



**MIDLANDS STATE UNIVERSITY**

**FACULTY OF LAW**

**PROCEDURAL LAW DEPARTMENT**

**CRIMINAL PROCEDURE**

**CODE: LB201**

**MAY/JUNE 2016**

**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**

- a) Name three (3) groups of people who are eligible to apply for a warrant of arrest in terms of our law. **[3 Marks]**
- b) What does strict interpretation in the case of search warrants entail? **[2 Marks]**
- c) Compare and contrast a written Notice to appear and a summons as ways of bringing an accused person for trial. **[3 Marks]**

### **Question 2**

- a) What considerations and principles of law should a Magistrate take into account before remanding an accused person in custody? **[8 Marks]**
- b) Give three (3) exceptions of situations where proceedings in the Magistrates Court would not be automatically reviewed by the High Court. **[3 Marks]**

### **Question 3**

- a) What is the major difference between a withdrawal before plea and a withdrawal after plea? **[2 Marks]**
- b) Using relevant case law authority, detail the requirements which must be met before a person may rely upon section 42 of the Criminal Procedure and Evidence Act [Chapter 9:07], as a defence to a charge of murder. **[6 Marks]**
- c) What are the legal remedies available to an accused person who has been unlawfully arrested and detained? **[3 Marks]**

#### **Question 4**

- a) What do you understand by impeachment of a witness and what is the legal significance of that procedure? **[2 Marks]**
- b) Identify three (3) provisions of the Criminal Procedure and Evidence Act [Chapter 9:07], and critically examine how they are inconsistent with the Constitution. **[6 Marks]**
- c) What procedure is followed by a magistrate who wishes to correct a prejudicial procedural irregularity which he or she has unintentionally committed during criminal proceedings? **[2 Marks]**

#### **Question 5**

Susan is a 21 year old mother of 2 children. In 2014, she was brought to court on allegations that she had killed her 2 year old child by throwing her into a well. Upon her arrest, Susan was detained for four days at Matapi Police station before appearing in court. She was further denied any access to a lawyer despite requesting to see one. None of Susan's relatives were allowed to bring her food while she was in police custody. On the 5<sup>th</sup> day of detention, a warned and cautioned statement was recorded from her in which she admitted to having murdered her daughter. The warned and cautioned statement was never confirmed. On her trial, the state sought to tender the warned and cautioned statement as part of its evidence.

- a) Explain the procedure by which such a statement can be adduced into evidence. **[6 Marks]**
- b) With reference to relevant provisions of the Criminal Procedure and Evidence Act [Chapter 9:07] and the Constitution, comment on the legality of Susan's detention in the circumstances. **[4 Marks]**

### Question 6

David is a man aged 30 years. On the 25<sup>th</sup> December 2015 and at Tube Night club, he had a misunderstanding with Peter, a fellow patron at the club. In anger, David picked up a stone, and threw it at Peter. The stone however missed and landed on Tinashe's car, thereby shattering the windscreen. David was arrested by the police and brought to court, on charges of malicious damage to property. During his initial remand, the prosecutor alleged that David was a mental patient.

- a) As a presiding magistrate, what procedure should be followed in terms of Section 27 of the Mental Health Act, [Chapter 15:12]? **[6 Marks]**
- b) Assuming that it is later found that David was indeed mentally ill at the material time, would that fact affect your verdict and sentence?. If so, how? **[4 Marks]**

### Question 7

You are a legal practitioner practising with T and H legal practitioners in Gweru. You are representing Peter who is undergoing trial on a charge of bribery as defined in Section 170 of the Criminal Law Codification and Reform Act [Chapter 9:07]. The brief allegations are that on or about the 20<sup>th</sup> of February 2016 and at Chitekete business centre, some members of the police internal investigation department were aboard a Toyota Noah vehicle on an operation to investigate how police officers treat motorists at their road blocks. Upon arrival at the road block, the officers saw a commuter omnibus driver handing money to Peter, a police officer. They disembarked from the vehicle and quickly searched all members of the roadblock including Peter who was in charge. None of the officers bothered to inspect the fines book, (Z69J). They however recovered USD100,00 from Peter and immediately arrested him and the driver of the commuter omnibus. During the trial of the two, evidence was led from the arresting details who all confirmed that they did not inspect the Z69J book to verify whether the USD100,00 had been duly receipted. The investigating officer further testified from his investigations, the USD100,00 was duly

receipted and he produced the Z69J receipt book as an exhibit. With that evidence, the State closed its case.

a) As accused person's legal practitioner, what procedure would you use to secure the liberty of your client without even going to the defence case? **[2 Marks]**

b) Discuss the factors that the court considers in the determination of such an application.

**[8 Marks]**

**End of Examination**