

## Model Exam with Model Answers

### CASE ONE

### 40 POINTS

Addis and Diana had been married for 10 years. At times the marriage was stormy, mostly because of the fact that both were insanely jealous and suspicious. Toward the end of 2005, however, things went well for them; the marriage was calm for a couple of months. They decided to celebrate with an evening out for New Year's Eve.

Unfortunately, Addis did not work on the last day of the year. He joined some friends early in the morning and started drinking. He got home later than scheduled and this made Diana furious. They got ready to go to the New Year's Eve Party, but argued furiously for more than an hour. By the time they left for the party both were fuming mad. Addis had continued to drink, which did not help the matter.

At the party, Addis and Diana ran into some people with whom Diana worked. At some point Diana was asked to dance by a man from work and she consented. Addis said nothing, but it was apparent to Diana that he was burning. She danced with the man three times before Addis said anything about it. Then he called her a "slut" and threatened to knock her teeth out. He continued to drink. Diana continued to dance with her friend from work.

Addis left the hall where the party was being held and went to his car. He kept a gun in the glove compartment. He got the gun, returned to the dance floor, and found Diana on the dance floor still continuing her dance with her friend dancing standing very close to him. Addis ran across the floor shouting and shooting. He emptied the gun; He put three shots in his wife and three in her friend. Both died instantly.

There was sufficient evidence to prove that all the above said facts. Later, in his own statement to the police Addis said he loved his wife, intended her no harm, and was so drunk on the occasion in question that he could not remember anything that happened.

1. Suppose that you are the Public Prosecutor in this case. Prepare a prosecution case against Addisu for causing the death of his wife and her friend. Explain the essential ingredients of the crime you are charging the accused with and support your case with sufficient reasoning.  
**20 Points**

**Prosecution Case:**

1. The Crime Committed: It is against the life of a person, i.e. 'Homicide' Essential elements and causation of crime: Arts. 538, 58, 23 and 24 have to be applied to establish that it is an intentional homicide and the causation.

**Intention** to cause death is sufficiently manifested by the fact that he purposefully went to his car to pick up his gun and fired at both of them after returning back. There is no doubt about the causation since it was committed in a party in the presence of many eyewitnesses.

2. Specific type of homicide: Ordinary homicide under Art. 540

Addisu can be charged under Art 540 of the Criminal Code, 2005 for committing ordinary homicide by causing death of both his wife Diana and her friend.

**Reasons for the Charge under Art 540:**

1. **The killings in the case are not 'aggravated homicides'** because, though the conduct of the accused indicates the presence of premeditation it is not of such a serious quality as to bring the case under aggravated homicide. A husband killing a wife and her male colleague under enraged condition cannot describe a dangerous or an exceptionally cruel personality as required by Art. 539. ***The quality of premeditation that is required under the Art. 539 is that it should be of such a mean nature that it suggests that the criminal is exceptionally cruel, abominable or dangerous person. Therefore, every case of premeditated killing may not necessarily fall under this article.*** A premeditation of lesser depravity may take the case to be treated under Art. 540 as an ordinary homicide.
2. **The killings are not an extenuated homicides** too for the following reasons:
  - a. Though there is provocation it does not amount to 'gross' provocation as required by Art 541.

- b. Provocation to be a valid defence it should come from the deceased person. Here in this case Diana is the reason for provocation but that was not such a serious one to describe it as a 'gross provocation'. So for the act resulting in the death of Diana provocation as required by Art. 541 cannot be established thereby disqualifying Addis from the benefits of extenuation.
- c. Diana's friend is ignorant of the disturbances between the wife and the husband. He did not do any thing in particular to provoke Addisu. Therefore, for causing death of Diana's friend Addisu can never claim the defence of provocation.

As the killings in the above case do not fit into the definitions of neither aggravated homicide nor extenuated homicide the right provision under which he should be prosecuted is 'ordinary homicide under Art. 540.

### **3. Intoxication cannot be a defence: Art. 50/1**

The accused got intoxicated by his own fault and the act he committed was not a simple disturbance that can get the benefit defence of intoxication.

**2. If you were the defense counsel what defense would you raise for the defendant. State the principles, in detail, governing such defense/s under the Criminal Code. 20 Points.**

#### **Defence Case:**

If I were the defence counsel for the defendant in this case I would raise the following contentions:

#### **1. Intoxication: Art. 50/3 read with Art. 491**

Though the defendant got intoxicated voluntarily, he neither contemplated nor intended that he would do any such act subsequent to his drinking. Therefore, he should be rightly treated under Art 50/3 read with Art 491. Following this, his sentence by no means should go beyond simple imprisonment not exceeding 1 year.

