NOVEMBER 2012 EXAMINATION

DATE: 15 NOVEMBER 2012

TIME: 14H00 – 16H00        TOTAL: 100 MARKS

DURATION: 2 HOURS       PASS MARK: 40%

(EL-91)

CRIMINAL LAW AND PROCEDURE

THIS EXAMINATION PAPER CONSISTS OF 3 SECTIONS:

SECTION A: CONSISTS OF:
(i) 10 MULTIPLE-CHOICE QUESTIONS (20 MARKS)
(ii) 5 TRUE OR FALSE QUESTIONS (10 MARKS)
(iii) 7 MATCHING-STATEMENT QUESTIONS (7 MARKS)

ANSWER ALL THE QUESTIONS

SECTION B: CONSISTS OF 8 SHORT QUESTIONS
ANSWER ALL THE QUESTIONS (43 MARKS)

SECTION C: CONSISTS OF 1 PRACTICAL APPLICATION QUESTION
ANSWER THE QUESTION (20 MARKS)

INSTRUCTIONS:

1. Read the following instructions carefully before answering the paper, as failure to act upon them will result in a loss of marks.
2. Write your answers in your answer book, which is provided in the exam.
3. Ensure that your name and student number are clearly indicated on your answer book.
4. Write your answers in either blue or black ink in your answer book.
5. Read each question very carefully before you answer it and number your answers exactly as the questions are numbered.
6. Begin with the question for which you think you will get the best marks.
7. Note the mark allocations for each question – give enough facts to earn the marks allocated. Don't waste time by giving more information than required.
8. You are welcome to use diagrams to illustrate your answers.
9. Please write neatly – we cannot mark illegible handwriting.
10. Any student caught cheating will have his or her examination paper and notes confiscated. The College will take disciplinary measures to protect the integrity of these examinations.
11. If there is something wrong with or missing from your exam paper or your answer book, please inform your invigilator immediately. If you do not inform your invigilator about a problem, the College will not be able to rectify it afterwards, and your marks cannot be adjusted to allow for the problem.
12. This paper may be removed from the examination hall after the examination has taken place.

Examiner: SAILT
(i) MULTIPLE-CHOICE QUESTIONS

Choose the correct option for each of the following. Write only the question number and your chosen answer. For instance, if you think that the correct answer for number 1 is (a), then write it as 1. (a).

1. X defends himself from an attack by Y. This is an example of:
   
   (a) necessity.
   (b) impossibility.
   (c) obedience to orders.
   (d) private defence.

2. Mens rea may be summarised as:
   
   (a) criminal capacity and either intention or negligence.
   (b) criminal capacity and consent.
   (c) intention and consent.
   (d) All of the above.

3. Which one of the following factors will NOT act to exclude criminal capacity?
   
   (a) intoxication
   (b) gender
   (c) age
   (d) provocation

4. The unlawful and intentional making of false statements under oath is:
   
   (a) sedition.
   (b) contempt of court.
   (c) perjury.
   (d) All of the above.

5. The unlawful, intentional, violent removal of a thing belonging to another is called:
   
   (a) robbery.
   (b) bigamy.
   (c) theft.
   (d) fraud.
6. Which one of the following is NOT a valid punishment for a South African court to impose?

(a) a fine  
(b) imprisonment  
(c) correctional supervision  
(d) the death sentence

7. Under what circumstances can the Director of Public Prosecutions refuse a request by the defence attorney to consult with a state witness?

(a) under no circumstances  
(b) where a witness may be intimidated  
(c) where state secrets may be disclosed  
(d) Both (b) and (c) above.

8. An adult accused, who has been arrested, cannot be held longer than a period of _____ unless he or she is brought before a lower court and the court orders further detention.

(a) one day  
(b) 48 hours  
(c) one month  
(d) one year

9. When can an accused change their plea from not guilty to guilty?

(a) at any stage during the trial, provided it is before judgment  
(b) before the state opens its case  
(c) before he is cross-examined  
(d) before closing arguments

10. An accused is entitled to representation from the moment:

(a) he is arrested or detained.  
(b) he is charged.  
(c) he or she first appears before a judge or magistrate.  
(d) the trial begins.  

[10 × 2 = 20]

(ii) TRUE OR FALSE QUESTIONS

Indicate whether the following statements are true or false. If you decide that a statement is FALSE, you must explain why.

1. A delict is unlawful, blameworthy conduct punishable by the state.

2. The test for fault in the form of negligence is a subjective test.

3. Under common law, rape only consists of a male having unlawful and intentional intercourse with a female.

4. In order to obtain a conviction, the prosecution must prove the accused’s guilt on a balance of probabilities.

5. If an accused pleads guilty, he or she can always be convicted on the basis of their plea alone.  

[5 × 2 = 10]
(iii) **MATCHING-STATEMENT QUESTIONS**

Match the words or phrases in Column B to the words or phrases in Column A. Write down the answers only, for example 1. (a).

