

CMP3701

(475249)

May/June 2014
Mei/June 2014

**LAW OF CRIMINAL PROCEDURE: TRIAL AND POST-TRIAL
STRAFPROSESREG: VERHOOR EN NA-VERHOOR**

Duration 2 Hours
Tydsduur 2 Uur100 Marks
100 Punte**EXAMINERS / EKSAMINATORE**

FIRST / EERSTE

MISS/MEJ MG KARELS

MR/MNR MT MOKOENA

SECOND / TWEEDE

PROF JP SWANEPOEL

Closed book examination
Toeboekeksamen

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The paper consists of 37 pages, including additional blank pages plus instructions for completing the mark-reading sheet. Students are required to submit both the completed mark-reading sheet and the examination paper. *Hierdie vraestel bestaan uit 37 bladsye wat bykomende blanko bladsye insluit, plus instruksies vir die invul van die merkleesblad. Studente moet sowel die voltooide merkleesblad as die eksamenvraestel indien.*

INSTRUCTIONS

- 1 THIS PAPER COUNTS A TOTAL OF ONE HUNDRED (100) MARKS AND CONSISTS OF TWO SECTIONS, SECTIONS A AND B. SECTION A COUNTS 75 MARKS AND SECTION B 25 MARKS. YOU ARE REQUIRED TO ANSWER BOTH SECTIONS A AND B. SECTION A CONSISTS OF MULTIPLE-CHOICE QUESTIONS WHICH MUST BE ANSWERED ON A SEPARATE MARK-READING SHEET. SECTION B CONSISTS OF TWO (2) QUESTIONS THAT MUST BE ANSWERED ON THE EXAMINATION PAPER.
- 2 **SECTION A:** The questions in this section **MUST** be answered on the mark-reading sheet which will be issued with your examination paper. Please read the instructions concerning the use of the mark-reading sheets carefully. Failure to do so may result in the computer being unable to read your answers.

Section A consists of TWENTY FIVE (25) multiple-choice questions. Answer all TWENTY FIVE (25) questions. The multiple-choice questions in Section A consist of four statements, marked (a) to (d). Some of these statements are correct and some are incorrect. You are required to decide which are correct and which are incorrect. The four statements are followed by five possible answers marked (1) to (5), claiming a certain statement or combination of statements to be correct or incorrect. You are required to decide which answer reflects the accurate version of your conclusion. **Each correct answer counts three (3) marks (or 3%).** Read the questions carefully, and then select only one of the alternative possible answers which you regard as correct. Mark the chosen option (1), (2), (3), (4) or (5) on the mark reading sheet next to the correct number of the question. Also bear in mind that if a composite statement is partly correct and partly incorrect, the statement AS A WHOLE is incorrect.

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- 3 **SECTION B** The questions in this section must be answered on the examination paper. Section B consists of TWO (2) questions. **PLEASE NOTE THAT THERE ARE NO ALTERNATIVE QUESTIONS IN SECTION B AND YOU ARE REQUIRED TO ANSWER BOTH (2) QUESTIONS**

Additional numbered pages have been attached at the back of this paper should you require more space to complete an answer. Unless you inform the examiner on the allotted page about this and indicate the page number where you have completed the question, the remaining part of your answer **WILL NOT** be marked! (Please give a clear indication of which question you are continuing on the additional pages.)

4. Please note that in this examination paper all references to specific sections refer to the Criminal Procedure Act 51 of 1977, unless otherwise indicated. Child Justice Act refers to the Child Justice Act, 2008 (Act of 2008).

INSTRUKSIES

- 1 **HIERDIE VRAESTEL TEL EEN HONDERD (100) PUNTE EN BESTAAN UIT TWEE AFDELINGS, NAAMLIK AFDELING A EN AFDELING B. AFDELING A TEL 75 PUNTE EN AFDELING B 25 PUNTE. U MOET SOWEL AFDELING A AS AFDELING B BEANTWOORD. AFDELING B BESTAAN UIT MEERVOUDIGEKEUSEVRAE WAT OP 'N AFSONDERLIKE MERKLEESBLAD BEANTWOORD MOET WORD. AFDELING B BESTAAN UIT TWEE (2) VRAE WAT OP DIE EKSAMENVRAESTEL BEANTWOORD MOET WORD.**

- 2 **AFDELING A.** Die vrae in hierdie afdeling **MOET** beantwoord word op die merkleesblad wat saam met u eksamenvraestel uitgedeel sal word. U moet die instruksies oor die invul van die merkleesblad noukeurig lees. Versuim om dit te doen, kan moontlik tot gevolg hê dat die rekenaar nie u antwoorde kan lees nie.

Afdeling A bestaan uit VYF-EN-TWINTIG (25) meervoudigekeusevrae. Beantwoord al VYF-EN-TWINTIG vrae. Die meervoudigekeusevrae in Afdeling A bestaan uit vier stellings, wat (a) tot (d) gemerk is. Party van hierdie stellings is korrek en ander verkeerd. U moet besluit watter korrek is en watter verkeerd. Die vier stellings word deur vyf moontlike antwoorde gevolg, wat (1) tot (5) gemerk is en wat voorgee dat 'n sekere stelling of kombinasie van stellings korrek of verkeerd is. U moet besluit watter antwoord die akkurate weergawe van u slotsom weerspieël. **Elke regte antwoord tel drie (3) punte (of 3%).** Lees die vrae sorgvuldig en kies dan slegs die een van die alternatiewe moontlike antwoorde wat u as reg beskou. Merk die gekose opsie (1), (2), (3), (4) of (5) op die merkleesblad langs die regte vraagnommer. Neem dit asseblief in ag dat indien 'n saamgestelde stelling gedeeltelik reg én gedeeltelik verkeerd is, is die stelling **IN SY GEHEEL verkeerd**.

- 3 **AFDELING B.** Die vrae in hierdie afdeling moet op die eksamenvraestel beantwoord word. AFDELING B bestaan uit TWEE (2) vrae. **LET DAAROP DAT DAAR GEEN ALTERNATIEWE VRAE IS IN AFDELING B GESTEL IS NIE EN DAT U ALBEI (2) VRAE MOET BEANTWOORD**

Daar is bykomende genommerde bladsye aan die einde van hierdie vraestel aangeheg indien u meer ruimte nodig het om u antwoord te voltooi. U moet die eksaminator op die betrokke bladsy hieroor inlig en die bladsynommer aantoon waar u die vraag voltooi het. As u dit nie doen nie, sal die oorblywende gedeelte van u antwoord NIE GEMERK WORD NIE! (U moet asseblief duidelik aantoon watter vraag u op die bykomende bladsye beantwoord.)

- 4 **Let asseblief daarop dat alle verwysings na spesifieke artikels verwys na die Strafproseswet 51 van 1977, tensy anders aangetoon word. Child Justice Act verwys na die Child Justice Act, 2008 (Wet 75 van 2008).**

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SECTION A / AFDELING A**Multiple-choice questions / Meervoudigekeusevrae**

English and Afrikaans questions are separate. The Afrikaans questions follow the English questions.
Engels en Afrikaans is apart. Afrikaans vrae volg na Engels op bladsy 15.

