

NUMBER OF PAGES: 6 PAGES

ASSESSOR: DR GJ BOUWERS

MODERATOR: PROF EA FREDERICKS

INSTRUCTIONS:

1. Answer ALL THE QUESTIONS.
2. Number your answers clearly.
3. This paper consists of 5 (five) questions.
4. You have 15 minutes reading time and 2 (two) hours to complete the exam.
5. Write clearly and legibly.

QUESTION 1

[20]

1.1 What are the characteristics of the law? (2)

- A. It consists of rules and principles facilitating human interaction.
- B. It orders society and gives some degree of certainty.
- C. The rules are often applied by institutions of state.
- D. the content of law depends on the history of the specific country.

Options

- a. A only
- b. A and B only
- c. C only
- d. A, C and D only
- e. All the options are correct (A-D)

1.2 Legal history is important because: (2)

- A. It explains the present character of law.
- B. Its understanding facilitates the necessary changes in law.
- C. Legal history is living law.
- D. It links South Africa to other countries.

Options

- a. All the options are correct (A-D)
- b. A, B and C only
- c. A, C and D only
- d. B, C and D only

e. A, B and D only

- 1.3 In which case did the court state that the following three factors needed to be taken into account in sentencing: (1) the seriousness of the offence; (2) the interests of the community; and (3) the particular personal circumstances of the offender? (2)

A. *S v Rabie*.
B. *S v Kelly*.
C. *S v Makwanyane*.
D. *S v Zinn*.

- 1.4 Peter, having a grudge against Russel, points his firearm at Russel and shoots Russel in the chest. (2)

A. Peter acts with negligence.
B. Peter acts with *dolus directus*.
C. Peter can be charged with murder.
D. Peter can be charged with culpable homicide.

Options

a. A only
b. A and D only
c. B and C only
d. B only
e. None of the options are correct (A-D)

- 1.5 A prosecution will only be instituted if a *prima facie* case is made out against the accused. In this regard, which test must be met? (2)

A. If the prosecutor believes that the allegations are proved on a balance of probabilities.
B. Whether a reasonable person will, at first glance, form the opinion that there is sufficient evidence to prove the case.
C. The guilt of the accused must be the only reasonable inference to be drawn from the facts.
D. The prosecutor believes that the guilt of the accused is beyond a reasonable doubt.

Options

a. B only
b. B, C and D only
c. C and D only
d. None of the options are correct (A-D)
e. A and B only

- 1.6 Once a prosecutor elects to charge an individual, a charge sheet will be drafted. This will set out the particulars of the alleged offence with which the accused is charged. The accused attendance in court can now be secured by means of: (2)

- A. An indictment.
- B. An arrest.
- C. A summons.
- D. A summons, only if an arrest is not possible.

Options

- a. D only
- b. A and B only
- c. All the above options are correct (A-D)
- d. A, B and D only
- e. B and C only

- 1.7 There are several principles which the court applies when evaluating the credibility of a witness. One such principle is the cautionary rule. Generally, the cautionary rule applies in the following cases: (2)

- A. The evidence of a single witness.
- B. In cases of sexual misconduct.
- C. The evidence of children.
- D. Character evidence.

Options

- a. C only
- b. B and C only
- c. All the options are correct (A-D)
- d. A, B and D only
- e. A and C only

- 1.8 When the court accepts something as a fact because it is so well known that it would be unnecessary to require it to be proved, is an example of: (2)

- A. A rebuttable presumption.
- B. Direct evidence.
- C. An irrebuttable presumption.
- D. Judicial notice.

Options

- a. None of the option are correct (A-D)
- b. D only
- c. All the options are correct (A-D)
- d. A and D only
- e. A only

- 1.9 In the case of “leading questions”, the following applies: (2)

- A. It may not be asked during examination in chief and re-examination.
- B. It may be asked during cross-examination.
- C. It is a question that suggests the answer to the witness.
- D. It applies to evaluate the credibility of a witness.

