

## EXAMINATION QUESTION PAPER B - 2022



**PROGRAM:** LLB  
**MODULE:** LAW OF CRIMINAL PROCEDURE  
**CODE:** SAR0011 / CPR41A0  
**DURATION:** 2 HOURS  
**TOTAL MARKS:** 80  
**EXAMINERS:** DR W N NEL  
**MODERATOR:** DR GJ BOUWERS  
**NO OF QUESTIONS:** 3

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**STUDENT SURNAME:** .....

**STUDENT INITIALS:** .....

**STUDENT NUMBER:** .....

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### INSTRUCTIONS

- This is an in-person, closed-book, fill-in 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 are *not* allowed to contact or exchange any information with any third party during the examination period.
- Additional lines are available at the end of the paper. If you make use of the additional lines to answer a question, please indicate such next to the relevant question.
- Please read each question carefully and thoroughly before answering, and make sure to obey the instructions of each question and take note of the marks allocated and approximate time required when answering each question.
- Follow the structure and layout guidelines for longer questions as discussed in the study guide.

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

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**Question 1****[+/- 75 minutes]****[50]**

Read the following adapted newspaper article and answer the question below:

**“Ex-Free State ward councillor arrested for allegedly plotting murder of ANC member” by Zandile Khumalo**

Free State police have arrested the alleged mastermind behind the murder of an ANC member, who was a candidate councillor when he was shot dead last year. The alleged gunmen - John Wells (aged 32) and Simphiwe Simelane (aged 34) - were arrested in January and remain in custody. It is further alleged that these gunmen were hired by Zonke Tshabalala, the alleged mastermind - a former councillor in one of the wards in the Free State – who was arrested on Monday.

Free State police spokesperson, Brigadier Motantsi Makhete, said Tim Moletsane - who at the time of the murder was active in politics as a member of the ANC and was a candidate councillor for Ward 8 in Meloding - was gunned down by two hitmen on 23 September 2021 while leaving the tavern in 8th street in Meloding, where he worked. Makhete said: "The two [hitmen] were easily identified using CCTV video surveillance footage outside the tavern, whereafter they were successfully traced and arrested on 28 January 2022, at which time certain property of the victim was found in their possession. They remain in custody in anticipation of their first court appearance."

Further intensive investigations led to the arrest of a 44-year-old man who was allegedly linked as the mastermind in the murder based on incriminating telephonic and electronic communication between the three suspects, which was intercepted by police. Makhete said that "these intercepted communications clearly show that the murder was premeditated". As a result, a warrant for arrest was issued for Tshabalala, who was arrested on Monday, around 18:30. The 44-year-old former councillor was arrested after he was linked to the murder of ANC member Tim Moletsane, who at the time of the murder was active in politics and was a candidate councillor for Ward 8 in Meloding.

According to Makhete, all the accused face a charge of murder, but have not been formally charged yet. The alleged mastermind, together with the two hitmen, will have their first court appearance on Wednesday and is likely to apply for bail at that time. All three men will remain in custody until then.

\*\*\*Set of facts were adapted from a News24 article written by Zandile Khumalo (3 May 2022)\*\*\*

- 1.1. For purposes of question 1.1., suppose that Zonke Tshabalala is formally charged and that you are assigned as the *public prosecutor* in this matter. With reference to the relevant legislative provision, discuss the essential contents of a charge sheet and draft the charge sheet against the accused for the main charge. (16)

### Essential contents of a charge sheet:

[illegible]

**Draft the charge sheet:**

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- 1.2. For purposes of question 1.2., suppose that the three alleged offenders are formally charged. During the State's case, the co-accused alleged police officials were not authorised to monitor or intercept their private telephonic and electronic communications as this amounted to an unjustifiable infringement of the right to privacy in terms of section 14 of the Constitution (and section 2 of the Regulation of Interception of Communications and Provision of Communication-related Information Act 70 of 2002).

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 individual's (suspect's) rights and the maintenance of law and order. Apply the approach outlined by the court in *Magobodi* to the set of facts above and indicate whether there was a *prima facie* infringement/limitation of rights and whether, under the circumstances, such a limitation was justifiable on the basis of reasonableness. In your answer, you must refer to relevant provisions of the Criminal Procedure Act 51 of 1977 (CPA) and the Constitution. (20)

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QUESTION 1.2. CONTINUES ON THE NEXT PAGE.../

[illegible]

- 1.3. For purposes of question 1.3., suppose that the three alleged offenders were formally charged and that during their trial, they were successful in their submission that the monitoring and interception of their private telephonic and electronic communications amounted to an unjustifiable infringement of the right to privacy in terms of section 14 of the Constitution. Briefly discuss the constitutional remedy available to the three alleged offenders regarding this evidence and the effect thereof?
- (8)

This image shows a single sheet of white paper with horizontal blue ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

- 1.4. For purposes of question 1.4., suppose that the three alleged offenders were prosecuted but discharged at the end of the State's case in terms of section 174 of the CPA because of a lack of admissible evidence.

