 **THREE** forms of errors:
- (a) Be under the impression that the owner has given his consent
 - (b) Or that the owner has discarded the object
 - (c) Or that he has the right to take the object. (6)
- 4.5 **The causing of damage:**
- (a) The perpetrator's act must have caused the damage.
 - (b) The damage does not have to be of a permanent nature.
 - (c) Even if the object can be repaired, it will still constitute a crime.
 - (d) The damage must not be of a trivial nature.
 - (e) It is not a requirement that the owner must have suffered financial loss. (10)

QUESTION 5

5.1 Missing words:

5.1.1 (a) damage (b) Immovable (c) human (d) goods (e) intention
(f) prejudice (12)

5.1.2 (a) removal (b) unmarried (c) minor (d) parents (e) permission
(f) marriage (g) sexual intercourse (14)

5.1.3 (a) reward/remuneration (b) report (c) perpetrator (d) crime
(e) crime (f) fine (12)

5.2 Define (without any discussion) the following:

5.2.1 Robbery

1. Unlawful
2. Intentional
3. Removal and
4. appropriation of
5. movable
6. corporeal property belonging to another
7. By use of violence
8. or threats of violence (16)

5.2.2 Incest is the

1. unlawful and
2. intentional
3. sexual intercourse between a man and a woman
4. who may not marry each other
5. because they are related within the forbidden degrees of consanguinity/blood relationship,
6. affinity or
7. adoption. (14)

5.2.3 Forgery is the

1. unlawful
2. falsification of a document
3. with the intention to defraud,
4. and which gives rise to actual
5. or potential prejudice of another. (10)

5.2.4 Sediton is the

1. unlawful and
2. intentional
3. gathering of a number of people
4. in order violently to challenge,
5. defy or resist the authority of the Republic,
6. or the unlawful and intentional
7. causing of such a gathering.

(14)

5.2.5 Violation of a grave is the

1. unlawfull and
2. intentional
3. violation of a place
4. where a human corpse lies buried.

(8)
[100]

TOTAL 300

S.A.STRAFREG(SG)
TYD: 3 URE

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VRAAG 1

- 1.1 Noem **VIËR** kenmerke van regsreëls. (gegewe voorbeeld: om mense se optrede in 'n samelewing te orden)
- (a) die regte en verpligtinge van mense te bepaal,
 - (b) oplossings te bied vir die botsings wat daar tussen mense mag ontstaan met betrekking tot hul regte en verpligtinge,
 - (c) die prosedures (maniere) voorskryf waarop regte afgedwing kan word en feite bewys mag word,
 - (d) neerlê wat die regsgevolge is wat intree indien bepaalde gebeurtenisse plaasvind (byvoorbeeld 'n kind word gebore) of mense wat op 'n sekere manier optree byvoorbeeld wanneer 'n misdadig gepleeg word. (8)
- 1.2 **Ontbrekende woorde :**
- 1.2.1 (a) menslike (b) verbied (c) straf (6)
- 1.2.2 (a) wederegtelike (b) handeling (c) straf (d) Staat (8)
- 1.3 Voltooi die ontbrekende sinne teenoor (a), (b), (c), ens. **in jou antwoordboek** om die verskille tussen 'n **MISDAAD** en 'n **DELIK** aan te dui.
- | MISDAAD | DELIK |
|--|---|
| (a) Tas gemeenskapsbelang aan | 1. Tas private belang aan |
| (b) Vorm deel van publiekereg | 2. Vorm deel van privaatreë |
| (c) Staat vervolg | 3. Private party stel aksie in |
| (d) Lei tot strafoplegging deur die staat | 4. Lei tot skadevergoeding wat skuldige party aan benadeelde moet betaal |
| (e) Staat vervolg die dader ongeag die wense van die benadeelde | 5. Benadeelde kan kies of hy skade-vergoeding van die dader wil eis of nie |
| (f) Verhoor en prosedures word gereël deur die strafprosesreg | 6. Verhoor en prosedures vind plaas ooreenkomstig die reëls van die siviele prosesreg |
| (g) Bewyslas vir die staat is bo redelike twyfel | 7. Bewyslas vir die eiser is met 'n oorwig van waarskynlikheid |
| 8. Verminderde toerekeningsvatbaarheid en versagende omstandighede ter sprake vir gepaste straf | (h) Genoemde kwessies speel nie 'n rol nie omdat skadevergoeding ter sprake is |
| 9. Misdade verjaar na 20 jaar (Ernstige misdade ingevolge artikel 18 van die Strafproseswet verjaar nooit) | (i) Verjaar drie jaar nadat delik gepleeg is |

