

PAPER B MEMO

QUESTION 1: 32 MARKS

1.1 Why did the prosecutor institute criminal prosecution? (3)

- 1 The 5 elements can be proven
- 1 The accused can be linked to the crime
- 1 There is a reasonable possibility of success

1.2 The accused tendered the defence of private defence which was rejected by the presiding officer.

1.2.1 Indicate was the private defence rejected as a ground of justification. (1)

- 1 No proportionate balance between attack and defence.

1.2.2 You also indicate that his conduct was against the legal convictions of society. Briefly explain why you indicated the latter. (2)

- 1 To determine unlawfulness.

- 1 the court applied the reasonable person test and ask: was the conduct reasonable?

To determine if reasonable: the court looks at the legal convictions of society which is based on the Constitution.

1.3 Assume in the alternative, the accused tendered the the same defence as was raised in *S v Liebenberg Case* Number: CC 90/2014. Why did you reject this defence? (2)

- 1 The accused had criminal capacity.
- 1 It was not non-pathological criminal incapacity which resulted in lack of criminal incapacity.
(maybe no premeditation). e

1.4 Discuss why you found the accused guilty with culpable homicide with reference to the defence that may exclude liability. Refer to ONE case that it relevant here. (10)

- (1) Dolus

- (1) Defence that excludes dolus: PUTATIVE PRIVATE DEFENCE

- (1) It is a subjective test – look at the mind of the accused and the accused believed that he was under attack.

- (1) for case name Case: *S v Ntuli*

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**Thomas J. Richards, Marjorie Diggs-
Wickes**

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