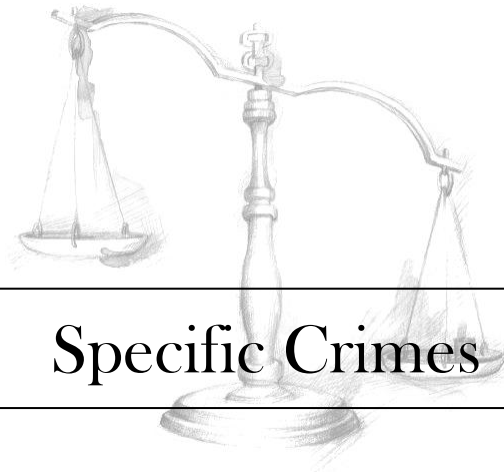


CRIMINAL LAW B



Specific Crimes

Course Outline & Reading List
2013



Lecturer: Adv J C McConnachie

1. PURPOSE OF THE COURSE:

Criminal Law at Rhodes University is two-semester course offered in the Penultimate year of the LLB degree. Successful completion of Criminal Law A (which concentrated on the general principles of criminal liability) is a prerequisite for Criminal Law B. The purpose of Criminal Law B is to build onto the knowledge and skills that students acquired from Criminal Law A, by applying the principles of criminal liability to selected specific crimes/offences. The course thus focuses on the classification of crimes, and the characteristics of specific crimes in the South African legal system, including the essential elements, contentious issues and reforms in selected common law and statutory crimes. By the end of the course, students should be able to identify, discuss and evaluate these specific crimes, and solve problems when presented with a factual scenario.

2. CREDIT VALUE: 10

This works out as follows:

- 18 hours 24 lectures @ 45 mins each
- 0.75 hours 1 written test
- 2 hours 1 written examination
- 79.25 hours Individual learning (pre- and post-lecture reading, preparation of written assignment, test and examination preparation)
- Total: 100 hours work

3. ASSUMPTIONS OF PRIOR LEARNING:

In order to successfully complete this course, students should:

- Have a sound knowledge of the general principles of criminal liability, and the general defences to specific elements of criminal liability;
- Be capable of communicating competently in both written and spoken English;
- Be able to work/study independently by reading, extracting and analysing relevant information from various sources of law;
- Know how and where to access resources, and so be capable of using the library and electronic resources;
- Be capable of applying legal problem-solving techniques;
- Have the ability to follow appropriate legal referencing conventions in written work.

4. OUTCOMES

4.1 Critical Cross-Field Outcomes:

It is expected that this course should contribute to the following critical cross-field outcomes, in that by the end of the course students should be able to:

- a) work in a team
- b) organise and manage themselves
- c) collect, analyse and evaluate information

- d) communicate effectively
- e) recognise problem solving contexts
- f) identify and solve problems

4.2 Specific Intended Outcomes

It is intended that by the end of this course students will be able to:

- a) Identify and define the requirements of different common-law and statutory crimes
- b) Apply the knowledge and skills gained during the course to solve practical problems.
- c) Evaluate the adequacy of South African specific crimes and suggest law reform where necessary; alternatively, evaluate reforms in existing laws.
- d) Understand, analyse and explain the influence of Constitutional principles on specific crimes, and how these have been harmonised with common-law principles.

5. TEACHING METHODS

There are two lectures per week. The course is taught by means of *viva voce* lectures and class discussions of the law as contained in textbooks, case law and legislation. There is no comprehensive handout for the course. Students are expected to take their own notes during lectures and to supplement these on their own after the lectures. Class discussions will be held, and students will have to participate actively in these; *i.e.* be able to explain case law and consider practical questions. Students are expected to prepare for lectures by doing the prescribed readings before each lecture. It is expected that students assume responsibility for their own learning by independent study according to the guidance provided by the detailed course outline. Lectures are compulsory. Students are welcome to discuss problems with the lecturer.

6. COURSE CONTENT

6.1 Introduction

Classification of Crimes

Origins of Common Law Crimes

6.2 Selected Common Law Crimes

6.2.1 Crimes Against the State

6.2.2 Crimes Against the Administration of Justice

6.2.3 Crimes Against the Person: Life and Bodily Injury

6.2.4 Crimes against the Person: Sexual Offences

6.2.5 Crimes Against Property

6.3 Selected Statutory Offences

6.4 Conclusion

7. RESOURCES

In order to assist preparation for lectures, a course outline listing the core readings is provided. However, it will be in students' own interests to read more widely than the readings listed. The leading judgments on aspects of the Specific Crimes covered may be found in the relevant Law Reports, which may be accessed in the Law Library, both in paper and electronic form.

