

**NATIONAL UNIVERSITY OF LESOTHO**  
**FACULTY OF LAW**  
**LL.B SUPPLEMENTARY EXAMINATIONS**  
**L181: LEGAL METHODS AND SYSTEMS**

**MAY 2018**

**MARKS: 100**

**TIME: 3 HOURS**

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**INSTRUCTION:**

Answer any **FOUR (4)** questions.

### QUESTION 1

(a) Explain how a follower of Natural Law might approach the issues surrounding abortion in Lesotho. **15 Marks**

(b) Discuss the three main functions of delegated legislation. **10 Marks**

**[25 MARKS]**

### QUESTION 2

(a) Describe the three main stages involved in the prosecution of a trial in the High Court. **15 Marks**

(b) Describe the three stages involved in the examination of witnesses in court.

**10 Marks**

**[25 MARKS]**

### QUESTION 3

The judge in the following judgment critiques the conclusion of the magistrate. Identify and discuss the logical fallacy that may have been committed by the Magistrate as illustrated by the judgment.

*R v Hlao* (CRI/APN/18G /87) [1988] LSCA 72 (27 April 1988);

#### JUDGMENT

Delivered by Hon. Acting Mr, Justice M. Lehohla on the 27th day of April, 1988.

*The Crown did not oppose an application moved by Dr. Tsotsi wherein applicant sought an order*

1. *Extending time within which to note an appeal, in the Criminal Case No. 84/87 tried in the Thaba Tseka Subordinate Court on 19th March 1987;*

2. *Granting such further and/or alternative relief as the High Court may deem fit*

*It was argued that (b) above did not exclude adoption of a procedure whereby this matter can be resolved by way of review. The crown was agreeable to this proposition.*

*Mr. Thetsane for the crown went further to draw to my attention the fact that perusal of the record reveals that the prosecution in the Subordinate Court did not prove its case beyond reasonable doubt. The charge sheet alleges that applicant had stolen 45 pieces of scaffolding, 2 planks, 2 poles and one sand-sieve belonging to Basotho Pony.*

*It appears that applicant was spotted in the yard of Basotho Pony where the above items were kept. Applicant admitted that the vehicle which was spotted in that area was his and driven by him. It appears that it was in fact in the evening when his vehicle was seen there. Applicant explained that he drove off when he saw Trooper Seeiso and P.W.1 approach him because he feared that he had been trespassing in the Basotho Pony yard. When warned that should there be discovered that anything went missing where he had been trespassing he admitted that he would be held responsible.*

*This in my view is what constituted the crux of the matter in the Subordinate Court, where the prosecution went no further than treating this aspect of the matter as the peg on which the Crown's sermon was to hang. It seems to me that when thus confronted applicant understood and admitted that it is a matter of common sense that if anything went missing in that yard his careless act of trespass would qualify him as a prime suspect.*



No evidence proved that he had tempered with any of the property appearing in the charge sheet. No search was mounted in his premises and house. The police contended themselves exclusively with what applicant told Trooper Seeiso, The crown in turn grasped it as proof of guilt The trace from where he had been spotted near the Basotho Pony dam to his place was a matter of minutes such that he would not have had an opportunity to dispose of the property alleged to have been stolen moreover the property, itself was of such bulky nature that even if an attempt to dispose of it by throwing it alongside the way it would not have been concealed.

The fact that some of the property mentioned above happened to have gone missing from the shed does not make applicant the thief.. It only amounted to making him a suspect. The fact that he admitted that it is common sense that he would be a suspect does not prove that he had stolen that property. I am satisfied that the crown failed to prove beyond reasonable doubt that the property referred to in the charge sheet was stolen by the applicant.

It seems to me that the learned magistrate erred in receiving the evidence of P.W.3 No. 5693 Trooper Seeiso to the effect that applicant made certain admissions, to him because those admissions in any event would amount to a confession of the offence to a policeman; and thus would be inadmissible. Short of these so called admissions made by the applicant no evidence pointed to his guilt.

On review therefore the order for conviction and sentence imposed by the learned magistrate is set aside. The fine paid by applicant should accordingly be refunded to him by the office of the court that convicted and sentenced him.

M. LEHOHLA

ACTING JUDGE

27th April, 1988.

