

**CMP301A**

( 444369)

May/June 2009  
Mei/Junie 2009**CRIMINAL PROCEDURE: TRIAL AND POST-TRIAL PROCEDURES  
STRAFPROSESREG: VERHOOR EN NA-VERHOORPROSEDURES**Duration 2 Hours  
Tydsduur 2 Uur100 Marks  
100 Punte**EXAMINERS / EKSAMINATORE**

FIRST / EERSTE

PROF PM BEKKER

MR/MNR G P STEVENS

MS/ME N MALI

ADV T MOKOENA

SECOND / TWEEDE

PROF JP SWANEPOEL

The paper consists of 31 pages including the additional blank pages plus instructions for completion of a mark reading sheet and for the written part. Students must hand in both the completed mark reading sheet and the examination question paper.

***Hierdie eksamenvraestel bestaan uit 31 bladsye wat ook ekstra blanko bladsye insluit plus instruksies vir die voltooiing van 'n merkleesblad en die geskrewe gedeelte. Studente moet beide die voltooide merkleeskaart en die eksamenvraestel inhandig.***

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[BLAAI OM]

## INSTRUCTIONS

1. THE QUESTIONS IN THIS PAPER COUNT A HUNDRED MARKS AND THE PAPER CONSISTS OF TWO SECTIONS, MARKED A AND B. SECTION A COUNTS 16 MARKS AND SECTION B, 84 MARKS YOU MUST ANSWER BOTH SECTIONS A AND B. SECTION A CONSISTS OF MULTIPLE CHOICE QUESTIONS WHICH HAVE TO BE ANSWERED ON A SEPARATE MARK READING SHEET. SECTION B CONSISTS OF FOUR (4) QUESTIONS THAT HAVE TO BE ANSWERED ON THE EXAMINATION QUESTION PAPER.
2. SECTION A. The questions in this section have to be answered on the mark reading sheet which will be issued with your examination question paper You have to read the instructions in connection with the use of the mark reading sheet carefully. Failure to do so may result in the computer being unable to read your answers.

**Section A consists of eight (8) multiple choice questions. Answer all eight questions.** Each of the eight multiple choice questions in Section A, consists of four statements, marked (a)-(d) Some of these statements are correct and some are incorrect You have to decide which are correct and which are not The four statements are followed by five possible answers marked (1)-(5) claiming that a certain statement or combination of statements is correct or incorrect You have to decide which answer reflects the accurate version of your conclusion Each correct answer **counts 2 marks (or 2%)** Read the questions carefully 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.**

3. SECTION B: The questions in this section have to be answered on the examination paper Section B consists of four questions **with subsections** the two questions count 22 marks each and two questions count 20 marks each (totalling 84 marks)

**Please note, that you have a choice only in the (b)-questions of each question and you are required to answer either the one (b)-question or the other (b)-question of each question, but not both, as only the *first one* will be marked where both have been answered Indicate your choice by deleting the (b)-question you did not select to complete.**

**Additional numbered pages have been attached at the back of this paper should you require more paper space in order 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 indicate also the question number at the back where you are continuing.)**

- 4 Please note that in this paper all references to sections, refer to the Criminal Procedure Act 51 of 1977 unless otherwise indicated

[TURN OVER]  
[BLAAI OM]

**INSTRUKSIES**

- 1. HIERDIE VRAESTEL TEL HONDERD PUNTE EN BESTAAN UIT TWEE AFDELINGS, GEMERK A EN B. AFDELING A TEL 16 PUNTE EN AFDELING B TEL 84 PUNTE U MOET BEIDE AFDELINGS BEANTWOORD. AFDELING A BESTAAN UIT MEERVOUDIGEKEUSEVRAE WAT U OP 'N AFSONDERLIKE MERKLEESBLAD MOET INVUL. AFDELING B BESTAAN UIT VIER (4) VRAE WAT OP DIE VRAESTEL BEANTWOORD MOET WORD.**
- 2. AFDELING A: Beantwoord hierdie vrae op die merkleesblad wat saam met u vraestel aan u uitgereik word** U moet die instruksies oor die voltooiing van die merkleesblad sorgvuldig deurlees. Versuim om dit te doen kan veroorsaak dat u antwoorde nie deur die rekenaar nagesien kan word nie.

