



PROGRAM:	LLB
MODULE:	LAW OF CRIMINAL PROCEDURE
CODE:	SAR0011 / CPR41A0
DATE:	20 JANUARY 2022 (11:30 – 14:30)
DURATION:	3 HOURS
TOTAL MARKS:	80
EXAMINERS:	DR W N NEL
MODERATOR:	PROF D S DE VILLIERS
NO OF QUESTIONS:	7

---

## 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 **deadline for submissions is strictly 14:31 on 20 January 2022**.
- **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](mailto:wnnel@uj.ac.za)).**

You **can** do this, good luck!

---

**Question 1** **[+/- 20 minutes]** **[12]**

Briefly discuss the constitutional duties placed on the judiciary flowing from the fair trial principles set out in section 35(3) of the Constitution.

**Question 2** **[+/- 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’s 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 3** **[+/- 20 minutes]** **[10]**

“As a result of section 51 of the Criminal Law Amendment Act 105 of 1997, the judicial discretion of Courts and judicial officers in determining the imposition of appropriate sentences, has been completely eliminated.”

Critically evaluate this statement with reference to relevant case law.

**Question 4****[+/- 30 minutes]****[16]**

Provide the missing word(s)/phrase(s):

1. Section [.....] of the Criminal Procedure Act 51 of 1977 (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 decision by the Constitutional Court case [.....] the Judicial Matters Second Amendment Act 122 of 1998 amended section 49(2) of the CPA to be in line with the right to life in the Constitution. Consequently, an arrestor may not kill (“justifiable homicide”) a suspect merely because he is fleeing or resisting arrest.
3. X is arrested for common assault. In terms of section 59 of the CPA, X may be granted bail by [.....] before his first appearance in the lower court.
4. A failure to observe conditions of bail may result in the court cancelling the bail and declaring the bail money [.....] to the State.
5. In terms of s 21(1)(a)-(b) of the Superior Courts Act, a division of the High Court (that has jurisdiction) may exercise its powers of review with regards to lower court proceedings in respect of specified [.....] that happened before or during such proceedings in the court *a quo*. The procedure to be followed is formally embodied in [.....] of the [.....].
6. [.....] essentially pertains to relief sought through review for an alleged infringement or disregard of a person’s fundamental human right in relation to criminal proceedings.
7. Mental illness or intellectual disability may have two very important implications in the context of criminal justice, which are not mutually exclusive. On the one hand, an accused may, by reason of such mental illness or intellectual disability, be incapable of

understanding the criminal proceedings so as to conduct a [...], which is regulated by section 77 of the CPA. On the other hand, an accused may lack [...] at the time of the commission or omission of the offence, which is regulated by section [...] of the CPA. In either instance, the court must adjourn proceedings to allow for a [...] in accordance with the provisions of section 79 of the CPA.

8. In the case of *R V Ngubane* 1945 AD 185, the court held for the first time that the primary threshold applicable to applications for leave to appeal is whether the appellant has a [...] on appeal.
9. In the case of *Minister of Justice v Ntuli* 1997 (2) SACR 19 (CC), the court held that all convicted persons had an [...] of appeal to a court of higher instance against a decision or sentence of a lower court.
10. It is the primary function of the [...] to institute criminal proceedings on behalf of the State.
11. In *S v Grobler* 1966 (1) SA 507 (A), the court concluded that if one and the same act of a person constitutes more than one offence, there is a general rule against the splitting of charges as this may result in [...].

**Question 5****[+/- 10 minutes]****[6]**

In each of the following situations, identify the relevant type of criminal review proceeding and the applicable legislative provision:

- 5.1. X has been convicted and sentenced to 25 years' imprisonment for common assault by the regional magistrate's court. The presiding officer was Y, who has more than 6 years' experience as a magistrate. X is of the opinion that the sentence imposed is not in accordance with justice. (2)
- 5.2. Y is a regional magistrate, with more than 15 years' experience as a presiding officer. After having convicted X (the accused) on a charge of sexual assault, Y decides that before imposing sentence, she wants to refer her recorded conviction for review. Y believes that the prosecutor and the legal representative for the accused might have

conspired to assure X is found guilty, and therefore, she has doubts whether the proceedings were in accordance with justice. (2)

- 5.3. X, an undefended accused, was found guilty of culpable homicide and sentenced to 10 years' imprisonment by Magistrate Y, who has less than 7 years' experience as a presiding officer. (2)

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

Y, the complainant and victim in a rape case, is your client and is seeking your legal advice. Y claims that she was 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. Because of this lack of material evidence, the National Prosecuting Authority (NPA) has officially declined to prosecute for the alleged offence. Y believes that 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)

**Question 7****[+/- 10 minutes]****[6]**

Briefly discuss the procedural consequences on the admissibility of evidence obtained during an *unlawful* search in terms of the Constitution.

\*\*\*\*\*

**Total marks: 80**