1.4 1.4.1 – (c) 1.4.2 – (b) 1.4.3 – (a) 1.4.4 – (a) 1.4.5 – (a) 1.4.6 – (a) (14)
1.4.7 – (c) [54]

VRAAG 2

2.1 Enige **SEWE** van die volgende vereistes wat by toestemming van die benadeelde moet geld: (**Gegewe** is dat die toestemming **vrywillig** moet wees -)

- Die persoon wat toestem moet wilsbevoegd wees.
- Die persoon wat toestem moet die bevoegdheid hê om te kan toestem.
- Toestemming moet 'n regverdigingsgrond, in die geval van besondere misdaad, kan wees.
- Toestemming moet voor die pleging van die daad gegee word.
- Toestemming moet redelik wees.
- Daar moet binne die toestemming gehandel word.
- Die toestemming kan óf uitdruklik óf stilswyend gegee word.
- Die persoon wat toestem, moet kennis dra van die ware en wesenlike feite wat betrekking het op die handeling waartoe hy toestem.
- Die toestemming moet relevant wees. (14)

2.2 **Waar en onwaar:** (20 punte)

- 2.2.1 Waar (2)
2.2.2 Onwaar – dit word in die Strafprosesreg bepaal (3)
2.2.3 Onwaar – vorm deel van die Publiekreg (3)
2.2.4 Waar (2)
2.2.5 Waar (2)
2.2.6 Onwaar – ~~verjaars na 20 jaar~~ – *sedert 1997* (3)
2.2.7 Onwaar – kan slegs 'n misdaad wees (3)
2.2.8 Waar (2)
- (20)

2.3 **Watter pas?**

1 (g) 2 (i) 3 (d) 4 (h) 5 (b) 6 (e) 7 (j) 8 (f) 9 (c) 10 (l) 11 (a) 12 (k) (24)
[58]

VRAAG 3

3.1 WAAR of ONWAAR :

3.1.1 Onwaar – is nie vervang nie.

3.1.2 Waar

3.1.3 Onwaar – daar moet penetrasie wees.

3.1.4 Onwaar – toestemming is nie hier 'n regsverdedigingsgrond nie.

3.1.5 Waar

3.1.6 Waar

3.1.7 Waar

3.1.8 Onwaar – dis nie 'n misdad nie

(20)

3.2 'n Struktuur is onroerend indien –

- dit op so 'n wyse aan die grond geheg is dat dit vatbaar is om permanent deel van die grond te vorm,
- die aanhegting effektief is, en
- dit die bedoeling van die eienaar was dat dit onroerend moet wees.

(6)

3.3 Crimen iniuria - faktore: (enige SES van die volgende)

1. omstandighede soos tyd en plek
2. die ouderdom en geslag van die klaer of klaagster
3. die hardnekkigheid waarmee volhard word met die gedrag
4. die mate waarin die gedrag in die openbaar geskied
5. die verhouding tussen partye
6. die reaksie van die klaer of klaagster
7. die aard van die handeling (sekere handeling soos ontbloting ens. is op sigself reeds ernstig).

(12)

L.W.(geen punt vir 'sosiale status van die partye' nie – dis in vraestel gegee)

3.4 Waar huisbraak wel gepleeg kan word:

- ▲ 'n tentwa, tente, kajuite op skepe en kompartemente op treine
- ▲ daar is al by 'n karavaan ingebreek toe dit onbewoon was
- ▲ 'n onroerende **vertoonkas** wat voor 'n winkel ingemessel is
(met ander woorde die struktuur hoef nie so groot te wees dat 'n normale mens daarin kan gaan nie)
- ▲ 'n **kantoor** binne 'n gebou en
- ▲ 'n **ingeboorde kas** in 'n kamer.