Prescribed Textbook:

CR *Snyman Criminal Law* 5th ed (2008).

Recommended Textbooks:

J Burchell *Principles of Criminal Law* 3rd ed (2005).

J Burchell and J Milton *Cases and Materials on Criminal Law* 3rd ed (2007).

EM Burchell and PMA Hunt, *South African Criminal Law and Procedure, Vol I: General Principles of Criminal Law*, 3rd ed (1997).

JRL Milton, *South African Criminal Law and Procedure, Vol II: Common Law Crimes*, 3rd ed (1996).

Other texts may be referred to during the course. Students will also be referred to Journal articles on aspects of the course content. Students are encouraged to utilise all the available library resources, and to familiarise themselves with the relevant Criminal Law texts by browsing through the shelves in the library.

8. STUDENT ASSESSMENT

INTENDED SPECIFIC OUTCOMES: Upon successful completion of the course, students should be able to:	ASSESSMENT CRITERIA: Students must provide evidence that they are able to:	ASSESSMENT TASKS:
1. Identify and define the requirements of different common-law and statutory crimes	1.1 Distinguish common-law crimes from statutory crimes. 1.2 Clearly identify and define common-law or statutory crimes, with reasons. 1.3 Critically explain the elements of the crime in question. 1.4 Distinguish between similar crimes, with reasons.	Formative Assessment: <ul style="list-style-type: none"> • Class discussions: responding to questions posed by the lecturer, based upon readings &/or own opinion. Summative Assessment: <ul style="list-style-type: none"> • Written test: theory-based questions, <u>and</u> factual problem requiring solution. • Written assignment: analytical case note <u>or</u> factual problem requiring solution.

		<ul style="list-style-type: none"> Final examination: theory-based questions <u>and/or</u> analytical case note <u>and/or</u> factual problem requiring solution.
2. Apply the knowledge and skills gained during the course to solve practical problems.	<p>2.1 Synthesise and integrate the knowledge and skills gained in order to propose practical solutions to problems associated with specific crimes, and to be able to advise accordingly.</p> <p>2.2 Critically evaluate which crime/s an accused would be charged with in given circumstances, and determine how charges would be structured.</p>	<p>Formative Assessment:</p> <ul style="list-style-type: none"> Class discussions: responding to questions posed by the lecturer, based upon readings &/or own opinion. <p>Summative Assessment:</p> <ul style="list-style-type: none"> Written test: factual problem requiring solution. Written assignment: factual problem requiring solution <u>and/or</u> drafting of charge sheet. Final examination: factual problem requiring solution.
3. Evaluate the adequacy of South African specific crimes and suggest law reform where necessary; alternatively, evaluate reforms in existing laws.	<p>3.1 Evaluate the adequacy of specific crimes, critically explain the shortfalls and make informed suggestions for law reform, based on relevant law / legal commentary.</p> <p>3.2 Where law reform has occurred, evaluate these, and critically discuss the implications thereof.</p>	<p>Formative Assessment:</p> <ul style="list-style-type: none"> Class discussions: sourcing cases <u>&/or</u> legislation before lectures and preparing to discuss the issues during the lecture. <p>Summative Assessment:</p> <ul style="list-style-type: none"> Written test and final examination: analysis of case law and/or legislation in light of legal commentary and/or own opinion. Written assignment: theory-based questions <u>and/or</u> factual problem requiring solution <u>with</u> analysis of case law / legislation.

<p>4. Understand, analyse and explain the influence of Constitutional principles on specific crimes, and how these have been harmonised with common-law principles.</p>	<p>4.1 Identify and explain the implications of the key constitutional provisions that affect specific crimes.</p> <p>4.2 Analyse the constitutional compatibility of various common-law and statutory crimes.</p>	<p>Formative Assessment:</p> <ul style="list-style-type: none"> • Class discussions: responding to questions posed by the lecturer, based upon readings &/or own opinion. <p>Summative Assessment:</p> <ul style="list-style-type: none"> • Written test, written assignment and final examination: theory-based questions <u>and/or</u> factual problem requiring solution and/or analysis of case law / legislation.
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Assessment Breakdown:

The final mark for the course is comprised of the following components:

Class Work: 30 marks

Examination: 70 marks

Total: 100 marks

Assignment

There is one major assignment for this course. The assignment is **compulsory** and comprises half of the class mark (15%). Late assignments will only be accepted subject to compliance with Leave of Absence requirements.

