
MULTI CHOICE QUESTIONS

CMP301-A

2010 Second Semester – Assignment 1

Question 1

- (a) When a court has decided to impose a sentence of correctional supervision, it must determine the composition of the sentence as the conditions of sentence may not be left to the discretion of the Department of Correctional Services.
 - (b) Correctional supervision may not be imposed in conjunction with any other form of punishment.
 - (c) When considering conditions of suspension, negative conditions are the most common conditions and require of the offender not to repeat the crimes specified.
 - (d) Being sent to a reformatory is a severe punishment which resembles imprisonment.
- (1) Only statements (a) and (b) are correct.
 - (2) Only statements (c), (b) and (d) are correct.
 - (3) Only statements (a), (c) and (d) are correct.**
 - (4) All the statements are correct.
 - (5) All the statements are wrong.

Question 2

- (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 wrong.
 - (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 3

- (a) Only the accused person is allowed in lieu of giving evidence under oath, to make an unsworn statement from the dock.
 - (b) Where persons are jointly charged, the probability of prejudice is not sufficient to justify an order for separation of trial in such a case.
 - (c) 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.
 - (d) After every witness has been cross examined by the other party, the party who called the witness may re-examine the witness on any matter concerning the charges.
- (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 4

- (a) Fear for the safety of a witness and the safety of his/her family is a just excuse not to give evidence.
- (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 a proper refusal to order a separation of trials will amount to an infringement of an accused'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 has been led in respect of the charge in question.

- (1) All the statements are correct.
- (2) Only statements (a) and (b) are correct.
- (3) Only statements (b) and (c) are wrong.
- (4) Only statements (b) and (d) are correct.**
- (5) Only statements (a) and (d) are wrong.

Question 5

- (a) With regard to the general appeal procedure, the law allows an absolute right of appeal against a decision or order of a provincial or local 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 fugitive convicted person also has a right of appeal against his/her conviction or sentence.

- (1) Only statement (a) is correct.
- (2) All statements are wrong.
- (3) All statements are correct.
- (4) Only statements (a) and (b) are correct.
- (5) Only statement (b) is correct.**

Question 6

- (a) There exists an absolute rule that failure to cross-examine a witness precludes the party in question from disputing the truth of that evidence.
- (b) A presiding officer does have the authority to close the State's case if the prosecutor is not willing to do so.
- (c) No rule of practice, such that an accused must be discharged *mero motu* when the State has closed its case, has been developed by the Supreme Court of Appeal.
- (d) The courts has to inform an accused that he/she does not have to stand in the witness stand when testifying under oath, but could also do so from the dock.

- (1) All the statements are wrong.
- (2) All the statements are correct.
- (3) Only statement (d) is correct.**
- (4) Statements (a) and (c) are wrong.
- (5) Only statement (b) and (c) are correct.

Question 7

- (a) Where the state is aware that the victim of an assault is in a critical condition but nevertheless charges the accused of assault, the accused is thereafter convicted of assault and the victim then dies because of the assault, the state cannot prosecute the accused of murder or culpable homicide.
- (b) Where the accused has previously been convicted of robbery, he may not be prosecuted again of attempting to commit such robbery or as an accessory after the fact.
- (c) An acquittal is on the merits even though the state has led no evidence at all.
- (d) Where no preparatory examination has been held, the indictment must be accompanied by a summary of the salient facts of the case, in order to inform the accused of the allegations against him.

- (1) Statements (a) and (d) are correct.
- (2) Only statements (a) and (b) are wrong.
- (3) Only statements (b), (c) and (d) are wrong.
- (4) All the statements are correct.**
- (5) All the statements are wrong.

Question 8

- (a) In terms of section 167 of the Criminal Procedure Act, a duty is cast on the court to subpoena and examine or recall and re-examine any person if his evidence appears to the court to be necessary for disposal of the case.
 - (b) In terms of the section 296 of the Criminal Procedure Act an offender must be committed to a treatment centre in addition to any other sentence for such an offence.
 - (c) A court of appeal cannot interfere with a sentence unless the trial court has not exercised its discretion judicially, that is, in a proper and reasonable manner.
 - (d) If the accused's refusal to plead is accompanied by such improper behaviour that it obstructs the conduct of the proceedings of the court, the court must order his removal and direct the trial to proceed in his absence.
- (1) Only statements (a), (c) and (d) are correct.
 - (2) Only statements (a) and (b) are correct.
 - (3) Only statement (c) is correct.**
 - (4) All the statements are true.
 - (5) All the statements are false.