Two weeks later, all three accused are re-arrested and charged with assault with the intent to do grievous bodily harm with reference to the same set of facts outlined above. You are assigned as the legal practitioner for the three co-accused in this

matter. What plea would you advise the co-accused to plea to the charge of assault with the intent to do grievous bodily harm? Motivate your answer with reference to the relevant constitutional due process provision. (6)

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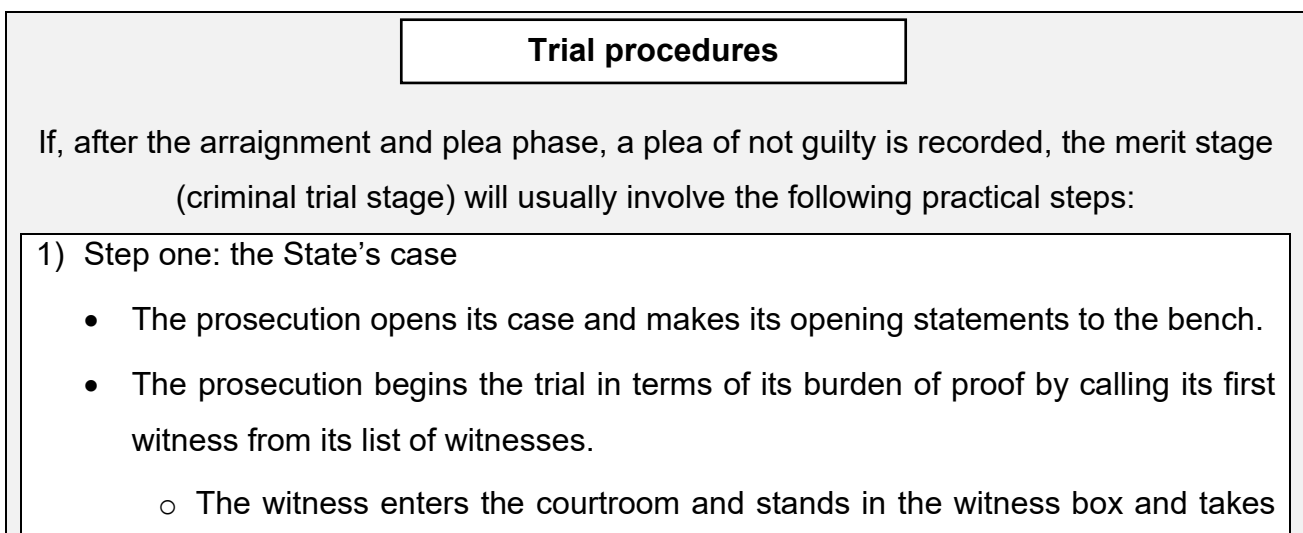
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**Question 2****[+/- 15 minutes]****[10]**

Identify and write down the relevant word/phrase missing from the diagram below.



the oath.

- The prosecutor leads evidence by questioning the witness during  
(2.1.) \_\_\_\_\_
- The counsel has a duty to  
(2.2.) \_\_\_\_\_ the witness.
- The (2.3.) \_\_\_\_\_ may re-examine the witness.
- The judicial officer may ask questions where necessary.
- Once the prosecution has called all its witnesses, it closes its case.
- At this point, the prosecution's evidence against the accused must establish a  
(2.4.) \_\_\_\_\_ case. Where the prosecution fails to establish such a basis at the close of its case, the defence may request for a  
(2.5.) \_\_\_\_\_ from prosecution in terms of section 174.

## 2) Step two: the case of the defence (accused)

- If the prosecution successfully established the required basis for its case, the defence bears an evidentiary burden of  
(2.6.) \_\_\_\_\_ and must present its case.
- The defence makes its opening statement to the bench.
- The defence calls its witnesses in order to rebut the state's case established by the prosecution and will follow the same process as indicated above.
- If the accused chooses to waive his/her right to silence and testifies in his/her own defence, he/she will generally testify first.
- The judicial officer may ask questions where necessary.
- Thereafter, the defence closes its case.