**AFDELING A bestaan uit 8 meervoudigekeusevrae. Beantwoord al hierdie vrae** Elkeen van die agt vrae bestaan uit vier stellings gemerk (a)-(d). Sommige van hierdie stellings is korrek en sommige is verkeerd. U moet besluit watter korrek is en watter is nie. Die vier stellings word gevolg deur vyf moontlike antwoorde gemerk (1)-(5), wat beweer dat 'n sekere stelling of kombinasie van stellings korrek of nie korrek is nie. U moet besluit watter antwoord die akkurate weergawe van u gevolgtrekking gee. Elke korrekte antwoord tel **twee (2) punte (oftewel 2%)**. Lees die vrae versigtig deur en kies dan **slegs een** van die alternatiewe moontlike antwoorde wat u dink korrek is. Dui die een verkose opsie (1), (2), (3), (4) of (5) op die merkleeskaart aan langs die korrekte nommer van die vraag. Waar 'n samegestelde stelling deels korrek en deels verkeerd is, dan is die stelling AS GEHEEL verkeerd.

- 3. AFDELING B: Bestaan uit vier vrae met onderafdelings waarvan twee vrae 22 punte elk tel en twee vrae wat 20 punte elk tel (met 'n totaal van 84 punte). Beantwoord al hierdie vrae op die eksamenvraestel**

**Let op dat u slegs in vraag (b) van elke vraag 'n keuse het. Doen slegs een van die keusevrae (maw kies slegs een (b)-vraag in elke vraag). Indien u beide die (b)-vrae in so 'n geval sou voltooi, sal slegs die eerste (b)-vraag wat u voltooi het, gemerk word. Dui u keuse aan deur die (b)-vraag wat u nie doen nie dood te trek.**

**Let ook op dat ekstra bladsye aan die einde van die vraestel ingevoeg is in geval u nie genoeg skryf ruimte gehad het om 'n vraag op die gegewe plek te kon voltooi het nie. Tensy u die eksaminator op die gegewe plek hieroor inlig en ook die bladsy nommer verskaf waar u voortgaan, sal die res van u antwoord nie gemerk word nie! (Verskaf ook die vraagnommer agter waar u voortgaan.)**

- 4. Let asseblief daarop dat alle verwysings in hierdie vraestel na artikels verwys van die Strafproseswet 51 van 1977 tensy anders aangedui.**

[TURN OVER]  
[BLAAI OM]

## SECTION A / AFDELING A

Multiple choice questions / *Meervoudige keusevrae.*

English and Afrikaans questions are separate Afrikaans follows after English

***Engels en Afrikaans is apart. Afrikaans volg na Engels op bladsy 8***

## QUESTION 1

- (a) During review proceedings, parties are confined to the alleged grounds for review that appear on the record
  - (b) The confirmation of proceedings on review requires a finding only that the proceedings were in accordance with justice although not necessarily in accordance with the law
  - (c) Where an appeal or review does not cover the rights or obligation in question on which clarity is required, a declaratory order is required
  - (d) In matters heard before a High Court, an appeal based on a question of law reserved cannot take place unless the trial has been concluded. However, this rule does not bar the prosecution to appeal a ruling by a court to quash the indictment
- (1) All the statements are correct
  - (2) All the statements are incorrect
  - (3) Only statements (a) and (c) are correct
  - (4) Only statements (b), (c) and (d) are correct
  - (5) Only statements (a) and (d) are correct

[TURN OVER]  
[BLAAI OM]

**QUESTION 2**

- (a) In an appeal on a question of law the question is whether the court of appeal would have made the same finding
  - (b) The prosecution may not appeal in order to obtain a decision on a purely academic question which would not affect the outcome of the case
  - (c) The power of the court of appeal to increase the sentence may not be exercised where the appeal is directed against the conviction only
  - (d) Where an application for appeal on grounds of a special entry is granted by the trial court based on an alleged irregularity or illegality, the matter may be taken on appeal to the Supreme Court of Appeal
- (1) All the statements are correct
  - (2) Only statements (a) and (d) are correct
  - (3) Only statements (b) and (d) are correct
  - (4) Only statements (a) and (c) are correct
  - (5) All the statements are incorrect

