STUDENTS ARE REQUESTED, IN THEIR OWN INTERESTS TO WRITE LEGIBLY.

PLEASE NOTE:
This paper consists of (5) pages. Please see that you have all the pages

INSTRUCTIONS:
1. Please note that all sections must be answered. You must answer all questions in Section A, one out of two questions in Section B and two out of three questions in Section C.
2. Answer Section A and B together and Section C in a separate book.
3. Please note the marks allocated for each question and apportion your time accordingly.
4. Please note that you must refer to any relevant case law in answering questions.
SECTION A – (40 MARKS)

PLEASE NOTE THAT ALL QUESTIONS IN THIS SECTION MUST BE ANSWERED

Question One (20 marks)
Thabo Xholisa is a 19 year old, first year BCom student at the University of Kwazulu-Natal. Thabo’s father died of AIDS when Thabo was 14 years old and since then he has lived with his mother and her alcoholic boyfriend, Zola. Zola abuses Thabo and his mother both physically and verbally. Zola is also unemployed and he is financially dependant on Thabo’s mother who is employed as a domestic worker. In order to pay for his University tuition, Thabo has several part time jobs. This leaves Thabo exhausted and stressed such that he is often unable to make it to lectures on time. To make matters worse, Thabo’s girlfriend, Lindiwe, has recently broken up with him. All of these problems have had a profound effect on Thabo’s studies and he is on the verge of failing his Accounting module.

Determined not to give up, Thabo decides to attend all of his Accounting lectures in the morning. One day, during an early morning Accounting lecture, a certain person (Bongani) opens the back door of the lecture venue, starts spraying pepper spray on students at the back of the lecture venue and then tries to run away. Thabo, who was sitting at the back of the lecture venue, starts chasing after Bongani. Thabo eventually catches him but Bongani starts taunting Thabo, telling him that he has AIDS and Bongani then spits in Thabo’s face. This behaviour infuriates Thabo and he then grabs a pocket knife and stabs Bongani in his neck three times thereby killing him instantly.

Thabo is charged with the murder of Bongani and he approaches you for legal advice. You are required to advise Thabo on whether he can successfully raise the defence of non-pathological incapacity based on provocation and emotional stress.

NB: In answering this question, you must, at the outset, explain what is meant by ‘actus reus’ and ‘mens rea’ and you must set out all of the elements of criminal liability.

Question Two (20 marks)
Eddie Van Schalkwyk is a passionate Springbok rugby supporter. Eddie has high hopes that the Springboks are going to win the Tri-Nations and he buys tickets to watch the Springboks playing against the All Blacks (New Zealand). Eddie also takes a bet with one of his work colleagues that the Springboks are going to win. Eddie is over the moon when the Springboks are leading 21-19 with only 2 minutes left on the clock. However, his mood quickly changes when New Zealand flyhalf, Dan Carter, kicks a drop goal thereby ensuring victory for the All Blacks and denying the Springboks the Tri-Nations crown. After the match, Eddie decides to drown his sorrows at a nearby pub. Eddie consumes a large quantity of alcohol and becomes so intoxicated that he can no longer stand. Eddie overhears another rugby supporter (X) talking about how useless the Springboks are, and he takes an empty beer bottle and hits X hard over the head with the bottle two times thereby causing the bottle to break. He then takes the broken bottle and stabs X two times. Eddie is charged with the murder of X. In his defence,
**Question 2... Continued**

Eddie claims that he was so drunk at the relevant time that he did not know what he was doing and that he was unable to exercise any control over his actions. Assess Eddie's criminal liability on the murder charge and also consider whether he could incur any liability in terms of the Criminal Law Amendment Act 1 of 1988.

**SECTION B**  (20 MARKS)

PLEASE ANSWER EITHER QUESTION ONE OR QUESTION TWO

**Question One** (20 marks) Answer both Question 1.1 and Question 1.2

1.1 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 1 000 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 2010, 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 more 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 Johan whether it is permissible to kill in defence of property. If so, advise Johan whether he exceeded the bounds of private defence in this instance. (15)