Question 1

- (a) A charge may be amended if it at the very least the indictment discloses an offence
 - (b) The omission of an essential element from a charge sheet is automatically corrected by evidence, which evidence must prove that which should have been averred
 - (c) Any numbers of participants or any number of accessories or any number of both participants and accessories, to the same offence may be jointly tried
 - (d) A plea of *autrefois acquit* will succeed if the accused can show that he or she was previously acquitted by a competent court, of the same offence and on the same merits as those before presently before court
- (1) All of the statements are correct
 - (2) None of the statements are correct
 - (3) Only statement (d) is correct
 - (4) Only statement (d) is correct with no qualification thereto
 - (5) Only statements (c) and (d) are correct

Question 2

- (a) An application to change a plea of guilty to not guilty must be made before sentencing whereas a plea of not guilty may be changed to a plea of guilty only with the leave of the court
 - (b) When the court is not in session the presiding officer is prohibited from communicating with either of the parties individually
 - (c) X is charged in the magistrates' court with assault on one Harry O. At the start of trial the witnesses are absent. The court finds that the case, as a result of the continuous absence of the state's witnesses, has been postponed too many times. A further postponement is refused and the court recommends that the state proceeds with its case. X pleaded not guilty at a previous appearance. As a result of the lack of witnesses the state closes its case and X is acquitted. The prosecutor charges X again but now institutes a charge of assault with the intention to do grievous bodily harm to Harry O. X will not succeed with a plea of *autrefois acquit* because he was not previously acquitted of the same offence or on the same merits
 - (d) If there are co-accused at trial an application for discharge at the close of the state's case can be brought for all of the accused but may not be brought for only some of the co-accused
- (1) None of the statements are correct
 - (2) Only statements (a), (b) and (c) are correct
 - (3) Only statements (a) and (b) are correct
 - (4) Only statements (c) and (d) are correct
 - (5) Only statement (a) is correct

Question 3

- (a) An accused is entitled, without exception, to be found guilty or not guilty after he or she has issued a plea
 - (b) Before any evidence is led the prosecutor is entitled to address the court for the purpose of explaining the charge and commenting on the charges
 - (c) Section 342A of the Criminal Procedure Act is employed when an accused pleads presidential pardon during arraignment
 - (d) The prosecutor and the police are officers of the court who function co-dependently in assisting the court in its fact-finding function
- (1) None of the statements are correct
 - (2) Only statements (b) and (c) are correct
 - (3) Only statements (a), (c) and (d) are correct
 - (4) Only statement (b) is correct
 - (5) All the statements are correct

Question 4

- (a) The Supreme Court of Appeal has extraordinary jurisdiction, legislation notwithstanding
 - (b) Section 327 of the Criminal Procedure Act provides that a convicted person, having exhausted all remedies in the Criminal Procedure Act, may petition the President for further legal relief
 - (c) If section 327 of the Criminal Procedure Act has been successfully employed and a matter is referred back to court and the court then finds that the additional evidence renders the convicted person not guilty the Minister of Justice orders the record expunged
 - (d) If a section 327 of the Criminal Procedure Act application is denied the applicant may appeal the decision
- (1) Only statements (a) and (b) are correct
 - (2) Only statements (a) and (d) are correct
 - (3) Only statement (a) is correct
 - (4) Only statement (d) is correct
 - (5) All the statements are incorrect

Question 5

- (a) In terms of section 167 of the Criminal Procedure Act the court may recall and re-question the accused and/or a witness
 - (b) If the previous convictions of the accused come to the attention of the court during trial it will result in the setting aside of his conviction at trial
 - (c) It is not necessary to include competent verdicts as alternatives in the charge sheet/indictment
 - (d) The right to a fair trial is infringed if, at the close of the state's case, there is no evidence to link the accused to the crime, but the court nonetheless allows the trial to continue in the hope that evidence which implicates the accused will come to light
- (1) Only statement (d) is correct
 - (2) Only statements (a) and (d) are correct
 - (3) None of the statements are correct
 - (4) Only statement (b) is incorrect
 - (5) Only statements (c) and (d) are correct

Question 6

- (a) An Appellant who is a fugitive from justice lacks *locus standi* to appear before a court of appeal
 - (b) Appeal and review procedures must be brought within a reasonable time
 - (c) Automatic review only comes into working where a magistrate, with less than seven years of experience at the substantial rank of magistrate or higher, sentences an accused to imprisonment for a period exceeding six months or imposes a fine of more than R8 000
 - (d) Automatic review comes into working where a regional court magistrate, with more than seven years of experience at the substantial rank of regional magistrate, sentences an accused to imprisonment for a period exceeding three months or imposes a fine of more than R6 000
- (1) All the statements are incorrect.
 - (2) All the statements are correct
 - (3) Only statements (a), (c) and (d) are correct
 - (4) Only statement (a) is correct
 - (5) Only statement (b) is correct

Question 7

- (a) The purpose of a declaratory order is to allow the court to pronounce on hypothetical points of law
 - (b) A declaratory order can only be granted where there is an existing dispute between the parties
 - (c) Section 172(1)(a) of the Constitution is wide enough in its application to allow a court to grant a declaratory order either in terms of section 21 of the Superior Court Act, 2013 or in terms of the Constitutional 'special declaratory order' when the issue is based on a constitutional question
 - (d) The applicant in a declaratory order must show a tangible, real and justifiable interest in the determination of his or her rights and obligations
- (1) Only statements (c) and (d) are incorrect
 - (2) Only statements (a) and (d) are correct
 - (3) Only statements (a), (c) and (d) are correct
 - (4) Only statement (d) is correct
 - (5) All the statements are incorrect

Question 8

- (a) If an indictment is accompanied by a summary of salient facts the state may not lead evidence which contradicts the contents thereof
 - (b) Considering that all people have the right of access to information held by state, the police/state cannot, under any circumstances, refuse the accused access to the police docket
 - (c) If an application for further particulars is denied by the court and such refusal prejudices the accused, his conviction will be overturned on appeal
 - (d) A charge is defective if it fails to include the place of offence where such element is essential to the offence
- (1) All the statements are correct
 - (2) None of the statements are correct
 - (3) Only statements (a), (b) and (d) are correct
 - (4) Only statement (d) is correct
 - (5) Only statements (c) and (d) are correct

Question 9

- (a) Section 50 of the Criminal Procedure Act (relating to detention after arrest) is applicable to child offenders charged in terms of the Child Justice Act
 - (b) Child and adult co-perpetrators are charged and tried jointly
 - (c) Any competent criminal court can serve as a children's court in terms of the Child Justice Act
 - (d) Every child arrested for a crime must undergo an assessment by a registered psychologist
- (1) Only statements (a) and (d) are correct
 - (2) Only statements (b), (c) and (d) are correct
 - (3) Only statements (c) and (d) are incorrect
 - (4) All the statements are correct
 - (5) All the statements are incorrect

Question 10

- (a) The Child Justice Act stipulates retributive sentencing procedures
 - (b) A child below the age of 14 may not be sentenced to life imprisonment in terms of the Child Justice Act
 - (c) The record of a preliminary enquiry held in terms of the Child Justice Act is admissible as evidence at the trial of a child offender
 - (d) A presiding officer may not, in any circumstance, preside over the preliminary enquiry and the trial of a child in terms of the Child Justice Act based on different causes
- (1) All the statements are incorrect
 - (2) All the statements are correct
 - (3) Only statements (a) and (c) are correct
 - (4) Only statement (b) is correct
 - (5) Only statements (a), (c) and (d) are correct

Question 11

- (a) Direct access to the Constitutional Court by a member of the public is prohibited
 - (b) The rule against duplication of convictions enjoins the court to guard against duplication of punishment which could result where two convictions arise out of the same incident
 - (c) Where an assessor becomes unable to act at any time during trial the presiding officer has no other choice but to order that the trial begins *de novo*
 - (d) It is possible for the accused to advance the defence of *autrefois convict* for the first time on appeal
- (1) All the statements are correct
 - (2) Only statements (b) and (d) are correct
 - (3) Only statements (a), (c) and (d) are correct
 - (4) Only statement (b) is correct
 - (5) Only statements (c) and (d) are correct

Question 12

- (a) Where the legal advisor replies in writing or orally to any question by the court in terms of section 115(3) of the Criminal Procedure Act the accused must also confirm this, but the court may not require of the accused to answer the question personally
 - (b) In the case of traditional plea-bargaining, the prosecutor and the defence cannot bind the court to a sentence, however, the prosecutor may agree to suggest a possible lighter sentence
 - (c) Section 112 of the Criminal Procedure Act only applies where a plea of guilty is tendered at the commencement of the trial
 - (d) It is not required of an accused to give his statement of defence under oath
- (1) All the statements are incorrect
 - (2) All the statements are correct
 - (3) Only statements (b) and (d) are correct
 - (4) Only statements (a), (b) and (d) are correct
 - (5) Only statements (a), (b) and (c) are correct

