

**UNIVERSITY OF JOHANNESBURG
KINGSWAY CAMPUS**

FACULTY OF LAW

SEMESTER TEST: 08 MAY 2018

COURSE NAME: LAW OF CRIMINAL PROCEDURE

COURSE CODE: SAR0011 / CPR41A0

EXAMINER: DR R HENRICO

DURATION: 60 MINUTES

MARKS: 50

READ AND ANSWER ALL QUESTIONS IN THIS PAPER AND, WHERE APPLICABLE, REFER TO CASE, STATUTORY, CONSTITUTIONAL AND LECTURE DISCUSSION AUTHORITY.

THE RULES OF THE UNIVERSITY OF JOHANNESBURG RELATING TO THE WRITING OF TESTS APPLY TO THIS TEST.

STUDENTS ARE PERMITTED AN ADDITIONAL FIVE (5) MINUTES READING TIME.

YOU MUST HAND IN YOUR QUESTION PAPER WITH YOUR ANSWER SHEET.

QUESTION 1

The Accused, Apay Gupta (AG) is charged in the Regional Court, Johannesburg with motor vehicle theft. It is alleged that:

On or about 14 February 2018, at APK campus, in the district of Johannesburg, the accused (AG) did unlawfully and intentionally steal a Mercedes Benz motor vehicle, registration number NB 99 BN GP (the vehicle), the property or in the lawful possession of Innocence Dladla.

At the trial AG pleads not guilty. There is no plea explanation. The state calls several witnesses (the state witnesses) and also leads video footage obtained from APK campus security. Common to the evidence of the state witnesses is that they all saw how AG walked round the parking bay with a key in his hand checking all vehicles and when the vehicle responded by a loud beep and flash of lights, he climbed in and drove away. At all times, he also appeared to be acting suspiciously. Video footage is consistent with such evidence. AG has decided to represent himself at trial since he has been told that the Bill of Rights ensures he has a right to a fair trial, which includes a right to remain silent and

presumption of innocence. At all times, even after the state has presented its case, AG simply insists on remaining silent.

With reference to the above facts, critically advise AG of the possible implications, if any, of his conduct. **[15]**

QUESTION 2

The entire process of bail is said to be provided for under Chapter 9 of the Criminal Procedure Act 51 of 1977.

With reference to the above statement, explain:

- 2.1 what party (the state or defence) generally carries the onus of proof in bail proceedings and what, if any, exceptions there may exist; [4] and
- 2.2 the different forms of bail that may be granted; [3] and
- 2.3 the ways in which a bail application can be brought. [3] **[10]**

QUESTION 3

A certain suspect (the suspect) has just committed a schedule 1 offence and is in the process of running away from the scene of the crime. A member of the South African Police Service (the police officer) is attempting to arrest by chasing after her.

With reference to the above facts, critically explain what force, if any, may be used by the police officer for purposes of arresting the suspect. **[10]**

QUESTION 4

Attorney-client privilege in respect of the execution of a warrant for the search and seizure of goods and documents is regarded as a privilege crucial to the proper maintenance and functioning of our legal system.

With reference to the above statement, critically discuss:

- 3.1 what should be given effect to, if anything, in *ex parte* applications for a search and seizure warrant; and
- 3.2 the relevance of preservation orders. **[15]**

TOTAL: [50]