#### **2. Art50/2 read with Art 543/1:**

If the Court is not convinced that his case does not fit into Art 50/3, it should at least be treated under Art 50/2 and is entitled to the benefit of his crime to be a negligent one. Under Art. 543/1 the accused may be punished with no more than 3 years simple imprisonment.

3. **Provocation Art 541/b:** The conduct of Diana and her friend were sufficiently provocative to a husband to react in such a way. There was no sufficient time to cool down there either. The provocation was from the deceased wife herself; therefore, provocation can be claimed as a defence. In this case his punishment should not exceed 5 years simple imprisonment. I humbly request the honorable Court to be considerate towards the accused having regard to the serious mental and emotional disturbances he had gone through and that his state of being intoxicated had made his state of mind even more incapable of regulating his conduct and grant him even a lesser sentence to him.

In any case the defendant's case does not fall under Art 540. Therefore, I humbly submit to the honorable Court to consider the grounds for the defence so that justice is done my client.

## CASE TWO

## 10 POINTS

Alemayehu sold and transferred his estate to Zelalam. Alemayehu afterwards, executed a transfer of the same estate to Bayisa, dated six months earlier than the date of transfer of the estate to Zelalam, intending it to be believed that he transferred the estate to Bayisa before he transferred it to Zelalam. Did Alemayehu commit any crime? If so, establish the crime against him as per the essential elements of the crime under the relevant provisions of the Criminal Code.

**Key Answer:** Yes he has committed a crime of 'Material Forgery' punishable under Art. 375 of the Special Part. As this could cause serious material damage to the victim this case should be treated with sufficient seriousness and his sentence should be sufficiently severe too. The punishment for this crime is a minimum sentence of 3 months simple imprisonment and a maximum of 10 years of rigorous imprisonment.

## III. PLEASE, GIVE EXPLANATORY ANSWERS FOR THE FOLLOWING: 10 X 4=40 POINTS

1. "Every accused is presumed to be responsible". Discuss. What are the differences between Art. 48 and Art 49? 10 POINTS

**Key Answer:** Generally, when a person is accused of a crime his/her responsibility is presumed by the Court. The prosecution need not prove it. This means that of the important things necessary to make a person liable for punishment within the meaning of Art.49/1 are established the in the following way:

1. The proof that the act was done by the accused---It is the burden of the prosecutor.

1. The fact that the accused is responsible for his acts—This is presumed by the Court.

However, the question of irresponsibility arises in any of the following two situations:

- When the accused invokes it, particularly, during the preliminary objections as per Art. 130/2/g of the Criminal Procedure Code, on the first day of the criminal Proceeding.
- When the Court is doubtful about the mental condition of the accused due to partial or complete deprivation of mental faculties. The Court may entertain such a doubt at any stage of the trial by the conduct of the accused on the trial.

Once the ‘question’ arises it becomes necessary to decide the facts in the light of Arts. 48 and 49. Then it becomes the burden of the defence to prove the accused is irresponsible beyond reasonable doubt. Then the burden of the prosecution is only to raise a reasonable doubt in the mind of the Court that the accused is responsible and deserves punishment.

➤ **Differences between Art. 48 and Art 49:**

- Regarding the causes of insanity the articles supplement each other.
- Art. 48 deals with absolute irresponsibility where as Art. 49 deals with limited or partial irresponsibility due to disease of mind.
- Absolute irresponsibility under Art.48 entitles the accused to complete immunity from the punishment, while under Art. 49 the accused is partially protected from punishment since he/she suffers from only partial incapacity to understand the nature and consequences of his/her conduct.

- Under Art. 48 the actions taken are, measures of treatment or measures for protection as provided Arts. 129-131. In case of Art 49 the accused is given free mitigation of punishment in accordance with Art. 180 as well as any other measures for treatment or protection shall be ordered.

2. The increasing understanding of the social and psychological causes of crime has led to a growing emphasis on *reformation* rather than *deterrence* in the older sense, as the best way to protect both the individual criminal himself, and society from the incidence of crime”. Analyze this statement critically. **10**

### POINTS

**Key Answer:** By reformation of the criminal is meant his moral regeneration, and developing the sense of honesty. A person, who commits a crime and suffers punishment for that, comes back to the society and lives in along with his other fellow beings. The advocates of reformatory theory aim at the rehabilitation of the criminal in the society. This theory admits only such types of punishments which are educative and discipline to the criminal, not those which inflict pain on him. Therefore, punishment must aim at making a man worthy of living in the society. However, purely reformatory punishment has the disadvantage of dilutes the pain of the penalty. And may not deter the criminal from repeating similar crime on the other hand it may even encourage the criminal to repeat his criminal behaviour.