**QUESTION 3**

- (a) A material defect to the indictment or charge sheet is fatal to the proceedings, and may not be cured in any manner other than the acquittal of the accused
  - (b) In terms of section 86 of the Criminal Procedure Act, an amendment to the indictment or charge sheet is allowed, *inter alia*, where words have been omitted, or unnecessarily inserted, or any other error is made
  - (c) Joinder of offences may only occur where evidence has already been led in respect of the other offence(s)
  - (d) Assessors may only adjudicate on questions of fact, and never on those of law
- (1) All the above statements are correct
  - (2) All the above statements are incorrect
  - (3) Only statement (a) is correct
  - (4) Only statements (b) and (d) are correct
  - (5) Only statements (a) and (c) are correct

[TURN OVER]  
[BLAAI OM]

**QUESTION 4**

- (a) If a plea bargaining agreement in terms of section 105A of the Criminal Procedure Act is rejected by the court, the only alternative available to the parties is to abide by the agreement on the merits, and then allow the court to consider sentence in the normal way
  - (b) An application for a change of the plea from 'guilty' to 'not guilty' may only be brought before conviction
  - (c) One of the primary requirements for succeeding with a plea of *autrefois acquit* is that the accused must have been acquitted of a similar offence with which he is now being charged
  - (d) A recalcitrant witness is one who lies under oath
- (1) All the statements are correct
  - (2) All the statements are incorrect
  - (3) Only statement (a) is correct
  - (4) Only statement (c) is correct
  - (5) Only statements (a), (b) and (c) are correct

**QUESTION 5**

- (a) All sentences should take into account the (so-called) main purposes of punishment, namely deterrence, prevention and rehabilitation
  - (b) Most prisoners are eventually released, but courts are not supposed to take the normal prison release policy into account when determining an appropriate prison term
  - (c) It is the possibility of parole that saves sentences of life imprisonment from being unconstitutional
  - (d) No court may impose a sentence of less than ten days' imprisonment, unless the sentence is that the offender be detained until the rising of the court
- (1) All the statements are incorrect
  - (2) All the statements are correct
  - (3) Only statements (a) and (b) are correct
  - (4) Statements (a) and (d) are correct and statements (b) and (c) are incorrect
  - (5) Only statements (c) and (d) are correct

[TURN OVER]  
[BLAAI OM]

## QUESTION 6

- (a) When an accused person challenges the correctness of his/her 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 7

- (a) Where persons are jointly charged, the probability of prejudice is not sufficient to justify an order for separation of trial in such a case
  - (b) An accused may be joined with any other accused in the same criminal proceedings at any time before the explanation of plea and questioning of the last mentioned accused, has taken place
  - (c) Where an accused has pleaded in terms of section 119 of the Criminal Procedure, such an accused is entitled to a verdict of the court
  - (d) A court is obliged to discharge an accomplice from further prosecution where he has answered frankly and honestly all questions put to him as a state witness even though his answers to such questions may *incriminate him*
- (1) All the statements are incorrect
  - (2) All the statements are correct
  - (3) Only statements (a) and (d) are correct
  - (4) Only statements (a), (b) and (c) are incorrect
  - (5) Only statements (a), (b) and (c) are correct

[TURN OVER]  
[BLAAI OM]

**QUESTION 8**

- (a) Where the legal advisor replies in writing or orally to any question by the court in terms of section 115(3) the accused must also confirm this, but the court may not require of the accused to answer the questions personally
- (b) At the trial in the regional court of an accused on a charge of murder, the judicial officer must summon two assessors to assist him
- (c) Section 112 only applies where a plea of guilty is tendered before the commencement of a trial
- (d) It is not required of an accused that his statement intended to indicate the basis of his defence be made 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