Question 13

- (a) The main objective of traditional plea bargaining is to save the state the cost and time associated with a long trial process
 - (b) Statutory plea bargaining may take place before the commencement of or during trial
 - (c) If evidence at a joint trial is admissible against one accused but inadmissible against another the court must order a separation of trial
 - (d) If the court discharges an accused at the end of the state's case, the state cannot appeal against such an acquittal
- (1) Only statement (c) is correct
 - (2) Only statements (a) and (d) are correct
 - (3) None of the statements are correct
 - (4) Only statements (a) and (b) are correct
 - (5) Only statements (c) and (d) are correct

Question 14

- (a) Probability of prejudice is insufficient to justify an order of separation of trials
 - (b) Persons charged with the same offence or separate offences alleged to have been committed at the same time and place or at the same place and about the same time, may be charged jointly in the same indictment
 - (c) After the accused has brought an application for separation an improper refusal by the court to order a separation of trials will amount to an infringement of the accused person's right to a fair trial
 - (d) An accused may be joined with any other accused in the same criminal proceedings at any time before any evidence is led in respect of the charge in question
- (1) All the statements are correct
 - (2) Only statements (b), (c) and (d) are correct
 - (3) Only statements (b) and (c) are incorrect
 - (4) Only statements (b) and (d) are correct
 - (5) Only statement (a) and (d) are incorrect

Question 15

- a) Die accusatorial system implies that the presiding officer plays an active role at trial
 - b) Where neither the state nor the accused present evidence, the court can call witnesses in order to prevent the accused from being acquitted and released
 - c) The courts omission to inform an accused of competent verdicts applicable to the main charge does not constitute a fatal irregularity which vitiates the trial and the conviction on a competent verdict
 - d) If the accused elects to remain silent the court is permitted to form a negative inference based solely thereupon
- (1) Only statement (c) is correct
 - (2) All the statements are correct
 - (3) Only statements (a), (c) and (d) are correct
 - (4) Only statements (a) and (c) are correct
 - (5) Only statement (b) is correct

Question 16

- (a) The consequence of a schedule 1 (Child Justice Act) offence is that it may be diverted by the National Prosecuting Authority with no interference by the court
- (b) In terms of the Child Justice Act if a written notice to appear is not served on an accused child and the parent or guardian simultaneously a ground of appeal is established
- (c) A child between the ages of 14 and 16 years may be incarcerated pending trial only if he is charged with a schedule 2 offence and the prosecution can show *prima facie*, that imprisonment would likely result upon conviction
- (d) In terms of the Child Justice Act, if a child accepts responsibility for his or her actions at the preliminary inquiry the presiding officer may divert the matter. If the child however fails to complete the diversion programme, his or her 'acceptance of responsibility' can be used as an informal admission during trial
- (1) All the statements are incorrect
(2) Only statements (a) and (c) are correct
(3) Only statements (b) and (d) are correct
(4) Only statements (c) and (d) are correct
(5) Only statement (b) is correct

Question 17

- (a) Lay-assessors may assist any trial court with respect to any charge or sentence, at any stage of the proceedings
- (b) The concept of 'justice' in its procedural sense is closely related to the idea of legality that refers to the quality of the proceedings. Therefore, the accused may not be asked before or during trial if he has been imprisoned previously
- (c) The interpreter must be sworn in, either upon taking office or at the commencement of the case in which he acts as interpreter. If he is not sworn in, it amounts to an irregularity which may render the trial abortive
- (d) The prosecutor is an officer of the court charged with the serious duty of assisting the court in arriving at the truth
- (1) None of the statements is correct
(2) Only statements (b) and (d) are correct
(3) Only statements (b), (c) and (d) are correct
(4) All the statements are correct
(5) Only statement (a) is correct

Question 18

- (a) The indictment must be served on the accused in accordance with the rules of court. Service is affected the moment the indictment is posted to the accused and received by him or her.
 - (b) Postponements and recalling of witnesses could serve as a substitute for the right of an accused to be sufficiently informed of the charges before he pleads and before he presents his defence.
 - (c) Where a charge is defective for the want of an averment which is an essential ingredient of the relevant offence, the defect shall always be cured by evidence at the trial proving the matter which should have been averred.
 - (d) Section 86 of the CPA makes provision for amendment of the charge and requires that the proposed amendment must differ to such an extent from the original charge that it is in essence another charge.
- (1) None of the statements is correct
 - (2) Only statements (b) and (c) are correct
 - (3) Only statements (a) and (d) are correct
 - (4) Only statement (c) is correct
 - (5) All the statements are correct

Question 19

- (a) With regard to the general appeal procedure, the law allows an absolute right of appeal against a decision or order of a provincial division of a High Court as a court of first instance.
 - (b) The Supreme Court of Appeal has the power to impose a punishment more severe than that imposed by the court *a quo*.
 - (c) When an accused has exhausted all recognised remedies of appeal or review or if they are no longer available to him/her, there is no further remedy or legal procedure available that would assist him/her when new evidence becomes available which materially affects his/her conviction.
 - (d) A third party who has an interest in the verdict of guilty has a right of appeal against his or her conviction or sentence.
- (1) Only statement (a) is correct
 - (2) All statements are incorrect
 - (3) All statements are correct
 - (4) Only statements (a) and (b) are correct
 - (5) Only statement (b) is correct and (a), (c) and (d) are incorrect

Question 20

- a) When an accused person challenges the correctness of his conviction and/or sentence by a lower court, the correct procedure to be followed would be by means of the review procedure
 - b) In order to reconstruct a lost record, the recalling of witnesses who gave evidence during the trial would be irregular
 - c) When a review judge directs a query to the magistrate who presided at the criminal case under review, the latter may at any time when it suits him and in any manner, respond to such a query
 - d) All courts have the power to exclude improperly obtained evidence as this power does not only fall exclusively within the jurisdiction of the courts of review and appeal
- (1) All the statements are correct
 - (2) Only statements (a) and (b) are correct
 - (3) Only statements (b) and (c) are incorrect
 - (4) Only statements (b) and (d) are correct
 - (5) Only statements (a) and (d) are incorrect

Question 21

- a) The prosecutor may compel the appearance of a witness at trial in terms of section 179 but the accused cannot, of his own accord, compel the appearance of a witness at trial
 - b) The question of whether an accused was fit to stand trial cannot be raised for the first time after conviction
 - c) Your client, Ms Julia M, is charged with culpable homicide arising from a motor vehicle collision that occurred on a deserted, dark, country road. You represent Ms M at trial and at the close of the State's case it is your opinion that the State has established a *prima facie* case against your client. In light of this the best course of action at this juncture would be for Ms Julia M to apply for a discharge in terms of section 174 of the Criminal Procedure Act
 - d) You represent a 15-year-old youth by the name of Sammy. Sammy has been charged with theft arising from an incident involving an i-pod. Sammy instructs you that he cares for his 10-year-old sister and 97-year-old grandfather since both his parents died in a tragic car accident last year. Sammy's sister needed money for school fees and in desperation Sammy stole the i-pod from a motor vehicle that was parked in a busy area with its front window left open. In light of the mitigating circumstances offered by Sammy the best option would be for him to plead guilty and consent to diversion for a schedule 1 offence?
- (1) All the statements are correct
 - (2) Only statement (c) is correct
 - (3) All the statements are incorrect
 - (4) Only statements (a) and (c) are correct
 - (5) Only statements (a) and (b) are correct