For Applicant: Dr. Tsotsi.

For Crown : Mr, Thetsane.

**[25 MARKS]**

#### **QUESTION 4**

By use of examples define the following concepts

- |   |                |
|---|----------------|
| (a) judgment <i>per incurium</i> ;      | <b>5 Marks</b> |
| (b) distinguishing a judgment;          | <b>5 Marks</b> |
| (c) minority judgment ;                 | <b>5 Marks</b> |
| (d) prescription and                    | <b>5 Marks</b> |
| (e) certificate <i>nolle prosequi</i> . | <b>5 Marks</b> |

**[25 MARKS]**

#### **QUESTION 5**

- |                                      |                |
|--------------------------------------|----------------|
| (a) Discuss three types of precedent | <b>9 Marks</b> |
|--------------------------------------|----------------|

(b) Assume that you have a client Domkop who was seriously injured when she was struck by a line of supermarket trolleys being pushed through the Pioneer Mall car park by Malkop. Malkop was employed by RATS Pty Ltd as a trolley boy at their Pioneer Mall branch. Domkop seeks your advice on the prospects for a successful action against RATS for damages arising from her injuries.

Assume also that you have located two "close" precedents: In the *Greengrocer case*, a greengrocer was found liable when one of his staff left a trolley that had been used to transport vegetables from the back of the shop to the display counters in front of the entrance to his shop. In the *Supermarket Chain case*, a



supermarket chain had been held liable when a row of parked trolleys had been allowed to run down a ramp inside the store, colliding with and injuring a customer.

(i) Construct a “deduced” statement of law from these two cases which would cover Domkop’s case sufficiently for you to argue “inductively” that she should succeed in her action. **8 Marks**

(ii) Reverse roles and take on the task of counsel for RATS in arguing that these two cases do not provide a valid precedent for Domkop’s case.

Hint: you must first deduce a statement of law from cases “A” and “B” narrow enough to exclude the facts of her case.

**8 Marks**

**[25 MARKS]**

## **QUESTION 6**

Dom, a prominent community leader and school principal of 53 years of age, is found by the police officer, sitting in the driver’s seat of his stationary vehicle late one evening. He had parked on the side of the freeway, but was unable to move the vehicle because the tyre burst when he hit a pavement. The police officer had been contacted by the driver of a vehicle which had been driving behind Dom. This driver reported the registration number of his vehicle because it was zigzagging erratically on the road. When the police officer approached Dom, he was dozing in the car. He claimed to be on medication, containing codeine for a bad cough. He said that a side-effect of the medication was that it induced sleepiness. He had been attending a Summer Fever festival in Maseru that evening and was returning home to Roma when he felt too tired to continue. He said that he knew that if he had a short nap, in his car, he would feel better and could continue driving home thereafter.

The police officer requested Dom to provide a sample of his blood for testing, as well as a breath sample. Dom's blood alcohol level registered 0,07 grams per 100 millilitres, and his breathalyzer test recorded an alcohol concentration of 0.2 milligrams per 1000 millilitres.

Section 65 of the Road Traffic Act provides:

Driving while under the influence of intoxicating liquor or drug having narcotic effect, or with excessive amount of alcohol in blood or breath

(1) No person shall on the public road-

(a) drive a vehicle; or

(b) occupy the driver's seat of a motor vehicle the engine of which is running, while under the influence of intoxicating liquor or a drug having a narcotic effect,

(2) No person shall on a public road-

(a) drive a vehicle; or

(b) occupy the driver's seat of a motor vehicle the engine of which is running, while the concentration of alcohol in any specimen of blood taken from any part of his body is not less than 0,05 grams per 100 millilitres.

...

(5) No person shall on a public road-

(a) drive a vehicle; or

(b) occupy the driver's seat of a motor vehicle the engine of which is running, while the concentration of alcohol in any specimen of breath exhaled by such person is not less than 0.24 milligrams per 1000 millilitres.

(a) Use the **FIRAC** formula to advise Dom as to whether a successful prosecution could be made in terms of section 65 of the Road Traffic Act?

**15 Marks**

(b) If she were to be convicted, what factors would be considered and what sentence would be considered appropriate in these circumstances?

**10 Marks**

**[25 MARKS]**