

NATIONAL UNIVERSITY OF LESOTHO

FACULTY OF LAW

L284 CRIMINAL LAW

LL.B FINAL EXAMINATIONS

MAY 2017

MARKS 100

TIME: 3 HOURS

INSRTUCTIONS:

1. Answer any four (4) questions.
2. All questions carry equal marks.
3. Use legal sources and authorities.

QUESTION 1

Thabo is a shop keeper at Ha Lifate. For the past six (6) months he has reported that there have been a series of burglaries at his shop. He reported this to the police but the police claimed that his store was far from the police station. There being no police vehicles, the police informed him that they are unable to assist him.

Thabo then decides to set a trap for would-be burglars by hooking a gun that would set off and shoot an intruder once the door of the shop is opened. He then puts up a huge notice at the door and windows of the store warning would-be intruders of the danger they face if they enter after the trap has been set.

One particular night, Reitumetse, a well-known thief in the village, sets off to steal from Thabo's shop. On opening the door he sets off the trigger of the gun and he is fatally shot.

Thabo is charged with Reitumetse's murder.

Discuss all the elements of the defence Thabo can raise.

[25 MARKS]

QUESTION 2

Mphonyane is a factory worker. On the day in question factory workers are involved in a strike for better wages. As the workers sing and chant slogans, there is an army of police officers on duty to monitor that, the "situation" does not get out of control.

The situation progresses to a stage where the workers sing songs that insult the police and mock them for just idly standing by and not doing a thing. One of the workers even throws a stone in the direction of the police officers and hits him on the forehead.

This causes the police to retaliate by opening fire in the direction of the strikers and Mphonyane is hit by a bullet on the chest and falls on the ground.

As panic reigns and everyone runs for cover, the police call a nearby ambulance. The ambulance arrives and whisks Mphonyane away as blood is oozing from the wound. The paramedic realising this rushes to the medicine cabinet for donated blood to assist Mphonyane but finds that they forgot to put some in the cabinet. Upon arrival at the hospital she is certified dead due to loss of blood.

- (a) As a prosecutor, you have to charge someone for murder. Identify who you would charge and outline the reasons.

15 marks

- (b) Would the charge be different if the blood was available and Mphonyane had refused to accept donated blood on religious grounds?

10 marks

[25 MARKS]

QUESTION 3

Discuss the constitutionality of the doctrine of common purpose as outlined in the case of THEBUS.

[25 MARKS]

QUESTION 4

Write short notes on:

(a) *Dolus directus*

5 marks

(b) *Dolus indirectus*

5 marks

[25 Marks]

QUESTION 5

Phofa is a well-known thief who specialises in stock theft. It comes to his attention through the grapevine that Mr Morui's sheep will be left unguarded for a night. Phofa then invites Stebo and Stlabolane to join him to go to Likajaneng where Mr Morui lives, to steal his sheep. They join him without any reluctance. They indeed go to Likajaneng and their mission is successful.

On completion of their illegal act, they ask the chief of their village Chief Mesarelo -ea -Batho to write bewyes for them which. The Chief agrees without hesitation.

Upon his return, Morui reports his stolen sheep and the police recover the stolen sheep in the kraals of various villagers with proper bewys written by Chief Mesarelo- ea- Batho.

Discuss the degree of participation in order to determine the criminal liability of the following participants

(a) Phofa

5 Marks

(b) Stebo and Stlabolane

10 Marks

(c) Chief Mesarelo-ea Batho

10 Marks

[25marks]

QUESTION 6

“The essential elements of the crime of murder are (1) unlawfulness (2) killing (3) person (4) intention”.

Burchul & Hunt Principles Criminal Law 2nd Edition.

- (a) Various theories have attempted to answer the question “when is a person born alive” so as to satisfy the element of ‘person’ in the crime of murder. Discuss the “expulsion” theory.

10 Marks

- (b) Outline the traditional definition of “death” and the modern definition of ‘death’ in relation to the requirement of ‘killing’ in the crime of murder.

15 marks

[25Marks]