Question 22

- a) Your client Mr Ben Johnston stands accused of armed robbery. He is in custody awaiting trial. The case has been postponed several times, mostly at the request of the State. At the most recent appearance the State again requests a postponement in order to allow it the opportunity to obtain important forensic evidence. The case has been ongoing for 15 months. The best legal remedy available to your client in this instance is to oppose the granting of a postponement and argue for a stay of prosecution in terms of section 342A of the Criminal Procedure Act?
- b) An inexperienced prosecutor in the lower court formulates a murder charge as follows: 'The accused is guilty of a crime in that the accused did intentionally and unlawfully cause the death of a human being'. In terms of section 84(1), and notwithstanding sections 86(1) and 88 of the Criminal Procedure Act the charge sheet does not contain sufficient detail and is defective although not fatally so.
- c) A confession of one accused in which he implicates a co-accused is inadmissible as evidence against him (the co-accused), but can be taken into account during an application for discharge.
- d) The only test in section 174 is whether a *prima facie* case has been proven by the prosecution.
- (1) Only statement (a) is incorrect
 (2) Only statement (c) is correct
 (3) Only statements (a) and (d) are correct
 (4) Only statements (b) and (d) are correct
 (5) Only statements (a) and (b) are correct

Question 23

- (a) The Child Justice Act functions as supplementary legislation to the Criminal Procedure Act.
- (b) In terms of the Child Justice Act, a child below the age of 10 cannot be arrested and will not suffer any consequence as a result of his criminal conduct.
- (c) In terms of the Child Justice Act, the prosecutor in a Schedule 1 offence may divert a matter without the intervention of the court.
- (d) In terms of the Child Justice Act, a summons must be served on a child at least 7 days before trial in the child justice court.
- (1) All the statements are incorrect
 (2) All the statements are correct
 (3) Only statement (a) is correct
 (4) Only statements (b) and (d) are incorrect
 (5) Only statement (b) is correct

Question 24

- (a) The decision of the prosecutor is determinative in charging co-perpetrators jointly
 - (b) In terms of section 86 of the Criminal Procedure Act, evidence in court will suffice to prove inclusion where the necessary wording has been unintentionally omitted from a charge sheet
 - (c) The defence need only show the possibility of minimal prejudice otherwise occurring to the accused when applying for a separation of trials
 - (d) The possibility of using a co-accused as a witness for the state is determinative in the court's decision to separate a trial
- (1) Only statements (a) and (d) are correct
 - (2) Only statements (b), (c) and (d) are incorrect
 - (3) Only statements (a) and (b) are correct
 - (4) All the statements are correct
 - (5) All the statements are incorrect

Question 25

- (a) Section 321 dictates that a convicted person is released on bail pending the outcome of a question reserved for consideration by the Supreme Court of Appeal
 - (b) Section 324 prescribes that the assessors who sat during the original trial must re-sit at proceedings which start *de novo* on order of the court of appeal
 - (c) The Supreme Court of Appeal is a creature of statute
 - (d) If the state wishes to appeal a sentence handed down by a high court it is not required to obtain leave to appeal because the State is *dominus litis ab initio*
- (1) All the statements are correct
 - (2) Only statement (a) is correct
 - (3) Only statements (a) and (b) are correct
 - (4) Only statements (b), (c) and (d) are correct
 - (5) All the statements are incorrect

Total: [25 x 3 = 75]

[TURN OVER]
[BLAAI OM]

AFDELING A**Meervoudigekeusevrae****Vraag 1**

- (a) 'n Aanklag mag gewysig word solank dit ten minste 'n misdryf openbaar
- (b) Die weglating van 'n wesenlike bewering uit 'n aanklag word outomaties deur getuienis reggestel, welke getuienis moet bewys wat beweert moes gewees het
- (c) Enige aantal deelnemers aan 'n misdryf, sowel as enige aantal begunstigers of soveel deelnemers as begunstigers by daardie misdryf mag gesamentlik verhoor word
- (d) 'n Pleit van *autrefois acquit* sal slaag indien 'n beskuldigde vantevore deur 'n bevoegde hof vrygespreek is wat die meriete van die saak aan dieselfde misdryf as die een waarvan hy nou aangekla word, oorweeg het
- (1) Al die stellings hierbo is korrek
- (2) Geen van die stellings is korrek
- (3) Slegs stelling (d) is korrek
- (4) Slegs stelling (d) is ongekwalifiseerd korrek
- (5) Slegs stellings (c) en (d) is korrek

Vraag 2

- (a) 'n Aansoek om 'n pleit van skuldig te verander na 'n pleit van onskuldig moet voor vonnis gebring word terwyl 'n pleit van onskuldig na een van skuldig met die verloop van die hof mag verander word
- (b) Waar die hof nie in sitting is nie, word die voorsittende beampte verbied om met enige van die partye individueel te kommunikeer
- (c) X word in die landdroshof aangekla van aanranding op Harry O. Toe die verhoor moet begin, is die getuies afwesig. Die hof bevind dat die saak as gevolg van die afwesigheid van die staat se getuies al te veel kere uitgestel is. 'n Verdere uitstel word geweier en die hof beveel die staat om met die saak voort te gaan. X het reeds onskuldig gepleit by 'n vorige hofverskyning. Die aanklaer moet noodgedwonge die staatsaak sluit. X word vrygespreek. Die aanklaer kla X weer op dieselfde feite aan, maar nou van aanranding met die opset om Harry O ernstige liggaamlike leed toe te dien. X sal nie met sy pleit van *autrefois acquit* slaag nie, omdat hy nie op die meriete van die saak of op dieselfde misdryf vrygespreek is nie.
- (d) Indien daar meerdere beskuldigdes in 'n strafverhoor is, mag 'n aansoek by die sluiting van die staatsaak vir die ontslag van al die beskuldigdes maar nie ten opsigte van slegs sekere beskuldigdes gebring word nie.
- (1) Nie een van die stellings is korrek nie
- (2) Slegs stellings (a), (b) en (c) is korrek
- (3) Slegs stellings (a) en (b) is korrek
- (4) Slegs stellings (c) en (d) is korrek
- (5) Slegs stelling (a) is korrek

Vraag 3

- (a) *n Beskuldigde is sonder uitsondering geregtig daarop om skuldig of onskuldig bevind te word nadat hy of sy gepleit het*
- (b) *Voordat enige getuieenis aangevoer word, is die aanklaer geregtig daarop om die hof toe te spreek met die doel om die klag te verduidelik en op die klagte kommentaar te lewer*
- (c) *Artikel 342A van die Strafproseswet word toegepas wanneer 'n beskuldigde gedurende sy op verhoorstelling presidensiele begenadiging pleit*
- (d) *Die aanklaer en die polisie is amptenare van die hof wat mede-afhanklik funksioneer in hulpverlening aan die hof met die hof se feitebevindings*
- (1) *Geeneen van die stellings is korrek*
 (2) *Slegs stellings (b) en (c) is korrek*
 (3) *Slegs stellings (a), (c) en (d) is korrek*
 (4) *Slegs stelling (b) is korrek*
 (5) *Al die stellings is korrek*

Vraag 4

- (a) *Die Hoogste Hof van Appel het, ongeag wetgewing, buitengewone jurisdiksie*
- (b) *Artikel 327 van die Strafproseswet bepaal dat 'n persoon wat skuldig bevind is en wat alle regsmiddele in die Strafproseswet uitgeput het, 'n versoekskrif vir verdere regsverligting aan die President kan rig*
- (c) *Indien artikel 327 van die Strafproseswet suksesvol toegepas is en 'n aangeleentheid word na die hof toe terugverwys en die hof bevind dat die bykomende getuieenis die gevonniste persoon onskuldig maak, gelas die Minister van Justisie dat die rekord geskrap word*
- (d) *Indien 'n artikel 327-aansoek in terme van die Strafproseswet geweier word, kan die applikant teen die beslissing appelleer*
- (1) *Slegs stellings (a) en (b) is korrek*
 (2) *Slegs stellings (a) en (d) is korrek*
 (3) *Slegs stelling (a) is korrek*
 (4) *Slegs stelling (d) is korrek*
 (5) *Alle stellings is verkeerd*

