



PROGRAM:	LLB
MODULE:	LAW OF CRIMINAL PROCEDURE
CODE:	SAR0011 / CPR41A0
DATE:	30 JULY 2021 (12:00 – 15:00)
DURATION:	3 HOURS
TOTAL MARKS:	80
EXAMINERS:	DR W N NEL
MODERATOR:	PROF D S DE VILLIERS
NO OF QUESTIONS:	6

INSTRUCTIONS

- This is an **online, open-book examination**, which is **subject to all the normal rules and regulations of the University pertaining to formal assessments**. By answering this paper, you acknowledge and accept the University's rules on plagiarism and dishonest behaviour.
- You may use any printed, typed, photocopied or written material at your disposal to answer the questions, including digital versions of the textbook and study material. **Do not include irrelevant information**, as this detracts from the overall impression of your answer.
- You are **not** allowed to contact or exchange any information with any third party during the examination period. Your answers will be tested for plagiarism in general and in respect of the answers of other students.
- You are **not** allowed to use any internet sources.
- The exam paper will be made available from **12:00 – 15:00** on **30 July 2021**. The **deadline for submissions is strictly 15:05** on **30 July 2021**, at which time system will auto submit your answers. Remember to click the 'save' button occasionally.
- **Please read each question carefully and thoroughly before answering**, and make sure to obey the instructions of each question. Take note of the marks allocated and

approximate time required when answering each question.

- **Structure and layout of longer questions:**
 - Remember to refer to relevant case law and/or legislation in your answer.
 - **Plan your answer so that it is organized, relevant, and concise.**
 - The use of correct legal language and terminology is essential.
 - **Refrain from answering a question as one continuous discussion. Separate sections of your answer into different paragraphs** and use bullet points, headings, and digital highlights, where appropriate.
- **Queries during the exam can be directed to Dr Nel (wnnel@uj.ac.za).**

You *can* do this, good luck!

Question 1**[+/- 20 minutes]****[10]**

Jonathan Nglovu, a prosecutor and colleague of yours, drafted the following charge-sheet:

“It is alleged that in March 2021 and at or near Sunnyside in the district of Pretoria, X (an adult person) intentionally and unlawfully broke down a door in order to enter the victim house and proceeded to steal a television.”

Before lodging this charge-sheet with the clerk of the court, Jonathan Nglovu falls ill, and the case is handed to you as lead prosecutor. You deduce that X’s conduct constitutes multiple offences, including the crime of housebreaking with the intent to commit a crime, housebreaking with intent to steal, theft, malicious injury to property, trespassing, and possibly, the possession of housebreaking implements.

With reference to the relevant legislative provisions, comment on whether the particulars of the offence found in the charge-sheet above, have been sufficiently and clearly formulated.

Question 2**[+/- 20 minutes]****[10]**

Read the following newspaper article and answer the question below:

The Witness

26 April 2021

Five arrested after being found with car and other items of murdered KZN farmer

Five people have been arrested in connection with the murder of Karkloof farmer, Trevor Murphy (50), on Friday.

Murphy was stabbed multiple times when three armed men entered his house in the early hours of Friday morning. They ransacked Murphy's home, stabbed him and ran off with some of his belongings. A female employee, who lives on the property, was tied up by the robbers after she interrupted them. Murphy died en route to the hospital.

Shaheen Suleiman of Magma security said Murphy's attackers took off in his Ford Ranger bakkie, with other items from the house including firearms. Suleiman said that on Sunday at around 6.30 pm, information was received that Murphy's bakkie was spotted in the vicinity of Table Mountain, in the Pietermaritzburg area. He said Magma members along with police officers from Pietermaritzburg started patrolling the area immediately. Just after 1 am on Monday morning, April 26, Suleiman said an informant contacted Magma and informed them that the bakkie was in Pietermaritzburg. He said with assistance from the police, the bakkie was stopped and three people, one man and two women, were found inside the car. A 9mm pistol that belonged to Murphy was recovered from the driver. "Further investigation had been done where clothing items taken during the crime, some stained with blood, were also seized," said Suleiman. He said follow-up investigations led them to the Swapo informal settlement area where two more people were arrested. Suleiman said a large quantity of items, including shoes, a hi-fi and amplifiers, a burned out TV, safe and clothing items, belonging Murphy were seized from two properties. Those who were arrested are expected to appear in court soon. Suleiman said investigations are ongoing.

