



COURSE NAME: LAW OF CRIMINAL PROCEDURE

PAPER: SUPPLEMENTARY EXAMINATION

COURSE CODE: SAR0011 / CPR41A0

EXAMINER: ADV M ROLLER

MODERATOR: PROF D S DE VILLIERS

DATE: 16 JULY 2020

DURATION: 3 HOURS (11:30 – 14:30)

TOTAL MARKS: 50

PAGES: 6

NO OF QUESTIONS: 5 (FIVE)

INSTRUCTIONS:

- 1. Answer all 5 (five) 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 other student or any other 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

[10]

SET OF FACTS

After many years attempting to solve a murder crime investigation, Captain de Beer received information, which lead to the arrest of the accused, Jacques da Costa. The investigations revealed that the accused murdered his ex-business partner 22 years ago, to prevent the deceased from alerting the South African Revenue Service of tax evasion methods conducted by the accused.

During the first court appearance in the Regional Court of Kemptonpark, the counsel acting on behalf of the accused argues that the delay of 22 years in prosecuting his client was unreasonably long and would result therein that his client will not be afforded a fair trial.

The case is thereafter postponed numerous times for purpose of discovery of the content of the police docket. One of the reasons provided by the prosecutor for the numerous postponements is that the police docket seems to have gone missing and the search for the police docket is ongoing. Eight months after the accused's first appearance, his counsel is still not in possession of copies of the police docket and the accused is not ready to plead to the charge.

- 1.1 Critically discuss the procedure(s) available to the counsel acting on behalf of the accused immediately after his client's first appearance in the Regional Court. **(5)**
- 1.2 Discuss the procedure(s) the counsel may follow, after numerous postponements to address the delay in finalising his client's trial and any legal requirements. **(5)**

QUESTION 2

[15]

SET OF FACTS

On Friday, 26 June 2020 at 19:00, a suspect was arrested on a charge of assaulting his wife. The brother of the suspect alleged that he saw the suspect kick the complainant in the stomach without sustaining any serious injuries. The suspect is held in the holding cells at the Johannesburg police station. The suspect calls his attorney and instructs him to apply for his release on bail. The suspect informs his attorney that he does not have any previous convictions nor any other pending cases.

- 2.1 Discuss the procedure the attorney should follow to have his client released on bail. **(5)**
- 2.2 In the event the attorney, upon his arrival at the Johannesburg Police station, is informed by the investigating officer that the wife of the suspect had, after the suspect's arrest, succumbed to her injuries, which resulted in the charge being converted to Murder. Discuss the procedure the attorney should follow to have his client released on bail. **(5)**

- 2.3 Discuss how your answer to Question 2.2 will differ, had the investigating officer inform the attorney that further investigations revealed that the suspect planned to kill his wife. **(2)**
- 2.4 At a subsequent court appearance, the prosecutor informs the presiding officer that the accused had been untruthful about his criminal record, and that the accused had 5 years prior to his arrest been convicted of culpable homicide. Discuss the procedure the prosecutor and the presiding officer should follow, and possible consequences for the accused. **(3)**

QUESTION 3 **[10]**

Discuss, with reference to Case law, three procedures during the conduct of criminal cases where the *audio alteram partem* - rule is required to protect the rights of an accused person and/or the prosecution, acting on behalf of the complainant and society. **(10)**

QUESTION 4 **[5]**

SET OF FACTS

Police officials responded to a call from a security guard who reported that he needs assistance in the arrest of a suspect who allegedly had broken into a business premises. Upon the police officials' arrival on the scene, they notice the suspect on top of the roof of the building, busy running away.

Critically discuss whether the police officials may fire shots at the suspect. **(5)**

QUESTION 5 **[10]**

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 on the next page. **(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

JACK DLAMINI

**PLEA AND SENTENCE AGREEMENT IN TERMS OF
SECTION 105A OF ACT 51 OF 1977
(AS BETWEEN THE STATE AND THE ACCUSED)**

1. Parties to Agreement

- 1.1 Jack Dlamini ("the accused"); and
- 1.2 The State, as represented by the Regional Court Prosecutor of Randburg, Mr. P Carstens; ("the prosecutor"); duly authorized thereto as per the annexed document, by the National Director of Public Prosecutions, hereby enter into an agreement in respect of :
 - (a) A plea of guilty in terms of Section 105A (1) (a) (i) of the Criminal Procedure Act 51 of 1977 ("the conviction agreement"); and
 - (b) A sentence in terms of Section 105A (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. The prosecutor entered into the plea and sentence agreement after having consulted with the following investigating officer:

- 2.1 Captain J Masinya.

3. Acknowledgment of Rights.

- 3.1 The accused acknowledge that he has a right to remain silent and not to testify during the proceedings.

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

- 4.1 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.
- 4.2 On 5 June 2019, the accused visited the marital residence situated at no 410 Long Street, Randburg.
- 4.3 He was armed with his licensed firearm, a 9 mm pistol.
- 4.4 He entered the home and fired two shots at his wife, Sarah Dlamini.
- 4.5 The accused foresaw the possibility that he could potentially kill his wife by firing shots at her and reconciled himself with this knowledge.
- 4.6 The accused knew that he acted unlawful.

5. Admissions relating to the count of Attempted Murder

- 5.1 The accused admits that :-
 - 5.1.1 On 5th June 2019;
 - 5.1.2 At approximately 15h00;
 - 5.1.3 at no 410 Long Street, Randburg;
 - 5.1.4 within the Regional Division of Randburg;
 - 5.1.5 the accused fired shots with an 9mm pistol;
 - 5.1.6 Towards Cathrine Simons;
 - 5.1.7 With the intention of killing Sarah Dlamini;
 - 5.1.8 The accused acted with knowledge of wrongfulness of his actions.
 - 5.1.9 In the circumstances, the accused pleads guilty to the count of Attempted Murder.

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

6.1.1 Mitigation circumstances

- 6.1.2 The accused is a married male of 69 years of age with two major children.
- 6.1.3 Divorce proceedings between the accused and the complainant are pending.
- 6.1.4 Financial difficulties caused marital problems between him and the complainant.
- 6.1.5 The complainant did not suffer any injuries.
- 6.1.6 The accused gave his full co-operation to the investigating officer throughout the investigation of the case.
- 6.1.7 The accused has pleaded guilty and has not wasted the time of the Honourable Court.
- 6.1.8 The accused is of an elderly age.
- 6.1.9 The accused has no previous convictions not any other pending criminal cases.

6.2 Aggravating circumstances

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

7. Agreement in respect of a just sentence

- 7.1 NOW THEREFORE THE PARTIES have agreed that a just sentence is as follow:-
- 7.2 5 (five) years imprisonment, wholly suspended for 5 (five) years, under the following conditions:

- 7.2.1 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
- 7.2.2 To 2 (two) years correctional supervision under Section 276(1) (h) of Act 51 of 1977; with conditions as set out in the correctional supervision report.
- 7.2.3 In terms of Section 103 (1) of Act 60 of 2000, the accused is declared unfit to possess a firearm.

JACK DLAMINI
The accused, Randburg
12 August 2019

P. CARSTENS
Regional Court prosecutor, Randburg
12 August 2019

TOTAL : **[50]**