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NATIONAL UNIVERSITY OF LESOTHO

FACULTY OF LAW

LLB FINAL EXAMINATIONS

L383- LAW OF CRIMINAL PROCEDURE

MAY 2018

MARKS: 100

TIME: 3 HOURS

INSTRUCTIONS:

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

“In a democracy such as ours, the office of the Director of Public Prosecutions must be independent of the executive, indeed must be free from all kinds of political influence.”

Per LLB dissertation 2015/16, page 33

To what extent is this true of the office of the Director of Public Prosecutions in Lesotho?

[25 Marks]

Question 2

While on patrol one night at the Shoprite centre in Maseru, Constable Pheko noticed that a shop window was broken. As he approached the window to investigate Likoti slipped from behind a pillar with a bulging bag under his arm. Constable Pheko touched Likoti and said to him,

“You are under arrest.”

“Why?” asked Likoti.

“You will find out when we get to the charge office. Just follow me.” Pheko replied.

“I am not going to follow you.” Likoti answered.

“Yes, you will.” Pheko retorted angrily, grabbing Likoti by the collar of his shirt and dragging him along. Likoti followed meekly.

When they got to the charge office Pheko just pushed a still handcuffed Likoti into one of the police cells and locked the door. With the aid of vaseline, Likoti managed to squeeze his body through the small window and escape from the charge office that night.

He was later rearrested but the handcuffs have not been recovered. Police investigations showed that Likoti had nothing to do with the burgled shop.

He was, however, charged with:

(i) escaping from lawful custody, and

(ii) theft of handcuffs.

(a) You are the magistrate trying Likoti for the two offences. How would you decide the case? Cite authorities for your decision.

20 Marks

(b) Would your decision be different if Pheko was an ordinary member of the public? Explain fully.

5 marks

[25 MARKS]

Question 3

Mpho and Moyo are the editors of "Maseru Times" a popular weekly newspaper circulating widely in Lesotho which is financially stable. Mpho is a 22 year old female who is studying journalism at Lim Ko Kwing College. She is married with one child, a three month old baby boy. Her husband is a South African citizen. He has business in Ladybrand and they both reside in Ladybrand.

Moyo is a 35 year old male of Zimbabwe, married to a Mosotho citizen and has 4 year old twins. Moyo left Zimbabwe in 2002 after political instability there and has sought asylum in Lesotho. He has applied for Lesotho citizenship.

The two recently published a story in the newspaper alleging corruption by a coalition cabinet Minister. The story appeared under the title, "Land scandal in High Places." They alleged that the coalition Minister had sold land which he did not own to the government without following proper procurement procedures. A few weeks after the circulation of the "Maseru Times," Mpho and Moyo were both arrested and charged in the High Court with sedition, it being alleged that they intended to undermine the authority of His Majesty's government.

Both Mpho and Moyo have approached you to apply for bail on their behalf.

Advise them.

15 Marks

(b) Assume that they are denied bail by the High Court. Being dissatisfied with the High Court decision they ask you to seek relief in the Court of Appeal. They further tell you that Moyo's application for Lesotho citizenship has recently been granted.

Advise them.

10 Marks

[25 MARKS]

Question 4

Compare and contrast the law relating to justifiable homicide by a policeman and a homeowner while effecting an arrest in Lesotho with that in South Africa and make recommendations for reform, if any.

[25 MARKS]

Question 5

Likoti is driving motor vehicle No. AA970 when he knocks down a cyclist, killing him instantly and smashing his bicycle beyond repair. An angry crowd gathers at the scene and when the police arrive, the crowd accuses Likoti of over-speeding.

The police ask Likoti for his driving license but he has none. The police subject Likoti to a breathalyzer and discover that the alcohol content in his blood far exceeds the permissible limit. They arrest him.

Then one of the policemen notices from the registration number plate of the vehicle that this was the same car reported missing by a lecturer at NUL some two weeks previously. They ask Likoti to open the boot and when he does so, the police find a bagful of dagga and a loaded but an unlicensed 9 mm pistol. Likoti is charged in the Magistrate's court. Assume that the statutory provisions have been cited properly.

Comment on the correctness of each of the following:

Count 1: culpable homicide of the cyclist

5 Marks

Count 2: malicious damage to bicycle

5 Marks

Count 3: reckless driving of motor-vehicle contrary to the Road, Traffic Act

5 Marks

Count 4: unlawful possession of a firearm contrary to the Internal Security Act and unlawful possession of habit forming drugs contrary to the Dangerous Medicines Act **5 Marks**

Count 5: theft of motor-vehicle contrary to the Motor-vehicle Theft Act, in the alternative, being in unlawful possession of motor-vehicle and failing to give a satisfactory explanation therefor contrary to the Motor-vehicle Theft Act. **5 Marks**

[25 MARKS]

Question 6

Thulo, a young man of 20 years impregnated Teboho, a young woman of 18 years. They discussed the possibility of abortion but decided against it because of their religious belief and it might well have been dangerous to Teboho's health. They also decided against getting married because they thought that Teboho's parents would not approve, Thulo being the son of a migrant mine-worker in South Africa and Teboho being the daughter of a principal chief. They also felt that it might have an adverse effect on Thulo's university studies as he was a first year Humanities student at the National University of Lesotho.

In the end the two rented a room in City Mafefs in which Teboho gave birth to a healthy baby girl. There was no one else to help with the delivery of the baby except Thulo. He wrapped the baby in a blanket and placed it near the fire. He later went to class at the university and when he returned the baby was dead. Thulo took the body to his parents' home and hid it there but it was discovered by his mother.

Thulo was charged and convicted of concealment of child birth contrary to the Penal Code.

Assume that you are the magistrate, discuss the various factors you would take into account and impose a suitable sentence on Thulo. **[25 MARKS]**

END