Vraag 5

- (a) Ingevolge artikel 167 van die Strafproseswet mag die hof 'n beskuldigde en/of 'n getuie terugroep en herondervra
- (b) Indien 'n beskuldigde se vorige veroordelings tot die kennis van die hof kom, sal dit veroorsaak dat sy huidige skuldigbevinding tersyde gestel word
- (c) Dit is nie nodig om bevoegde uitsprake as alternatiewe aanklagte in die akte van beskuldiging of klagstaat in te voeg nie
- (d) 'n Beskuldigde word 'n billike verhoor ontnem indien die hof, by die sluiting van die staat se saak waar geen getuienis aangebied is wat die beskuldigde met die beweerde misdryf verbind nie, die verhoor laat voortduur in die hoop dat getuienis na vore sal kom wat die beskuldigde impliseer
- (1) Slegs stelling (d) is korrek
- (2) Slegs stellings (a) en (d) is korrek
- (3) Geeneen van die stellings is korrek nie
- (4) Slegs stellings (b) is verkeerd
- (5) Slegs stellings (c) en (d) is korrek

Vraag 6

- (a) 'n Appellant wat 'n vlugteling voor die gereg is, het geen locus standi om in die hof van appel te verskyn nie
- (b) Appel- en hersieningsprosedure moet binne 'n redelike tyd gebring word
- (c) Outomatiese hersiening kom slegs in werking indien 'n landdros, met minder as sewe jaar ondervinding op die substansiele rang van landdros of hoer, 'n vonnis van ses maande gevangenisstraf of meer of 'n boete van R8 000 of meer oplê
- (d) Outomatiese hersiening sal ingestel word indien 'n streekhoflanddros, met minder as sewe jaar ervaring op die substantiewe rang van streeklanddros, 'n vonnis oplê van drie maande gevangenisstraf of meer, of 'n boete van R6 000 of meer
- (1) Alle stellings is verkeerd
- (2) Alle stellings is korrek
- (3) Slegs stellings (a), (c) en (d) is korrek
- (4) Slegs stelling (a) is korrek
- (5) Slegs stelling (b) is korrek

Vraag 7

- (a) *Die doel van n verklarende bevel is om die hof toe te laat om uitspraak te lewer oor hipotetiese regspunte*
- (b) *'n Verklarende bevel mag net toegestaan word waar daar 'n bestaande geskil tussen die partye bestaan*
- (c) *Artikel 172(1)(a) van die Grondwet is wyd genoeg in sy toepassing daarvan om 'n hof te magtig om 'n verklarende bevel te verleen óf ingevolge artikel 21 van die Wet op Hoer Howe, 2013 óf ingevolge die Grondwet se 'spesiale verklarende bevel' waar die aspek waaroor die vraag handel, op 'n grondwetlike vraag gebasseer is*
- (d) *Die applikant in 'n verklarende bevel moet n tasbare, werklike en regverdigbare belang toon in die bepaling van sy of haar regte en verpligtinge*
- (1) *Slegs stellings (c) en (d) is verkeerd*
(2) *Slegs stellings (a) en (d) is korrek*
(3) *Slegs stellings (a), (c) en (d) is korrek*
(4) *Slegs stelling (d) is korrek*
(5) *Al die stellings is verkeerd*

Vraag 8

- (a) *Indien 'n akte van beskuldiging vergesel is van 'n opsomming van die wesentliche feite mag die staat nie getuënis aanbied wat dit weerspreek nie*
- (b) *Aangesien elkeen die reg het op toegang tot enige inligting wat deur die staat gehou word, mag die polisie/staat nooit aan die beskuldigde toegang tot die polisie-dossier weier nie*
- (c) *Indien 'n aansoek om nadere besonderhede deur die hof geweier is en dit blyk later dat die beskuldigde hierdeur benadeel is, sal sy skuldigbevinding op appel tersyde gestel word*
- (d) *Indien die plek waar die misdryf gepleeg is 'n wesentliche element van die misdaad is, sal n klagstaat gebrekkig wees indien dit nie sodanige plek vermeld nie*
- (1) *Al die stellings is korrek*
(2) *Geen van die stellings is korrek nie*
(3) *Slegs stellings (a), (b) en (d) is korrek*
(4) *Slegs stelling (d) is korrek*
(5) *Slegs stellings (c) en (d) is korrek*

Vraag 9

- (a) Artikel 50 van die Strafproseswet (aanhouding na inhegtenisname) is van toepassing op kinderoortreders wat ingevolge die Child Justice Act aangekla is
 - (b) Kinder- en volwasse medepligtiges word saam aangekla en gesamentlik verhoor
 - (c) Enige hof saamgestel deur die Strafproseswet kan ingevolge die Child Justice Act as kinderhof dien
 - (d) Enige kind wat vir n misdryf in hegtenis geneem is, moet deur n geregistreerde sielkundige geassesseer word
- (1) Slegs stellings (a) en (d) is korrek
 - (2) Slegs stellings (b), (c) en (d) is korrek
 - (3) Slegs stellings (c) en (d) is verkeerd
 - (4) Al die stellings is korrek
 - (5) Al die stellings is verkeerd

Vraag 10

- (a) Die Child Justice Act sluit vergeldende vonnisprosedures in
 - (b) 'n Kind van jonger as 14 jaar mag nie in gevolge die Child Justice Act tot lewenslange gevangenisstraf gevonniss word nie
 - (c) Die rekord van 'n voorlopige ondersoek wat ingevolge die Child Justice Act gehou word, is toelaatbaar as getuie in die verhoor van 'n kinderoortreder
 - (d) 'n Voorsittende beamppte mag onder geen omstandighede in verskillende gedinge die voorsitter van 'n voorondersoek en van die verhoor van 'n kind, ingevolge die Child Justice Act wees nie
- (1) Al die stellings is verkeerd
 - (2) Al die stellings is korrek
 - (3) Slegs stellings (a) en (c) is korrek
 - (4) Slegs stelling (b) is korrek
 - (5) Slegs stellings (a), (c) en (d) is korrek

Vraag 11

- (a) Direkte toegang tot die Konstitusionele Hof aan 'n lid van die publiek word nie toegelaat nie
 - (b) Die reel teen verdubbeling van skuldigbevindings skryf ook voor dat die howe moet waak teen die duplisering van straf wanneer vonnis opgelê word vir meer as een skuldigbevinding op grond van dieselfde voorval
 - (c) Indien 'n assessor onbekwaam raak om verder in 'n saak op te tree, het die regter geen ander keuse as om te gelas dat die verhoor de novo begin nie
 - (d) Die beskuldigde kan die pleit van autrefois convict vir die eerste keer op appel opper
- (1) Al die stellings is korrek
 - (2) Slegs stellings (b) en (d) is korrek
 - (3) Slegs stellings (a), (c) en (d) is korrek
 - (4) Slegs stelling (b) is korrek
 - (5) Slegs stellings (c) en (d) is korrek

Vraag 12

- (a) Indien die regsvertegenwoordiger skriftelik of mondeling op enige vraag van die hof kragtens artikel 115(3) van die Strafproseswet antwoord moet die beskuldigde dit bevestig maar die hof mag nie van die beskuldigde vereis om die vrae persoonlik te beantwoord nie
- (b) In die geval van tradisionele pleitonderhandelings kan die aanklaer en die verdediging nie die hof ten opsigte van 'n gepaste vonnis bind nie. Die aanklaer mag egter instem om 'n moontlike ligter vonnis by die hof aan die hand te doen
- (c) Artikel 112 van die Strafproseswet is slegs van toepassing waar 'n pleit van skuldig aan die begin van die verhoor aangebied word
- (d) Daar word nie van 'n beskuldigde verlang om sy verklaring wat bedoel is om die grondslag van sy verdediging aan te dui, onder eed af te lê nie
- (1) Al die stellings is verkeerd
(2) Al die stellings is korrek
(3) Slegs stellings (b) en (d) is korrek
(4) Slegs stellings (a), (b) en (d) is korrek
(5) Slegs stellings (a), (b) en (c) is korrek

