



ZIMBABWE EZEKIEL GUTI UNIVERSITY

FACULTY OF LAW

EXAMINATION PAPER

COURSE CODE : LLB 207
COURSE TITLE : CRIMINAL PROCEDURE
DURATION : 3 Hours
LEVEL : 2.2
DATE : 28 May 2019

INSTRUCTIONS TO CANDIDATES:

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 FIVE (5) 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

On the 31st December 2017 Samantha went to joy night club for new year's celebration with her friends, whilst there Samantha meets a powerful politician named Chinoz he is a cabinet minister and a member of ZOZO RF the ruling party. Chinoz asks to buy Samantha a drink and he put a drug in her pill which makes are drowsy and weak. Chinoz seizes the opportunity and takes her to his Mercedes Benz where he rapes her twice without using protection and he dumps her outside the club. Samantha wakes up hours later and realises what has happened. She proceeds to make a police report at her nearest police station. However, the police since the filing of the police report on the 1st January 2019 have not made any meaningful inroads to arrest Chinoz. They tell Samantha that they took the docket to the office of the Prosecutor General and he has declined to prosecute. They suspect that the Prosecutor General is friends with Chinoz and he is protecting his friend. Samantha is stuck and does not know what to do

You have been approached by Samantha for legal advice and representation advise her on what you can do for her to get justice.

[TOTAL Q1: 25 MARKS]

QUESTION 2

Pokello is a 30-year-old female, residing at number 2456 aerodrome Bindura. She works for Hot wings restaurant as a chef. She is married to her husband Davido and they are blessed with 2 minor children. On the 1st June 2018 her ex-boyfriend Stunner visited the restaurant to buy 6 hot wings and chips. Pokello's breakup with Stunner was very acrimonious and she never forgave him for the breakup. She poisoned Stunner's food and he almost died of poisoning. Stunner suspects Pokello but he has no evidence that it was her that poisoned the food. He makes a police report at Bindura central police station on the 4th June 20018. Pokello was arrested at 11:10 am on the 6th June 2018. She was arrested and charged with a crime of attempted murder in terms of the Criminal

Law Codification and Reform Act. Pokello denies the charge. She was Detained in custody from the time of her arrest to 10:00am on the 8th June 2018 wherein she was taken to Bindura Magistrates court for initial remand. On the day of the remand the police learn that Stunner subsequently died the previous day from the suspected poisoning. The Police change the charge from that of attempted murder to Murder.

You have been engaged by Pokello's Husband to represent Her.

2.a Advise on the procedure that you will undertake to secure the release of the accused person.

[TOTAL Q2.a: 10MARKS]

2.b Draft the full application you will make to the respective court and include all your legal arguments comprising of caselaw, statutes and scholarly works

[TOTAL Q2. b :15 MARKS]

[TOTAL Q2: 25 MARKS]

SECTION B

ANSWER ANY TWO (2) QUESTIONS FROM THIS SECTION

QUESTION 3

Describe and discuss in detail all the processes of criminal trial proceedings from the time of set-down of the matter for trial up to pronouncement of the verdict.

[TOTAL Q3: 25 MARKS]

QUESTION 4

Section 57 of the Constitution provides that every person has the right to privacy which includes the right not to have:

- their homes, premises or property entered without their permission;
- their person, home, premises or property searched.

These rights are not absolute as they are not listed under section 86(3) as rights that may not be limited by law. Therefore, they may be limited by a law which complies with the provisions of s 86(2) of the Constitution.

Using scholarly arguments, caselaw and statutes analyse the extent that this statement is true.

[TOTAL Q4: 25 MARKS]

QUESTION 5

Have the procedural and evidential rules in criminal cases been properly aligned to the Constitution and are the new provisions on the death penalty for murder satisfactory? Discuss

[TOTAL Q5: 25 MARKS]

QUESTION 6

6.1 Part VIII of the Criminal Procedure and Evidence Act [Chapter 9:07] provides for the confirmation of extra-curial statements made by accused persons. If such a statement is confirmed in terms of that Part, it is admissible in evidence at the accused's subsequent trial unless he or she proves that it was not made freely and voluntarily.

Are these provisions constitutional? Even if they are, is it desirable to separate the investigation of the admissibility of an extra-curial statement from the main trial?

[TOTALQ6.1: 15 MARKS]

6.2 Section 277(3) of the Criminal Procedure and Evidence Act [Chapter 9:07] states that where a corporate body is liable for prosecution for a crime for any conduct, that conduct is deemed to have been the conduct of every person who at the time was a director or employee of the corporate body unless it is proved he or she took no part in the conduct.

Is this provision constitutional? Even if it is, is it socially necessary?

[TOTALQ6.2 :10 MARKS]

[TOTAL Q6: 25 MARKS]

QUESTION 7

7.1 Discuss the right to silence of a suspect, outlining the extent to which their right to silence is respected by Zimbabwe's criminal procedure system.

[8 MARKS]

7.2 Discuss the powers of search conferred on peace officers by legislature, what is the effect of an illegal search

[10 MARKS]

7.3 What principles and factors should a court take into account when deciding whether or not to suspend all or part of a sentence.

[7 MARKS]

[TOTAL Q7: 25 MARKS]

QUESTION 8

With reference to specific legislation discuss the various methods of securing the attendance of an accused person and also a witness in court indicating the circumstances under which each should be used.

[TOTAL Q8: 25 MARKS]

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