1.2 Agnes Matabane is employed as a messenger at an Attorneys firm called Johnson and Tshabalala. One day, Agnes goes to Mr Tshabalala’s office in order to deliver some documents to him. Mr Tshabalala is not in his office and Agnes decides to leave the documents on his desk. Agnes sees Mr Tshabalala’s personal cheque book on the desk. She quickly takes one of the blank cheques and tries to hide it under some other documents. However, Mr Tshabalala enters the office suddenly and Agnes, in a state of panic, accidentally drops the blank cheque on the floor. Agnes is charged with theft and she requires advice on whether the maxim *de minimus non curat lex* would apply in this instance as she only stole a ‘blank piece of paper’. Advise her. (5)
Question Two (20 marks)

‘Depending on the circumstances, necessity can be a ground of justification (that excludes the unlawfulness of the accused’s act) or a ground that excludes fault’

Discuss the above statement fully. In the course of your answer you must give an example of when necessity may operate as a justification ground and you must thereafter explain whether necessity can be said to operate as a justification ground when the accused kills an innocent third party while acting under compulsion. Your answer must include a discussion of the cases of *S v Bailey* 1982 (3) SA 772 (A); *S v Goliath* 1972 (3) SA 1 (A); and *S v Mandela* (2001) 1 SACR 156 (C).

SECTION C – (40 marks)

Please answer ANY OF THE TWO of the following THREE questions

**Question One (20 marks)**

Andrew stabs his girlfriend Rachel in the chest with a knife after they argue about his unfaithfulness. Although Rachel is seriously injured, she is alive when she is admitted to hospital. Unfortunately it is a Saturday evening, the trauma unit at the hospital is very short-staffed, and the doctor on duty misdiagnoses the seriousness of the wound. Rachel subsequently dies. When charged with murder, Andrew argues that the cause of death was not the stab wound, but the negligent treatment Rachel received at the hospital. Assess Andrew’s liability for murder.

**Question Two (20 marks)**

Donald decides to poison Daisy.

(i) At what point would he incur criminal liability? (5)

(ii) What if, after he placed poison in her drink, he decided not to kill her after all? (5)

(iii) What if Donald purchased a small bag of sugar which had been inadvertently placed on the shelf of poisonous substances, and he tried to poison Daisy using the sugar, believing that it was poison which would kill her? (5)
Question 2 of Section B continued…

(iv) What if Donald simply wanted to cause Daisy great discomfort and pain, and so only added a small quantity of the poison to her drink, whilst foreseeing as a remote possibility that even a small quantity of the poison may cause her death? (5)

OR

Question Three (20 marks)

James is having an affair with Bob’s wife Phillida. As Phillida will have to share a considerable portion of the wealth she has accumulated during the marriage with Bob if they divorce, she is reluctant to do so. James suggests that it may be better if Bob ‘has an accident’. Phillida agrees that Bob should die. James’s plan is to shoot Bob dead. He follows Bob and his family (Phillida, her children Jo and Flo, as well as the family pet, a large dog called Yo) to a picnic spot near the edge of a cliff, overlooking the sea. James and Phillida have agreed that James should shoot Bob while he is walking on the edge of the cliff, admiring the view over the sea. In this way his body would fall into the sea, and given that this stretch of water is well-known for shark activity, all traces of the manner of Bob’s death would be disguised if the remains of his body were ever found.

James hides in a clump of bushes near the edge of the cliff, rifle at the ready, and waits for the family to walk up to the cliff. After Bob has had a few beers, Phillida persuades Bob to take a stroll up to the edge of the cliff, along with the rest of the family. As they come up the path, James, in moving into position to shoot, drops his glasses, and stands on them. James is extremely short-sighted, and now can see no more than a blur. He nevertheless decides to go through with his plan. He aims at the blurry shape that he thinks is Bob, and pulls the trigger. In fact, the shape is Yo the dog, who is killed instantly. There is panic amongst the family group. James aims again at the shape he thinks is Bob, and fires again. Although he hits his target, this time he is actually aiming at Jo, who is shot dead. James senses that things are not going well, and so he picks up his glasses and puts them on. Though he can see a little more clearly, despite the cracks in the glass, he then fires once more at Bob, who is trying to run away, he misses, and hits Flo, who is running next to Bob, killing her. Before James can fire again, Bob, in a final desperate attempt to get away, tries to dive into some long grass. Trying to save his wife’s life, he pulls Phillida down with him. Unfortunately Bob does not realise that the grass is on the edge of the cliff, and he and Phillida slip and fall over the cliff, to their deaths.

Unknown to James, all the events have been witnessed by a young couple who were hiding in the clump of bushes, enjoying a romantic interlude. Assess James’s criminal liability for the deaths of Yo, Jo, Flo, Phillida and Bob.