



COURSE NAME: LAW OF CRIMINAL PROCEDURE

COURSE CODE: SAR0011 / CPR41A0

EXAMINER: ADV M ROLLER

MODERATOR: PROF D S DE VILLIERS

DATE: 22 JUNE 2020

DURATION: 3 HOURS (8:30 – 11:30)

TOTAL MARKS: 50

NO OF QUESTIONS: 6 (SIX) (SIX PAGES)

INSTRUCTIONS:

- 1. Answer all 6 (six) questions.**
- 2. You have three attempts to complete the paper, but only the last attempt will be marked.**
- 3. This is an open-book examination. You are allowed to consult any of your study material. You are not allowed to consult with or obtain assistance from any third party.**
- 4. Write in essay format, and refrain from a copy and paste approach.**
- 5. With case scenario questions, read the set of facts carefully before you start answering the question.**
- 6. Refer to relevant decided cases where possible.**
- 7. The marks allocated for each question, should guide you on the length of your answer and time spent on each question.**
- 8. By answering this paper, you acknowledge and accept the rules of the University on plagiarism and dishonesty.**

QUESTION 1**[20]****SET OF FACTS**

The accused stood trial in the Regional Court on a charge of murder and possession of an unlicensed firearm. The state called its witnesses and at the close of the state's case, the defence attorney applied for a discharge of his client in terms of Section 174 of the Criminal procedure Act. The Magistrate dismissed the application. The defence case followed with the accused's testimony and the accused called a witness. At the close of the defence case, the Magistrate convicted the accused of murder and possession of unlicensed firearm and sentenced the accused to 12 years imprisonment on the charge of murder and to 4 years imprisonment on the charge of possession of an unlicensed firearm. The Magistrate ordered that both sentences should run concurrently. The Magistrate ordered further that the accused may only apply for parole after having served 8 years imprisonment. The defence attorney lodged an appeal against the conviction only. The Court of Appeal dismissed the appeal on the conviction, but increased the sentence on the murder charge to 15 years imprisonment.

- 1.1 Discuss whether the defence attorney may have taken the matter on review immediately after the Magistrate's refusal to discharge his client. (5)
- 1.2 Discuss the procedure the defence attorney should have followed to lodge the appeal. (4)
- 1.3 Critically discuss the sentence and the order made by the Magistrate. (6)
- 1.4 Critically discuss the ruling of the Court of Appeal. (5)

QUESTION 2**SET OF FACTS**

The accused is charged with theft in the Regional Court. The charge sheet reads as follow: *On the 12th of March 2020, at Diamond Jewelleries, the accused did intentionally and unlawfully steal a watch and a diamond ring, with the intention to permanently deprive the owner, Mr Jack Dhlamini, ownership thereof.*

At the first appearance of the accused, he instructed his attorney to apply for bail. During the formal bail application, the prosecutor stated that the matter is a Schedule 5 bail application and he read a statement drafted by the investigating officer into the record. The attorney was of the view that the bail application falls under Schedule 1 due to the fact that his client does not have any previous

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convictions nor any other pending cases. The attorney read a statement disposed to by his client into the record. At the conclusion of the bail application, the Magistrate found that the accused did not discharge the onus to proof that he is a suitable candidate for bail and denied the application for bail.

Critically discuss the ruling and judgment of the Regional Court Magistrate. (5)

QUESTION 3

SET OF FACTS

At a subsequent appearance, the attorney acting on behalf of the same accused as stated in the set of facts for Question 2, informs the court that his client elects to plead guilty to the charge of theft. After the prosecutor read the charge into the record, the accused confirmed that he elects to plead guilty, whereafter his attorney read a statement in terms of Section 112 (2) of the Criminal Procedure Act into the record. The statement reads as follow: *"I confirm that on the 12th March 2020, I was in Diamond Jewelleries to shop for an engagement ring for my fiancé. I looked at a few rings and I also asked the shop attendant to hand me a watch from the locked cupboard which I liked. I put the watch on my wrist. At this juncture, the shop attendant started assisting other customers. Because my mind was preoccupied with problems I have at work, I accidentally put one of the diamond rings in the pocket of my jacket and walked out of the supermarket, with the watch also still on my wrist. To my surprise I was stopped by the security guard standing outside the door and I was searched. The security guard found the ring in my pocket and the watch on my wrist and I was arrested. I am truly sorry for my actions. I know I did wrong."*

Discuss the procedure the Magistrate should follow after the attorney has read his client's statement into the record. (5)

QUESTION 4

An unrepresented accused is charged with one count of Housebreaking with the intent to commit an offence unknown to the state. At the end of the trial, the accused is convicted of theft.