<table>
<thead>
<tr>
<th>Column A</th>
<th>Column B</th>
</tr>
</thead>
<tbody>
<tr>
<td>factual causation</td>
<td>(a) policy considerations</td>
</tr>
<tr>
<td>voluntary intoxication</td>
<td>(b) high treason</td>
</tr>
<tr>
<td>crime against the administration of the state</td>
<td>(c) warrant</td>
</tr>
<tr>
<td>statutory bribery</td>
<td>(d) gratification</td>
</tr>
<tr>
<td>search and seizure</td>
<td>(e) condictio sine qua non</td>
</tr>
<tr>
<td>scene of the offence</td>
<td>(f) actio libera in causa</td>
</tr>
<tr>
<td>legal causation</td>
<td>(g) inspection in loco</td>
</tr>
</tbody>
</table>
SECTION B: SHORT QUESTIONS (43 MARKS)

ANSWER ALL THE QUESTIONS

QUESTION 1

(a) What do we mean when we say that the Constitution is the "supreme law of the land"? (2)

(b) List two fundamental rights enshrined in the Constitution that are relevant to criminal law and procedure. (2)

(c) The doctrine of nullum crimen sine lege has been incorporated into the Constitution in section 35(3) (l) – (n). Set out the three essential elements of the provision. (3) [7]

QUESTION 2

In each of the following circumstances, and with reference to the 'act' as an element of a crime, state whether the actions of X are punishable as crimes, and, in each case, provide a reason for your answer:

(a) X fails to submit her tax returns. (3)

(b) X's dog bites Y. (3)

(c) X plans to murder Y, but takes no steps in preparation to do so. (2)

(d) X half-awakens from a nightmare, and, acting mechanically, stabbed Y with a knife. (3) [11]

QUESTION 3

What is the difference between incitement and conspiracy? In your answer, you should define both concepts. [2]

QUESTION 4

(a) Under South African law, can a person consent to their own murder? (1)

(b) Would your answer to (a) be any different if the person who consented to their murder had an illness from which they could never recover? Provide a reason for your answer. (2) [3]

QUESTION 5

Under what circumstances may a trial be conducted in the absence of the accused? [4]
QUESTION 6

Under what circumstances may the police forcibly enter the premises in order to conduct an arrest in terms of section 48 of the Criminal Procedure Act? [3]

QUESTION 7

(a) What are the fundamental principles of bail? (4)
(b) For what type of case may the police grant bail? (1)
(c) If the police grant bail, of what rank must the officer granting the bail be? (1)
(c) What are the consequences for the accused if he or she does not comply with his or her bail conditions? Set out the procedure that must be followed. (4) [10]

QUESTION 8

List three ways of securing the attendance of the accused at the trial other than arrest. [3]
SECTION C: PRACTICAL APPLICATION QUESTION (20 MARKS)

ANSWER THE QUESTION

QUESTION 1

Thandi and Peta are young and in love. Thandi is 16, and Peta is 19. Thandi's father, Andre, does not approve of the relationship, and has told Thandi that she may not date Peta any more. Thandi and Peta therefore enlist the help of their friend, Rose, to help them run away. Rose tells Andre that Thandi and Peta will be spending the weekend at her house, and instead lends them her car so that they can drive to Johannesburg, where Thandi and Peta plan on getting married and starting a new life together. When Andre finds out what has happened he is consumed with rage.

(a) Andre reports the incident to the police, and insists that they charge Peta with kidnapping. Can Peta be charged with kidnapping? Explain your answer.  (2)

(b) Is there another crime with which Peta could more appropriately be charged? Explain your answer. (4)

(c) Andre also wants the police to charge Rose with a crime. How could Rose be charged? If there is more than one option, set out each one, and the reasons therefor.  (3)

(d) Who makes the decision whether or not to prosecute Peta and Rose? (1)

(e) When Peta and Thandi are pulled over for speeding by a policeman on the N1, the policeman recognises the couple, and arrests Peta. What are the requirements for the arrest to have been lawful? (5)

(f) If Peta resisted arrest, may the police use force to overcome the resistance? If so, what are the limitations on the use of such force in terms of section 49 of the Criminal Procedure Act? (2)

(g) A few weeks later, Andre tracks down Thandi and Peta and shoots Peta. At Andre's trial for Peta's murder he claims that he lacked criminal capacity due to provocation. Explain how the court assesses provocation. In your answer, you must make reference to the case of S vs. Eadie. (3) [20]

[20]