**MEERVOUDIGE KEUSEVRAE****VRAAG 1**

- (a) *Gedurende hersiening is die party beperk tot die grond vir hersiening soos blyk uit die oorkonde*
- (b) *Die bekragtiging van die verrigtinge op hersiening vereis slegs 'n bevinding dat die verrigtinge ooreenkomstig geregtigheid geskied het alhoewel nie noodwendig ooreenkomstig die reg nie*
- (c) *Wanneer 'n appel of 'n hersiening nie die betrokke regte of verpligtinge pertinent te berde sal bring nie en daar nie sekerheid is dat uitsluitel daarvoor gegee sal word nie, kan 'n verklarende bevel aangevra word*
- (d) *In sake wat deur 'n Hof bereg word, kan 'n appel gegrond op 'n regspraak wat deur die hof voorbehou is, slegs plaasvind as die verhoor beëindig is. Nietemin verhoed hierdie reel nie die vervolging om te appelleer teen 'n bevel van 'n hof dat 'n akte van beskuldiging geskrap moet word*
- (1) *Al die stellings is korrek*
- (2) *Al die stellings is verkeerd*
- (3) *Slegs stellings (a) en (c) is korrek*
- (4) *Slegs stellings (b), (c) en (d) is korrek*
- (5) *Slegs stellings (a) en (d) is korrek*

[TURN OVER]  
[BLAAI OM]



**VRAAG 2**

- (a) *In 'n appel op 'n regspraak is die vraag of die hof van appel dieselfde bevinding sou maak het*
- (b) *Die vervolging mag nie appelleer ten einde 'n bloot akademiese vraag, wat nie die uitslag sal beïnvloed, te laat beslis nie*
- (c) *Die bevoegdheid van die hof van appel om die vonnis te verhoog, bestaan nie waar die appel slegs teen die skuldigbevinding gerig is nie*
- (d) *Waar die hof 'n spesiale aantekening aangaande onreëlmatighede of met die reg strydige verrigtinge toegelaat het, mag die aangeleentheid in appel na die Hoogste Hof van Appel geneem word*
- (1) *Al die stellings is korrek*
- (2) *Slegs stellings (a) en (d) is korrek*
- (3) *Slegs stellings (b) en (d) is korrek*
- (4) *Slegs stellings (a) en (c) is korrek*
- (5) *Al die stellings is verkeerd*

**VRAAG 3**

- (a) *'n Wesenlike defek in die opstelling van die klagstaat is fataal en kan gevolglik slegs bewerk word deur die die vryspraak van die beskuldigde*
- (b) *In terme van artikel 86 van die Strafproseswet 51 van 1977 word die wysiging van die klagstaat toegelaat, onder andere, waar daar woorde weggelaat is, of oortolige woorde ingevoeg is, of enige ander fout maak is*
- (c) *'n Samevoeging van misdade kan slegs geskied nadat getuies ten opsigte van die ander klagte(s) alreeds gelei is*
- (d) *Assesore mag slegs beslis oor feitevrae maar nooit oor regspraak nie*
- (1) *Al die stellings is korrek*
- (2) *Al die stellings is verkeerd*
- (3) *Slegs stelling (a) is korrek*
- (4) *Slegs stellings (b) en (d) is korrek*
- (5) *Slegs stellings (a) en (c) is korrek*

[TURN OVER]  
[BLAAI OM]

**VRAAG 4**

- (a) *Indien die hof nie tevrede is met die pleitooreenkoms wat bereik is in terme van artikel 105A van die Strafproseswet nie, is die enigste uitweg tot die beskikking van die partye die volgende om hulleself te onderwerp aan die ooreenkoms op die meriete van die saak, en dan toe te gee dat die hof normaalweg met vonnis voortgaan*
- (b) *'n Aansoek om 'n pleit van skuldig na onskuldig te wysig kan slegs gedoen word voor skuldigbevinding*
- (c) *Een van die hoofvereistes ten opsigte van 'n pleit van autrefois acquit is dat die beskuldigde voorheen vrygespreek is van 'n soortgelyke misdaad aan die een waarvan hy nou aangekla is*
- (d) *'n Weerspannige getuie is 'n getuie wat onder eed lieg*
- (1) *All die stellings is korrek*  
(2) *Al die stellings is verkeerd*  
(3) *Slegs stelling (a) is korrek*  
(4) *Slegs stelling (c) is korrek*  
(5) *Slegs stellings (a), (b) en (c) is korrek*

