



ZIMBABWE EZEKIEL GUTI UNIVERSITY

FACULTY OF LAW

DEPARTMENT OF PROCEDURAL LAW

EXAMINATION PAPER

COURSE CODE : LLB207
COURSE TITLE : Criminal Procedure
SPECIAL REQUIREMENTS : Relevant pieces of legislation
DURATION : 3 Hours
LEVEL : 2.2
DATE :

09 FEB 2022

INSTRUCTIONS TO CANDIDATES:

1. Answer FOUR questions. Question ONE in section A is compulsory. Answer any THREE questions from section B. Each question carries 25 marks.
2. Students may bring into the exam un-annotated and clean texts of applicable legislation. Copies with notes inside shall not be allowed and may be confiscated. No student is allowed to share his/her copy with another.
3. Students are NOT allowed to carry and use electronic gadgets such as laptops and cellular phones, among other things
4. Write legibly
5. Number your answers accordingly
6. Good luck...and remember...*all is fair in love and war*

Section A: Compulsory question

QUESTION 1

Below are statements made by the complainant as well as the accused in a criminal matter?

A statement by Janet Mutuzu (complainant) – prosecution witness

My name is Janet Mutuzu I'm married and live with my husband Ralph Mutuzu at 6 Sandhurst Way Braeside Harare. I am employed at Tina Eats Restaurant at 23 Brooklyn Road, an all-night restaurant. The restaurant has a counter with a row of stools and a single row of tables between the counter and the front.

I usually work the 19h00 to 03h00 shift at the restaurant. The manager, the cook, and I are usually there during these hours. On 14th October I became dizzy and nauseated, probably because I was three months pregnant. I asked for and received permission to leave early. I left at about 23h00. I decided to walk home and did not call my husband to tell him that I was leaving early because I wanted to ambush him and see what he will be doing in my absence. The restaurant is only about 1 km away from our home. I have worked there for the past five months.

As I reached an alley a short way from the restaurant, a man stepped out and blocked my way. I had never seen the man before. He put a knife to my throat and ordered me to come with him. He took me to a car and forced me in. He then locked the doors.

I am unable to describe the make and year of the car, but it was a medium-sized sedan and a dark colour. I did not see the numberplate.

The man drove around the city for what seemed to be an hour or more and kept threatening to kill me if I did not do what he told me to do. He said he would cut my throat if I screamed or tried to get out of the car. As he drove the man kept poking the knife at me, but he did not cut me.

After driving around the man stopped at the open field in Aerodrome Camps Drift which was deserted. He forced me to undress. Still holding the knife the man engaged in an act of sexual intercourse with me. After that he told me to get dressed. He then drove the car around for another hour or two before driving back to the Kitsiyaniwa shopping centre. Again he made me undress and forced me to take part in sexual intercourse. During the second occasion he slapped me, choked me and squeezed my right arm.

After the second act of intercourse and after I again got dressed, he drove me back to the spot where he had first confronted me he pushed me out of the car saying that if I told anyone he would find me and cut my throat.

I then walked home, arriving there at about 03h45. On my way home, I walked past Jambalya Bar but felt too embarrassed to go in and ask for help.

The man who attacked me was a coloured male, of medium size and weight about 25 to 30 years old. He had no distinguishing marks or characteristics. I saw that he was wearing a blue overall that had the words "Ingazvakanaka 1945 Service Station" embroidered on the back. I also saw that he had a label on his left-hand front pocket that said "Mucha".

Statement of Mr Mucharepa Svongwa (accused)

My name is Mucharepa Svongwa and I'm 25 years old. I live in Chuma Street and work at Ingazvakanaka 1945 Service Station.

I know that I have been accused of raping Janet Mutuzu, but I did not have sex with her without her consent. I have known her for the past year. She is a nightshift waitress at the Tina Eats Restaurant, and I go there about once a week for meals. She usually waits on me and is the only waitress in there when I get off work at 22h00. If the bar is not very busy she usually comes and talks to me.

On the night in question we talked quite a lot, particularly when she told me that she was bored with her marriage and there was no excitement in life for her. Her husband likes to stay at home and watch TV rather than go out. She said that this led to arguments which resulted in him assaulting her. I told her that I could provide some excitement if she was interested. She said yes she was interested.