The purpose of the punishment is to deter the criminal from committing crime in future and to set as an example to the prospective criminals. It carries the message that those who violate the law will be punished like wise. The idea is that punishment will curb the criminal activities of the potential criminals. Strongly deterrent punishments may be successful in maintaining the full intimidation value of the penalty. However, it has the disadvantage of restricting the chances of reforming. Too lengthy and too harsh punishments in the name of deterrence may harden the criminal instead of reforming him.

Therefore, punishment should be designed in each and every case by carefully including the deterrent as well s reformatory elements.

3. a. Petty offences are also referred to as 'regulatory offences', 'public welfare offences' etc. What do these different labels signify about the nature of these offences? **5 Points.**

**Key Answer:** The petty offences originated as result of the need to protect the social interest i.e. the interest of the public in general. The necessity of social regulation arose out of the growing complexity of social life. The special regulatory legislations such as examples of such laws may be, The Weights and Measures Proclamation, 1973, The Wild Life Conservation Order, 1970, the Currency Proclamation, 1942 (Proc. No. 31), the Currency Amendment Proclamation of 1947 (Proc. No. 99), road traffic rules etc., The violations of such mandatory provisions are made punishable more in order to give effect such laws than to inflict pain in the name of punishment on the law breaker. Therefore, the above said names signify that these offences are for the purpose of regulation of social conduct in the general interest of the community as opposed to the private interests of a specific victim.

- b. Do all the general principles and rules of the General Part of the Criminal Code apply to the petty offences by virtue of Arts 3 of the Criminal Code and 734 of the Petty Code? State the exceptions, if any. **5 Points.**

**Key Answer:** No, all the general principles and rules of the General Part of the Criminal Code do not apply to the petty offences. The following are some of the important differences:

**Principles of Liability that Differ from the Criminal Code: Art 740:**

- In case of petty offences only completed offences are punishable. The stages of preparation and attempts are not punishable.
- In these cases only principal offender (Art 32) is punishable. Inciters, co-offenders, and accessories after the fact are not punishable. Each offender shall be punished for his own act irrespective of the participation of another. Art 741/3 clearly lays down that the responsibility and liability for petty offences

shall always be individual (Art 41 and 88). There is no collective responsibility under the Petty Code.

- Juridical persons are also not liable for incitement or complicity relating to petty offences. A juridical person is punishable only when its employee violates laws, regulations or directives as a petty offender in accordance with Art 32 of the Criminal Code.

4. a. Define ‘trafficking in women and minors’. Are the definitions under the Ethiopian Criminal Code in conformity with those given under the international instruments? **5 Points.**

**Key Answer:** The Ethiopian Criminal Code deals with the crime of trafficking under two different heads basing on the purpose of this criminal conduct. They are:

1. Trafficking for the purpose of forced labor, Arts. 597-600
2. Trafficking for the purposes of prostitution, Arts. 634-638

- b. Does the consent of victim neutralize the crime of trafficking? Is the pecuniary gain of the criminal an essential element of the crime of trafficking? **5 Points.**

**Key Answer:** No, the consent of a victim is irrelevant. These crimes are punishable even where there is consent of the victim or where there is no pecuniary gain to the criminal. Art. 597 does not mention ‘pecuniary gain’ to the criminal as an essential element. Under Art. 635 ‘pecuniary gain’ is one of the two alternative purposes of the crime, the other being to ‘gratify another’.

## **Annex II. Key to Solve a Case Problem:**

While solving a case problem the students are required to systematically deal with the facts given to them keeping certain key points in their mind in order to achieve these beneficial results:

1. To have clarity in presentation of their case, and

2. To avoid mixing up of prosecution and defense cases.

Students have this common problem of mixing up of prosecution case with that of defence. They should remember that while preparing a prosecution case they should stick to that side and challenge the defence with their contentions. Switching to defence points in between reflects their uncertainty and makes their case weak. The same is true while preparing a defence case; the student should completely explore his chances of defending his case by identifying different grounds to establish the innocence of the accused in a right case or at least try to limit his liability in a case where the defendant's involvement is obvious.

### **I. Being a Prosecutor:**

Before proceeding to prepare your case always read the facts thoroughly, if need be more than once to clear any lingering doubts about the facts in your mind. Note the names of the parties, dates, timings etc. perfectly in a chronological order (according to the order of occurrence). The prosecution case should necessarily consist of three important parts namely, identification of the conduct under specific provision of the Special Part, fixing the criminal liability of the accused and recommendation of the sentence.

#### **1. Identification of the Accused's Conduct:**

The first thing that comes to the mind after reading the facts is the specific kind of crime that the accused has committed. It is the harmful result that directs you to the relevant provision; say for example if the facts include the killing of a human being it will be identified as:

- A crime of homicide Arts 538-543
- The specific type of homicide i.e. whether intentional [Aggravated

(Art. 539), Ordinary(Art. 540) or Extenuated (Art. 541)]or Negligent homicide(Art. 543)

At this stage just identification of the conduct under the relevant provision is sufficient.