## 3) Step three: the close of arguments

- The prosecutor addresses the court on the merits
- The defence presents its arguments
- The prosecutor may reply on matters of law.



## 4) Step four: the finding of the court (verdict)

- The purpose of this phase of criminal proceedings is to determine the criminal liability of the accused for the alleged crime, which culminates in the court's verdict (judgment).
- The court must be satisfied that, after mature consideration, the prosecution (State) has proven the legal guilt of the accused  
(2.7.) \_\_\_\_\_
- On this basis, the court renders its verdict by either:
  - Finding the accused (2.8.) \_\_\_\_\_ and ordering a discharge, or
  - Finding the accused (2.9.) \_\_\_\_\_, in which case the (2.10.) \_\_\_\_\_ stage must now follow.

**Question 3****[+/- 30 minutes]****[20]**

Choose only the most appropriate answer from the alternatives provided and write down the answer in the relevant answer space in the table below.

Question:	Answer:		Question:	Answer:		Question:	Answer:
1.			2.			3.	
4.			5.			6.	
7.			8.			9.	
10.			11.			12.	
13.			14.			15.	
16.			17.			18.	
19.			20.				

1. X was arrested by police officials on Monday 29 March for allegedly assaulting Y at a bar but has not been formally charged. During the arrest, X was searched by police, and they seized a knife that was in his possession. Which of the following fundamental criminal procedural rights will X be entitled to?
  - a. The right to be present during the trial and participate meaningfully.
  - b. The right to be afforded a reasonable opportunity to answer to the charges.
  - c. The right to remain silent.
  - d. The right to a fair public trial before an ordinary court.
  - e. The right to have his trial begin and conclude without unreasonable delay.
  - f. All the above.
  
2. 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.
  - a. life imprisonment.
  - b. the death penalty.
  - c. correctional supervision.
  - d. committal to a treatment centre.
  - e. declaration of the accused as a habitual offender.
  
3. 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.
  - a. *S v Govender* 1955 (2) SA 130 (N).
  - b. *S v Chavulla* 2001 (2) SACR681 (SCA).
  - c. *S v Kumkani* 2013 (2) SACR 360 (WCC).
  - d. *Johannesburg Consolidated Investment Company v Johannesburg Town Council* 1903 TS 111.
  - e. *Stopforth v Minister of Justice* 1999 (2) SACR 529 (SCA).
  - f. All of the above options are correct.
  - g. None of the above options are correct.

4. A ..... is a 'peace officer' for purposes of section 1 of the Criminal Procedure Act 51 of 1977 (CPA).
- a. correctional services official.
  - b. police officer.
  - c. magistrate.
  - d. metro police officer.
  - e. All the above.
  - f. None of the above.
5. The Constitutional Court in *Minister of Justice and Constitutional Development v Prince* [2018] ZACC 30, found that it is unconstitutional for the State to criminalise .....
- a. the possession, use or cultivation of cannabis by any person for personal consumption in private.
  - b. the possession, use or cultivation of cannabis by adults for personal consumption in private or public.
  - c. the commercialisation of the possession, use or cultivation of cannabis by adults for personal consumption in private.
  - d. the possession, use or cultivation of cannabis by adults for personal consumption in private.
  - e. the possession, use or cultivation of cannabis by adults for communal consumption in private.
6. X has been found guilty of shoplifting goods worth R500. This is X's fifteenth (15) such offence in the last two years. Therefore, the trial court declared X a habitual criminal. Which is the most likely court to have adjudicated this case?
- a. District Magistrate's Court.
  - b. Regional Magistrate's Court.
  - c. High Court.
  - d. Supreme Court of Appeal.
  - e. Constitutional Court.

7. In circumstances where section 51 of the Criminal Law Amendment Act 105 of 1997 is applicable, how does this provision affect the court's discretionary power to impose a 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 substantial and compelling reasons 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.
8. X is the accused in the alleged murder of Z. X has been granted bail and will appear in the South Gauteng High Court on the 12<sup>th</sup> of July. Which of the following fundamental criminal procedural rights will X not be entitled to?
- a. The right to be detained in humane conditions.
  - b. The right to remain silent.
  - c. The right to a legal representative.
  - d. The right to a fair public trial before an ordinary court.
  - e. The presumption of innocence.
  - f. None of the above.
9. X is to appear before a magistrate's court for the alleged violation of certain road traffic offences. Based on the nature of this charge, it is generally accepted that a peace

officer may serve X with ..... in order to secure his attendance at the trial, in which case X is free to go as he pleases, provided he attends at his trial.