Vraag 13

- (a) Die hoofoorweging van tradisionele pleitonderhandeling is om die staat die tyd en geld van 'n langdurige verhoor te spaar
- (b) Statutêre pleitonderhandeling mag aangegaan word vóór en tydens die verhoor
- (c) Indien getuies by 'n gesamentlike verhoor aangevoer gaan word wat toelaatbaar is teen een beskuldigde, maar ontoelaatbaar is teen 'n ander, moet die hof 'n skeiding van verhore gelas
- (d) Indien die hof 'n beskuldigde aan die einde van die staatsaak ontslaan, kan die aanklaer nie teen so 'n onskuldigbevinding appelleer nie
- (1) Slegs stelling (c) is korrek
(2) Slegs stellings (a) en (d) is korrek
(3) Geen van die stellings is korrek nie
(4) Slegs stellings (a) en (b) is korrek
(5) Slegs stellings (c) en (d) is korrek

Vraag 14

- (a) *Die waarskynlikheid van benadeling is onvoldoende om 'n bevel van skeiding van verhore te regverdig*
- (b) *Persone wat aangekla word van dieselfde misdryf of afsonderlike misdrywe wat na bewering op dieselfde tyd en plek of op dieselfde plek en ongeveer dieselfde tyd gepleeg is, kan in dieselfde klagstaat aangekla word*
- (c) *Indien 'n hof onregmatiglik weier om 'n skeiding van verhore te gelas nadat so 'n versoek deur die beskuldigde gebring is, sal die weiering neerkom op 'n inbreukmaking van die beskuldigde se reg op 'n billike verhoor*
- (d) *'n Beskuldigde kan by 'n ander beskuldigde in dieselfde strafregtelike verrigting gevoeg word te eniger tyd voordat enige getuienis ten opsigte van die betrokke aanklag gelei is*
- (1) *Al die stellings is korrek*
(2) *Slegs stellings (b) (c) en (d) is korrek*
(3) *Slegs stellings (b) en (c) is verkeerd*
(4) *Slegs stellings (b) en (d) is korrek*
(5) *Slegs stellings (a) en (d) is verkeerd*

Vraag 15

- a) *Die akkusatoriese stelsel impliseer dat die voorsittende beampte 'n aktiewe rol speel tydens die verhoor*
- b) *Waar beide die staat en die verdediging geen getuienis aangebied het nie, kan die hof getuies roep om te verhoed dat die beskuldigde vrygespreek en ontslaan word*
- c) *Die versuim van die hof om 'n beskuldigde van 'n bevoegde uitsprake op die hoofaanklag in te lig, is nie 'n fatale onreelmatigheid wat die verrigtinge nietig maak waar die beskuldigde wel skuldig bevind word aan 'n misdad wat juis daardie bevoegde uitspraak uitmaak nie*
- d) *Die hof is daarop geregtig om 'n negatiewe afleiding te maak uit die blote uitoefening van die beskuldigde se swygereg*
- (1) *Slegs stelling (c) is korrek*
(2) *Alle stellings is korrek*
(3) *Slegs stellings (a), (c) en (d) is korrek*
(4) *Slegs stelling (a) en (c) is korrek*
(5) *Slegs stelling (b) is korrek*

Vraag 16

- (a) Die gevolg van 'n skedule 1-oortreding van die Child Justice Act kan sonder tussenkoms van die hof deur die Nasionale Vervolgingsgesag afgewend word
- (b) Die Child Justice Act bepaal dat as 'n skriftelike kennisgewing om te verskyn nie tegelykertyd aan 'n beskuldigde kind en die ouer of voog beteken word nie, dit 'n grond vir appel skep
- (c) 'n Kind tussen 14 en 16 jaar kan slegs hangende 'n verhoor opgesluit word as hy of sy van 'n skedule 2-oortreding aangekla word en die vervolging *prima facie* kan toon dat sou die kind skuldig bevind word dit waarskynlik tot gevangenisstraf sal lei
- (d) As 'n kind by die voorondersoek verantwoordelikheid vir sy of haar daad aanvaar kan die voorsittende beampte ingevolge die Child Justice Act die saak afwend. As die kind egter nie die afwendingsprogram voltooi nie kan sy of haar 'aanvaarding van verantwoordelikheid' tydens die verhoor as 'n informele erkenning gebruik word
- (1) Geeneen van die stellings is korrek nie
- (2) Slegs stellings (a) en (c) is korrek
- (3) Slegs stellings (b) en (d) is korrek
- (4) Slegs stellings (c) en (d) is korrek
- (5) Slegs stelling (b) is korrek

Vraag 17

- (a) Leke assessore mag enige verhoorhof bystaan in verband met enige aanklag of enige vonnis en op enige stadium van die verrigtinge
- (b) Die begrip "geregtigheid" in prosessuele sin hang ten nouste saam met die legaliteitsbegrip en dui 'n eienskap van die proses aan en daarom mag die beskuldigde nie gevra word waarvoor hy vantevore in die tronk was nie
- (c) Die tolk moet beedig word, óf aan die begin van sy dienstermyn, of by die aanvang van die saak waarin hy as tolk optree. Indien hy nie beedig is nie, kom dit op 'n onreëlmatigheid neer wat die vervolging kan laat misluk
- (d) Die aanklaer is 'n beampte van die hof wat die belangrike plig het om die hof te help om agter die waarheid te kom
- (1) Nie een van die stellings is korrek nie
- (2) Slegs stellings (b) en (d) is korrek
- (3) Slegs stellings (b), (c) en (d) is korrek
- (4) Al die stellings is korrek
- (5) Slegs stelling (a) is korrek

Vraag 18

- (a) Die akte van beskuldiging moet ooreenkomstig die hofreëls aan die beskuldigde beteken word. Betekening geskied op die oomblik wanneer die akte van beskuldiging aan die beskuldigde gepos word en dit deur hom/haar ontvang word.
- (b) Uitstelde en herroeping van getuiens kan die reg van 'n beskuldigde om behoorlik aangaande die aanklag teen hom ingelig te wees voor hy pleit en voor hy sy verdediging aanbied, vervang.
- (c) Waar 'n aanklag gebrekkig is vanweë die weglating van 'n bewering wat 'n noodsaaklike bestanddeel van die betrokke misdryf is, word die gebrek altyd herstel deur getuienis by die verhoor wat die aangeleentheid bewys wat beweër moes gewees het.
- (d) Artikel 86 van die Strafproseswet maak voorsiening vir die wysiging van die aanklag wat vereis dat die beoogde wysiging in so 'n mate van die oorspronklike aanklag verskil dat dit in wese 'n ander aanklag is.
- (1) Nie een van die stellings is korrek nie.
 (2) Slegs stelling (b) en (c) is korrek.
 (3) Slegs stellings (a) en (d) is korrek.
 (4) Slegs stelling (c) is korrek.
 (5) Al die stellings is korrek.

Vraag 19

- (a) Met betrekking tot algemene appelprosedure, laat die reg 'n onbelemmerde reg van appel toe teen 'n beslissing of bevel van 'n provinsiale afdeling van 'n Hoë Hof as die hof van eerste instansie.
- (b) Die Hoogste Hof van Appel het die bevoegdheid om 'n straf op te lê wat swaarder is as dié een wat in die hof a quo opgelê is.
- (c) Indien 'n beskuldigde al die erkende remedies van appel of hersiening uitgeput het of dit nie meer beskikbaar is nie, bestaan daar geen verdere remedie of regsprosesse indien nuwe getuienis na vore kom wat sy/haar skuldigbevinding weselik raak nie.
- (d) 'n Derde party wat 'n belang by 'n skuldigbevinding mag ook teen sy/haar skuldigbevinding of vonnis appelleer.
- (1) Slegs stelling (a) is korrek.
 (2) Al die stellings is verkeerd.
 (3) Al die stellings is korrek.
 (4) Slegs stellings (a) en (b) is korrek.
 (5) Slegs stelling (b) is korrek en (a), (c) en (d) is verkeerd.

