



MIDLANDS STATE UNIVERSITY

FACULTY OF LAW

PROCEDURAL LAW DEPARTMENT

CRIMINAL PROCEDURE

CODE: LB201

MAY / JUNE 2015

DURATION: 3 HOURS

INSTRUCTIONS

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

- a) List four (4) lawful ways by which an accused can be brought to court for trial. **[4 Marks]**
- b) Which courses of action are available to the court where a private prosecutor fails to appear on the appointed day? **[2 Marks]**
- c) Which procedure should the court follow where one accused person pleads guilty and the other not guilty in a case where they are jointly charged? **[1 Mark]**
- d) State and explain three tests used by the courts to determine whether or not there has been a case of unlawful splitting of charges. **[3 Marks]**

Question 2

To what extent does the new constitution safeguard the constitutional rights of accused persons to liberty and trial within a reasonable period of time? **[6 Marks]**

Question 3

- a) Explain what is meant by the following terms:
- i) A trial within a trial.
 - ii) Confirmation of a warned and cautioned statement.
 - iii) *Altrefoise* convict **[3 Marks]**
- b) A magistrate has convicted an accused person but feels that the offence is so serious such that it warrants a sentence beyond his jurisdiction. Which procedure should he follow? **[4 Marks]**

Question 4

- a) A plea of not guilty can be tendered together with one or more special pleas. State and explain 4 of such pleas that can be tendered by an accused person in a criminal case.

[4 Marks]

- b) What procedure is followed in the forfeiture of a bail bond?

[2 Marks]

- c) How is a review different from an appeal?

[4 Marks]

Question 5

Mr James is a teacher at Chana Primary school in Zhombe. One day when his daughter Charity was doing some laundry inside the house, he approached her from behind, dragged her into the bedroom and forcibly had sexual intercourse without her consent. Charity was so disturbed by her father's conduct and told all that had happened to her grandmother who then reported a case of rape to the police. Mr James appeared in court on rape charges. The following facts were stated by the state during his bail application. He had attempted to bribe the police officer dealing with the matter as an incentive for him to jeopardize the case. He had also threatened the child soon after the rape that if she reports the rape, he was going to kill her and chase her away from the house. Charity's mother is late and apparently she has no other place to stay other than in Zhombe where she stays with her father and siblings. Mr James was arrested at Chirundu Border Post as he attempted to cross over to Zambia.

- a) You are the magistrate presiding over this bail application, using the above given facts and case law, discuss with reasons whether you will grant this application.

[10 Marks]

- b) i) State 2 classes of police who are eligible to grant police bail in terms of the Criminal Procedure and Evidence Act, [Chapter 9:07].

[2 Marks]

- ii) In respect of which offence are such officer's precluded from granting police bail?

[1 Mark]

- c) Assume further that the state has invoked section 121 of the Criminal Procedure and Evidence Act soon after you have granted bail to Mr James, what is its effect on Mr James? **[3 Marks]**

Question 6

You are a legal practitioner representing Stephen who is undergoing trial on a charge of rape as defined in Section 65 of the Criminal Law Codification and Reform Act [Chapter 9:02]. The brief allegations are that on or about the 20th of July 2012 at Uptown Nite club , Peter unlawfully and intentionally had sexual intercourse with Pretty without her consent. During the trial, evidence was led from the complainant who testified to the court that she agreed to sexual intercourse and only reported this offence against Peter because he had refused to give her money after the sexual act. The second state witness, Constable Banda who is the investigating officer also testified to the effect that sometime in August 2012, Pretty came to the charge office intending to withdraw these charges stating that they were false. With these two witnesses, the state closed its case.

As Peter's legal practitioner, what procedure would you use to secure the liberty of your client even before going to the defence case and what factors would the court consider in the determination of your application. (Cite relevant sections of the Criminal Procedure and Evidence Act and relevant case law). **[8 Marks]**

Question 7

You are a legal clerk for Justice Duck, a Judge of the High court of Zimbabwe who has been invited by the Law Society of Zimbabwe at its 2015 summer school in Nyanga to present a paper on the powers of a Judge seized with a review matter. The Judge has asked you to prepare a paper on the topic to be presented.

- a) State and explain the powers of a judge seized with a criminal review matter. **[4 Marks]**
- b) The lawyers also want to know the circumstances at law where proceedings in the magistrates courts are reviewable by the High court Explain **[6Marks]**

End of Examination