INSTRUCTIONS

1. Students are requested, in their own interests, to write legibly.

2. This paper consists of SIX (6) pages. Please ensure that you have all of the pages.

3. Please note that you must answer Section A, B and C. All the questions in Section A are compulsory. In Section B and Section C you have a choice. In Section B you must answer any one of the two questions and in Section C you must answer any two of the three questions.

4. Please note that Section A and B must be answered in one (1) booklet, Section C must be answered in separate booklet.
SECTION A

Please note that all questions in this section are compulsory

QUESTION 1

Thabo has just turned 16 years old and he starts experimenting with sex and drugs. One day, Thabo invites his girlfriend (Thembi) to his house in the hope that he 'will finally get lucky'. Thabo takes a large quantity of a drug known as 'LSD' and when Thembi arrives, he starts to make certain sexual advances towards her. As a result of the drug, Thabo suddenly starts having hallucinations and believes that he is being attacked by snakes. He then takes his pocket knife and wildly stabs a blurred image in front of him. It subsequently transpires that Thabo actually stabbed and killed Thembi. Thabo is charged with murder. Assess his criminal liability in the above instance. In the course of answering this question you must explain what is meant by the *actus reus* and *mens rea* and you must set out the elements of criminal liability.

[25 marks]

AND

QUESTION 2

The Child Justice Act 75 of 2008 has made important changes to the common law as far as determining the criminal liability of children is concerned. Critically discuss the changes made by the Act in this regard and in particular, discuss the test contained in s 11 (1). Is this test merely a restatement of the common law test to determine criminal capacity? Explain with reference to an example.

[15 marks]

[TOTAL SECTION A: 40 MARKS]
SECTION B

Please answer either question three or question four.

QUESTION 3

The judgment in *Eadie* is one of the most enigmatic judgments of the Supreme Court of Appeal in the field of criminal law during the past half century... On the facts the finding of both the trial court and the Supreme Court of Appeal, namely that [Eadie’s] defence should be rejected, was completely correct. Had the court simply found that the defence no longer exists because it is irreconcilable with the basic policy consideration... (which demands that all people – those who lose their tempers as well as those who take the trouble to control their tempers - should be judged by the same standard), one could have agreed entirely with such a decision. However, instead of “burying”, as it were, the defense on the solid ground of its incompatibility with legal policy, the court attempted to “bury” it on the grounds of criminal law theory. It is exactly here that the court, with respect, took the wrong turn.


In light of the above statement, critically discuss the case of *S v Eadie* 2002 (1) SACR 663 (SCA). Your answer should include, but necessarily not be limited to, the following:

- A brief explanation of the facts of the *Eadie* case;
- A brief explanation of the judgment of the court *a quo*;
- A critical discussion of the judgment of the Supreme Court of Appeal; and
- A discussion of whether the judgment of the Supreme Court of Appeal in the *Eadie* case spells the end of the defence of non-pathological incapacity based on provocation and emotional stress.

[20 marks]

OR

Continued/...
QUESTION 4

Johan Botha is a 53 year old man who lives in a small house in Scottsville. Johan runs a small business from home (selling sporting equipment) and this serves as his main source of income. Over the past few months, Johan has been plagued by a series of burglaries and as a result thereof he is on the verge of financial ruin. It transpires that Johan has lost more than R 25 000 over the past 6 months because of the burglaries. Johan has taken various measures to protect his property. His property is enclosed by high fences with barbed wire. Six months ago, Johan also installed a high-tech alarm system with armed response. However, notwithstanding these measures, thieves were still able to break into his property and steal his goods.

By the time the security company had arrived at the scene, the thieves were already gone and Johan had suffered financial loss. Johan thereafter decided to cancel the contract with the security company as this was proving too expensive for him (the cost was R 400 per month). He then had two vicious dogs protecting his property but the dogs were subsequently poisoned and killed in another burglary.

On the 26 December 2012, upon hearing a loud noise outside, Johan woke up and saw three thieves stealing his goods. Johan then took his gun and fired two warning shots. Notwithstanding this, the thieves attempted to run away with the goods. Johan then fired two shots at the thieves. One of the thieves was killed while the other two got away. When charged with murder, Johan pleads private defence. Advise John whether it is permissible to kill in defence of property. If so, advise John whether he exceeded the bounds of private defence in this instance.

[20 marks]

[TOTAL SECTION B: 20 MARKS]
SECTION C

Please answer any two of the following three questions.

QUESTION 5

Mani has just completed his criminal law exam. He decides to reward himself by going to a water themed park (Water World) with rides such as the super tube. He has heard that this theme park has one of highest super tube rides in Africa, called the Long Drop Ride. This is an opportunity he cannot miss! What Mani does not know is that the owners of the theme park have not been doing maintenance to fix the Long drop Ride. The maintenance of the rides is the responsibility of Sipho. Due to the lack of maintenance, bolts keeping the tubes attached together become loose. As a result, instead of going down the Long Drop Ride, the tubes become detached and Mani falls through the super tube head first. As a result of severe head trauma, Mani is declared dead on arrival at the hospital. Assess the criminal liability of the owners of the theme park.

[20 marks]

QUESTION 6

Costa has caviar tastes on a tuna budget. So to "support" his lifestyle, he decides to rob a bank. He walks into the bank, goes up to the teller and demands cash. Costa is nervous as this is his first time robbing a bank. The gun goes off by accident hitting the cashier in the back while she is busy getting the cash together. Costa is subsequently arrested at the scene. The bank teller is admitted to hospital but does not receive the immediate attention that is required for gunshot wounds that can likely cause the victim to go into shock. As a result the bank teller goes into shock and dies. Who is likely to be held liable here? Costa or the doctor? Explain with reference to case law and authority.

[20 marks]
QUESTION 7

Please answer all questions here

(i) Members of the Sacred Heart community are outraged. A member of their community’s daughter was raped. News spreads concerning the potential perpetrators identity. The women of the community decide to exact revenge on the alleged rapist by beating him. Nawande joins the group of women who have already assembled. She throws a brick at the alleged rapist’s head. Should the alleged rapist die, what can Nawande be held liable for? Discuss with reference to case law.

[10 marks]

(ii) If Nawande withdraws from common purpose, can she escape liability? Discuss with reference to case law.

[5 marks]

(iii) If the police were on the scene of the stoning of the alleged rapist and did not act to protect him, can they be held liable? Discuss with reference to case law.

[5 marks]

[20 MARKS]

[TOTAL SECTION C: 40 MARKS]

[TOTAL MARKS FOR PAPER: 100 MARKS]