I mentioned that I was also married, but that I had been separated from my wife for a couple of months. I suggested that if she really wanted a change of pace she should get off work and meet me. She said that she could get off early by about 23h00. I said that would be okay and I would pick her up outside. She then said that might not look too good. I told her that I would wait for her in my car down the road. She said she would be there.

I parked my car down the road and when she came walking along the pavement I honked my horn. She opened the door and got in. We drove along the road and around town for a while and then on her suggestion we went to Aerodrome Camps Drift. She was very friendly and sat very close to me. She put her hand on my lap and began fondling me. I drove to Aerodrome Camps Drift and parked the car in a secluded spot. There was nobody else there. We started touching and kissing and before long we were naked and were making love. She complained, playfully, that the backseat was a little cramped and said that if we had a bed she would really "rock my world".

After it was over, she started crying and saying how bad she was for doing this to her husband. I thought that was a good time to get rid of her and so I offered to drive her home. That is all

that happened. She never said that she did not want to have sex with me. I would never have forced her to do anything if she did not want to. I would never hit a woman and I do not have a knife.

I dropped her off about an hour after I had picked her up and got home just after midnight. Sam Mashango was at Tina Eats Restaurant at the time I was with her. He knows that I had been talking to her and had heard her agree to go out with me. He was sitting right next to me the whole time that we were there.

I must say that on the next day when Detective Inspector Chiutsa approached me at work and said that he was investigating the rape I did not know what he was talking about. I was taken aback and told him that I had gone home from work at about 23h00 and stayed there all night. When, however, he told me that I was accused of raping Janet Mutuzu I realised that I had better make a statement in order to clear things up.

(Names, characters, places and incidents used here are fictitious. Any resemblance to actual events or locales or persons, living or dead, is entirely coincidental.)

Prepare the following arguments:

- a) Assume you are *Mucharepa Svongwa*'s defence counsel. Argue in favour of him being released on bail. **(5 marks)**
- b) Assume you are the public prosecutor. Argue in favour of denial of him release on bail. **(5 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 *Mucharepa Svongwa* should be released. **(5 marks)**
- d) Assume you are the public prosecutor, based on the above facts, draft the state outline **(5 marks)**
- e) Assume you are *Mucharepa Svongwa*'s defence counsel, based on the above fact, draft the defence outline. **(5 marks)**

[Total 25 marks]

Section B answer any THREE questions

QUESTION 2

Analyze the major thrusts and themes of the statement by the then McNally JA in *S v Matare* 1993 (2) ZLR 88 (S) at 102; that;

“The law of criminal procedure in any country is a compromise between two conflicting objectives. The one is to ensure that criminals are brought to justice quickly and effectively. The other is to ensure that innocent people caught up in the criminal process are not wrongly convicted.

[25 marks]

QUESTION 3

“The Zimbabwean 2013 Constitution contains the declaration of Human Rights which altered the scope, content and application of criminal law”. Outline and explain this seismic shift of the grundnorm in the context of criminal procedure.

[25 marks]

QUESTION 4

‘The right to remain silent can be described as the absence of a legal obligation to speak,’ (Currie & de Waal *The Bill of Rights Handbook* 6th ed p. 758.). Explain the nature and ambit of this right in the Zimbabwe Criminal Procedure context. In your answer also discuss how the Criminal Procedure and Evidence Act, has substantially eroded the right of silence.

[25 marks]

QUESTION 5

Examine and discuss the powers of the police to arrest and search a person without the necessary warrants. In the course of your answer also discuss what will happen if the illegal search does result in the seizure of evidence of a crime.

[25 marks]

QUESTION 6

In criminal matters, jurisdiction is fundamental; it is not simply a question of form for it prescribes the boundaries of the authority of a court. Explore the nature, scope and meaning of this assertion in the context of criminal procedure in Zimbabwe

[25 marks]

QUESTION 7

- a) State the major factors that a court consider in an application for extension of time within which one can note an appeal against a criminal conviction. (15 marks)
- b) Distinguish between review and appeal in a criminal matter. (10 marks)

[Total 25 marks]

QUESTION 8

- a) With aid of relevant case authority clarify the applicable law by explaining the various criteria applied by our courts in deciding on an application for discharge at the close of the state’s case. (15 marks)

b) Discuss the law relating to the admissibility of extra-curial statements in criminal trials.
(10marks)

[Total 25 marks]

****** End of examination******