**VRAAG 5**

- (a) *Alle vonnisse moet die (sogenaamde) hoofdoelwitte van straf, naamlik afskrikking, voorkoming en hervorming in ag neem*
- (b) *Die meeste gevangenes word uiteindelik vrygelaat, maar die howe word nie toegelaat om die gewone vrylatingsbeleid van die Departement van Korrektiewe Dienste in ag te neem by bepaling van die gepaste termyn gevangenisstraf nie*
- (c) *Dit is die moontlikheid van parool wat voorkom dat vonnisse van lewenslange gevangenisstraf ongrondwetlik is*
- (d) *Geen hof mag gevangenisstraf van korter as 10 dae oplê nie, tensy die vonnis lui dat die beskuldigde aangehou word totdat die hof verdaag*
- (1) *Al die stellings is verkeerd*  
(2) *Al die stellings is korrek*  
(3) *Slegs stellings (a) en (b) is korrek*  
(4) *Stellings (a) en (d) is korrek en stellings (b) en (c) is verkeerd*  
(5) *Slegs stellings (c) en (d) is korrek*

[TURN OVER]  
[BLAAI OM]

**VRAAG 6**

- (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 dit te doen
- (b) Dit is onreëlmstig om getuies wat tydens die verhoor getuig het, weer te roep ten einde 'n verlore rekord te rekonstrueer
- (c) Wanneer 'n hersieningsregter 'n navraag rig aan die landdros wat by die verhoor voorgesit het, is laasgenoemde geregtig om op enige wyse en te enige tyd wanneer dit vir hom gelee is, daarop te antwoord
- (d) Die uitsluiting van onbehoorlike verkree getuienis is 'n bevoegdheid wat alle howe het en nie net hersienings- of appèlhowe 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 7**

- (a) Die waarskynlikheid van benadeling is nie genoegsaam om 'n bevel van skeiding van verhore in die geval van persone wat gesamentlik aangekla is, te regverdig nie
- (b) 'n Beskuldigde mag by 'n ander beskuldigde in dieselfde strafregtelike verrigtinge gevoeg word te enige tyd voordat die pleitverrigtinge en ondervraging van die laasgenoemde beskuldigde plaasgevind het
- (c) Waar 'n beskuldigde ingevolge artikel 119 van die Strafprosesreg 51 van 1977 gepleit het, is so 'n beskuldigde geregtig op 'n uitspraak deur 'n hof
- (d) 'n Hof is verplig om 'n medepligtige van verdere vervolging te vrywaar waar so 'n medepligtige gedurende strafregtelike verrigtinge alle vrae wat aan hom as staatsgetuie gestel is, openhartig en eerlik beantwoord het self al inkrimineer sy antwoorde op die vrae hom
- (1) Al die stellings is verkeerd
- (2) Al die stellings is korrek
- (3) Slegs stellings (a) en (d) is korrek
- (4) Slegs stellings (a), (b) en (c) is verkeerd
- (5) Slegs stellings (a), (b) en (c) is korrek

[TURN OVER]  
[BLAAI OM]

**VRAAG 8**

- (a) *Indien die regsverteenwoordiger skriftelike of mondelings op enige vraag van die hof kragtens artikel 115(3) antwoord moet die beskuldigde dit bevestig maar die hof mag nie van die beskuldigde vereis om die vrae persoonlik te beantwoord nie*
- (b) *Die regterlike beampte moet by die verhoor van 'n beskuldigde in die streekhof waar die aanklag moord is, twee assessore aansê om hom by te staan*
- (c) *Artikel 112 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 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*

[TURN OVER]  
[BLAAI OM]

SECTION B / AFDELING B  
PART II / DEEL ISECTION B / AFDELING B  
PART III / DEEL II

English and Afrikaans questions are combined. Answer all 4 questions with subsections. Note the choice in all the (b)-questions and comply with the instructions above. In respect of each question, select one (b)-question and delete the other (b)-question.