Question 9

- (a) When the accused is called upon to plead to a charge and it appears uncertain whether he is capable of understanding the proceedings at the trial, so as to be able to make a proper defence, an enquiry into his mental state must be made by the medical superintendent of a psychiatric hospital.
 - (b) Statutory plea bargaining in terms of section 105A of the Criminal Procedure Act entails that the prosecutor can now also reach an agreement with the defence on the conviction and the sentence to be imposed.
 - (c) Section 112 of the Criminal Procedure Act applies only where a plea of guilty is tendered before the commencement of a trial and not also when an accused changes his plea to one of guilty during the course of the trial.
 - (d) The acceptance by the prosecutor of the accused's plea of not guilty to a serious charge (eg robbery) and his acceptance of the accused's plea of guilty to a less serious charge (eg assault) indicates that the prosecutor has withdrawn the main charge and will allow the prosecutor to charge the accused again on the serious charge.
- (1) Only statement (b) is correct.**
 - (2) Only statements (c), (d) and (b) are correct.
 - (3) Only statements (a), (b) and (d) are correct.
 - (4) All the statements are correct.
 - (5) All the statements are incorrect.

Question 10

- (a) The indictment must be served on the accused in accordance with the rules of court. Service is effected the moment the indictment is posted to the accused and received by him/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 be cured by evidence at the trial proving the matter which should have been averred.
- (d) Section 86 makes provision for amendment of the charge that 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.
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2010 May / June Examination

Question 1 2010 2nd - A2 q9

- (a) When the accused is called upon to plead to a charge and it appears uncertain whether he is capable of understanding the proceedings at the trial, so as to be able to make a proper defence, an enquiry into his mental state must be made by the medical superintendent of a psychiatric hospital.
- (b) Statutory plea bargaining in terms of section 105A of the Criminal Procedure Act entails that the prosecutor can now also reach an agreement with the defence on the conviction and the sentence to be imposed.
- (c) Section 112 of the Criminal Procedure Act applies only where a plea of guilty is tendered before the commencement of a trial and not also when an accused changes his plea to one of guilty during the course of the trial.
- (d) The acceptance by the prosecutor of the accused's plea of not guilty to a serious charge (eg robbery) and his acceptance of the accused's plea of guilty to a less serious charge (eg assault) indicates that the prosecutor has withdrawn the main charge and will allow the prosecutor to charge the accused again on the serious charge.

- (1) **Only statement (b) is correct.**
- (2) Only statements (c), (d) and (b) are correct.
- (3) Only statements (a), (b) and (d) are correct.
- (4) All the statements are correct.
- (5) All the statements are incorrect.

Question 2 2010 2nd - A2 q10

- (a) The indictment must be served on the accused in accordance with the rules of court. Service is effected the moment the indictment is posted to the accused and received by him/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 be cured by evidence at the trial proving the matter which should have been averred.
- (d) Section 86 makes provision for amendment of the charge that 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 3 2010 2nd - A2 q2

- (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.

Question 4

- (a) If, when the accused is called upon to plead to charge, it appears to be uncertain for any reason whether he is capable of understanding the proceedings at the trial, so as to be able to make a proper defence, the court must find that the accused is mentally ill or mentally defect and direct that he be detained pending the signification of the decision of a judge in chambers. p212(219) 2.4
- (b) The acceptance by the prosecutor of a plea of not guilty to a serious charge of murder and the acceptance of a plea of guilty to a less serious charge of assault should be seen as a withdrawal of the main charge in terms of s 6(a) or a stopping of the prosecution in terms of s 6(b). p221(227) 2.4.1.3
- (c) If a magistrate's (district) court, after conviction following on a plea of guilty but before sentence, is of the opinion that the accused is a dangerous criminal as referred to in s 286A(1), the court shall stop the proceedings and commit the accused for sentence by a high court having jurisdiction. p224(230) 4.2.5
- (d) Where an accused at a summary trial pleads not guilty, the presiding official may inform the accused that he is not obliged to answer any questions. p225(232) 4.3.1

- (1) All the statements are incorrect.**
- (2) Only statements (b) and (d) are correct.
- (3) Only statements (a), (b) and (d) are correct.
- (4) Only statements (c) and (d) are correct.
- (5) Only statements (b) and (c) are correct.

