INTERNAL EXAMINERS : MR A. RAMDHIN
                    PROFESSOR S. HOCTOR

INDEPENDENT MODERATOR : MS S. BHAMJEE

INSTRUCTIONS

1. You are requested, in your 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 both Section A and B.

4. During the course of your answers, you must refer to any relevant case law and legislation that may be applicable.

5. Please note that Sections A and B must be answered in separate answer booklets.
SECTION A

PLEASE ANSWER THIS SECTION IN A SEPARATE ANSWER BOOKLET.

Please answer ANY TWO of the following three questions.

QUESTION 1
Carl Johnson is a 30-year-old man who lives alone in Scottsville and who is in a wheelchair. He became paralysed when he was shot during a robbery at his home several years ago. Carl used to be employed at a factory but was subsequently retrenched a few months ago. He was married at the age of 23 but his wife subsequently divorced him after the shooting incident and she ended up marrying another man. Carl, however, is now dating Mary Smith, an attractive pharmacist who he met a few months ago.

In the early hours of the morning on 14 February 2014, Carl is woken up by a loud noise outside and is concerned as there have been previous break-ins at his house and other houses in his neighbourhood. He goes to investigate but cannot see anything and goes back to sleep. A few hours later, Carl again hears another loud noise. He shouts out ‘Who’s there?’ two times but does not get a reply. He then hears footsteps in the kitchen and can see a silhouette gradually approaching his room. Carl quickly grabs his gun from his bedside drawer and when he sees a person entering his doorway, he fires three shots thereby killing the person instantly. It transpires that Carl shot and killed Mary, who was planning a Valentine’s Day surprise for him.

1.1 Carl is charged with murder and wants to raise the defence of non-pathological incapacity due to provocation and emotional stress. Advise him on his prospects of successfully raising this defence.

[12 marks]

1.2 Carl also wants to raise the defence that he had no intention to act unlawfully as he believed that he was shooting an intruder and not his girlfriend, Mary. Advise him fully on his prospects of successfully raising this defence.

[13 marks]

[TOTAL FOR Q 1: 25 Marks]

Continued/…
QUESTION 2
During Easter, Damien goes to his friend’s farm in the Eastern Cape for a holiday. One day, Damien and his friends decide to go on a hunting expedition. Damien manages to shoot and kill three birds, including a Blue Stork, and does not miss any of his targets. Damien’s friends are impressed by his accuracy and ask him whether he can shoot another bird which is sitting perched on a nearby tree. In the surrounding area, Damien sees that there are other hunters including some standing behind the tree. Damien aims at the bird thinking that he will be able to hit it. However, when he fires a shot he ends up shooting and killing one of the other hunters (Peter) who was standing a few metres behind the tree. Damien is charged with the murder of Peter and with contravening the National Environmental Management Biodiversity Act 10 of 2014 for killing the Blue Stork. It transpires that it is an offence to kill a Blue Stork as it is listed as a critically endangered species and cannot be hunted without a permit in terms of the Act. In his defence, Damien argues that he did not have intention to commit these crimes. Advise him on his prospects of success.

[25 Marks]

QUESTION 3
Please answer BOTH questions in this section

3.1 Phillip Jacobs, a 12-year-old boy, likes to play in his father's bakkie, pretending that he is driving the vehicle. His father, however, has warned him on numerous occasions that his bakkie is not a toy and that he should not play inside the vehicle as it can be dangerous. One afternoon, while his father is having a mid-afternoon nap, Phillip and his cousin, Jake (4 years old), are both playing outside. Phillip then grabs his father’s keys, opens the bakkie and sits in the driver’s seat. While pretending that he is driving, Phillip dislodges the handbrake and the vehicle starts rolling. Phillip presses the hooter twice to warn Jake but no takes no further action after this. The bakkie runs over Jake thereby killing him in the process. Phillip’s father approaches you for legal advice. Advise him on the prospect of Phillip being convicted of culpable homicide under these circumstances.

[20 Marks]

AND
3.2 Bongani is a homeless man who lives on the street. One day, while Bongani is sitting along the pavement waiting for someone to give him money or food, another man, Sibusiso approaches Bongani and forcibly injects him with a potent drug and runs away. This drug has a profound effect on Bongani and he becomes distressed and aggressive. A pedestrian notices that Bongani is in severe distress and goes to check whether he is okay. Bongani in his confused, drugged state grabs a broken beer bottle and stabs the pedestrian three times thereby killing him instantly. When charged with murder, Bongani wants to raise the defence of intoxication. Advise him on his prospects of success in this instance including in the course of your answer a brief explanation on whether he can also be convicted in terms of the Criminal Law Amendment Act 1 of 1988.

[5 Marks]

[TOTAL FOR Q 3: 25 Marks]

TOTAL SECTION A: 50 MARKS
SECTION B

PLEASE ANSWER THIS SECTION IN A SEPARATE ANSWER BOOKLET.

Please answer ANY TWO of the following three questions.

QUESTION 4
Simon is a gang member who has already served time in prison for an attempted murder conviction. One night he is heading out of the family home when his younger brother, Eugene, a law student at UKZN, asks him where he is going. Simon replies that he is going to ‘teach Bheki a lesson that he will never forget’. Bheki is the current lover of Simon’s ex-girlfriend, Judy, who broke the relationship off with Simon when he was in prison.

Eugene pushes aside his Criminal Law books and begs Simon to come with him. Simon reluctantly agrees. They find Bheki with Judy at a nearby tavern. When Judy sees Simon, she screams, and Bheki tries to get away. Eugene trips Bheki as he runs past him, and holds him until Simon gets there. Eugene then moves away as Simon starts to beat Bheki with his fists. Although Simon is far stronger than him, Bheki resists, and manages to land a blow to Simon’s face. This enrages Simon, who pulls out a knife hidden in his boot. Eugene calls out ‘No!’, but when Simon ignores him, Eugene quickly escapes from the tavern. While Eugene is running home, Simon stabs Bheki to death.

Along with Simon, Eugene is charged with Bheki’s murder. Assess whether Eugene can be convicted. [25 Marks]

QUESTION 5
Discuss when a failed attempt results in criminal liability, and when it does not. [25 Marks]
QUESTION 6
While committing an armed robbery of a neighbourhood jewellery store, Jonas shot the owner, Mr Lee, and his wife Joyce, when they hesitated before handing over the rings and bracelets in their display cabinets. Both Mr and Mrs Lee, who were in their seventies, were shot in the stomach, and in addition Mr Lee was shot in the leg. They were taken to hospital. Though serious, the wounds were not immediately life-threatening. When Mrs Lee was operated on to repair the damage caused by the bullet, she suffered an unexpected allergic reaction to the anaesthetic used to sedate her, and she died. Mr Lee developed breathing difficulties during the operation, as a result of which the hospital gave him a tracheotomy (a tube inserted into his windpipe connected to a ventilator). Several weeks later Mr Lee’s gunshot wounds were healing, however he continued to have breathing difficulty and died from complications arising from the tracheotomy.

On trial for murder of Mr and Mrs Lee, Jonas argues that neither of their deaths came about as a result of his actions, but rather as a result of medical negligence. Discuss, with reference to the relevant case law.

[25 Marks]

TOTAL FOR SECTION B: 50 MARKS

TOTAL FOR PAPER: 100 MARKS