Test

There is one test for this course, which will make up the other half of the class mark (15%). The test will contain questions equivalent to those which will be found in the November examination. The test is **compulsory** and will cover everything we have done in the course up until that date.

Examination

The November examination for this course will comprise a two-hour paper counting 70% towards the final mark. The examination is compulsory.

9. EVALUATION

The course is evaluated on a three-year cycle. Students evaluate the course by filling in a questionnaire containing specific questions about the course. The responses are processed by the Centre of Higher Education Research, Teaching and Learning, which compiles a report summarising the strengths and weaknesses of the course. The feedback and issues arising from the evaluation are conveyed to the lecturer, who will

then take appropriate action. This is a more formal type of evaluation, administered by an outside body and covering a broader range of issues.

In addition or alternatively, a further evaluation may also be administered by the lecturer to be used for further improvement of the course or of teaching. Results will be reported back to students as soon as possible, along with the actions the lecturer wishes to take to address any problems. This is a more informal type of evaluation, allowing for more specific questions, and more specific feedback from students.

COURSE CONTENT & SELECTED READING LIST

1 INTRODUCTION

- 1.1 Classification of Crimes
- 1.2 Origins of Common Law Crimes
- 1.3 Codification of Common Law Crimes

2 SELECTED COMMON LAW CRIMES

2.1 CRIMES AGAINST THE STATE

General Reading: Snyman: 309-323.
 Burchell: Chapters 72; 80-82.

2.1.1 Treason

- *S v Banda* 1990 (3) SA 466 (B)
- *S v Mayekiso* 1988 (4) SA 738 (A)

2.1.2 Seditio

- *S v Mayekiso* 1988 (4) SA 738 (A)

2.1.3 Public Violence

- *S v Le Roux* 2010 (2) SACR 11 (SCA)

2.2 CRIMES AGAINST THE ADMINISTRATION OF JUSTICE

General Reading: Snyman: 325-349.
 Burchell: Chapters 83-86.
 Bill of Rights Compendium at 2A -33.

2.2.1 Defeating or Obstructing the Course of Justice

- *S v Binta* 1993 (2) SACR 553 (C)
- *S v Bazzard* 1992 (1) SACR 302 (NC)
- *S v Cassimjee* 1989 (3) SA 729 (N)
- *S v Pakane & Others* 2008 (1) SACR 518 (SCA)
- CR Snyman “Laying a false criminal charge.” (1978) 95 *SALJ* 454.
- B Clarke “Attempting to defeat the ends of justice.” (1989) 106 *SALJ* 33.
- GE Devenish “Defeating the ends of justice.” (1979) 96 *SALJ* 30.

2.2.2 Perjury

2.2.3 Contempt of Court

- *Midi Television (Pty) Ltd v Director of Public Prosecutions (WC)* 2007 (9) BCLR 958 (SCA)

- *S v Mamabolo* 2001 (1) SACR 686 (CC)
 - *S v Moila* 2005 (2) SACR 517 (T) / 2006 (1) SA 330 (T)
 - *Uncedo Taxi Service Association v Maninjwa* 1998 (2) SACR 166 (E)
 - *Fakie NO CCII Systems (Pty) Ltd* 2006 (4) SA 326 (SCA)
 - *S v Moshoeu* 2007 (1) SACR 38 (T)
 - *H v M* 2009 (1) SA 329 (W)
- D Pretorius “Freedom of expression and the broadcasting of public enquiries and judicial proceedings.” (2006) 123 *SALJ* 40.

2.3 CRIMES AGAINST THE PERSON: LIFE AND BODILY INJURY

General Reading: Snyman: 447-453; 455-463
 Burchell: Chapters 48-50.

