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09/11/10

EXH

EXAMS OFFICE
USE ONLY

University of the Witwatersrand, Johannesburg

Course or topic No(s)

LAWS 4002

Course topic names(s)
Paper Number & title

CRIMINAL PROCEDURE

Examination / Test* to be
held during month(s) of (*delete
as applicable)

NOV/DEC 2010
EXAM

Year of study
(Art & Science leave blank)

Degrees / Diplomas for which
this course is prescribed
(BSc (Eng) should indicate which branch)

LLB

Faculty/ies presenting candidates

COMMERCE, LAW AND
MANAGEMENT

Internal examiner(s)
and telephone extension
number(s)

PROF S TUSON / ADV PICARRA

External examiner(s)

PROF MURDOCH WATNEY

Special materials required (graph/music/drawing
paper
maps, diagrams, tables, computer cards, etc)

NONE

Time allowance

Course no: LAWS 4002 hours: 1 hr 30 mins
PLUS 10 minutes reading time

Instructions to candidates
Examiners may wish to use this space to indicate,
inter alia,
the contribution made by this
examination or test towards the year mark, if
appropriate

Answer BOTH questions

This paper is worth 50% of the year mark.

CRIMINAL PROCEDURE EXAMINATION - NOVEMBER 2010 – LAWS 4002

ANSWER BOTH QUESTIONS

Question 1

- a. Ben Fagliotti has been charged with the murder of businessman Gett Treble, in the High Court. The judge appoints two assessors to hear the matter with him. One of the assessors is Fagliotti's cousin by marriage who is a retired advocate. The state is not happy with the appointment of this assessor, and wishes to challenge it. What remedy does the state prosecutor have and what grounds or factors should the court take into account when considering this remedy? [3 marks]
- b. The state wishes to call a witness to testify against Fagliotti, who used to be part of Fagliotti's gang, and who is afraid to testify in open court. The witness fears that Fagliotti's gang may kill him after the trial for testifying. On what grounds or circumstances may a judge order that a trial be held *in camera*? [6 marks]
- c. At the close of the State's case, the defence believes that the State has failed to prove the charge of murder against Fagliotti. What can the defence advocate do, and what test should the defence advocate rely on in support of his application. In your answer you should deal with the provisions of Section 174 of Criminal Procedure Act. Your answer should also deal with the Constitutionality of the decisions dealing with applications in terms of section 174 decided before the coming into effect of our new constitution. [6 marks]
- d. The State wishes to lead evidence of a purely formal nature of a witness who is a government worker, relating to the worker's day to day duties. In what manner can the State lead this evidence? [3 marks]
- e. Discuss the application of section 203 of the Criminal Procedure Act (*witness shall not be obliged to answer any question that may incriminate him*) to the testimony of a witness at a criminal trial. In your discussion deal with when a witness may rely upon section 203, and how the section is applied in practice regarding the taking of the oath and the refusal to answer questions. [8 marks]

[TOTAL FOR QUESTION 1 – 25 MARKS]

QUESTION 2

Casper was charged with armed robbery and was subsequently put on trial in the Regional Magistrate's Court. Unable to afford legal representation, Casper conducted his own defence. Things did not go well for him and he was subsequently convicted and a sentence of five years was imposed on him.

- (a) While travelling to the jail, Casper chats to some of the prisoners in the prison bus with him and is told by Baba, who has just been convicted for the fifth time, that Casper should either appeal his conviction and sentence or take the matter on review. How would you explain the difference between these two procedures to Casper? [6]
- (b) Overhearing the conversation, the guard tells Casper he doesn't have to do anything because section 302 of the Criminal Procedure Act will apply. Under what circumstances does section 302 apply, and what does it provide for? [4]
- (c) Baba wants to know whether section 302 also applies to him. Although he was properly represented by his lawyer, he was still convicted for murder in the Regional Magistrates' Court and sentenced to 15 years imprisonment. He says the policeman that acted as interpreter in his trial did not explain things properly. How would you answer Baba, and what would you advise him to do? Substantiate with case authority where applicable. [4]
- (d) Sitting next to Casper is Algernon who was convicted and sentenced to 3 years for rape. He is worried because the prosecutor said that the state would be appealing. Does Algernon have anything to worry about? *Can* the state appeal and if so on what grounds? Provide authority where applicable. [5]
- (e) Patheticus, sitting in the row in front of Casper, was convicted in the South Gauteng High Court. He tells Casper that he (Patheticus) should not have been convicted as he has just heard from his brother that there is a new witness who saw the person committing the crime for which Patheticus was convicted. This witness had been overseas throughout the trial and only returned to South Africa after Patheticus was convicted. As soon as he arrived, the witness contacted Patheticus's brother to tell him what he had witnessed. Patheticus wants to use this new evidence to set aside his conviction. What procedure must he use and what must he show in order to introduce this new evidence? Substantiate your answer with authority where applicable. [4]
- (f) The guard on the prison bus starts laughing at all this talk of appeals and tells Casper and his new friends they should think carefully before applying for leave to appeal. Why should they be careful? [2]

[TOTAL FOR QUESTION 2 – 25 MARKS]

TOTAL FOR PAPER – 50 MARKS

