



**MIDLANDS STATE UNIVERSITY**

**FACULTY OF LAW**

**PROCEDURAL LAW DEPARTMENT**

**CRIMINAL PROCEDURE**

**CODE: LB201**

**MAY/JUNE 2018**

**DURATION: 3 HOURS**

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***INSTRUCTIONS***

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1. *Answer **all** questions.*
  2. *No statutes to be brought into the examination room.*
  3. *This paper is worth 70 Marks.*
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**Question 1**

Explain the changes that were introduced by the amendment to section 121 of the Criminal Procedure and Evidence Act [Chapter 9:07] where a prosecutor appeals against the granting of bail to an accused person. **[6 Marks]**

**QUESTION 2**

What steps should a prosecutor take before deleting prejudicial material from an accused person's warned and cautioned statement? **[3 Marks]**

**Question 3**

Compare and contrast the following procedures:

- i) a review and an appeal, **[3 Marks]**
- ii) a withdrawal of a charge before plea and a withdrawal after plea **[4 Marks]**
- iii) procedure in terms of section 271 (2)(a) and 271 (2) (b) of the Criminal Procedure and Evidence Act [Chapter 9:07]; and **[3 Marks]**
- iv) written notice to appear and a summons. **[3 Marks]**

**Question 4**

Outline the procedure that is followed in the impeachment of a hostile witness. **[6 Marks]**

**Question 5**

State three circumstances in the course of a criminal trial that may give rise to an application for discharge at the close of a State case. **[3 Marks]**

### Question 6

Discuss the legal requirements relating to the amendment of a charge against an accused person.

**[5 Marks]**

### Question 7

How has the phrase "*substantial and peculiar interest*" in terms of section 13 of the Criminal Procedure and Evidence Act [Chapter 9 : 07] Code been interpreted by the Courts to mean?

**[4 Marks]**

### Question 8

Peter is a businessman who deals in foreign currency. One night, on a Sunday, a police officer came to his house with a search warrant. On close analysis of the search warrant, Peter noticed that the warrant was issued by the District Public Prosecutor, Kwekwe authorizing searches in all houses in Mbizo section 15. He also noticed that no offence was stated on the said warrant. Peter was arrested on the basis of the warrant and his money was confiscated. He was however not advised of any charge. Upon arrest, the police officer took Peter to his house where he detained him over the weekend before taking him to the police station four days later. Peter was detained at the police station for a further three days before appearing in court and was also denied food and legal representation. Peter was subjected to intense interrogation that lasted about five hours at any given time. He was beaten in order to confess and was told by the Officer in Charge that if he does not make a confession he would die in police cells. Eventually, Peter gave a warned and cautioned statement admitting to the charge and the statement was not confirmed.

a) Discuss in detail, the legality or otherwise of the arrest, detention and search in this case.

**[10 Marks]**

b) Comment on the admissibility of Peter's statement into evidence and explain the procedure by which such a statement can be adduced into evidence.

**[10 Marks]**

**Question 9**

John had an altercation with his longtime girlfriend, Susan over the upkeep of their seven year old daughter. In an act of fury, John pulled a knife and stabbed Susan three times leading to her death. Sergeant Dube who happened to be at the scene at the material time attempted to arrest John but was struck on the head with an axe by John and only regained consciousness at Kwekwe General Hospital. After committing the offence, Peter ran away and escaped to Mozambique. Peter's father, Gandanga, a well-known politician later summoned Susan's family members and threatened them with death if they ever give statements to the police. Everyone in the area including eye witnesses and sergeant Dube were so terrified by the threats and refused to co-operate in the recording of statements by the police. After staying for two years in South Africa, John came back to Zimbabwe to attend to his mother's funeral. The police were tipped of his presence and arrested him. John appeared at court and applied for bail pending trial through his lawyer, Mr Smith and you are the presiding magistrate.

With the aid of case law and relevant sections of the Criminal Procedure and Evidence Act [Chapter 9:07], discuss the factors and principles you would use in granting or denying Peter bail (only the above facts are to be used). **[10 Marks]**

**End of Examination**