

## ZIMBABWE EZEKIEL GUTI UNIVERSITY

**FACULTY OF LAW: NOVEMBER 2018 MAIN EXAMINATION**

**MODULE AND CODE: CRIMINAL PROCEDURE (LLB 207)**

**DATE: 30 NOVEMBER 2018**

**TIME: 0900 HOURS**

**DURATION: 3 HOURS**

### 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. During the course of 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 are allowed to 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
8. All cellular phones and electronic devices must be switched off during the duration of the exam. Failure to comply will lead to automatic disqualification.

**SECTION A: ANSWER 2 QUESTIONS FROM SECTION A.**

**PLEASE ANSWER QUESTION 1 WHICH IS COMPULSORY AND ANY OTHER QUESTION IN THIS SECTION**

**QUESTION 1**

Jane has been arrested on multiple charges of murder arising out of the shootout involving two Bus companies in separate incidents, resulting in the deaths of one bus driver and six passengers (including a two-year-old child) and the wounding of 11 others - two of whom are in a critical condition. The police believe the murders are related to a bus transporter war that has broken out as a result of the dispute between bus operators belonging to rival associations. Jane's uncle is an operator belonging to one of these associations and Jane works for him as a conductor over the weekends. Jane's arrest arises from her links to her uncle (who was also been arrested) as well as the fact that an unlicensed firearm, that is linked to the murder, was found in her room. Jane's background circumstances are to the effect that she is 22 years old and lives with her mother and four siblings in Ashdown. None of them are employed although her mother receives a pension of \$500 per month. The two younger siblings are at school. Jane earns \$30 over the weekends working for her uncle as a taxi conductor. She is also working as a gardener two days a week for an elderly woman who pays her \$10 per day. She has been doing this for the past 10 years - starting on the weekends when she was at school and now working during the week since she has completed school. She has applied (and been accepted) to do an electrician's course at Harare Poly-technic college. The course is due to commence in January 2013. The police are opposed to Jane being released on bail on the basis that this is a very serious offence and further that the taxi violence is ongoing. Many of the suspects involved have not yet been arrested and there is a fear of widespread intimidation of witnesses. It is also felt that all those involved should be removed from the general population as their presence in the community is likely to provoke acts of revenge and further violence. Jane's version of events surrounding the murders is that she has been falsely implicated. She admits possession of a firearm, but states that this was given to her by her uncle for safekeeping. She was under the impression that it was licensed.

Prepare the following arguments:

(a) Assume you are Jane's defence counsel. Argue in favour of her being released on bail. (7 marks]

(b) Assume you are the public prosecutor. Argue in favour of denial of her released on bail. 7 marks]

(c) Assume you are the magistrate. Give a considered judgement as to whether or not the accused should be released on bail- including any conditions upon which Jane should be released. (11 marks]

**[TOTAL: 25 MARKS]**

## QUESTION 2

Your client is charged with the rape of his 12-year-old daughter. He explains to you that he has already been convicted of that charge, and the matter has been postponed for sentence. However, he tells you that although he had pleaded guilty at his first appearance, he did so because he had been forced to plead guilty by the investigating officer. The investigating officer had threatened to lock him up with gangsters in prison if he did not plead guilty.

Discuss the action you will take at his next appearance? In your answer you must discuss the relevant legislative provisions and case law.

**[TOTAL: 25 MARKS]**

## QUESTION 3

You are a regional court magistrate, and have convicted the accused before you of rape (for contravening s 65 of the Criminal Law (Codification and Reform) Act [9:23] and trespass (for contravening s 131 of the same Act). The accused, a 20-year-old security guard, was guarding the perimeter of a building when he noticed that an external door was open. Entering the building he discovered the complainant, a homeless woman, asleep inside. He forced her to accompany him further into the building, where he raped her in one of the offices. He had no permission to enter the office. The accused is a first offender, with two dependants. He admitted that he had smoked a dagga cigarette just before the incident. He denied his guilt throughout the trial and exhibited no remorse for his actions.

Taking all relevant factors into consideration, you are required to sentence the accused.

**[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. **25 MARKS]**

**QUESTION 5**

Describe and discuss briefly the main phases of a criminal trial from arraignment through to sentencing. **[25 MARKS]**

**QUESTION 6**

Briefly discuss the pleas that an accused may raise as provided for by the Criminal Procedure and Evidence Act, and justifications for each plea. **(25 MARKS]**

**QUESTION 7**

An accused is charged with driving under the influence of alcohol. He wants to plead guilty. You represent him. Draft the statement that will make up the plea. Include all headings and endings. **[25 MARKS]**

-----THE END-----