



THE NATIONALA UNIVERSITY OF LESOTHO

FACULTY OF LAW

LL.B FINAL EXAMINATIONS

L284 CRIMINAL LAW

MAY 2018

MARKS:100

TIME:3HOURS

INSTRUCTIONS:

1. Answer any **FOUR (4)** questions.
2. All questions carry equal marks.

QUESTION 1

Khothatso has done a hard day's work and has not eaten all day. Feeling weak from hunger, she drives to the shop to buy something for her supper. On her way, she suffered a black-out. Her car swerves and crashes into an oncoming car and she is charged with negligent driving. Khothatso has been told that she suffers from hypoglycaemia and that she should eat regular meals to avoid blacking out, but she has not been expressly warned not to drive with a low blood-sugar level. Although she has had black-outs before, this is the first time she has had one whilst driving.

Discuss her criminal liability.

[25 MARKS]

QUESTION 2

Mathe is a teacher, employed at a boy's school in Mantsopa. One lunch time, whilst she is on duty in the playground, a fight breaks out amongst a group of schoolboys. Noticing this, Mathe runs to the scene and finds one of the boys, Tumelo, lying on the ground, bleeding profusely. He has evidently been stabbed in the chest by one of the other boys. Mathe instructs a prefect to run and phone for an ambulance, whilst she waits with Tumelo. Unfortunately, the ambulance takes nearly an hour to arrive and, by that time, Tumelo has bled to death. Tumelo's parents take the view that Mathe could have saved their son's life if she had put him into her own (private) car, which was at the school, and had driven him to hospital immediately. They lay a charge of culpable homicide against her.

Discuss her criminal liability.

QUESTION 3

Molupe goes out to shoot ducks at a particular dam. When he gets to the dam, he notices, far away on the opposite bank, some people having a picnic. Molupe realizes that, if he shoots at a duck and misses, there is a faint chance that the bullet might strike one of the picnickers. He decides to go ahead anyway, rather than losing out on his afternoon of duck-shooting. One of his shots misses the duck and strikes Khotso, one of the picnickers, with fatal consequences.

Discuss whether Molupi has the necessary intention to murder Khotso Molupe have the necessary intention to murder Khotso? **15 MARKS**

Would your answer be any different if;

a) Molupe was a good shot, who had never missed a duck before?

5 MARKS

b) Khotso was not a member of the picnic party, but had been standing behind a clump of bushes, where he was visible to Molupe? **5 MARKS**

[25MARKS]

QUESTION 4

Serabele, a music teacher persuaded a young female pupil to have sex with him on the pretext that it was a surgical operation that would improve her singing voice.

On a charge of rape, Serabele claims that the girl had consented.

Discuss the defence he raises and whether it can succeed in such circumstances.

[25MARKS]

QUESTION 5

Mathabo discovers that her husband, Poloko, has been having a series of affairs behind her back. She decides to exact revenge by poisoning him. She manages to procure some arsenic, which is a cumulative poison, and starts adding it to his food in tiny doses. After a time, Poloko becomes so ill that he believes that he is dying. He does not want to die with his adultery on his conscience, so he summons Mathabo to his bedside and confesses all, begging her forgiveness. Mathabo is so moved by Poloko's confession and his evident remorse that she decides to forgive him. She discontinues the poisoning and Poloko gradually begins to recover. In the meantime, the doctor who has been attending Poloko has grown suspicious about his mysterious 'illness'. He arranges for toxicology tests and discovers the arsenic in Poloko's system. Mathabo is ultimately charged with attempted murder.

Discuss whether Mathabo is guilty of the offence guilty of this offence?

[25 MARKS]

QUESTION 6

Write short notes on;

a) The M'cNaughton rules

5 MARKS

b) Irresistible impulse

5 MARKS

c) The three categories of mental functions in human beings.

15 MARKS

[25MARKS]

QUESTION1

In **LEHANA AND OTHERS V LAW SOCIETY OF LESOTHO** Monaphathi J.

The meaning of sec. 6 (1) (c) (iii) of the legal Practitioners Act 1983 (sic) is clear and not dubious. So that if the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expound those in that natural and ordinary sense.

Discuss how the courts in Lesotho have interpreted this section.

[25 MARKS]

QUESTION2

The Court has the discretion to decide whether or not an Applicant is a fit and proper person to be admitted / readmitted as an attorney, but the Court only exercises its discretion in favour of re-reinstatement if they are satisfied that the evidence of reformation was overwhelming and that they will not make a mistake if they re-instate the applicant.

In the case of **Kaplan v Incorporated Law Society, Transvaal** 1981 (2) SA 762 (T)

Discuss how the courts have dealt with the concept of “fit and proper person” for;

(a) Admission (b) striking off, and (c) readmission of legal practitioners.

[25 Marks]

Question 3

Discuss the legal practitioner's duty to avoid conflict of interest.

Question 4

Lisebo is married to Mollo Sbabole. Her maiden name is Thebe. She is Mollo's second wife. Mollo's first wife is Malitaba. Malitaba and Mollo got married by customary rites. Whilst she had 'ngalaed' for 4 years Mollo married Lisebo by civil rites. They have 2 minor children, a boy and a girl.

Mollo also has 2 minor children with Malitaba. Two boys to be exact. After learning of the marriage Malitaba wants to divorce Mollo. She has obtained leave of court to sue in terms of civil rites.

Before she left the matrimonial home, the couple had various assets such as 5 taxis, a 10 roomed house, and 2 cars for private use.

Assuming summons has already been drafted, you are to

- (a) Draft a declaration on her behalf emanating from the above set of facts.

20 Marks

- (b) Mollo has received the combined summons and has instructed his legal practitioners to enter a document that indicates that he is defending the matter.

Draft an Appearance to Defend on behalf of Mollo.

5 Marks

QUESTION 5

Sebele was awarded a site at Ha-Thetsane in Mazenze. The laws of Mazenze are similar to those of Lesotho. Sebele has followed all the legal prerequisites to obtain a lease from the proper allocating authorities. Is unable to access the house he has built because Khathatso, his neighbour, has built a wall on Sebele's site. Sebele requests Khathatso to demolish the wall promising to compensate him. The neighbour refuses to do so. Sebele has sought the intervention of the Local Land Allocating Authority (LLAA). On proper inspection of the map, the authorities discover that in actual fact, Khathatso has encroached on the land belonging to Sebele.

Sebele wants to know the remedies available to him to have Khathatso remove the wall. He has come to you for legal advice.

(a) Draft consultation noted you you have writtin during the consultation session.

10 Marks

(b) Draft a legal opinion for Sebele.

15 Marks

[25 MARKS]

Question 6

Marata Helele bought a car from Hake Litaba. The price of the car was M100,000.00. It is a BMW. The terms of the agreement are that Marata will first pay a deposit of 50% of the value of the car. Thereafter he will pay 5 equal amounts until the debt is extinguished.

After paying the 50% Marata disappeared. He did not paid Hake in terms of the agreement.

Hake successfully serves a Summons on Marata. Through his legal representative, Marata enters an Appearance to Defend.

After consulting you and learning about what a summary judgement is, Hake instructs you to proceed to file an application for Summary judgement on his behalf.

Draft Summary Judgment papers from the above set of facts adding relevant facts which may assist in the drafting.

[25 MARKS]