**CRIMINAL LAW: SPECIFIC OFFENCES**

**- EXAM PERIOD SS 2020 -**

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**Section A: Multiple-Choice & Short Open Questions**

(10 out of 20 points | 0,5 point per question)

*Justify all your answers with up to three sentences. Mere reference to the respective legal provisions is not considered a fully justified answer.*

**1. Mistakes in treating a particular patient can be attributed to the State leading to absolute preclusion of criminal liability of the involved medical personnel. Provide *an example* to justify your answer.**

a. True

b. False

**2. Consent cannot legitimise all possible violations against human life codified in the Portuguese Penal Code (hereinafter Port. PC).**

a. True

b. False

**3. There is no exception to the rule that the State has an interest in life of its citizens. Justify your answer by evaluating the criminalisation of acts against human life in the Port. PC.**

a. True

b. False

**4. Consent can justify attacks against all possible legal interests.**

a. True

b. False

**5. Provide two examples of unlawful criminal acts associated with the regulatory status quo in the field of *post-mortem* transplantations*.***

**6. Helena is suffering from lung cancer; fact that is already known to her parents. Her doctor, Jorge, who happens to be her friend too, shares this news with their common friend, Miguel, after the latter puts some pressure on him saying that he would like to support Helena if she is suffering from a severe disease (as he was suspecting). Does Jorge’s revelation of Helena’s condition constitute an unlawful act in the light of the Portuguese Criminal Law?**

a. Yes

b. No

**7. Criminal liability rules governing clinical trials are expressly regulated:**

a. in the Law No. 21/2014

b. neither in the Law No. 21/2014 nor in the Port. PC

c. both in the Law No. 21/2014 and in the Port. PC

d. in the Port. PC

**8. There are exceptions to the rule of personal consent.**

a. True

b. False

**9. Negligent arbitrary medical interventions are not punishable under any circumstances.**

a. True

b. False

**10. The Portuguese regulation of trafficking in human organs (Art. 144-B Port. PC) does not present any difference compared to the respective rules of the Council of Europe Convention against trafficking in human organs.**

a. True

b. False

**11. Surrogate mothers are allowed to abort the child they expect without any legal consequences.**

a. True

b. False

**12. Presumed consent is considered equivalent to express consent.**

a. True

b. False

**13. Only the intended parents can be held criminally liable in the light of the Law No. 32/2006.**

a. True

b. False

**14. Maíra is an ophthalmologist; while being out with some friends, she tries to explain to her friends who Mariana, one of her patients, is by using the following description: ‘Mariana wears farsightedness glasses and she is a truly annoying person; she keeps complaining every time that I examine her eyes.’ Does any part of this statement constitute a breach of the medical duty to secrecy that could be considered unlawful in the light of the Portuguese Criminal Law?**

a. Yes

b. No

**15. Acting upon presumed consent means acting in view of the best interests of the patient objectively speaking.**

a. True

b. False

**16. The use of means of alternative medicine is prohibited in the light of the Portuguese Criminal Law.**

a. True

b. False

**17. How is the principle of non-commercialisation, which governs the regulation of transplantations in the Portuguese legal order, reflected in the field of Criminal Law?**

**18. Preclinical studies do not fall in the subject matter of the violations against life as codified in the Port. PC.**

a. True

b. False

**19. Should a medical treatment not violate the bodily integrity or life of a patient, it can be considered a fully lawful act in criminal law terms.**

a. True

b. False

**20. How is the primacy of humans in terms of a fundamental rule, which governs the conduct of clinical trials, reflected in the field of Criminal Law?**

**Section B: Exercise** (10 out of 20 points)

João is a 60-year-old man, who started presenting the first symptoms of the Alzheimer disease five years ago – by experiencing greater memory loss and certain cognitive difficulties leading among other things to troubles of handling money, finding the right way, remembering names of friends who used to be close to him etc. Having identified his difficulties, he decides that his wife, Catarina, will handle health care decisions on his behalf, when he will not be able to do so solely by himself. In this context, he explains to Catarina that he would like to rely on the natural process of the disease and protect himself from additional pain, in order to enjoy the remaining quality moments with his loved ones. He also makes clear to her that he does not want to be kept alive if he needs to be mechanically supported.

At this stage of João’s disease, Catarina is approached by Dr. Silva, who was a family friend and aware of the medical condition of João as well as of the emotional situation of his wife, suggesting to her the participation of João in a research project aiming to design a new medicine to decelerate Alzheimer’s symptoms among middle-age males. Dr. Silva explains to Catarina that the newly designed medicine will have the potential to prolongate the life of João and to make possible for him to even be professionally active – fact that he considers a ‘catching point’, given that João is a well-known Portuguese author. Catarina, who is deeply sad about her husband’s condition and observes that the latter is getting worse day-by-day, provides her consent.

Dr. Silva, who is collaborating with the neurologists of the participants of the clinical trial, communicates with Dr. Ribeiro who consults João, and informs her about the decision of João to be part of this study, while he also mails the consent form that has been filled out duly and signed by Catarina, the health proxy of João. Accordingly, he asks her to modify the drug therapy of João – letting her believe that the latter is already on board and well informed about this. Dr. Ribeiro acts in accordance with these instructions, and adds the medicine X in her patient’s drug therapy. After three months and while receiving this drug, João starts presenting surprisingly high blood pressure (without having any relevant indicators in his medical history) that leads to a severe heart attack. Dr. Ribeiro – being deeply concerned about the evolution of her patient’s condition – calls the medical centre, where the aforementioned trial is being conducted, only to find out that 9 out of 10 participants to this have suffered a heart attack. She also manages to personally contact Dr. Silva who confidentially says to her that she should not be worried, given that participants to similar studies conducted abroad have also suffered a heart attack, but all of them survived it. At the same time, Dr. Silva, who remains confident about this research, gives a TV interview, in which he reveals that some really well-known Portuguese citizens support his scientific efforts – pointing out to João’s persona. It is the day that João finds out that he had been part of this experiment – fact that he is not able to evaluate as the damage occurred in his brain is already extended as one should have expected looking at Alzheimer disease statistics.

One year, after these incidents, João continues being treated by Dr. Ribeiro who still enjoys the trust of his family. At this point, he is in bed most of the day as his body starts to shut down. He suffers severe myoskeletal pains and he is not able to recognise anyone – not even his children. Catarina, who is feeling guilty about what happened during the previously mentioned clinical trial, decides to be honest with Dr. Ribeiro this time explaining what her husband wished and what not. Dr. Ribeiro understands the situation and provides strong painkillers to João knowing that these accelerate the death process of a patient like him, namely a patient in the final stage of the Alzheimer disease.

João dies a month after the beginning of this treatment. Before that, he falls into vegetative comma for a week. In the hospital, where he is transferred, Dr. Rodrigues, the director of this hospital’s pneumonologist clinic, issues a certificate of João’s brain death while the latter is still alive, and he begins with the administrative arrangements of the removal of João’s lungs. When João was 30 years old, he provided a statement expressing his will to be excluded as a potential organ donor in the future. After he got diagnosed with the Alzheimer disease, he did not refer to this possibility again.

João died 24 hours after the certificate has been issued without any intervention and being provided the care required by the responsible medical staff. The doctors of the clinic did not proceed with the removal of his lungs in the meantime, because they did discover that João was not a donor – fact initially hidden by Dr. Rodrigues.

**Evaluate the actions of A) Dr. Silva, B) Dr. Ribeiro and C) Dr. Rodrigues in the light of the Portuguese Criminal Law.**

***Good luck!***