*Engelse en Afrikaanse vrae is gekombineer. Beantwoord al 4 vrae met onderafdelings. Let op die keuse in al die (b)-vrae en volg die instruksies hierbo. Kies slegs een (b)-vraag ten opsigte van elke vraag en skrap die ander (b)-vraag wat u nie kies nie.*

## QUESTION 1 / VRAAG 1

- (a) X is a habitual offender who is charged with the crime of assault with the intention to do grievous bodily harm. During his trial the presiding officer, P, who is X's uncle and who has been bearing a grudge against him for many years, agreed with the prosecutor, B, to pay an amount of R5000 to B in order to fabricate additional evidence against X in order to secure a conviction as well as a heavy sentence. X is accordingly convicted and sentenced to 20 years imprisonment without the possibility of parole.

X is extremely aggrieved by his sentence and the procedure followed during his trial. Advise X as to his possible remedy(ies) in this regard as well as the procedure to be followed. (12)

- (a) *X is 'n gewoontemisdadiger wat aangekla word van aanranding met die opset om ernstig te beseer. Gedurende sy verhoor bereik die voorsittende beampte, P, wat X se oom is en vir etlike jare al 'n wrok teenoor hom koester, 'n ooreenkoms met die aanklaer, B, om aan B R5000 te betaal in ruil daarvoor dat B addisionele getuienis teen X fabriseer ten einde 'n skuldigbevinding sowel as 'n swaar vonnis te verseker. X word gevolglik skuldig bevind en gevonnis tot 20 jaar gevangenisstraf sonder die moontlikheid van parool.*

*X is hewig ontsteld oor sy vonnis en voel gegrief oor die prosedure wat gevolg is tydens sy verhoor. Adviseer X oor sy moontlike remedie(s) in hierdie verband asook die prosedure wat gevolg moet word.* (12)

[TURN OVER]  
[BLAAI OM]



- (b) Once an accused has pleaded, he is entitled to demand that he either be acquitted or found guilty, excepting where specifically provided for in the Criminal Procedure Act or any other law. Give examples of instances when an accused will not be entitled to such acquittal or conviction (10)
- (b) *As 'n beskuldigde gepleit het, is hy geregtig om te eis dat hy óf vrygespreek word óf skuldig bevind word, tensy die Strafproseswet of 'n ander wetsbepaling anders bepaal. Gee voorbeelde van gevalle waar die beskuldigde nie geregtig sal wees op vryspraak of skuldigbevinding nie* (10)

**ALTERNATIVE TO QUESTION 1(b)/ALTERNATIEF TOT VRAAG 1(b)**

- (b) "Since the courts are created by statute, the powers and functions of the High Court and the Supreme Court of Appeal with regard to the reopening of a criminal matter and the hearing of further evidence after all remedies of appeal have been exhausted, are governed by the Criminal Procedure Act"

Discuss with reference to this statement, the manner in which the Criminal Procedure provide for such a situation (10)

- (b) *"Aangesien die Hoe Hof 'n statutêre skepping is, word die bevoegdhede van die Hoe Hof met betrekking tot die heropening van 'n strafsak en die lei van verdere getuienis nadat alle regsmiddele tot appel uitgeput is, deur die Strafprosesreg gereel"*

*Bespreek in die lig van hierdie stelling watter voorsiening die Strafproseswet vir sodanige situasie maak* (10)

(22)



[TURN OVER]  
[BLAAI OM]



**QUESTION 2/VRAAG 2**

- (a) The discretion of imposing a suitable sentence lies with the court. The court cannot do so without sufficient factual information on which to base this decision. Section 274(1) empowers the court, before passing sentence, to allow evidence that will assist the court in determining a proper sentence. Name and discuss the nature, kind and contents of evidence relevant to determine a proper sentence. (12)
- (a) *Die diskresie om 'n gepaste vonnis op te lê berus by die hof en die hof kan nie hierdie taak uitvoer nie sonder feitelike inligting waarop sy beslissing berus. Artikel 274 (1) magtig die hof om voordat hy vonnis op lê, getuienis toe laat ten einde 'n gepaste vonnis op te lê. Noem en bespreek die aard, soort en inhoud van die getuienis wat relevant is vir die vasstelling van 'n gepaste vonnis. (12)*

