

NATIONAL UNIVERSITY OF LEOTHO
FACULTY OF LAW
LLB FINAL EXAMINATIONS
L383: LAW OF CRIMINAL PROCEDURE

MAY, 2017

MARKS: 100

TIME: 3 HOURS

INSTRUCTIONS:

1. Answer any **FOUR** questions.
 2. All questions carry equal marks.
 3. Answer clearly and refer to relevant authorities wherever possible.
 4. Allocate 45 minutes to each question.
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Question 1

“The decision whether to prosecute or not is fundamental to a democracy such as ours. It is therefore imperative that the office of the Director of Public Prosecutions, located as it is, at the centre of delivery of criminal justice, not only executes its functions without fear or favour but it must be non-partisan, non-political and free from interference from the powerful, the well-connected, the rich and the peddlers of political influence.”

Per The State v. Yengeni 2006 (1) SACR 405

Discuss the above statement with reference to the office of the DPP in Lesotho.

[25 Marks]

Question 2

Lerotholi is a married businessman with a teenage son, Tumi. He lives in Ha Thetsane. Of late there has been a spate of armed robberies around Ha Thetsane which has alarmed residents there. As a result, Lerotholi has erected a high wall around his property, purchased a fire-arm and forbidden members of his household from leaving the house after 7 pm.

Last Saturday, the famous kwaito band from South Africa, Mafikizolo, came to perform at the music festival held throughout the night at Maseru Park. Tumi attended the festival but did not tell anybody at home for fear that his father would not permit him to go outside the house after dark.

At 2 am Tumi returned home, climbed over the wall, tip-toed to the window and tried to sneak into the house unnoticed. His mother, a slight sleeper, heard the sound of footsteps outside the house and the sound of a window latch being opened. She woke up her husband and told him that there was a burglar in the house. Grabbing his firearm, Lerotholi crept out of the bedroom and saw a shadowy figure trying to get into the house through the now open window.

Lerotholi shouted “stop” at the figure. Scared that his father would discover that he had been out after dark, Tumi turned and ran. Lerotholi fired in the air but Tumi kept running towards the wall surrounding the house. As Tumi got to the wall and clambered on top of it, Lerotholi fired directly at Tumi killing him instantly.

(a) Lerotholi is charged with the murder of Tumi. Advise him.

15 marks

(b) Assume that the events occurred in South Africa. Advise Lerotholi. **10 marks**

[25 Marks]

Question 3

Molapo, a chief, is charged together with others still at large, with the murder of Teboho. It is alleged that Molapo murdered Teboho to use her remains for ritual purposes so as to boost his chances of electoral victory in the forthcoming general elections. Molapo denies the charge and applies to the High Court for bail.

He is a prominent member of one of the parties contesting elections next month. He has a big family including many dependants and several businesses in Maseru. Molapo swears that he will not jump bail although he readily concedes that he has many relatives and several bank accounts in South Africa. The murder charge, he maintains, is a fabrication of his political rivals who are scared of his popularity with the electorate.

The crown opposes bail arguing that Molapo is likely to abscond as his accomplices who have fled to South Africa. Moreover, investigations are not yet complete and the applicant is such a power hungry politician who is likely to interfere with crown witnesses, most of whom are his subjects, so as to avoid conviction.

You are a High Court judge,

(a) Consider the competing factors and decide whether to grant Molapo bail.

15 marks

(b) Assume that after the June elections Molapo's party wins the elections and Molapo is appointed a cabinet minister. Then his trial commences and thereafter Molapo is convicted for murder and sentenced to 15 years of imprisonment. Molapo applies to you for bail pending appeal. How would you decide?

10 marks

[25 marks]

Question 4

“Whenever a charge in respect of any offence is defective for want of averment of any matter which is an essential ingredient of the offence, the defect shall be cured by evidence adduced at the trial....”

Per section 158 of the Criminal Procedure and Evidence Act.

Discuss the extent, if at all, to which the above provision altered the approach of the courts when faced with a defective charge.

[25 marks]

Question 5

Thabo did not like Likoti because the latter seduced Thabo's girlfriend some time last year. Then last month Thabo decided to show his displeasure with Likoti. He armed himself with a pistol which had a silencer and walked past Likoti's house. He planned that he would simply smash Likoti's window pane into shreds and walk away.

He shot the window and as the pane broke he started walking away. But then he looked inside and saw Likoti and Pule asleep on the sofa in the living room. In addition, Thabo saw a lap top lying on the table at the far corner of the room. He jumped inside the living room through the hole in the window made by his bullet and picked up the lap top from the far corner.

As Thabo made it back to the window he stepped over Likoti but as he did so Likoti woke up. Thabo knocked him hard over the head with the butt of the pistol rendering Likoti unconscious. The noise woke up Pule. Pule quickly pulled out his cell-phone to call the emergency number 911. Thabo pointed the pistol at him and took away Pule's phone. Thabo then left but was later arrested and charged with the counts below. Assume that the statutory provisions are properly cited in the charge sheet.

Comment on the correctness of each of the following:

Count 1: Unlawful possession of a firearm and ammunition **5 marks**

Count 2: Malicious damage to property being broken window pane **5 marks**

Count 3: House breaking with intent to steal and theft of lap top or, in the alternative, theft of a lap top, the property of Likoti. **5 marks**

Count 4: Assault GBH of Likoti

5 marks

Count 5: Robbery of a cell-phone, being the property of Pule.

5 marks

[25 Marks]

Question 6

Sello is an unmarried man of 20 years of age. After his COSC he got a job with Leribe district office as an office messenger. He was in that capacity entrusted with banking the daily collection of various fees paid to the office. As a result of his dedication to duty and his honesty he was soon promoted to the position of store keeper.

Due to the drought which hit Lesotho early this year, the World Food Programme donated food to be distributed free of charge to the population. A consignment of mealie meal was delivered to the Leribe district office for this purpose.

Sello desired a cell-phone with a camera because all his friends seemed to have it but he could not afford one on his salary. He approached Mohapi, a shopkeeper in town, and enquired whether he could sell some of the bags of mealie meal through his shop. Mohapi readily agreed to do so and to split the proceeds fifty-fifty. Sello made a duplicate key and in the middle of the night, ferried 20 bags of mealie meal valued at M1000 to Mohapi's shop.

The shortfall was discovered the following morning and Sello was immediately arrested. He readily admitted the theft and took the police to Mohapi's shop where the 20 bags were easily identified because they were marked with "not for sale" signs. Sello and Mohapi were charged with theft but because there was no available time slot in the magistrate's diary, their trial did not start until 2 months later. They were granted cash bail of M200 each. Sello could not afford the amount of bail and was remanded in custody. At their trial Mohapi pleaded not guilty and his trial was postponed. Sello, however, pleaded guilty and was convicted of theft.

Assume you are a magistrate in the Leribe court discuss the various factors you would take into account and impose a suitable sentence on Sello.

[25 Marks]

END