



PROGRAM: LLB

MODULE: LAW OF CRIMINAL PROCEDURE

CODE: SAR0011 / CPR41A0

DATE: 21 JUNE 2021 (08:30 – 12:15)

DURATION: 3 HOURS, 45 MINUTES

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 **08:29 – 12:15 on 21 June 2021**. The **deadline for submissions is strictly 12:15 on 21 June 2021**, at which time system will auto submit your answers. Remember to click the 'save' button occasionally.
- **You can prepare your answers on a separate Microsoft Word document, but only answers submitted on Blackboard will be considered.** This document may serve as

a submission back-up, should you not be able to submit via Blackboard. Email submissions will only be accepted under exceptional circumstances and must be in either Microsoft Word or PDF format, using your surname as file title.

- You have two submission attempts on Blackboard. Do *not* submit a second submission unless there was a problem with the first submission. **Only your final submission will be marked and must contain all your answers.**
- **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**[+/- 50 minutes]****[20]**

Consider the following set of facts and answer the question below:

Z was the victim of a recent house burglary (housebreaking with intent to steal and theft), which occurred whilst she was away walking her dogs in the public park opposite her house. Ten (10) similar burglaries have occurred during the last two months in the area adjacent to the park. Police believe that the burglaries were committed by certain individuals that are part of a group of twenty (20) homeless persons living in that park. The same investigating officer (Y) searched each of the crime scenes and found three sets of fingerprints at Z's house. Y decided to take fingerprints from each individual of the group of homeless persons living in the park and compare them to the fingerprints found at Z's house in order to include or exclude one or more of those persons as possible perpetrators of the offence. Y exercised this authority in terms of section 36C of the Criminal Procedure Act 51 of 1977 (CPA). The group of homeless persons approach the office of the Public

Protector, alleging that in the process of obtaining the bodily features of members of the group of homeless persons, their right to bodily and psychological integrity had been infringed.

In *Magobodi v Minister of Safety and Security* [2010] JOL 24904 (Tk), the court held that in the context of criminal investigations, a balance must be struck between the protection of the suspect's rights and the maintenance of law and order. Apply the approach outlined by the court to the set of facts above and indicate whether there has been a *prima facie* infringement/limitation of rights, and whether such a limitation was, under the circumstances, justifiable on the basis of reasonableness. In your answer, you must refer to relevant provisions of the CPA and the Constitution.

Question 2

[+/- 25 minutes]

[12]

In *S v Zuma* 1995 (4) BCLR 401 (CC) the court stated that the right to a fair trial is broader than the list of specific rights set out in sections 35(3)(a)-(o) of the Constitution. It embraces a concept of substantive fairness which is not to be equated with what might have been accepted as adequate or satisfactory in our criminal courts before the Constitution came into force. On the one hand, the fair trial principle guarantees certain fundamental criminal procedure rights for accused persons. On the other hand, the fair trial principle as set out in section 35(3) places important constitutional duties on the judiciary. Briefly discuss the latter constitutional duties on the judiciary in the context of the court's judgment/verdict.

Question 3

[+/- 35 minutes]

[15]

Section 274(1) of the CPA states that a court may, before passing sentence, receive such evidence as it thinks fit, in order to inform itself as to the proper sentence to be passed. Outline the *considerations* that the sentencing court will take into account in order to adapt the sentence and punishment to the particularities of each case. In your answer, you must refer to relevant case law.

Question 4

[+/- 20 minutes]

[12]

The plea stage is when the accused is required to respond to the charges brought against him or her by entering a plea. In each of the following instances, identify the most appropriate plea relevant to the stated facts and motivate your answer.