[TURN OVER]  
[BLAAI OM]



- (b) Discuss the grounds on which a presiding officer may order the recusal of the assessor from the criminal proceedings as well as the rights and duties of assessors in a criminal trial (10)
- (b) *Bespreek die gronde waarop 'n voorsittende beampte die onttrekking van 'n assessor uit strafregtelike verrigtinge kan gelas, sowel as die regte en verpligtinge van assessore gedurende 'n strafverhoor* (10)

**ALTERNATIVE TO QUESTION 2(b)/ALTERNATIEF TOT VRAAG 2(b)**

- (b) The general constitutional and procedural principles are that the conduct of criminal trials should take place in open court and in the presence of the accused. Discuss the exceptions to these rules (10)
- (b) *Die algemene grondwetlike en prosessuele beginsels is dat alle strafverhore in 'n ope hof moet plaasvind en in die teenwoordigheid van die beskuldigde. Bespreek die uitsonderinge op dié reëls* (10)

[TURN OVER]  
[BLAAI OM]

(22)



[TURN OVER]  
[BLAAI OM]

## QUESTION 3/VRAAG 3

- (a) X and Y commit an armed robbery at a commercial bank. They shoot security guard, P when P falls to the ground, Y kicks him in the face, takes his wallet from his pocket, as well as P's weapon, and together with X, takes flight. P dies and X is caught and brought to court on charges of

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

X pleads not guilty and objects to the charges, which according to him, amount to a splitting of charges. The court rejects X's objection. The prosecutor asks that Y, who has been arrested in the meantime, be joined on the same charges. X and Y are found guilty on all charges.

- (i) Is the joinder of Y on all charges an irregularity or not?
- (ii) Discuss and test with reference to relevant legal principles, whether the conviction of X and Y on all charges does not amount to an irregular duplication of convictions. (10)

- (a) *X en Y pleeg gewapende roof by 'n handelsbank. Hulle skiet die sekuriteitswag (P). Toe P op die grond val, skop Y vir P in die gesig, neem P se beursie en wapen, en X en Y maak hulle uit die voete. P sterf en X word gevang en voor die hof gebring op aanklagte van*

- (1) *roof*
- (2) *moord*
- (3) *diefstal*
- (4) *aanranding*
- (5) *die statutêre misdaad van "die rig van 'n vuurwapen"*

*X pleit onskuldig en maak beswaar teen die aanklagte, wat volgens X 'n splitsing van aanklagte is. Die hof werwerp X se beswaar. Die aanklaer vra dat Y, wat intussen gearresteer is, op dieselfde aanklagte gevoeg word. X en Y word skuldig bevind aan alle aanklagte.*

- (i) *Is die voeging van Y op alle aanklagte reelmatig of nie?*
- (ii) *Bespreek en toets aan die hand van tersaaklike regsbeginsels of die skuldigbevinding van X en Y aan alle aanklagte, nie op onreelmatige verdubbeling van skuldigbevinding neerkom nie.* (10)

[TURN OVER]  
[BLAAI OM]

[TURN OVER]  
[BLAAI OM]



- (b) Mr X is charged with murder in the regional court. His attorney and the prosecutor agree verbally to a plea in terms of section 105A of the Criminal Procedure Act, in terms of which the accused will plead guilty to the lesser charge of culpable homicide in exchange for a wholly suspended sentence. The agreement is sealed in the magistrate's chambers, and the latter agrees with every aspect of the agreement. After the accused has pleaded guilty as agreed upon, the magistrate indicates that she is not entirely pleased that the accused will be "getting off scot free", and that X should, in fact receive a sentence of direct imprisonment. She further rules that the plea agreement reached in her chambers is binding on all the parties, and proceeds to sentence the accused, according to her, "in terms of the provisions of s 105A"

Did the parties follow the correct procedure in terms of the provisions of s 105A? Discuss  
(10)