With reference to the relevant constitutional provisions, list the fundamental criminal procedural rights applicable in the situation above.

Question 3**[+/- 20 minutes]****[10]**

Indicate whether the following statements are true or false:

1. Section 37 of the CPA states that if a person is found not guilty at his trial, the fingerprints used in the trial shall be destroyed.

2. As a result of the Constitutional Court case *Ex Parte Minister of Safety and Security and Others: In Re S v Walters and Another* 2002 (4) SA 613 (CC) an arrestor may kill a suspect merely because he is fleeing or resisting arrest.
3. Bail can be granted by the President before the first appearance of the accused in the lower court if the accused is in custody in respect of any offence other than an offence referred to in Part II or Part III of Schedule 2 to the CPA.
4. Legally, you are not allowed to film or photograph a police officer at a roadblock and it is legal for an officer to confiscate or damage your recording equipment or force you to remove images or footage.
5. In terms of Section 29 of the CPA, an article may not be seized by a police official without a search warrant, even if the person concerned consents to the search for and the seizure of the article in question.
6. Bail conditions are important aspects of the criminal trial that is supposed to inform the accused of the charges against him/her in sufficient detail to the extent that he/she will be able to answer to such charges and prepare a defence.
7. After the investigation and charge sheet is completed, the accused must appear before the court. This can be achieved by serving a summons on the accused to appear in court in terms of section 54 of the CPA.
8. A failure to observe conditions of bail may result in the court cancelling the bail and declaring the bail money forfeited to the State.
9. X, who was recently involved in a bar fight, was arrested by police officials for assault at the scene directly following the incident. At the police station, the police officials ordered that X's fingerprints must be taken. The police officials are empowered, in terms of section 339 of the CPA, to order the taking of fingerprints from X.
10. Correctional supervision is a type of sentence intended to avoid overfilling the prisons on the one hand but on the other hand to punish effectively but strictly.

Question 4

[+/- 30 minutes]

[15]

List and briefly discuss the various types of review procedures relevant to criminal proceedings and related matters.

Question 5 **[+/- 30 minutes]** **[15]**

“Mental illness is a disorder (or a disease) of the mind that is judged by experts to interfere substantially with a person's ability to cope with the demands of life on a daily basis. It can profoundly disrupt a person's thinking, feeling, moods and ability to relate to others. Mental illness is manifested in behaviour that deviates notably from normal conduct. Mental illness in a legal context is defined as a positive diagnosis of a mental health related illness in terms of accepted diagnostic criteria made by a mental health practitioner authorised to make such diagnosis.”

Mental illness or intellectual disability may have two very important implications in the context of criminal justice, which should, where applicable, be distinguished. With reference to the relevant provisions of the CPA, discuss how the court will deal with the trial of a mentally disabled person.

Question 6 **[+/- 40 minutes]** **[20]**

Y, the complainant and victim in a rape case, is your client and is seeking your legal advice. Y was allegedly raped at a work function by two of her most senior colleagues. After the incident, Y went to a local hospital for an examination and a rape-kit was compiled. This evidence was, however, misplaced at the police station and could not be included in the police docket. Under the authority of the Director of Public Prosecutions, the National Prosecuting Authority (NPA) has officially declined to prosecute for the alleged offence, citing a lack of evidence. However, Y believes the NPA's decision was influenced by the two alleged perpetrators' political connections, and she therefore feels very aggrieved by the NPA's decision. Advise Y regarding the following aspects:

- 6.1. The NPA's discretion to prosecute and whether, in your view, such a discretion was improperly exercised *in casu*. (12)

- 6.2. The possible legal proceedings Y can institute against the two alleged perpetrators and her chances of success in your opinion. (8)

Total marks: 80