- a. indictment
- b. warrant of arrest
- c. written notice to appear
- d. summons
- e. Any of the above options (a-d)

10. 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 16 years' experience as a magistrate. X is of the opinion that the sentence imposed is not in accordance with justice and requests you to apply for review.

- 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. Options a or b.
- f. Options a or c.
- g. Options b or c.
- h. Options b or d.

11. 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. Which of the following constitutes constitutional duties on the judiciary in the context of the court's verdict?

- a. Judgment must generally be delivered in open court – “public trial” - in terms of section 152 of the CPA and guaranteed by section 35(3)(c) of the Constitution.
- b. Judgment must generally be delivered in a language that an accused understands, which is in line with the principle of orality (*viva voce*).
- c. Judgment must be delivered within a reasonable time and without unreasonable delay, which is based on section 35(3)(d) of the Constitution.
- d. The judicial officers must express the basis for their decisions on any factual or legal issue through reasoned judgments, whether in a superior court or a magistrate’s court.
- e. The principle of judicial impartiality requires that the court must base its judgement purely upon evidence heard in open court (and given under oath) in the presence of the accused.
- f. All of the above options are correct.
- g. None of the above options are correct.

12. 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.

- a. *S v Williams* 1995 (7) BCLR 861 (CC).
- b. *S v Makwanyane and Another* 1995 (6) BCLR 665 (CC).
- c. *S v Pieters* 1987 (3) SA 717 (A).
- d. *S v Xaba* 2005 (1) SACR 435 (SCA).
- e. None of the above.

13. Mrs. Pletz, a South African citizen, is a member of a terrorist organization planning to overthrow the South African government. She is arrested and charged with treason after a bomb that she planted exploded, killing 10 people. Which court will have jurisdiction to hear this case?

- a. District Magistrate’s Court.
- b. Regional Magistrate’s Court.
- c. High Court.

- d. Supreme Court of Appeal.
- e. Constitutional Court.

14. 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 trial, thus constituting a gross irregularity in the proceedings.

- a. Constitutional judicial review.
- b. Automatic review in terms of section 302 of the CPA.
- c. Extraordinary review in terms of section 304(4) of the CPA.
- d. Review of proceedings before sentencing in terms of section 304A of the CPA.
- e. None of the above.

15. An important consequence of an official pronouncement of legal guilt based on a reasoned judgment, during a fair public hearing before an impartial and independent court, is that .....

- a. the prosecution has been successful in proving the *prima facie* guilt of the convicted person.
- b. the convicted person is henceforth, no longer entitled to the fundamental rights to a fair trial in terms of section 35(3) of the Constitution.
- c. upon conviction, the convicted person may be sentenced and punished for any criminal offence, regardless of whether such an act or omission was an offence under South African criminal law at the time it was committed or omitted.
- d. the constitutional presumption of innocence, as it relates to the specific charges in question, is said to have been overturned in accordance with the rules of evidence and criminal procedure.
- e. All of the above options are correct.

16. If, upon conviction, the sentencing court is considering a sentencing option that requires the temporary deprivation of the convicted person's freedom of movement as contemplated in section 12(1)(a) of the Constitution, there must be ..... in the particular circumstances.
- arbitrary and degrading treatment
  - appropriate correctional facilities available
  - no other sentencing options available
  - just cause for such a sentence
  - no reasonable explanation for the convicted person's actions
  - None of the above.
17. 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?
- Petition the Minister of Justice to reopen his case in terms of section 327 of the CPA.
  - Review proceedings.
  - Petition the State President to pardon his conviction and sentence in terms of section 84(2)(j) read with section 83 of the Constitution.
  - Postponement.
  - Appeal proceedings.
18. The ..... is the process where the accused appears in court to stand trial for the offences which he/she has allegedly committed. The purpose of this phase is to conclude whether or not the accused is guilty beyond a reasonable doubt for the crimes he/she is accused of.
- pre-trial phase
  - plea-phase
  - trial on merits stage
  - sentencing stage



e. after-trial phase.

19. 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 *not* correct?

- a. “Sentencing” refers specifically and exclusively to the possible sentencing options that are not punitive in nature.
- b. “Sentencing” is a collective term that includes all the possible sentencing options as provided for in terms of relevant legislation.
- 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*.

20. 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, to appeal against.....

- a. the decision to grant bail or against the imposition of a condition of bail.
- b. the sentence imposed on the facts.
- c. the sentence imposed on the law.
- d. a question of law decided in favour of the accused.
- e. All of the above options are correct.
- f. None of the above options are correct.

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**Additional Lines:**

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**Total marks: 80**