

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

MAY, 2019

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

1

“The decision whether to prosecute or not is fundamental to democracy under a constitutional dispensation such as ours. It is therefore imperative that the office of the Director of 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 LLB Dissertation 2011/2012

Discuss the above statement with reference to Lesotho.

[25 MARKS]

Question 2

Lerato, a 20 year old female resident of City Mafefs, made an alarm alleging that Thabo had just raped her. The alarm brought members of the community of City Mafefs in hot pursuit. Thabo, a well known resident of City Mafefs, was seen running towards the taxi rank at City Mafefs. Thabo was soon cornered as he tried to get into one of the taxis. The conductor of the taxi got hold of Thabo and tried to wrestle him down but Thabo held him off. Sello, a karate student at NUL and resident of City Mafefs, who had been part of the crowd in hot pursuit of Thabo, jumped on Thabo with a precisely timed karate kick and broke his neck. Thabo died instantly.

(a) Sello is charged with Thabo's murder. Advise him.

10 Marks

(b) Would your advice be different if Thabo had not died but was seriously injured and Sello had been charged with assault with grievous bodily harm?

5 Marks

(c) Assume that the above events took place in South Africa, advise Sello on the murder charge.

*governer v minister of justice
Tlou makhubela*

10 Marks
[25 MARKS]

Question 3

2

Mohale is the principal secretary in the ministry of Livestock. He is charged in the Maseru Magistrate's Court with defrauding the Lesotho government of M 1 million for mohair allegedly sold to a businessman in South Africa and not accounted for. Mohale applies for bail. The Crown opposes bail on the ground that Mohale's accomplices have fled to South Africa, that he has bank accounts in South Africa and that he might jump bail. The Chief Magistrate grants him bail in the sum of M500,000 cash but does not ask Mohale to report regularly to the charge office nor to deposit his passport with the police.

(a) Both Mohale and the Crown are unhappy with the decision. Mohale claims that the bail deposit is too much while the crown claims that the conditions for bail are too lenient.

(i) Advise Mohale on possible relief.

5 Marks

(ii) Advise the crown on possible relief.

5 Marks

(b) Assume that Mohale is out on bail. The crown is then reliably informed that Mohale has been visiting his relatives and bidding them goodbye. And that he was even seen visiting the cemetery where his parents are buried.

(i) Advise the crown on the course of action open to have Mohale attend his trial.

warrant of arrest The crown can apply for
warrant of arrest.

5 Marks

(ii) Assume that Mohale is arrested and detained. He is aggrieved. Advise him on possible relief.

causal
Pillay

5 Marks

(c) Assume that Mohale is tried and sentenced to ten years imprisonment by the Chief Magistrate. He seeks bail pending appeal. Advise him on the grounds and forum of his application.

5 Marks

8 Rule 12 of court of appeal rules
the same court that convicted him

[25 MARKS]

Mohale.

Question 4

3

Thabo was arrested for the murder of Jobo it being alleged that on 1st July in the middle of winter, he stabbed Jobo to death in the fields below City Mafefs. A preparatory examination was held at which Pitso, testifying for the crown, stated that as he was going home at 5.00 pm he saw Thabo chasing the deceased across the fields some 200 meters away from where he was standing. He saw Thabo catch up with Jobo, fell him to the ground, stab him many times and then disappear into the bushes. He concluded that the whole incident took less than a minute.

Thabo, whose defence is an alibi reserved his cross-examination of Pitso. A post mortem examination of the deceased concluded that Jobo died as a result of more than twenty stab wounds inflicted straight to the heart while he was lying on the ground. Sometime after his testimony, Pitso was knocked down by a car. He was admitted to 'Mamohato Hospital where he still remains in a comma.

In the course of the preparatory examination it transpired that Thabo has a history of past convictions for assault with grievous bodily harm. A list of these convictions was handed in without Thabo's objection and formed part of the record of the preparatory examination.

There and then, the prosecutor told the magistrate that he wished to substitute a charge of culpable homicide against Thabo despite the evidence of the postmortem report and requested that the preparatory examination be converted into a summary trial. The magistrate agreed. Thabo pleaded not guilty to the charge but the magistrate convicted him relying, *inter alia*, on Pitso's testimony which had not been subjected to cross-examination and despite being aware of Thabo's previous convictions.

Comment on all the legal issues arising.

[25 MARKS]

Question 5

Sello and Tumi were charged with various counts as a result of the events which occurred on the night of 2nd April at Tau's house in Maseru. Tau is a well known businessman. That night the two accused drove to Tau's house. Sello shot the front door and, together with Tumi, walked into the house. They were confronted by an armed Tau who had heard them break in. Sello shot Tau dead on the spot. Sello,

accompanied by Tumi, then located the safe in the bedroom, shot the lock open and removed M 100,000 he found therein.

In the meantime neighbours had rung the police when they heard the shooting in Tau's house. With sirens blaring, the police screeched to a stop outside Tau's house. Sello ran out of the bedroom, noticed a closed back window made of glass, jumped through it amidst broken and flying glass and ran to the car. Tumi followed him snatching, on the way, the jacket he had earlier noticed hanging in the wardrobe of Tau's bedroom. He jumped through the now gaping hole of the back widow, ran to the car and got in just as Sello started the engine and drove off.

Constable Makara had noticed Sello and Tumi getting in the car. He now ran across the main road to cut off their avenue of escape. Makara raised his gun to shoot just as the car's headlights bathed him in bright light. Tumi screamed at Sello, "Go for him or we are dead meat!" Ever accelerating Sello drove directly at Makara. He must have been doing 200km per hour when the car hit Makara. The impact threw Makara in the air and tore open his police issue boots. Makara died even before he hit the ground.

Sello and Tumi are charged before the High Court with the counts below. Assume that the statutory provisions are properly cited in the charge sheet, using decided cases comment on the correctness of each of the following:

- (a) Count 1: Sello and Tumi: robbery of M100,000. **5 Marks**
- (b) Count 2: Sello and Tumi: robbery of jacket. **5 Marks**
- (c) Count 3: Sello and Tumi: murder of Tau and Makara **5 Marks**
- (d) Count 4: Sello and Tumi: malicious damage to property being front door, safe, back window and police issue boots **5 Marks**
- (e) Count 5: ^{Sello}reckless driving of a motor vehicle contrary to the Road Traffic Act, in the alternative, over-speeding contrary to the Road Traffic Act. **5 Marks**

[25 MARKS]

Question 6

5

your
is a offender
Pitso is an unmarried man 20 years of age. He is a well behaved young man with no record of a criminal offence. He is currently unemployed but last week he attended an interview at Matekane Contractors for the job of a porter. He was successful and was asked to report for work with effect from 1st June this year.

Unfortunately, he yielded to temptation when he saw a NUL student leave her handbag on the table at KeyCey the day when Manpower paid student allowances. He picked up the handbag and left quickly. After a boozing spree over the weekend during which he spent all the money he found in the handbag, he suddenly felt regret at what he had done. *remorseful*

Cooperation
To a charge of theft before you as the magistrate, Pitso, who is unrepresented, pleads guilty. He agrees with the Prosecutor's statement of the facts and that he stole M500. You convict him of theft.

Discuss the various factors you would take into account when sentencing Pitso and impose a suitable sentence on him.

[25 MARKS]

END