Vraag 20

- (a) Wanneer 'n beskuldigde die korrektheid van sy/haar skuldigbevinding en/of vonnis deur 'n laerhof wil betwis, is 'n hersiening die korrekte prosedure om te volg
- (b) Ten einde 'n verlore rekord te rekonstrueer, is dit onreëmatig om getuies wat getuies gelewer het gedurende die verhoor, terug te roep
- (c) Wanneer 'n hersieningsregter navraag rig aan die landdros wat in die straf-verhoor voorgesit het, mag laasgenoemde landdros te enige tyd wanneer dit hom pas, en op enige manier die navraag beantwoord
- (d) Die uitsluiting van onbehoorlike verkreepte getuies is 'n bevoegdheid wat alle howe het en nie net hersienings- of appelhowe nie
- (1) Al die stellings is korrek
 (2) Slegs stellings (a) en (b) is korrek
 (3) Slegs stellings (b) en (c) is verkeerd
 (4) Slegs stellings (b) en (d) is korrek
 (5) Slegs stellings (a) en (d) is verkeerd

Vraag 21

- a) Die aanklaer mag die aanwesigheid van 'n getuie by die verhoor ingevolge artikel 179 afdwing, maar die beskuldigde kan nie uit sy eie die aanwesigheid van 'n getuie by 'n strafverhoor afdwing nie
- b) Die vraag of 'n beskuldigde oor die vermoede beskik om sy verhoor te begryp kan nie vir die eerste keer na afloop van die skuldigbevinding geopper word nie
- c) U klient, me Julia M, word aangekla van strafbare manslag na aanleiding van 'n voertuigbotsing op 'n verlate, donker plaaspad. U verteenwoordig me M by die verhoor en by die sluiting van die Staat se saak, is u van opinie dat die Staat 'n prima facie saak teen u klient bewys het. In die lig hiervan is die beste uitweg op hierdie stadium vir Julia M om ontslag ingevolge artikel 174 van die Strafproseswet te vra
- d) U verteenwoordig 'n 15-jarige met die naam Sammy Hy is weens diefstal aangekla na aanleiding van 'n i-pod-voorval. Sammy lig u in dat hy vir sy 10-jarige sussie en 97-jarige oupa sorg aangesien albei sy ouers verlede jaar tragies in 'n motorongeluk omgekome het. Hy moes sy sussie se skoolgeld betaal en het uit wanhoop 'n i-pod gesteel uit 'n motor wat in 'n besige deel van die stad geparkeer was, en waarvan 'n voorruit oopgedraai was. In die lig van die versagende omstandighede deur Sammy aangebied is die beste uitweg vir hom om skuldig te pleit en tot afwending van 'n skedule 1 misdryf toe te stem
- (1) Al die stellings is korrek
 (2) Slegs stelling (c) is korrek
 (3) Al die stellings is verkeerd
 (4) Slegs stelling (a) en (c) is korrek
 (5) Slegs stelling (a) en (b) is korrek

Vraag 22

- a) *U klient, mnr Ben Johnston, word aangekla van gewapende roof. Hy is verhoorafwagtend en is in aanhouding. Die saak is verskeie kere meestal op versoek van die Staat, uitgestel. In die mees onlangse verskyning het die Staat opnuut versoek dat die saak uitgestel word sodat belangrike forensiese bewyse verkry kan word. Die saak sleep reeds 15 maande voort. In die lig hiervan is die beste uitweg op hierdie stadium om die toestaan van die uitstel te opponeer en om te argumenteer dat 'n permanente staking van vervolging ingevolge artikel 342A van die Strafproseswet toegestaan word.*
- b) *'n Onervare aanklaer in die laer hof het 'n moordaanklag as volg geformuleer: 'Die beskuldigde is skuldig aan 'n misdryf deurdat die beskuldigde opsetlik en wederregtelik die dood van 'n mens veroorsaak het.' In terme van artikel 84 (1), ongeag die werking van artikel 86 (1) en 88, van die Strafproseswet vervat die klagstaat nie genoegsame besonderhede nie en is dus gebrekkig maar nie fataal gebrekkig nie.*
- c) *'n Bekentenis van een beskuldigde waarby hy 'n medebeskuldigde betrek, is ontoelaatbaar as getuienis teen hom (die medebeskuldigde), maar kan in ag geneem word gedurende 'n aansoek om ontslag.*
- d) *Die enigste toets in artikel 174 is of 'n prima facie-saak deur die vervolging bewys is.*
- (1) *Slegs stelling (a) is verkeerd*
 (2) *Slegs stelling (c) is korrek*
 (3) *Slegs stellings (a) en (d) is korrek*
 (4) *Slegs stellings (b) en (d) is korrek*
 (5) *Slegs stellings (a) en (b) is korrek*

Vraag 23

- (a) *Die Child Justice Act dien as aanvullende wetgewing tot die Strafproseswet 51 van 1977.*
- (b) *Kragtens die Child Justice Act kan 'n kind onder die ouderdom van 10 jaar nie gearresteer word nie en daar sal nie enige gevolge weens sy strafwaardige/kriminele optrede opdoen nie.*
- (c) *Kragtens die Child Justice Act mag die aanklaer in 'n Bylae 1-misdad 'n aangeleentheid sonder die tussenkoms van die hof afwend.*
- (d) *Kragtens die Child Justice Act, moet 'n dagvaardigin op 'n kind ten minste 7 dae voor die verhoor in die kindergeregtigheidshof beteken word.*
- (1) *Al die stellings is verkeerd*
 (2) *Al die stellings are korrek*
 (3) *Slegs stelling (a) is korrek*
 (4) *Slegs stellings (b) en (d) is verkeerd*
 (5) *Slegs stelling (b) is korrek*

Vraag 24

- (a) *Die diskresie van die aanklaer is beslissend by die besluit om mededaders gesamentlik aan te kla*
- (b) *Ingevolge artikel 86 van die Strafproseswet is getuie in die hof voldoende om insluiting, waar nodig, te bewys, indien noodsaaklike bewoording nie-opsetlik uit 'n klagstaat weggelaat is nie*
- (c) *Die verdediging hoef slegs die moontlikheid van minimale benadeling vir die beskuldigde aan te toon wanneer aansoek om 'n skeiding van die verhoor gedoen word*
- (d) *Die moontlikheid om 'n medebeskuldigde as staatsgetuie te gebruik, is beslissend by die hof se besluit om 'n verhoor te skei*
- (1) *Slegs stelling (a) en (d) is korrek*
- (2) *Slegs stellings (b), (c) and (d) is verkeerd*
- (3) *Slegs stellings (a) and (b) is korrek*
- (4) *Al die stellings is korrek*
- (5) *Al die stellings is verkeerd*

Vraag 25

- (a) *Artikel 321 bepaal dat 'n gevonniste persoon op borgtog vrygelaat word hangende die beslissing op 'n vraag wat vir oorweging deur die Hoogste Hof van Appel gereserveer is*
- (b) *Artikel 324 skryf voor dat die assessore wat gedurende die oorspronklike verhoor voorgesit het, weer moet sit in verrigtinge wat de novo op las van die appelhof begin*
- (c) *Die Hoogste Hof van Appel is ingestel deur 'n wet*
- (d) *Indien die staat wil appelleer teen 'n vonnis wat deur 'n hof opgelé is word dit nie vereis om verlof tot appel te kry nie omdat die staat dominus litis ab initio is*
- (1) *Al die stellings is korrek*
- (2) *Slegs stelling (a) is korrek*
- (3) *Slegs stellings (a) en (b) is korrek*
- (4) *Slegs stellings (b), (c) en (d) is korrek*
- (5) *Al die stellings is verkeerd*

Totaal [25 x 3 = 75]

SECTION B/AFDELING B**Question 1 / Vraag 1**

Sally D, a 15 year old female and her boyfriend, Roy (Red Beard) an adult male, are co-accused on charges of possession of dependence producing substances and assault. Sally D is represented at trial but will not acknowledge responsibility for her part in the alleged offences. Roy (Red Beard) has been studying for his LLB for a period of two years and decides that he will represent himself. Sally D and Roy (Red Beard) are found guilty of all charges and sentenced by Mr Arnold who has been presiding in the district court for 4 years, having previously been a legal advisor. Their sentences are as follows:

- 1 Sally D is sentenced to five (5) months in a child and youth care centre which sentence is suspended for 3 years
- 2 Roy (Red Beard) receives a sentence of six (6) months imprisonment

In light of the above, fully discuss the possibility of automatic review for both Sally and Roy's sentences with concentration on the interpretation of the Child Justice Act, Criminal Procedure Act and recent case law in this regard.