- 4.1. X, a 24-year-old male, loves playing rugby for his local rugby club. During a community club match, X tackles his opponent Y. As a result of X's tackle, Y falls badly onto his shoulder and dislocates his arm. He is taken to hospital and receives medical care. Upon his discharge from the hospital, Y lays a charge of assault against X at the nearest police station. X is summoned to appear on the charge of assault at the district magistrate's court. (2)
- 4.2. In 2001, X caused a motor vehicle accident that resulted in the death of V. Consequently, X was charged with culpable homicide in the regional court. At the end of the trial, the court returned a verdict of guilty, and X was convicted of culpable homicide and sentenced to 15 years' imprisonment. X served out his sentence and was released in March 2017. In June 2021, the prosecution finds new evidence in the case which suggests that X had intended to kill V and staged the collision to look like an accident. Based on this new evidence, X is charged with murder. (2)
- 4.3. X is a Namibian national and represents the Namibian government as a diplomatic envoy (ambassador) at the Namibian embassy in Pretoria, South Africa. As a result, X has diplomatic immunity. On 14 June, X and his wife, T, were at their official homestead when a serious argument ensued between the couple. X had found out that T was having an extra-marital affair and he was very angry. During the argument, X shot and killed T. X is arrested and charged with murder at the regional magistrate's court in Pretoria. (2)
- 4.4. X, the former president of South Africa, is arraigned in the magistrate's court on numerous charges of racketeering. The appointed prosecutor is Z, who was also the state prosecutor in a previous case against X, back in 2006. In that case the charges against X were withdrawn, which made Z very angry as he wanted to see justice done. Z believed that the 2006 charges were withdrawn because of X's political relations and

influence with high-ranking officials within the National Prosecuting Authority (NPA). Therefore, when the NPA decided to prosecute X on the racketeering charges in 2021, Z requested the Deputy Director of Public Prosecutions to appointment him as lead prosecutor. Z was subsequently appointed as lead prosecutor in the case against X and is now single-mindedly determined to successfully prosecute X. As a result, X is concerned that Z's bias toward him will affect his right to a fair trial.

(2)

- 4.5. In September 2017, X was indicted in the Johannesburg High Court on twenty-eight (28) counts of fraud, but never pleaded to the charges owing to a range of delays requested by the prosecution, headed by state prosecutor, Ms. R. Between September 2017 and July 2019 Ms. R was sick on multiple occasions and could not appear in court. In September 2019 she was in a car accident and hospitalized for three months, and again, could not appear. The case was postponed to January 2020. When the case was to commence in January 2020, Ms. R requested two further postponements to allow her time to prepare for the trial. In March 2020, the case was again postponed when Ms. R tested positive for Covid-19. At that time, the presiding judge in the Johannesburg High Court found that these delays by the prosecution had caused an unreasonable delay in the trial. The court ordered that the case be struck off the roll and that the prosecution may not be resumed or instituted *de novo* without the written instruction of the Director of Public Prosecutions, which was not subsequently given. In May 2021, a new prosecutor (Ms. H) was appointed to the case by the Deputy Director of Public Prosecutions. In June 2021, Ms. H indicted X again in the Johannesburg High Court on the same twenty-eight (28) charges of fraud.

(2)

- 4.6. During the apartheid era, X was a member of a certain political party. In 1988, she led several mass marches and disruption actions aimed at drawing international attention to the injustices of the apartheid system. In 1989, she was sentenced to life imprisonment for political crimes and served her sentence on Robben Island. Following a series of negotiations from 1990 to 1991 for the dismantlement of apartheid, the State President directed that the convictions for political crimes during

the apartheid era be expunged and that such persons, including X, be reprieved of their crimes. In 2021, X is arrested after she speaks publicly about her involvement in the commission of some of the political crimes in relation to which she was convicted.

(2)

Question 5	[+/- 20 minutes]	[9]
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Provide the missing word/ phrase:

1. X is found guilty of murder after he committed euthanasia (mercy killing) at the request of his dying wife, Y. His legal representative has successfully applied for leave to appeal to the , arguing that the interpretation of the right to life in section 11 of the Constitution, allows for the right to choose to terminate one's own life.
2. In the case of, the court held for the first time that the primary threshold applicable to applications for leave to appeal is whether the appellant has a reasonable prospect of success on appeal.
3. Broadly speaking, the CPA does *not* allow the National Prosecuting Authority of South Africa, whether through an authorised prosecutor or the Director of Public Prosecutions, the possibility to appeal against.....
4. In *Chavulla* 2001 (2) SACR681 (SCA), the Supreme Court of Appeal held that is considered appropriate in instances where the nature of the particular offence or offender merits his/her removal from society for up to the rest of his/her natural life.
5. The parties to a criminal appeal matter are the
6. In the case of, the court held that all convicted persons had an unlimited or absolute right of appeal to a court of higher instance against a decision or sentence of a lower court.