Question 5 2010 2nd - A2 q4

- (a) Fear for the safety of a witness and the safety of his/her family is a just excuse not to give evidence.
- (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 a proper refusal to order a separation of trials will amount to an infringement of an accused'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 has been led in respect of the charge in question.

- (1) All the statements are correct.
- (2) Only statements (a) and (b) are correct.
- (3) Only statements (b) and (c) are wrong.
- (4) Only statements (b) and (d) are correct.**
- (5) Only statements (a) and (d) are wrong.

Question 6 2010 2nd - A2 q5

- (a) With regard to the general appeal procedure, the law allows an absolute right of appeal against a decision or order of a provincial or local 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 fugitive convicted person also has a right of appeal against his/her conviction or sentence.

- (1) Only statement (a) is correct.
- (2) All statements are wrong.
- (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 7

- (a) Direct access to the Constitutional Court by a member of the public, shall be allowed in exceptional circumstances only and is not an appeal. p350(362) 1.2.5.2
 - (b) A court of appeal cannot interfere with a sentence unless the trial court has not exercised its discretion judicially. p354(365) 1.4
 - (c) A court of appeal may not hold an inspection *in loco*. p359(370) 1.10
 - (d) Sentences may be increased on appeal. p373(385) 2.10
- (1) All the statements are correct.
 - (2) Only statements (a) and (b) are correct.
 - (3) Only statements (a), (b) and (d) are correct.**
 - (4) Only statements (c) and (d) are correct.
 - (5) Only statements (b) and (c) are correct.

Question 8 2010 2nd - A2 q7

- (a) Where the state is aware that the victim of an assault is in a critical condition but nevertheless charges the accused of assault, the accused is thereafter convicted of assault and the victim then dies because of the assault, the state cannot prosecute the accused of murder or culpable homicide.
 - (b) Where the accused has previously been convicted of robbery, he may not be prosecuted again of attempting to commit such robbery or as an accessory after the fact.
 - (c) An acquittal will always be "on the merits" even though the state has led no evidence at all.
 - (d) Where no preparatory examination has been held, the indictment must be accompanied by a summary of the salient facts of the case, in order to inform the accused of the allegations against him.
- (1) Statements (a) and (d) are true.
 - (2) Only statements (a) and (b) are correct.
 - (3) Only statements (a), (b) and (d) are correct.
 - (4) All the statements are true.**
 - (5) All the statements are false.

2010 First Semester – Assignment 1**Question 1**

- (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 wrong.
 - (4) Only statements (b) and (d) are correct.**
 - (5) Only statements (a) and (d) are wrong.

Question 2

- (a) If the magistrate, in a procedurally correct manner, performs his functions in a proper and regular way but comes to a wrong conclusion on the merits, no application may be made to the court of appeal before conviction.
- (b) A question of law arises only when the facts upon which the trial court based its judgment could have another legal consequence than that which the trial court had found. Accordingly, whether the trial court's factual findings are right or wrong, is the only relevant factor in order to determine whether the court erred in law.

- (c) A third party who has an interest in a verdict of guilty or in a subsequent order has *locus standi in iudicio* to appeal.
 - (d) Leave to appeal is not required where the convicted person was, at the time of the commission of the offence, at least 14 years of age but below the age of 21 years of age, not assisted by a legal representative at the time of conviction in a regional court and was sentenced to any form of imprisonment as contemplated in section 276(1) that was not wholly suspended.
- (1) All the statements are correct.
 - (2) Only statement (a) is correct.**
 - (3) Only statements (b) and (c) are correct.
 - (4) Only statements (b), (c) and (d) are correct.
 - (5) All the statements are wrong.

Question 3

- (a) Before any evidence is led the prosecutor is entitled to address the court for the purpose of explaining the charge and opening the evidence intended to be adduced for the prosecution but without comment thereon.
 - (b) In a criminal trial an accused may decide to present his evidence either *viva voce* or by means of a written statement.
 - (c) Evidence of certain formal matters may be given by way of affidavit but subject to the right of the opposing party to object to such evidence.
 - (d) Where a magistrate has made a mistake in the recording of the evidence he cannot correct the mistake after sentence as he is then *functus officio*.
- (1) Only statements (a), (c) and (d) are correct.**
 - (2) Only statements (a) and (c) are correct.
 - (3) Only statements (b) and (d) are correct.
 - (4) All the statements are correct.
 - (5) All the statements are wrong.