- (b) *Mnr X word in streekshof aangekla op 'n aanklag van Moord. X se prokureur en die staataanklaer bereik 'n mondelinge ooreenkoms in terme van artikel 105A van die Strafproseswet waarvolgens X skuldig sal pleit op die minder klagte van strafbare manslag. Die pleitooreenkoms vind plaas in die landdros se kamers, waarby die partye (insluitend die landdros) ooreenkom op 'n vonnis van gevangennisstraf wat in die geheel opgeskort is. Nadat die beskuldigde alreeds skuldig gepleit het op die klagte van strafbare manslag, deel die landdros die partye mee dat sy nie gelukkig is met die ooreenkoms nie, en dat volgens haar, die beskuldigde direkte gevangennisstraf moet kry. Sy beveel verder dat die pleitooreenkoms wat in haar kamers gesluit is, bindend is op die partye, en gaan voorts om X te vonnis volgens haar, "in terme van die bepalings artikel 105A"*

*Het die partye die korrekte prosedure gevolg ten opsigte van die bepalings van artikel 105A? Bespreek*  
(10)

#### ALTERNATIVE TO QUESTION 3(b)/ALTERNATIEF TOT VRAAG 3(b)

- (b) Discuss and compare the correction of a plea of 'guilty' to 'not guilty', with the application for an amendment of a plea from 'guilty' to 'not guilty' (10)
- (b) *Bespreek en vergelyk die regstelling van 'n pleit van skuldig na een van 'onskuldig', met die aansoek om 'n wysiging van die pleit van 'skuldig' na 'onskuldig'* (10)

[TURN OVER]  
[BLAAI OM]



(20)



[TURN OVER]  
[BLAAI OM]

**QUESTION 4/VRAAG 4**

- (a)(i) Discuss the principles and provisions relating to the power of a court to adjourn or postpone a trial

AND

- (ii) When may the court call a witness or recall a witness who has already testified? Discuss (10)

- (a)(i) *Bespreek die beginsels en bepalings wat te make het met die bevoegdheid van 'n hof om die verhoor te verdaag of uit te stel*

EN

- (ii) *Wanneer mag die hof 'n getuie roep of 'n getuie wat reeds getuig het herroep? Bespreek.* (10)

[TURN OVER]  
[BLAAI OM]



- (b) X is convicted in a lower court on a charge of theft in that he stole from Y his LCD television and other electronic appliances to the value of R200 000. While the said items were in the possession of X, some of them were irreparably damaged and others were sold by X. Y requests the prosecutor that he wishes to be compensated for his losses. It is commonly known that X is from a wealthy family with high standing in the community. X does not have any previous convictions.

Discuss the appropriate measures that the court could apply in the given circumstances (10)

- (b) *X is in die laerhof skuldig bevind aan diefstal deurdat hy Y se LCD televisie en ander elektroniese toestelle ter waarde van R200 000 gesteel het. Terwyl die goedere in X se besit was, is sommige van die goed onherstelbaar beskadig en die ander het X verkoop. Y deel die aanklaer mee dat hy vir sy skade vergoed wil word. Dit is algemeen bekend dat X 'n welvarende familie het wat hoe aansien in die gemeenskap het. X het egter geen vorige veroordelings nie.*

*Bespreek watter gepaste optrede die hof in die gegewe omstandighede kan toepas (10)*

**ALTERNATIVE TO QUESTION 4(b)/ALTERNATIEF TOT VRAAG 4(b)**

- (b) Discuss the various forms of correctional supervision and name also the main or standard penal measures which are normally included in such a punishment (10)
- (b) *Bespreek die verskillende vorme van korrektiewe toesig en noem ook die hoofsaaklike strafmaatreels wat by sodanige vonnis ter sake is (10)*

[TURN OVER]  
[BLAAI OM]

(20)

TOTAL/TOTAAL [84]

TOTAL/TOTAAL [100]

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[TURN OVER]  
[BLAAI OM]

Additional pages Record the number of the Question Have you informed the examiner on the allotted space that you are continuing here?

*Ekstra bladsye Nommer die vrae Het u die eksaminator op die gegewe plek ingelig dat u hier voortgaan?*

[TURN OVER]  
[BLAAI OM]