7. It is the primary function of the to institute criminal proceedings on behalf of the State.
8. Essentially, guarantees and protects the right to an adequate reappraisal of the criminal proceedings and an informed and reasoned decision on the outcome.
9. In the case of, the court found that corporal punishment constitutes a cruel, inhuman and degrading punishment for purposes of section 12(1)(e) of the Constitution, and thus cannot be considered an acceptable form of punishment in the South African criminal justice system.

Question 6**[+/- 24 minutes]****[12]**

Choose only the *most appropriate* answer from the alternatives provided:

1. X was found guilty of murder in the Pretoria division of the High Court and sentenced to 25 years' imprisonment. X is aggrieved with this outcome and wishes to challenge the correctness of the conviction and sentence. He alleges that he has a legitimate defence of necessity and that the court *a quo* erred in ultimately arriving at the conviction. Which procedure should X use as a form of redress in this instance?
 - a. Petition the Minister of Justice to reopen his case in terms of section 327 of the CPA.
 - b. Review proceedings.
 - c. Petition the State President to pardon his conviction and sentence in terms of section 84(2)(j) read with section 83 of the Constitution.
 - d. Appeal proceedings.
 - e. All of the above.
 - f. None of the above.
2. Section 310(5) of the CPA provides that: "In allowing the appeal, whether wholly or in part, the provincial or local division may itself impose such sentence or make such order as the lower court ought to have imposed or made, or it may remit the case to the lower court

and direct that court to take such further steps as the provincial or local division considers proper." Which statement below is most applicable to this section?

- a. This provision authorises the Supreme Court of Appeal to exercise a limited discretion to correct the decision of the court of first instance by starting the sentencing proceedings *de novo*.
 - b. The provision allows the appeal court to impose such sentence as the lower court ought to have imposed, yet the power to increase a sentence will only be exercised if there is a substantial difference between the sentence imposed and the sentence deemed appropriate by the appeal court.
 - c. Although the provision allows the appeal court to impose such sentence as the lower court ought to have imposed, appeal courts cannot interfere with a sentence unless the trial court has not exercised its discretion judicially or the sentence is grossly disproportionate to the offence.
 - d. This provision authorises the appeal court, provided it is a provincial or local division of the High Court, to exercise a general discretion to correct the decision of the court of first instance by starting the sentencing proceedings *de novo*.
 - e. All of the above.
 - f. Options b, c or d.
 - g. Options b & c.
 - h. None of the above.
3. Identify the type of criminal review proceedings relevant in the following situation: You are the legal representative for X, who was 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.
- a. Automatic review in terms of section 302 of the CPA.
 - b. Extraordinary review in terms of section 304(4) of the CPA.
 - c. Review of proceedings before sentencing in terms of section 304A of the CPA.
 - d. Setting down of a case for argument in terms of section 306 of the CPA.
 - e. Option a or b.
 - f. Option a or c.

- g. Option b or d.
4. Identify the type of criminal review proceedings relevant in the following situation: You are the legal representative for X, who 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. You have inspected and made copies of the record of the proceedings in the magistrate's court before the record of the proceedings has been transmitted to the High Court. The next step is to bring the court proceedings under review before a High Court with jurisdiction.
- Constitutional judicial review.
 - Review in terms of the Superior Courts Act and Rule 53 of the High Court Uniform Rules of Court.
 - Automatic review in terms of section 302 of the CPA.
 - Extraordinary review in terms of section 304(4) of the CPA.
 - Review of proceedings before sentencing in terms of section 304A of the CPA.
 - Setting down of a case for argument in terms of section 306 of the CPA.
5. Identify the type of criminal review proceedings relevant in the following situation: You are the legal representative for X, who was convicted and sentenced to 5 years' imprisonment for theft by the district magistrate's court. You filed a notice of motion, together with founding and supporting affidavits, which is served upon the magistrate who presided over the matter. The application for review is based on the allegation that the presiding officer was drunk during the course of the trial, thus constituting a gross irregularity in the proceedings.
- Constitutional judicial review.
 - Automatic review in terms of section 302 of the CPA.
 - Extraordinary review in terms of section 304(4) of the CPA.
 - Review of proceedings before sentencing in terms of section 304A of the CPA.
 - All of the above.
 - None of the above.