Question 4

- (a) When by mistake a wrong judgment or sentence is delivered or passed, the court may, before or immediately after it is recorded, amend the judgment or sentence.
 - (b) Section 271A provides that certain previous convictions “fall away” after a period of fifteen (15) years if the offender has not committed a fairly serious crime within that period.
 - (c) An offender must be committed to a treatment centre in lieu of any other sentence.
 - (d) All imposed sentences may be suspended.
- (1) Only statements (b) and (d) are wrong.
 - (2) Only statements (a) and (d) are correct.**
 - (3) Only statements (b), (c) and (d) are correct.
 - (4) Only statement (a) is correct.
 - (5) All the statements are wrong.

Question 5

- (a) The maximum term for which a sentence may be suspended is three (3) years.
 - (b) The court shall enter a plea of not guilty if the accused refuses to plea or answer directly to the charge.
 - (c) If the totality of the accused’s criminal conduct can be accommodated in one single charge, the accused may not be convicted of multiple charges.
 - (d) An accused will be entitled to an acquittal or conviction where a separation of trials takes place.
- (1) Only statement (a) and (c) are correct.
 - (2) Only statement (b) and (c) are correct.**
 - (3) Only statement (a) and (d) are correct.
 - (4) All the statements are wrong.
 - (5) All the statements are correct.

Question 6

- (a) It is accepted practice that the prosecutor at a superior court trial is obliged to call all the witnesses who made depositions at the preparatory examination.
 - (b) Where an accused has more than one legal representative, only one of the representatives is permitted to cross-examine any particular state witness.
 - (c) If an accused's application for discharge at the end of the State's case is successful, the director of public prosecutions (or public prosecutor) may appeal in terms of section 310.
 - (d) The legislature did not specially provide for an "accessory before the fact" as a competent verdict on a charge of having committed such offence. Such a person can be charged and punished as a principal offender.
- (1) All the statements are wrong.
 - (2) All the statements are correct.
 - (3) Only statements (b) and (c) are correct.
 - (4) Statement (a) and (b) are wrong.**
 - (5) Only statement (a) is correct.

Question 7

- (a) All sentences should take into account only the (so-called) main purposes of punishment, namely retribution, deterrence and prevention.
 - (b) In the United States of America the death penalty itself has not been held to be unconstitutional.
 - (c) In terms of the Constitution the Constitutional Court found the death penalty not to be cruel, inhuman and degrading.
 - (d) Life imprisonment is an indeterminate sentence, because when it is imposed, it is unknown for how long the offender will be imprisoned.
- (1) All the statements are wrong.
 - (2) All the statements are correct.
 - (3) Only statements (b) and (d) are correct.**
 - (4) Only statement (b) is wrong.
 - (5) Only statement (b) is correct.

Question 8

- (a) A court may discharge an offender with a mere caution and although the discharge has the effect of an acquittal, the conviction is still recorded and counts as a previous conviction.
 - (b) A Full Court is a court of appeal and not a court of first instance and consequently, a criminal trial cannot be conducted before such a court.
 - (c) Although the courts are slow to interfere in un-terminated criminal proceedings, the High Court's inherent or common law powers to restrain illegalities in High courts could be exercised in exceptional cases.
 - (d) Courts are not allowed to impose any prescribed minimum sentence on an offender of 16 or 17 years of age.
- (1) All the statements are wrong.
 - (2) All the statements are correct.
 - (3) Statements (a) and (b) are correct.**
 - (4) Only statement (d) is wrong.
 - (5) Only statements (c) and (d) are correct.

Question 9

- (a) When a court has decided to impose a sentence of correctional supervision, it must determine the composition of the sentence as the conditions of sentence may not be left to the discretion of the Department of Correctional Services.
- (b) Correctional supervision may not be imposed in conjunction with any other form of punishment.
- (c) When considering conditions of suspension, negative conditions are the most common conditions and require of the offender not to repeat the crimes specified.
- (d) Being sent to a reformatory is a severe punishment which resembles imprisonment.

- (1) Only statements (a) and (b) are correct.
- (2) Only statements (c), (b) and (d) are correct.
- (3) Only statements (a), (c) and (d) are correct.**
- (4) All the statements are correct.
- (5) All the statements are wrong.