(12)

[50]

VRAAG 4

- 4.1 **DRIE** voorbeelde van Minagting van die Hof wat **buite** die hof gepleeg kan word:
- **Die maak van uitlatings** wat daarop bereken is om regterlike beamptes of die administrasie van geregtigheid deur die howe in diskrediet te bring.
 - Enige uitlating oor die regspleging op 'n onbehoorlike en skandalige manier.
 - Enige uitlatings, hetsy skriftelik of mondelings, waarin korrumperte of oneerlike motiewe of gedrag aan 'n regter of landdros toegeskryf word.
 - **Die verhinder van beamptes** van die hof in die uitvoering van hulle pligte of
 - Die valslike voordoening deur 'n persoon dat hy 'n beampte van die hof is.
 - **Die verontagsaming van hofbevele**
 - Dit is minagting van die hof om inligting of kommentaar betreffende 'n saak wat nog hangende (*sub iudice*) is, en wat die uitslag van die saak mag beïnvloed, te publiseer (6)
- 4.2 **Vier voorbeelde** wat die misdaad 'strafbare manslag' kan uitmaak:
- a) Waar 'n persoon 'n **voertuig nalatig bestuur** en as gevolg hiervan 'n botsing veroorsaak wat tot iemand se dood lei.
 - b) Waar 'n persoon uit onversigtigheid vir 'n ander 'n **oordosis medisyne** inspuit en die ander sterf.
 - c) Waar 'n persoon 'n **bloedoortapping** op die verkeerde persoon doen en daardie persoon sterf.
 - d) Waar 'n **dokter** 'n **voorskrif** swak formuleer en 'n pasiënt sterf.
 - e) Waar 'n persoon vergeet om werksmense te waarsku dat die krag aangeskakel is en 'n **werksman doodgeskok** word. (8)
- 4.3 **VIER** vorme van aanranding:
(Aanranding met die opset om ernstig te beseer' is 'n gegewe)
- a) **Onsedelike** aanranding
 - b) Aanranding met die opset om te **verkrag**
 - c) Aanranding met die opset om te **roof**
 - d) Aanranding met die opset om te **moor** (8)
- 4.4 **DRIE** voorbeelde van dwaling:
- a) Dink dat die eienaar **toegestem** het.
 - b) Dink dat die eienaar die saak **weggegooi** het.
 - c) Dink dat hy **die reg** het om die saak te neem. (6)
- 4.5 Bespreek die **veroorsaking van skade** by opsetlike saakbeskadiging:
- a) Die dader se **optrede** moes die skade veroorsaak het.
 - b) Die skade **hoef nie permanent** van aard te wees nie.
 - c) Selfs al kan die saak weer **herstel** word, kan dit steeds die misdaad daar stel.
 - d) Die skade moet **nie van 'n onbenullige aard** wees nie.
 - e) Dit is nie 'n vereiste dat die eienaar **finansiële verlies** moet ~~le~~ ^{ly} nie. (10)

VRAAG 5

5.1 Ontbrekende woorde:

- 5.1.1 (a) beskadiging (b) onroerende (c) menslike (d) goedere
(e) bedoeling (f) benadeel (12)
- 5.1.2 (a) verwydering (b) ongetroude (c) minderjarige (d) ouers (e) toestemming
(f) huwelik (g) geslagtelik (14)
- 5.1.3 (a) vergoeding (b) misdaad (c) boete (d) rapporteer (e) pleger (f) misdaad
(12)

5.2 Definieer alleenlik (**sonder enige bespreking**) die volgende:

5.2.1 **ROOF** is die

1. wederregtelike en
2. opsetlike
3. wegneem en
4. toe-eienig
5. deur gebruik te maak van geweld
6. of dreigemente van geweld
7. van 'n ander se roerende
8. liggaamlike saak. (16)

5.2.2 **BLOEDSKANDE:**

1. wederregtelike en
2. opsetlike
3. **geslagsverkeer** tussen 'n man en 'n vrou
4. wat nie met mekaar mag trou nie
5. omdat hulle binne die verbode grade van **bloedverwantskap**,
6. **aanverwantskap**
7. of deur **aanneming** aan mekaar **verwant** is. (14)

5.2.3 **VERVALSING** is die

1. wederregtelike en
2. vervalsing van 'n dokument
3. met die opset om 'n ander te mislei (bedrieg)
4. wat werklike of
5. potensiele nadeel tot gevolg het. (10)

5.2.4 **SEDISIE** word gepleeg wanneer iemand

1. Wederregtelike
2. Opsetlike
3. Deelnem aan 'n toeloop van persone
4. Tot geweldadige weerstand teen
5. Of uitdaging van die gesag van die Republiek
6. Of wederregtelik en opsetlik
7. Sò 'n toeloop veroorsaak

(14)

5.2.5 **GRAFSKENDING** is die

1. wederregtelike en
2. opsetlike
3. inwerking op die plek
4. waar 'n menslike lyk weggebêre is.

(8)

[100]

TOTAAL 300