Options

- a. A only
- b. A and B only
- c. All the options are correct (A-D)
- d. C and D only
- e. B only

1.10 Stacey offers to pay Phillip the sum R12 000 upon the completion of maintenance work at one of her property's. However, after the work has been completed, Phillip claims that Stacey refuses to make payment. Which court is best suited to hear the matter? (2)

- A. The High Court.
- B. The Small Claims Court.
- C. The Maintenance Court.
- D. The District Division of the Magistrate's Court.
- E. The Regional Division of the Magistrate's Court.

QUESTION 2

[3]

Discuss the differences between "legal positivism" and the "natural-law approach".

QUESTION 3

[8]

During the period of the Roman Empire (27 BCE – 1453 CE), the emperor Justinian, decided to codify Roman law. The codification is known as the *Corpus Iuris Civilis* and consists of four parts. Identify and provide a brief description of the four components.

QUESTION 4

[40]

Thabang is out with his child one afternoon and decides to take her to the park. However, while playing on the jungle gym, his daughter falls on her head and seriously injures herself. In a panic, Thabang rushes his daughter to the nearest hospital for emergency medical treatment. On his way to the hospital, he fails to come to a complete stop at an intersection. Consequently, he collides with another motor vehicle. The other motor vehicle driver is subsequently taken to the hospital as a precautionary measure, but upon examination, it is established that he suffered a severe concussion. He slips into a coma later that evening and dies due to the injuries he sustained in the accident. With regard to the above scenario, answer the following:

- 4.1 Thabang is charged with murder. He is brought before the court where he pleads not guilty to the charge. The case is subsequently postponed to a later date for trial. Must Thabang remain in custody until the date of the trial? (Your answer should include the factors that will be considered in determining whether he should be kept in custody). (7)

- 4.2 Identify the burden of proof as well as the party that bears the burden of proof. (2)
- 4.3 What will the parties in the matter be known as? (2)
- 4.4 What are the defences that exclude unlawfulness, and will Thabang be able to rely on any one of them? Discuss fully. (4)
- 4.5 Regarding question 4.4, what are the remaining two elements of a crime. (2)
- 4.6 Thabang is apprehensive about disclosing certain facts to you. As his legal representative, you explain the various forms of privilege. (7)
- 4.7 Thabang's trial commences on 1 June 2022. In each instance below, name the type of evidence that is being tendered and state whether it is generally admissible:
 - 4.7.1 The evidence of witness A who testifies that his friend told witness A that he had observed the incident. (2)
 - 4.7.2 Photographs of the wrecked motor vehicles are submitted as evidence. (2)
 - 4.7.3 Witness B testifies that she observed the entire incident. (2)
 - 4.7.4 Witness C testifies about Thabang's recklessness and refers to another incident where he exceeded the speed limit. (2)
- 4.8 For the purpose of this question, assume that the prosecutor has offered Thabang a plea agreement. Explain the possibility of a plea agreement, outlining the requirements, procedure and implications attached to a plea agreement. (8)

QUESTION 5

[9]

In each instance below, indicate the court that is best suited to hear the matter:

- 5.1 Kim faces a possible prison sentence of 2 years for drunken driving. (1)
- 5.2 Anele causes damage to her ex-husbands guitar collection and refuses to compensate him? The cost of the repairs amounts to R 250 000. (1)

- 5.3 Nomsa claims that her neighbour is in possession of her Louis Vuitton handbags to the value of R80 000. Her neighbour has subsequently lost the bag. (1)
- 5.4 regarding question 5.3, suppose Nomsa does not want a good relationship with her neighbour to sour. How can she resolve the dispute without referring the matter to formal litigation? (1)
- 5.5 Lilly loans Cyril R10 000, on condition that he pays her back within one month. However, Cyril fails to deliver on his promise. (1)
- 5.6 What is the monetary threshold of the court in 5.5? (1)
- 5.7 Dali, an interior decorator, is asked to redesign the entire look of Karen's house. The cost of the project amounts to R800 000. However, Karen fails to pay Dali (1)
- 5.8 Jacob is arrested on the charge of high treason. (1)
- 5.9 Paul faces a possible prison sentence of 10 years. (1)

TOTAL: **[80]**