Question 10

- (a) The prosecutor should avoid any reference to evidence which may not be admissible, or to any contentious matter which may prejudice the case of the accused when they arise during the course of the trial.
 - (b) Section 213 provides that a written statement made by an accused will, in certain circumstances, be admissible as evidence to the same extent as oral evidence given by the accused.
 - (c) The prosecutor is not obliged to deliver an opening address in every case on trial.
 - (d) The general rule is that the prosecutor may interview all state witnesses at any given time.
- (1) Only statements (a), (b) and (c) are correct.
 - (2) Only statements (b) and (c) are correct.**
 - (3) Only statement (c) is correct.
 - (4) All the statements are correct.
 - (5) All the statements are wrong.

2009 October / November Examination

Question 1

- (a) In the High Court where no preparatory examination has been held, the indictment must be accompanied by a summary of the salient facts of the case but the State is not bound by the summary and cannot be precluded from leading evidence which contradicts it. p181(187) 1.2
 - (b) An accused can now be found guilty even though the indictment does not disclose an offence as long as the evidence proves the offence. p186(192) 3
 - (c) Section 86 of the Criminal Procedure Act makes provision for amendment of the charge – not for replacement thereof by an altogether new charge. p188(193) 4
 - (d) The rule against the splitting of charges was in fact always directed at the duplication of convictions and designed to apply in the field of punishment. p189 (195) 5 **GROBLER!**
- (1) Only statements (a), (b) and (c) are correct.
 - (2) Only statements (a), (c) and (d) are correct.
 - (3) Only statements (b), (c) and (d) are correct.
 - (4) All the statements are wrong.
 - (5) All the statements are correct.**



Question 2

- (a) Where the accused was charged with both rape and incest, arising from the same act of intercourse, he can be convicted of both. p190(196) 5.2
 - (b) If an assault is committed pursuant to, and in the course of, an attempt to escape, the accused should be convicted of one of these offences only. p191(197) 5.3
 - (c) Where an accused is caught selling dagga, he may be convicted only of selling and not also of possession of the rest of the (unsold) dagga. p192(197) 5.3
 - (d) The prosecution or the accused may apply for the recusal of the assessor. p198(204) 2.1
- (1) Only statements (a) and (b) are correct.
 - (2) Only statements (a) and (c) are correct.
 - (3) Only statements (b), (c) and (d) are correct.**
 - (4) Only statements (a) and (d) are correct.
 - (5) Only statements (a), (c) and (d) are incorrect.

Question 3

- (a) Threatening a judicial officer will materially affect his impartiality, and his refusal to recuse himself is irregular. p208(214) 3.3.2
- (b) An accused may plead truth and public benefit where the charge is one of criminal defamation. p218(224) 4.1

- (c) Section 112 of the Criminal Procedure Act applies only where a plea of guilty is tendered before the commencement of the trial and not when an accused changes his plea to one of guilty during the course of the trial. p220(226) 4.2.1.1
 - (d) It is regular for a court to put questions directly to an accused that is represented. p228 (234) 4.3.3
- (1) All the statements are correct.
 - (2) All the statements are wrong.
 - (3) Only statements (a), (c) and (d) are incorrect.**
 - (4) Only statements (a) and (b) are correct.
 - (5) Only statements (b) and (c) are correct.

Question 4

- (a) The plea of *autrefois acquit* can be sustained even where it is based on the judgment of a foreign court. p234(241) 4.4.3
 - (b) It is accepted practice that the prosecution at a high court trial is obliged to call all the witnesses who made depositions at the preparatory examination. p254(261) 2.2
 - (c) It is necessary that a competent verdict should formally be mentioned in the indictment. p269(277) 2.2
 - (d) The prescribed minimum sentences are not applicable to an offender of under the age of 16 years when the offence is committed. p281(290) 5.3
- (1) Only statements (a) and (d) are correct.**
 - (2) Only statements (a) and (b) are correct.
 - (3) Only statements (a) and (c) are correct.
 - (4) All the statements are correct.
 - (5) All the statements are wrong.