#### **2. Fixing the Criminal Liability of the Accused:**

##### **a. Essential elements of the crime identified:**

The material and moral ingredients of the crime in accordance with the identified provision of the Special Part has to be discussed here clearly. For example, if it is a case of aggravated homicide, the facts should be shown to disclose:

- Intention of the accused in terms of Art. 58,
- At least one of the aggravating circumstances in terms of Art.539/1/a or b

**b. Causation of crime:**

If the facts include more than one cause then it has to be shown that the accused's act was the actual and adequate cause for the harmful consequence i.e. 'death of a human being' as in the case of the example we are considering. This is done in accordance with the rules laid down in Art.24 of the General part.

Always try to give sufficient reasoning for your stand. Yes/ No answers are neither useful for scoring maximum marks nor useful for your future practical application. This will help you to write nice reasoned judgments of academic as well as practical importance in future.

**3. Recommendation of the Quantum of Punishment:**

The last and very important part of the prosecution case is that it should contain a well reasoned recommendation for a specific 'quantum' of punishment. Though it is the judge that has the final word in deciding the nature and length of the sentence to be given, it should form part of the prosecution's request. For example, in a case of aggravated homicide you will conclude that the accused be given a sentence of rigorous imprisonment for life unless there are convincing grounds for demanding a death penalty. You have to support your sentence with sufficient reasoning too which will stand as an answer for the demands of the defence for mitigation of punishment.

The sentence recommendation should include aggravating circumstances, previous convictions, if any, and a description of the disposition of the accused.

**II. Being a Defence Counsel:**

Normally the defence case begins with a 'plea of not guilty' where in the accused denies all the charges made against him. The defence may base its case on anyone of the following grounds:

### 1. Absence of Legal Ingredient:

It may be shown that the harm caused is not one of those which are specifically prohibited under the Special Part of the Code. For example, ‘raping’ is a crime under the Ethiopian Criminal Code where as ‘fornication’ is not. Therefore, unless there is a strong proof of an element of ‘force’ the conduct cannot be a crime. The principle of legality prohibits the creation of crimes by analogy (Art.2/3). Or,

### 2. Absence of Material Ingredient:

#### a. By proving the absence of ‘cause’ and ‘effect’ relationship:

In a case where several causes are present like preceding, concurrent or intervening etc. (Art. 24) ‘the act/conduct of the accused’ may be proved to be ‘not the one’ that had brought about the result or that it was the ‘inadequate one’ to have brought about the harmful result in question.

You need to show facts supporting your argument. Or,

#### b. By plea of ‘alibi’:

The Latin expression ‘*alibi*’ literally means ‘elsewhere’. It is a plea by a person accused of an offence that he was ‘elsewhere’...that having regard to the time and place when and where he is alleged to have committed the crime, he could not have been present.

The *plea of alibi* postulates the ‘*physical impossibility of the presence*’ of the accused at the scene of the crime by reason of his presence at another place. It should be shown that the accused was so far away at the relevant time that he could not be presented at the place where the crime was committed.

**Note:** While solving a hypothetical case ‘*alibi*’ can be raised only in the light of the given facts. You cannot modify the facts by imagination. You cannot assume the facts unless you are asked to. Or,

### 3. Absence of Moral Ingredient:

#### a. By Proof of Incapacities: Arts. 48-56

The defence may claim anyone of the incapacities like insanity, intoxication or infancy to prove the incapability of the defendant to form the guilty mind necessary to bring about the harmful consequences in question. Here again you have an obligation to support your contentions in the light of the facts given and the principles governing such a defence by referring to the relevant provisions of law. Or,

**b. By Proof of an Affirmative Defence; Arts. 68-81**

**i) Where justifiable-No punishment at all:**

Where all the essential conditions and the limitations specified under the relevant provision are fulfilled, the defence can claim complete immunity from punishment.

**ii) Where excusable-Mitigation of punishment:**

Where the conduct of the accused does not fulfill the requirements for an absolute justification a free mitigation of punishment pursuant to Art 180 can be claimed.

**III. Being a Judge:**

**a. Analysis of issues on both sides:**

If you are asked to decide the case assuming yourself to be a judge, you have to briefly discuss both prosecution and defence cases and then come to a reasoned decision which can answer the contentions of both the parties.

**b. Determination of punishment:**

This exercise should be done carefully following important principles relating to determination of punishment incorporated in Arts. 87 and 88. Due attention should be given to the aggravating, mitigating as well as combination of both kinds of circumstances (Arts. 82-86, and 179-189). Supporting your sentence with sufficient reasoning is the most important part of your judgment.