2.3.1 Murder

2.3.2 Culpable Homicide

Cases:

- *S v Mshumpa & Another* 2008 (1) SACR 126 (E)
- *Van Aardt v S* [2009] 2 All SA 184 (SCA)
- *S v Raath* 2009 (2) SACR 46 (C)
- *S v Van Heerden* 2010 (1) SACR 529 (ECP)
- *S v Crossberg* 2008 (2) SACR 317 (SCA)
- *S v Jara* 2003 (2) SACR 216 (Tk)
- *S v Naidoo* 2003 (1) SACR 347 (SCA)
- *S v Mavuso* 1989 (4) SA 800 (T)
- *S v Mampa* 1985 (4) SA 633 (C)

2.3.3 Common Assault

2.3.4 Assault with Intent to do Grievous Bodily Harm (Assault GBH)

Cases:

- *S v Marx* 1962 (1) SA 848 (N)
- *S v B* 1994 (2) SACR 237 (E)
- *S v Miya* 1966 (4) SA 274 (N)
- *S v Reabow* 2007 (2) SACR 292 (E)
- *S v R* 1998 (1) SACR 166 (W)
- *S v Mbelu* 1966 (1) PH H 176 (N)
- *S v Mdau* 2001 (1) SACR 625 (W) at 626i-j
- *S v Smith* 2003 (2) SACR 135 (SCA)

2.4 CRIMES AGAINST PROPERTY

- 2.4.1 Theft
- 2.4.2 Robbery
- 2.4.3 Housebreaking
- 2.4.4 Fraud

Readings:

General Reading: Snyman: 483-511; 517-521; 531-540; 549-555.
Burchell: Chapters 61-64, 66, 70.

Articles

- SV Hocter “The Singular Statutory Housebreaking Crime.” (2008) 29 (1) *Obiter* 93.
- SV Hocter “The Underlying Rationale of the Crime of House-breaking.” (1998) 19 (1) *Obiter* 96.
- SV Hocter “The ‘Premises’ Requirement in the Crime of House-breaking.” (1998) 19 (1) *Obiter* 127.
- SV Hocter “The ‘Breaking’ Requirement in the Crime of House-breaking.” (1998) 19 (2) *Obiter* 201.
- S Nanoo “In defence of housebreaking with intent to commit a crime unknown.” (1997) 10 *SACJ* 254.

Cases

Theft:

- *S v Boesak* 2000 (1) SACR 633 (SCA)
- *S v Mekula* 2012 (2) SACR 521 (ECG)
- *S v Mintoor* 1996 (1) SACR 514 (C)
- *S v Mdaba* 2002 (1) SACR 556 (E)
- *S v Mostert and Another* 2010 (1) SACR 223 (SCA)
- *S v M* 1982 (1) SA 309 (O)
- *S v Graham* 1975 (3) SA 569 (A)
- *S v Visagie* 1991 (1) SA 177 (A)
- *S v Cassiem* 2001 (1) SACR 489 (SCA)
- *Riba v S* [2010] 1 All SA 331 (SCA)

Robbery:

- *S v Mohamed* 1999 (1) SACR 287 (O)
- *S v Mati* 2002 (1) SACR 323 (C)
- *S v Mogala* 1978 (2) SA 412 (A)
- *S v Sithole* 1981 (1) SA 1186 (N)
- *S v Mofokeng* 1982 (4) SA 147 (T)
- *S v Witbooi* 1984 (1) SA 242 (C)
- *S v Salmans* 2006 (1) SACR 333 (C)

Housebreaking:

- *S v Mososa* 1931 CPD 348
- *S v Small* 2005 (2) SACR 300 (C)
- *S v Mavela* 2008 (2) SACR 608 (Ck)
- *S v Temmers* 1994 (1) SACR 357 (C)
- *S v Maseko* 2004 (1) SACR 22 (T)
- *S v Slabb* 2007 (1) SACR 77 (C)

Fraud:

- *S v Friedman (1)* 1996 (1) SACR 181 (W)
- *S v Mostert and Another* 2010 (1) SACR 223 (SCA)
- *S v Gardener and another* 2011 (1) SACR 570 (SCA).

SELECTED STATUTORY OFFENCES**3.1 CRIMES AGAINST THE PERSON: SEXUAL OFFENCES**

- 3.1.1 Rape: Common Law and Statutory Reforms.
- 3.1.2 Indecent Assault and Statutory Reforms.
- 3.1.3 Other Sexual Offences.

