

ZIMBABWE EZEKIEL GUTI UNIVERSITY

FACULTY OF LAW:

MAY/JUNE 2018 MAIN EXAMINATION

MODULE AND CODE: CRIMINAL PROCEDURE (LLB 207)

FULL-TIME

DURATION: 3 HOURS

TOTAL MARKS: 100

INTERNAL EXAMINER: *ADVOCATE WELLINGTON THOMAS PASIPANODYA*

INSTRUCTIONS

1. You are requested, in your own interests, to write legibly.
2. You are directed to use avoid using short hand and poor grammar.
3. This paper consists of FOUR (4) pages. Please ensure that you have all the pages.
4. Please note that you must answer questions from both Section A and B.
5. In your answers, you must refer to any relevant case law, legal principles and legislation that may be applicable.
6. Please note that each answer must be answered on a new.
7. You can bring into the exam unannotated legislation. Students are not allowed to lend to or borrow from, each other any exam material during the duration of the exam.

SECTION A**ANSWER 2 QUESTIONS FROM SECTION A.****ANSWER QUESTION 1 WHICH IS COMPULSORY AND ANY OTHER QUESTION IN THIS SECTION****QUESTION 1**

Peter Harris and his wife Susan live on a farm approximately 15 kilometres outside Bindura. On the night of 10th July 2017 Peter and his wife are disturbed by three intruders whilst they are at home. The intruders, all armed, proceed to tie up both Peter and Susan. Peter however manages to set off an alarm which is linked to a neighbour's farm. The intruders go through the house and in the process take Peter's wallet; Susan's purse as well as their television set. Peter is assaulted and forced to open his safe which contains three firearms and US\$10 000 in cash – the cash being wages for the farm workers who work on the farm. Thereafter Peter and Susan are again assaulted. All three of the intruders threaten to rape Susan and are in the process of this act when the neighbour arrives. They flee into the darkness, but one is arrested approximately 500 meters from the farm. Fifteen days later Sam Ngubane is arrested in connection with the attack on the farm. He is arrested at his home in Chipindura, approximately five kilometres from Peter Harris' farm. His circumstances are the following:

- i. He is 19 years old and is staying with his elderly paternal grandparents in Chipindura.
- ii. He is attending the local High School and is in form six. His teacher has indicated that his academic progress is satisfactory but that he is absent from school quite frequently. She is of the opinion that his grandparents are unable to exercise control over him although they provide his basic needs.
- iii. Both his grandparents are pensioners struggling to survive financially. His grandmother suffers from cancer and her prognosis is that she will likely not live longer than six months.
- iv. His father has been deceased for ten years and his mother, who has remarried, now lives in Durban. She will occasionally send some support money to the grandparents, but she has had very little contact with Sam.
- v. Sam participated in an identity parade where two of the co-accused were pointed out by Peter. Sam was however not so pointed out.

- vi. At the time of his arrest and during a search and seizure operation a shoebox containing USD 2000 in cash was found under his bed. Sam alleges that this was money he had earned doing odd jobs around the area and from the proceeds of which he regularly contributes to the household expenses of his grandparents.
- vii. Sam has a previous conviction for theft of a bicycle which occurred in 2011 and for which he was sentenced to six months imprisonment which was suspended for three years.

Do the following (separate) tasks:

1.1 You are Sam's defence attorney and argue in favour of his release on bail

[10 marks]

1.2 You are the public prosecutor and argue that bail should be denied.

[10 marks]

1.3 You are the magistrate and give a considered judgment as to whether Sam should be released on bail or not – including any bail conditions which should be applicable if you are of the view that Sam should be released on bail

[Total 5 marks]

[TOTAL: 25 MARKS]

QUESTION 2

Joe, a police officer, forcibly opens the cellar of the accused's (Wendy) house without Wendy's consent and without a warrant to search. Joe then searches the cellar and finds a bag full of Mandrax tablets, 100kg of dagga and documents, addressed to Wendy's lawyer. During the trial Wendy argues that the search was illegal because Joe did not act upon a warrant, and in accordance with the provisions of the CRIMINAL PROCEDURE AND EVIDENCE ACT, and that Joe's evidence relating to the dependence producing substances and the documents must be excluded as evidence as it was obtained unlawfully. The prosecution argues that Joe acted lawfully, and the court must allow Joe's evidence. Discuss whether the arguments of Wendy or the State should be accepted by the court. Your answer must also reflect the classes of articles that are susceptible to seizure.

[TOTAL: 25 MARKS]

QUESTION 3

Describe and discuss briefly the phases of a criminal trial from indictment through to sentencing.

[TOTAL: 25 MARKS]

SECTION B

ANSWER ANY TWO (2) QUESTIONS FROM THIS SECTION**QUESTION 4**

Discuss the various methods of securing the attendance of an accused in court indicating the circumstances under which each should be used.

[TOTAL: 25 MARKS]

QUESTION 5

Discuss the risks and factors which must be considered by a court when deciding a bail application.

[TOTAL: 25 MARKS]

QUESTION 6

Discuss the powers of the police to arrest and search a person without the necessary warrants.

[TOTAL: 25 MARKS]

QUESTION 7

7.1 Your client was charged with Housebreaking with the intent to steal and theft. He pleaded guilty and his plea was accepted and recorded by the presiding officer. Explain to your client what the procedure is regarding sentencing.

[10 MARKS]

7.2 Explain your understanding of the concept "Autrefois acquit".

[5 MARKS]

7.3 Discuss the powers of the police to arrest and search a person without the necessary warrants.

[10 MARKS]

[TOTAL: 25 MARKS]

-----**THE END**-----