

UNIVERSITEIT SAKHAROV



CMP102-4

October/November 1999

CRIMINAL PROCEDURE 102

100 Marks

Duration : 2 Hours
Examiners :
PROF DR SANDROON
PROF DR JOUBERT
DR T GILDEBRITS

ADV B VAN DER MERWE

This Paper consists of 3 Pages

Answer ALL questions and note that you have a choice in the last subsection of each of the four questions. Candidates must substantiate their answer fully. Questions should be answered on the basis of the prescribed work and the tutorial letters as furnished to you. You have 120 minutes to complete this paper for 100 marks, which allows you approximately 30 minutes to complete a full question. In calculating how much time to allow for answering each question, bear in mind the mark allocation and complexity of individual questions.

QUESTION 1

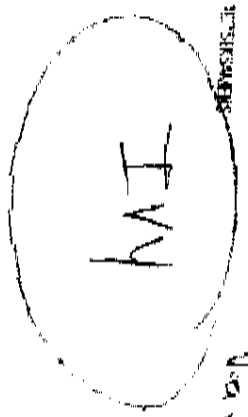
(a) X and Y commit an armed robbery at a commercial park. The security guard (P) is shot by them. When P falls to the ground Y kicks P in the face and disarms P by taking his firearm from P's hand. While pointing the firearm at P, X removes P's purse from his pocket. P dies at the scene of the crime and X and Y flee. X is caught and brought before a court on charges of -

- (1) robbery
- (2) murder
- (3) theft
- (4) assault and
- (5) the statutory offence of pointing a firearm.

X pleads not guilty to the charges and objects to all the charges on the basis that they constitute a splitting of charges. X's objection is dismissed by the court. Y is thereafter apprehended and brought before the court where X stands trial. The prosecutor requests that Y be joined as a co-accused on all the charges brought against X. Y is then joined and both X and Y are convicted on all charges.

- (1) Discuss whether the joinder of Y to be tried with X and the joinder of Y to be tried on all charges are regular (or otherwise).

TRIPIN OWERY



Vir die naam van 'n Somerskeping bl. 572

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STRAFPROSESREK 102

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Hierdie vraestel bestaan uit 3 bladsye

Besworaad ALLE vrae en lei daarop die u n kausse het in die basiese onderrigting van elk van die vier vroe. U moet u antwoorde voldoende motiveer. Vrae moet beantwoord word aan die hand van die voorgeskrewe werk en strafprosesing streeklake woe soos aan u verskaf. U het 120 minute om 100 punte te verdien wat u ongeveer 30 minute per vroe vraag toelaat. U moet u opmerke het deur die formulering en ingewikkelde aard van elke individuele vraag ten einde die beskikbare tyd per vraag te bevestig.

VRAAG 1

(a) X en Y pleeg gewapende roof by 'n handelspark. Die sekuriteitswag (P) word deur hulle geskiet. Toe P op die grond val, skop Y vir P in die gesig, onttrek P se wapen uit sy hand te neem, en, terwyl X die vuurwapen op P rig, neem hy (X) P se borsse uit sy sak. P sterf en X en Y maak hulle uit die voete. X word gearrest en voor die Hof gebring op aanklagtes van -

- (1) roof
- (2) moord
- (3) geskiet
- (4) aanranding en die
- (5) statiese mededad van 'n vuurwapen

X pleit onskuldig en maak beweer hier die aanklagtes wat volgrens X op 'n onafregerige splitting van aanklagtes neerkom. Die Hof verwerp X se beweer. Die aanklager vra dat Y wat intussen gearresteer is, by X op dieselfde aanklagtes gearrest word. Dit word toegestaan en X en Y word saadig bevestig aan alle aanklagtes.

- (1) Bespreek of die voeging van Y by die verhoor van X, en die voeging van Y op alle aanklagtes, redematig was of nie.

bl 5 nr 6 e 17

IRLAN DAN

The concept of justice was commented on in *Sussex Justices* (1924) 1 KB 256 at 259 as follows:

... it is not merely of some importance, but of fundamental importance, that justice should both be done and be manifestly seen to be done... The rule is that nothing is to be done which creates even a suspicion that there has been an improper interference with the course of justice.

Discuss briefly the various general rules or standards (which must not include a discussion on the concept of fairness to the accused), that have to be applied and by means of which the criminal justice system tries to ensure that justice is seen to be done. (11) [25]

QUESTION 4

(a) Discuss the constitution or composition of lower courts with regard to criminal trials. In your answer you have to indicate the functions of each role player. (10)

(b) X is convicted of rape in a High Court and sentenced to 25 years' imprisonment. X wants to appeal against the sentence and applies to the trial court for leave to appeal. His application is refused. In the meantime evidence comes to light to the effect that X could not have committed the crime. X consults you.

Advise X as to the procedure and procedural remedies at his disposal.