General Reading: Snyman: 353-381; 392-398.

- Criminal Law (Sexual Offences & Related Matters) Amendment Act 32 of 2007.
- Criminal Law Amendment Act 105 of 1997, as amended by Criminal Law (Sentencing) Amendment Act 38 of 2007.

Articles:

- T. Illsey “The defence of mistaken belief in consent” (2008) 1 *SACJ* 63.
- H Combrinck “Well worth the wait? The Sexual Offences Bill in 2006.” (2006) 17 *SA Crime Quarterly* 1.
- C Hall “Rape: the Politics of Definition.” (1988) 105 *SALJ* 67.

Cases:

- *B v S* [2011] JOL 27188 (SCA)
- *S v Acting Regional Magistrate, Boksburg* 2011 (1) SACR 256 (GSJ)
- *DPP v Prins (Minister of Justice and Constitutional Development & two amici curiae intervening)* (369/12) [2012] 106 ZASCA (15 June 2012)
- *Masiya v Director of Public Prosecutions (Pretoria) & Others* 2007 (8) BCLR 827 (CC)
- *R v Siggelaar* 1950 (1) PH H61 (A) at 110-111
- *S v Volschenk* 1968 (2) PH H283(D)

- *S v S* 1971 (2) 591 (A)
- *R v C* 1952 (4) SA 117 (O)
- *S v Williams* [1923] 1 KB 340

3.2 CRIMES AGAINST PUBLIC WELFARE

- 3.2.1 Drug Offences : Drugs & Drug Trafficking Act 140 of 1992
- 3.2.2 Road Traffic Offences: National Road Traffic Act 93 of 1996 read with: National Road Traffic Amendment Act 64 of 2008
- 3.2.3 Organised Crime: The Prevention of Organised Crime Act 121 of 1998.

General Reading: Snyman: 428-434; 441-443.
 Burchell: Chapters 76-79; 88.

Articles:

- N Boister “Drugs and the Law: Prohibition versus legalisation.” (1999) 12 *SACJ* 1.
- S Lötter “The decriminalisation of cannabis: Hallucination or reality.” (1999) 12 (2) *SACJ* 184.
- RT Paschke “Personal use and possession of dagga: a matter of privacy or prohibition.” (1995) 8 *SACJ* 109.
- Van der Schyff “Cannabis, Religious Observance and the South African Bill of Rights.” (2003) 1 *TSAR* 122.
- L Jordaan “Confiscation of the proceeds of crime and the fair trial rights of an accused person.” (2002) 15 *SACJ* 41.
- MG Cowling “Some developments in the Prevention of Organised Crime Act: Comment on *NDPP v Carolus*.” (1999) 12 *SACJ* 379.

Cases:

Drug Offences:

- *S v Mello* 1999 (2) *SACR* 255 (CC)
- *Moloi v Min for Justice & Constitutional Development* 2010 (2) *SACR* 78
- *S v Smith* 1965 (4) SA 166 (C)
- *S v Quinta* 1984 (3) SA 334 (C) at 338
- *Prince v President, Cape Law Society, and Others* 2002 SA 794 (CC)
- *S v Solomon* 1986 (3) SA 705 (A)
- *S v Tshali* 2007 (2) *SACR* 23 (C)
- *Muholi v State* [2006] SCA 44 (RSA)

Traffic Offences:

- *S v Van Rooyen* 1968 (1) SA 641 (T) at 643-644
- *S v Kriel* 1968 (3) SA 451 (T) 456-457
- *S v Van Zyl* 1969 (1) SA 553 (A)
- *DPP, Eastern Cape v Klue* 2003 (1) SACR 389 (E)
- *S v Bagadi* 2008 (2) SACR 400 (T)
- *S v Tentelil* 2003 (1) SACR 48 (C)
- *Price v Mutual & Federal Insurance Co Ltd* 2007 (4) SA 501 (SE)
- *S v Zerky* 2010 (1) SACR 460 (KZP)

Organised Crime:

- *Eyssen v S* [2009] 1 All SA 32 (SCA)
- *S v De Vries* 2009 (1) SACR 613 (C)
- *S v Dos Santos* 2010 (2) SACR 382 (SCA)

NB. The above will be supplemented as the course progresses having regard to current developments.

4 CONCLUSION

- 4.1 Summary of the Course
- 4.2 Exams.