6. Identify the type of criminal review proceedings relevant in the following situation: 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.
- Constitutional judicial review.
 - Review in terms of the Superior Courts Act and Rule 53 of the High Court Uniform Rules of Court.
 - Automatic review in terms of section 302 of the CPA.
 - Extraordinary review in terms of section 304(4) of the CPA.
 - Review of proceedings before sentencing in terms of section 304A of the CPA.
 - Setting down of a case for argument in terms of section 306 of the CPA.
7. Identify the type of criminal review proceedings relevant in the following situation: 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.
- Review in terms of the Superior Courts Act and Rule 53 of the High Court Uniform Rules of Court.
 - Automatic review in terms of section 302 of the CPA.
 - Extraordinary review in terms of section 304(4) of the CPA.
 - Review of proceedings before sentencing in terms of section 304A of the CPA.
 - Setting down of a case for argument in terms of section 306 of the CPA.
 - None of the above.
8. In the context of sentencing, the terms "sentence" and "punishment" are often used interchangeably, although there may be certain technical differences. Which of the following statements are correct?
- "Sentencing" is a collective term that includes all the possible sentencing options as provided for in terms of relevant legislation.

- b. "Sentencing" refers specifically and exclusively to the possible sentencing options that are not punitive in nature.
- c. "Punishment" generally refers to the imposition of a sentence that results in an unpleasant experience for the convicted person.
- d. "Punishment" is a collective term that generally excludes those sentencing options that do not constitute or impose retribution *per se*.
- e. Options a, b or c.
- f. Options a, c & d.
- g. Options b, c & d.
9. X is the accused on a charge of rape. During the trial, the evidence does not prove the commission of the offence charged, but nevertheless the commission of a different offence. Which competent verdict is possible in relation to the offence charged?
- a. murder;
- b. robbery;
- c. pointing a firearm, airgun or air-pistol in contravention of any law;
- d. trafficking in persons;
- e. theft;
- f. None of the above.
10. X was convicted in the Regional Magistrate's Court on a charge of murder and sentenced to 15 years' imprisonment. X lodged an appeal against the conviction. In her application for leave to appeal, X contended, as a ground of appeal, that the presiding officer erred in finding that the State had proven her guilt beyond a reasonable doubt. Which outcome is incorrect?
- a. The application should be dismissed because no substantiated basis for appeal is evident as required in terms of section 309B(3)(a) of the CPA.
- b. The application should be dismissed because such appeals must be made by the accused orally after sentencing in terms of Rule 67(1) of the Magistrates' Courts Rules.
- c. The application should be dismissed because a court of appeal could reasonably arrive at a conclusion different from that of the *court a quo*.

- d. The application should be granted because X has the unlimited and absolute constitutional right to appeal to a court of higher instance in terms of section 35(3)(o) of the Constitution.
- e. All of the above.
- f. Options a, c & d.
- g. Options b, c & d.
- h. Options c & d.

11. In circumstances where section 51 of the Criminal Law Amendment Act 105 of 1997 is applicable, how does this provision effect the court's discretionary power to impose sentence?

- a. In such instances, the minimum sentence had been ordained by section 51 as the sentence which must be imposed for the commission of the listed crime, provided the accused was informed of the applicability of section 51 before the trial commenced.
- b. In such instances, courts do not have a discretionary power to impose sentence and must impose the minimum sentence specified by section 51.
- c. In such instances, the court is only bound by the prescribed minimum sentence in section 51 if there are substantial and compelling reasons that necessitate the imposition of the prescribed minimum sentence.
- d. In such instances, the minimum sentence had been ordained by section 51 as the sentence which ordinarily should be imposed for the commission of the listed crime, and no departure from the prescribed sentence is possible without the approval of a superior court with jurisdiction.
- e. None of the above.

12. Section 84 of the CPA contains the essentials of a charge. Which of the following particulars do *not* form part of the essentials of a charge?

- a. A charge shall set forth the relevant offence in such manner and with such particulars as to the violence with which the offence is alleged to have been committed.

- b. A charge shall set forth the relevant offence in such manner and with such particulars as to the time at which the offence is alleged to have been committed.
- c. A charge shall set forth the relevant offence in such manner and with such particulars as to the place at which the offence is alleged to have been committed.
- d. A charge shall set forth the relevant offence in such manner and with such particulars as to the person, if any, against whom the offence is alleged to have been committed.
- e. A charge shall set forth the relevant offence in such manner and with such particulars as to the property, if any, in respect of which the offence is alleged to have been committed.
- f. None of the above.

Total marks: 80