Question 5 2010 2nd - A2 q7; 2009 2nd – A1 q2

- (a) Where the state is aware that the victim of an assault is in a critical condition but nevertheless charges the accused of assault, the accused is thereafter convicted of assault and the victim then dies because of the assault, the state cannot prosecute the accused of murder or culpable homicide.
 - (b) Where the accused has previously been convicted of robbery, he may not be prosecuted again of attempting to commit such robbery or as an accessory after the fact.
 - (c) An acquittal will always be “on the merits” even though the state has led no evidence at all.
 - (d) Where no preparatory examination has been held, the indictment must be accompanied by a summary of the salient facts of the case, in order to inform the accused of the allegations against him.
- (1) Statements (a) and (d) are true.
 - (2) Only statements (a) and (b) are correct.
 - (3) Only statements (a), (b) and (d) are correct.
 - (4) All the statements are true.**
 - (5) All the statements are false.

Question 6

- (a) No right, whether entrenched or not, is absolute. p318(331) 1.2.2
 - (b) Should a party feel aggrieved about an irregularity involved in arriving at the conviction, the best procedure is to seek redress by way of appeal. p315(327) 1.1.2
 - (c) Although automatic review procedure is termed “review”, the reviewing judge is not limited to the investigation of the irregularities, but may pay attention to all aspects that are subject to appeal. p324(327) 3.1.1.
 - (d) The high court with jurisdiction may review and alleged procedural irregularity at the instance of the prosecution. p333(344) 4.2
- (1) All the statements are correct.
 - (2) Only statements (a) and (b) are correct.
 - (3) Only statements (b) and (c) are correct.
 - (4) Only statements (c) and (d) are correct.
 - (5) Only statements (a), (c) and (d) are correct.**

Question 7

- (a) Direct access to the Constitutional Court by a member of the public, shall be allowed in exceptional circumstances only and is not an appeal. p350(362) 1.2.5.2
 - (b) A court of appeal cannot interfere with a sentence unless the trial court has not exercised its discretion judicially. p354(365) 1.4
 - (c) A court of appeal may not hold an inspection *in loco*. p359(370) 1.10
 - (d) Sentences may be increased on appeal. p373(385) 2.10
- (1) All the statements are correct.
 - (2) Only statements (a) and (b) are correct.
 - (3) Only statements (a), (b) and (d) are correct.**
 - (4) Only statements (c) and (d) are correct.
 - (5) Only statements (b) and (c) are correct.

Question 8

- (a) If, when the accused is called upon to plead to charge, it appears to be uncertain for any reason whether he is capable of understanding the proceedings at the trial, so as to be able to make a proper defence, the court must find that the accused is mentally ill or mentally defect and direct that he be detained pending the signification of the decision of a judge in chambers. p212(219) 2.4
 - (b) The acceptance by the prosecutor of a plea of not guilty to a serious charge of murder and the acceptance of a plea of guilty to a less serious charge of assault should be seen as a withdrawal of the main charge in terms of s 6(a) or a stopping of the prosecution in terms of s 6(b). p221(227) 2.4.1.3
 - (c) If a magistrate's (district) court, after conviction following on a plea of guilty but before sentence, is of the opinion that the accused is a dangerous criminal as referred to in s 286A(1), the court shall stop the proceedings and commit the accused for sentence by a high court having jurisdiction. p224(230) 4.2.5
 - (d) Where an accused at a summary trial pleads not guilty, the presiding official may inform the accused that he is not obliged to answer any questions. p225(232) 4.3.1
- (1) All the statements are incorrect.**
 - (2) Only statements (b) and (d) are correct.
 - (3) Only statements (a), (b) and (d) are correct.
 - (4) Only statements (c) and (d) are correct.
 - (5) Only statements (b) and (c) are correct.

2009 Second Semester – Assignment 2**Question 1**

- (a) 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 whether why he had been in prison before.
 - (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 strength of the state's evidence.
 - (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 (c) are correct.
 - (3) Only statements (a), (c) and (d) are correct.**
 - (4) Only statement (c) is correct.
 - (5) All the statements are correct.

Question 2

- (a) It is accepted practice that co-accused persons exercise their right to cross-examine before their co-accused or his witness in numerical order before the State is given the opportunity to cross-examine.
- (b) The fact that the accused's rights have been explained should be properly recorded.

- (c) It is desirable that a witness be present in court before he gives evidence in order to know where he can amplify the evidence presented thus far.
 - (d) A court should refuse an undefended accused's request to call witnesses if the court believes the accused is adopting delaying tactics or if there is uncertainty about the whereabouts of the witnesses.
- (1) None of the statements is correct.
 - (2) Only statements (a) and (d) are correct.
 - (3) Only statements (a) and (b) are correct.**
 - (4) Only statement (c) is correct.
 - (5) All the statements are correct.

