

NATIONAL UNIVERSITY OF LESOTHO
LLB EXAMINATIONS
L3306: LAW OF CRIMINAL PROCEDURE

MAY 2023

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.
4. Allocate 45 Minutes to each question.

Question 1

Molapo, Tankiso and Lefa have been charged with murder, attempted murder, robbery and fraud. The police have substantial evidence against the suspects. The prosecutor receives the evidence and has to determine the charges. There are two tests used to determine splitting of charges and joinder of counts by the prosecution under the law of criminal procedure. The same intent test and the same evidence test, respectively.

Using relevant case law discuss the tests.

[25 MARKS]

Question 2

During a trial, the accused or the defense is faced with a dilemma after the prosecution closes its case. They can choose to apply for a discharge and/or proceed with adducing evidence and presenting the defense case.

Critically discuss elements of an application for discharge.

[25 MARKS]

Question 3

Sizwe, Molapo and Hlomla drove to Mr Chang's house at Ha Thetsane intending to rob him of his money because they knew that he kept the week's takings from his supermarket in a safe in his bedroom. Sizwe, to the knowledge of both Molapo and Hlomla, was armed with a pistol. When they arrived at Mr Chang's house they agreed that Sizwe and Molapo would enter while Hlomla kept the car idling outside. Sizwe shot the front door with his pistol and together with Molapo walked into the house. They were confronted by an armed Mr Chang who heard them break in. Sizwe shot Mr Chang who died instantly.

Sizwe ordered Mrs Chang to show them where the safe was located and to give them the key to the safe. Mrs Chang frightened, gave them the key and showed them the safe. Sizwe took the key and told Molapo to open the safe in the bedroom. Whilst Molapo did that, Sizwe raped Mrs Chang in the same room. Molapo tried to open the safe with the key but it refused to open until he twisted the key in the lock, damaging the lock. He eventually managed to open the safe and he found M20 000 in the safe.

In the meantime the neighbours heard all the commotion and called the police. With sirens blaring, the police screeched to a stop outside Chang's house. Molapo noticed a back window, jumped through it amidst flying glass and ran to the car. Sizwe saw him and followed Molapo. On the way he noticed a leather jacket hanging on the wardrobe and grabbed it. He jumped the now gaping back window, ran to the car and got in. Hlomla drove off at a speed of about 250 km/h and hit Police Constable Moshe head on, as the police officers tried to stop them. Police Constable Moshe died on the spot as he flew in the air. Hlomla eluded the other police officers and fled.

Investigations eventually led to the arrest of Sizwe, Molapo and Hlomla who were charged with the following counts:

Count 1: Sizwe, Molapo and Hlomla: Theft of M20 000 and murder of Chang and Moshe

Count 2: Sizwe, Molapo and Hlomla: sexual assault of Mrs Chang

Count 3: Sizwe, Molapo and Hlomla: Theft of jacket

Count 4: Sizwe, Molapo and Hlomla: Malicious Damage to property being that of front door, safe and back window

Count 5: Hlomla, over-speeding and in the alternative reckless driving contrary to section 90 of the Road Traffic Act, 1981 and in the alternative being an accessory after the fact to murder, robbery, sexual assault and malicious damage to property.

Assume that the provisions of the Penal Code Act, 2010 and the Road Traffic Act, 1981 have all been correctly cited in the charge sheet, comment on the correctness or otherwise of each of the above counts.

[25 MARKS]

Question 4

Explain the following:

- (a) A plea of Autrefois acquit **5 Marks**
- (b) An indictment **5 Marks**
- (c) A quash of charge **5 Marks**
- (d) An Inquest **5 Marks**
- (e) “Ho tsosa Hlooho” Raising of the head **5 Marks**

[25 MARKS]

Question 5

Distinguish between a review application and an appeal application from the subordinate court to the High Court.

[25 MARKS]

Question 6

Discuss in full details the criminal procedure steps that occur in a trial and the rules of trial that are followed.

[25 MARKS]