(15)

Sally D, 'n 15 jaarige meisie en haar kêrel Roy (Rooibaardjie) 'n volwasse man, is medebeskuuldigdes in 'n verhoor op aanklagte van besit van gewoontevormende afhanklikheids medisyne en aanranding. Sally D het regsverteenvoording by haar verhoor maar wil nie aanspreeklikheid vir haar deelname aan die beweerde misdrywe erken nie. Rooibaardjie is al besig vir 'n periode van twee jaar om vir 'n LLB graad te studeer en besluit om homself te verdedig. Beide beskuuldigdes word skuldigbevind aan al die misdrywe en deur Mnr Arnold, 'n persoon wat vantevore 'n regsadviseer was en wat nou al vir 4 jaar op die bank in die distriktshof diens doen, soos volg gevonniss.

- 1 *Sally D word tot vyf (5) maande in aanhouding in 'n jeugsorg sentrum gevonniss welke vonniss vir 3 jaar opgeskort word.*
- 2 *Roy (Rooibaardjie) word tot ses (6) maande gevangenisstraf gevonniss.*

In die lig van bogenoemde bespreek die moontlikheid van outomatiese hersiening van beide Sally D en Rooibaardjie se vonnisse met spesfieke bespreking van beide die voorskrifte van die Child Justice Act en die Strafproseswet hieroor. Bespreek ook onlangse gesag hieroor.

(15)

Total/Totaal [15]

[TURN OVER]
[BLAAI OM]

Question 2 / Vraag 2

Mr M was convicted of murder and sentenced to life imprisonment. He appealed unsuccessfully to the Supreme Court of Appeal. After the unsuccessful appeal a witness (Mr Liar) who had given material evidence at trial came forth and stated, under oath, that he had fabricated the evidence against Mr M. Without this fabricated evidence the state would not have been able to satisfy its burden of proof against Mr M. Mr M has been advised by his attorney that there are no further remedies available to him since the possibility of appeal has been exhausted. Mr M now decides to approach a civil court on the basis of the *restitutio in integrum* to show that he was convicted on false evidence. Will Mr M be successful with this approach? Is there another alternative available to Mr M under the auspices of the Criminal Procedure Act? Discuss

(10)

Mnr M is aan moord skuldig bevind en tot lewenslange gevangenisstraf gevonniss. Hy het sonder sukses na die Hoogste Hof van Appel geappelleer. Na afloop van die appel het een van die getuies (Mnr Liegbek) wat wesentlike getuie in Mnr M se verhoor gelewer het na vore gekom en onder eed erken dat hy sy getuie teen Mnr M gefabriseer het. Sonder sy getuie sou die staat nie instaat gewees het om sy bewys na te kom nie. Mnr M se prokureur het Mnr M meegedeel dat hy geen verdere remedie het nie. Nogtans besluit Mnr M om 'n siviele hof te nader vir restitutio in integrum op grond daarvan dat hy op valse getuie skuldig bevind is. Sal Mnr M hiermee suksesvol wees? Is daar enige verdere remedie vir Mnr M ingevolge die Strafproseswet beskikbaar? Bespreek

(10)

Total/Totaal: [10]

[TURN OVER]
[BLAAI OM]

Additional pages. Record the question number. Have you informed the examiner at the corresponding question that you are continuing here?

Ekstra bladsye: Dui die vraagnommer aan. Het u die eksaminator op die gegewe plek ingelig dat u hier met die vraag voortgaan?

PART 1 (GENERAL/ALGEMEEN) DEEL 1

STUDY UNIT (e.g. PSY100-X)
 STUDIE EENHEID (bv. PSY100 X)

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PAPER NUMBER
 VRAESTELNOMMER

STUDENT NUMBER
 STUDENTENOMMER

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INITIALS AND SURNAME
 VOORLETTERS EN VAN

DATE OF EXAMINATION
 DATUM VAN EKSAMEN

EXAMINATION CENTRE (E.G. PRETORIA)
 EKSAMENSENTRUM (BV. PRETORIA)

UNIQUE PAPER NO
 UNIEKE VRAESTEL NR

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For use by examination invigilator
 Vir gebruik deur eksamenopsiener

IMPORTANT

1. USE ONLY AN HB PENCIL TO COMPLETE THIS SHEET
2. MARK LIKE THIS ➡
3. CHECK THAT YOUR INITIALS AND SURNAME HAS BEEN FILLED IN CORRECTLY
4. ENTER YOUR STUDENT NUMBER FROM LEFT TO RIGHT
5. CHECK THAT YOUR STUDENT NUMBER HAS BEEN FILLED IN CORRECTLY
6. CHECK THAT THE UNIQUE NUMBER HAS BEEN FILLED IN CORRECTLY
7. CHECK THAT ONLY ONE ANSWER PER QUESTION HAS BEEN MARKED
8. DO NOT FOLD

BELANGRIK

1. GEBUIK SLEGS N HB POTLOOD OM HIERDIE BLAD TE VOLTOOI
2. MERK AS VOLG ➡
3. KONTROLEER DAT U VOORLETTERS EN VAN REG INGEVUL IS
4. VUL U STUDENTENOMMER VAN LINKS NA REGS IN
5. KONTROLEER DAT U DIE KORREKTE STUDENTENOMMER VERSTREK HET
6. KONTROLEER DAT DIE UNIEKE NOMMER REG INGEVUL IS
7. MAAK SEKER DAT NET EEN ALTERNATIEF PER VRAAG GEMERK IS
8. MOENIE VOU NIE

PART 2 (ANSWERS/ANTWOORDE) DEEL 2

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| 1 (1) (2) (3) (4) (5) | 36 (1) (2) (3) (4) (5) | 71 (1) (2) (3) (4) (5) | 106 (1) (2) (3) (4) (5) |
| 2 (1) (2) (3) (4) (5) | 37 (1) (2) (3) (4) (5) | 72 (1) (2) (3) (4) (5) | 107 (1) (2) (3) (4) (5) |
| 3 (1) (2) (3) (4) (5) | 38 (1) (2) (3) (4) (5) | 73 (1) (2) (3) (4) (5) | 108 (1) (2) (3) (4) (5) |
| 4 (1) (2) (3) (4) (5) | 39 (1) (2) (3) (4) (5) | 74 (1) (2) (3) (4) (5) | 109 (1) (2) (3) (4) (5) |
| 5 (1) (2) (3) (4) (5) | 40 (1) (2) (3) (4) (5) | 75 (1) (2) (3) (4) (5) | 110 (1) (2) (3) (4) (5) |
| 6 (1) (2) (3) (4) (5) | 41 (1) (2) (3) (4) (5) | 76 (1) (2) (3) (4) (5) | 111 (1) (2) (3) (4) (5) |
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| 12 (1) (2) (3) (4) (5) | 47 (1) (2) (3) (4) (5) | 82 (1) (2) (3) (4) (5) | 117 (1) (2) (3) (4) (5) |
| 13 (1) (2) (3) (4) (5) | 48 (1) (2) (3) (4) (5) | 83 (1) (2) (3) (4) (5) | 118 (1) (2) (3) (4) (5) |
| 14 (1) (2) (3) (4) (5) | 49 (1) (2) (3) (4) (5) | 84 (1) (2) (3) (4) (5) | 119 (1) (2) (3) (4) (5) |
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