Question 3

- (a) Where there is direct *prima facie* evidence implicating the accused in the commission of the offence, his failure to give evidence, whatever his reason may be for such failure, in general *ipso facto* tends to strengthen the State case, because there is nothing to gainsay it,
 - (b) The right to silence has been greatly and negatively affected by the introduction in 1977 of the 'plea-explanation' procedure at arraignment, in terms of s 115.
 - (c) An accused or his counsel may admit any fact placed in issue.
 - (d) The State is entitled to introduce still further fresh evidence in the course of its rebuttal.
- (1) None of the statements is correct.
 - (2) Only statements (a), (b) and (c) are correct.
 - (3) Only statements (a) and (c) are correct.**
 - (4) Only statements (c) and (d) are correct.
 - (5) All the statements are correct.

Question 4

- (a) The Constitutional Court has the power to exclude from the record unconstitutionally obtained evidence.
 - (b) A sentence of a fine that exceeds the amount of R2000 is subject to automatic review procedure if imposed by a judicial officer who has not held the substantive rank of magistrate or higher for seven years.
 - (c) A sentence of 3 months imprisonment plus a further 2 months imprisonment suspended for 3 years is automatically reviewable if imposed by a magistrate who has held the substantive rank of magistrate or higher for seven years or longer.
 - (d) No right whether entrenched or not, is absolute and unqualified.
- (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 (d) are correct.**
 - (5) Only statement (b) is correct.

Question 5

- (a) Where an accused is undefended his rights have to be explained to him by the presiding judicial official and the interpreter.
 - (b) The fact that a judge has knowledge of facts obtained in civil proceedings in which the accused was concerned, disqualify him from presiding at the subsequent criminal trial.
 - (c) Section 271A provides that certain previous convictions 'fall away' after a period of 20 years if the offender has not committed a fairly serious crime within that period.
 - (d) The failure of a court to afford an accused an opportunity to address the court after all the evidence has been adduced is a gross and fatal irregularity.
- (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 statements are correct.
-

2009 Second Semester – Assignment 1

Question 1

- (a) There exists an absolute rule that failure to cross-examine a witness precludes the party in question from disputing the truth of that evidence.
 - (b) A presiding officer does have the authority to close the State's case if the prosecutor is not willing to do so.
 - (c) No rule of practice, such that an accused must be discharged *mero motu* when the State has closed its case, has been developed by the Supreme Court of Appeal.
 - (d) The court must inform the accused that he need not necessarily give his evidence under oath or affirmation.
- (1) All the statements are false.
 - (2) All the statements are true.
 - (3) Only statement (a) is false and statements (b), (c) and (d) are correct.
 - (4) Statements (a) and (c) are false and statements (b) and (d) are true.
 - (5) Only statement (b) is correct and statements (a), (c) and (d) are false.**

Question 2

- (a) Where the state is aware that the victim of an assault is in a critical condition but nevertheless charges the accused of assault, the accused is thereafter convicted of assault and the victim then dies because of the assault, the state cannot prosecute the accused of murder or culpable homicide.
 - (b) Where the accused has previously been convicted of robbery, he may be prosecuted again of attempting to commit such robbery or as an accessory after the fact.
 - (c) An acquittal is on the merits even though the state has led no evidence at all.
 - (d) Where no preparatory examination has been held, the indictment must be accompanied by a summary of the salient facts of the case, in order to inform the accused of the allegations against him.
- (1) Statements (a) and (d) are true.
 - (2) Only statements (a) and (b) is correct.
 - (3) Only statements (b), (c) and (d) are incorrect.
 - (4) All the statements are true**
 - (5) All the statements are false

Question 3

- (a) In terms of section 167 of the Criminal Procedure Act, a duty is cast on the court to subpoena and examine or recall and re-examine any person if his evidence appears to the court to be necessary for the disposal of the case.
 - (b) In terms of the section 296 of the Criminal Procedure Act an offender may be committed to a treatment centre in addition to any other sentence for such an offence.
 - (c) A court of appeal cannot interfere with a sentence unless the trial court has not exercised its discretion judicially, that is, in a proper and reasonable manner.
 - (d) If the accused's refusal to plead is accompanied by such improper behaviour that it obstructs the conduct of the proceedings of the court, the court must order his removal and direct the trial to proceed in his absence.
- (1) Only statements (a), (c) and (d) are correct.
 - (2) Only statements (a) and (b) are correct.
 - (3) Only statement (c) is correct.**
 - (4) All the statements are true.
 - (5) All the statements are false.