Discuss the correctness of the conviction, possible other convictions on the original charge and any legal requirements. (5)

QUESTION 5

Critically discuss the different tests developed in reported cases to determine whether duplication of convictions occurred. What test should in your view, be applied? Motivate your answer. (5)

QUESTION 6

The counsel representing the accused and the prosecution entered into a plea and sentence agreement in terms of the Criminal Procedure Act. Critically discuss the draft agreement below. (10)

IN THE REGIONAL COURT FOR THE REGIONAL DIVISION OF RANDBURG HELD AT RANDBURG

CASE NO: 357/2019

In the matter between:

THE STATE

Versus

JOHN SIMONS

PLEA AND SENTENCE AGREEMENT IN TERMS OF SECTION 115B OF ACT 51 OF 1977 (AS BETWEEN THE STATE AND THE ACCUSED)

1. Parties to Agreement

- 1.1 John Simons ("the accused"); and
- 1.2 The State, as represented by the District Court Prosecutor of Randburg, Mr. P Carsten; ("the prosecutor") hereby enter into an agreement in respect of :
 - (a) A plea of guilty in terms of Section 115B (1) (a) (i) of the Criminal Procedure Act 51 of 1977 ("the conviction agreement"); and
 - (b) A sentence in terms of Section 115B (1) (a) (ii) of the Act ("the sentence agreement"),to secure the conviction of the accused on the count set out in the charge sheet annexed hereto, and to be sentenced to punishment as provided for in this agreement.

2. Acknowledgment of Rights.

- 2.1 The accused acknowledge that he has a right to be presumed innocent until proved guilty beyond reasonable doubt.

3. The Substantial Facts and Admissions made by the Accused as to the Conviction Agreement

- 3.1 The parties agree that the accused tenders a plea of guilty on the count of Attempted Murder as detailed in the charge sheet annexed hereto, and as set out in herein.

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- 3.2 On 5 June 2019, the accused visited the marital residence situated at no 410 Long Street, Randburg.
- 3.3 He was armed with his licensed firearm, a 9 mm pistol.
- 3.4 He entered the home and fired two shots at his wife, Cathrine Simons.
- 3.5 The accused foresaw the possibility that he could potentially kill his wife by firing shots at her and reconciled himself with this knowledge.
- 3.6 The accused knew that he acted unlawful.

4. Admissions relating to the count of Attempted Murder

- 4.1 The accused admits that :-
 - 4.1.1 On 5th June 2019;
 - 4.1.2 At approximately 15h00;
 - 4.1.3 at no 410 Long Street, Randburg;
 - 4.1.4 within the Regional Division of Randburg;
 - 4.1.5 the accused fired shots with an 9mm pistol;
 - 4.1.6 Towards Cathrine Simons;
 - 4.1.7 With the intention of killing Cathrine Simons;
 - 4.1.8 The accused acted with knowledge of wrongfulness of his actions.
 - 4.1.9 In the circumstances, the accused pleads guilty to the count of Attempted Murder.

5. The following facts are common cause in mitigation and aggravation of sentence:

5.1 Mitigation circumstances

- 5.1.1 The accused is a married male of 69 years of age with two major children.
- 5.1.2 Divorce proceedings between the accused and the complainant are pending.
- 5.1.3 Financial difficulties caused marital problems between him and the complainant.
- 5.1.4 The complainant did not suffer any injuries.
- 5.1.5 The accused gave his full co-operation to the investigating officer throughout the investigation of the case.
- 5.1.6 The accused has pleaded guilty and has not wasted the time of the Honourable Court.
- 5.1.7 The accused is of an elderly age.
- 5.1.8 The accused has no previous convictions not any other pending criminal cases.

5.2 Aggravating circumstances

- 5.2.1 The seriousness of the offence.

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- 5.2.2 The prevalence of the offence in the area of jurisdiction of the Honourable Court and specifically violence against women.
- 5.2.3 The actions of the accused had the potential of killing the complainant.
- 5.2.4 The sentence must also serve as deterrence for other potential criminal and as retribution for the complainant.
- 5.2.5 The complainant suffered from post- traumatic stress disorder due to the incident for which she received costly psychological treatment.

6. Agreement in respect of a just sentence

6.1 NOW THEREFORE THE PARTIES have agreed that a just sentence is as follow:-

- 6.1.1 5 (five) years imprisonment, wholly suspended for 5 (five) years, under the following conditions:
- 6.1.2 That the accused not be convicted again of an offence containing an element of violence or attempt thereto, committed within the period of suspension; and
- 6.1.3 To 3 (three) years correctional supervision under Section 276(1) (h) of Act 51 of 1977; with conditions as set out in the correctional supervision report.
- 6.1.4 In terms of Section 103 (1) of Act 60 of 2000, the accused is declared unfit to possess a firearm.

P CARSTENS
Prosecutor, Randburg
12 August 2019

ADV G NKUNA
Counsel for the Accused, Randburg
12 August 2019

TOTAL :

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