OR

Discuss the appeal procedure on a special entry of illegality or irregularity contained in section 317 of the Criminal Procedure Act. (15) [25]

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The konsep van geregtigheid is in *Sussex Justices* (1924) 1 KB 256 op 259 soos volg verwoordlik

... it is not merely of some importance, but of fundamental importance, that justice should both be done and be manifestly seen to be done... The rule is that nothing is to be done which creates even a suspicion that there has been an improper interference with the course of justice.

Besprek kortliks die verskillende algemene reëls of standaarde (wel nie 'n bespreking van die beginsel van billikeheid teenoor 'n beskuldigde moet insluit nie), wat toegepas moet word en waarvoor die strafregstelsel poog om geregtigheid sigbaar te maak by die verloop van 'n besourdigde. (11) [25]

VRAAG 4

(a) Besprek die konstitusie of samestelling van laergerette in kriminele. In antwoord moet ook die funksies van elke rolspeler aandui. (10)

(b) X word in 'n Hoër Hof aan verkragting skuldig bevind en gevonnis tot 25 jaar gevangenisstraf. X wil teen sy vonnis appelleer en doen aansoek by die verhoorhof om verlof om te appelleer. Sy aansoek word van die hand gewys. Gelukkig kon intussen na noue wêreld daarop dat dal X nie die misdadend kon gepleeg het nie. X konsulteer jou.

Adviseer X aangaande die prosedure en prosedurale remedies tot sy beskikking.

OF

Besprek die appelprosedure op 'n spesiale aansoek van onregmatigheid of wedersydelike vernagtinge soos veral in artikel 317 van die Strafproeswet. (15) [25]

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- (b) Discuss and test against the relevant legal principles whether or not the convictions of X and Y on all charges constitute a duplication of convictions. (117)
- (b) Discuss the common law principles governing the amendment of the plea from "guilty" to "not guilty".

OR

Discuss the role of the presiding judicial officer when an accused pleads guilty at his or her trial. (110) [25]

QUESTION 2

- (a) F and G are charged jointly in the regional court on a charge of robbery. The complainant testifies as to what occurred on the particular date and place, but can only pick out F. At the close of the state's case G applies for his discharge. (9)
- (i) Discuss the principles governing such an application. (9)
- (ii) Indicate whether in your opinion, G will be successful in his application and submit reasons for your opinion. (3)

- (b) X robs a commercial bank and wounds several members of the public. X is thereafter charged in a High Court and convicted of robbery with aggravating circumstances. X's previous convictions reveal that he is a hardened criminal who repeatedly commits crimes. In the light of these considerations, what sentence would be proper to impose on X? Fully discuss the sentence.

OR

Discuss the pre-arresting investigation and the general principles with regard to sentencing. (13) [25]

QUESTION 3

- (a) (i) Write brief notes on the recalcitrant witness during a criminal trial. (9)
- (ii) Name (without discussion) the various criminal procedural methods to secure and enforce the attendance of witnesses at criminal proceedings. (5)
- (b) Discuss those sentences that are subject to automatic review.

OR

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- (ii) Besprek en toets dan aan die hand van tersaaklike regsbeginsels of die skuldtoewysing van X en Y aan alle aanklagtes, 'n verdubbeling van skuldtoewysings daerstel of nie. (110)
- (b) Besprek die geregtelike beginsels en opsigte van die pleitverandering van "skuldig" te "onskuldig".

OR

Besprek die rol van die voorsittende regterlike beampte by 'n pleit van skuldig. (110) [25]

VRAAG 2

- (a) F en G word saam in 'n struikhor op 'n aanklag van roof aangekla. Die klager is getuente af oor wat op die besokkers eëg en pik gekleur het, maar is segs in staat om F uit te wys. Aan die einde van die staatsaak, doen G om sy onskuld aan te bewys. (9)
- (i) Besprek die beginsels wat op hierdie aansoek van toepassing is. (9)
- (ii) EN

- (b) (i) Hujaan of, na u mening, G moet sy aansoek suksesvol sal wees. U moet die grondele waarom u opname gebaseer is, maak. (3)
- (ii) X behoort 'n hantseksiek en verwond vankeie lede van die publiek. Hy word vervolgers in 'n hoër hof aangekla en skuldig bevind aan roof met verswarende omstandighede. X se vorige veroordelings bring aan die lig dat hy 'n gevaarlike misdadiger is wat herhaaldelik misdade pleeg. Wat voorwaarde sou in die lig van die bogenoemde gegewens, die gepaste wets om aan X opgelê te word? Besprek die toepaslike wets.

OR

Besprek die verskillende beginsels van strafbesnoeiing. (13) [25]

VRAAG 3

- (a) (i) Skryf kort aantekeninge oor die weerspanning tussen in 'n straftraak. (9)
- (ii) EN
- (b) (i) Noem (sonder bespreking) die verskillende strafprosedure wyses waarop die aanwysing van skuld by strafregtelike verhoorde verkry en stigting kan word. (5)
- (ii) Besprek welke rommsa aan uitspraak versiening onderworpe is. (5)

[BLANK OUT]