Question 4

- (a) When the accused is called upon to plead to a charge and it appears uncertain whether he is capable of understanding the proceedings at the trial, so as to be able to make a proper defence, an enquiry into his mental state must be made by the medical superintendent of a psychiatric hospital.

- (b) Statutory plea bargaining in terms of section 105A of the Criminal Procedure Act entails that the prosecutor can now also reach an agreement with the defence on the conviction and the sentence to be imposed.
 - (c) Section 112 of the Criminal Procedure Act applies only where a plea of guilty is tendered before the commencement of a trial and not also when an accused changes his plea to one of guilty during the course of the trial.
 - (d) The acceptance by the prosecutor of the accused's plea of not guilty to a serious charge (eg robbery) and his acceptance of the accused's plea of guilty to a less serious charge (eg assault) indicates that the prosecutor has withdrawn the main charge and will allow the prosecutor to charge the accused again on the serious charge (robbery).
- (1) **Only statement (b) is correct.**
 (2) Only statements (b), (c) and (d) are correct.
 (3) Only statements (a), (b) and (d) are correct.
 (4) All the statements are correct.
 (5) All the statements are incorrect.

Question 5

- (a) The indictment must be served on the accused in accordance with the rules of court. Service is effected the moment the indictment is posted to the accused and received by him/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 be cured by evidence at the trial proving the matter which should have been averred.
 - (d) Section 86 makes provision for amendment of the charge that 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.

2009 May / June Examination

Question 1

- (a) During review proceedings, parties are confined to the alleged grounds for review that appear on the record. [p322\(332\) 2](#)
 - (b) The confirmation of proceedings on review required 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. [p338\(349\) 8](#)
 - (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. [p369\(381\) 2.9.2](#)
- (1) All the statements are correct.
 (2) All the statements are incorrect.
 (3) Only statements (a) and (c) are correct.
 (4) **Only statements (b) and (d) are correct.**
 (5) Only statements (a) and (d) are correct.

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. [p357\(369\) 1.6](#)
- (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. [p370\(381\) 2.9.2](#)

- (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. p373(385) 2.10
 - (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. p387(399) 3.5
- (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. p186(191) 3
 - (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. p187(193) 4
 - (c) Joinder of offences may only occur where evidence has already been led in respect of the other offence(s). p193(200) 6
 - (d) Assessors may only adjudicate on questions of fact, and never on those of law. p200(206) 2.3
- (1) All the above statements are correct.
 - (2) All the above statements are incorrect.
 - (3) Only statement (a) is correct.
 - (4) Only statement (b) and (d) are correct.**
 - (5) Only statements (a) and (c) are correct.

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. p217(222) 3.2
 - (b) An application for a change of the plea from 'guilty' to 'not guilty' may only be brought before conviction. p224(230) 4.2.6
 - (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. p231(238) 4.4.3
 - (d) A recalcitrant witness is one who lies under oath. p241(248) 2.2
- (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 2008 2nd - A2 q2

- (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 false.
 - (2) All the statements are correct.
 - (3) Only statements (a) and (b) are correct.
 - (4) Statements (a) and (d) are false and statements (b) and (c) are correct.**
 - (5) Only statements (c) and (d) are correct.

Question 6 2010 1st – A1 q1

- (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 wrong.
 - (4) Only statements (b) and (d) are correct.**
 - (5) Only statements (a) and (d) are wrong.

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. p247(254) 2.3
 - (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. p249(256) 3
 - (c) Where an accused has pleaded in terms of section 119 of the Criminal Procedure Act, such an accused is entitled to a verdict of the court. p238(244) 5
 - (d) A court is obliged to discharge an accomplice from further prosecution where he has answered frankly and honestly all question put to him as a state witness even though his answers to such questions may incriminate him. p246(253) 2.2
- (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.

Question 8 2010 2nd – A1 q2

- (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.

2009 First semester – Assignment 2**Question 1**

- (a) Where application to amend a charge is made on appeal, the court need not be satisfied that the defence of the accused would have remained the same if the charge had originally contained the necessary particulars. p187(193) 4
- (b) If the court has ordered a separation of trial, the accused must first be sentenced, if convicted, and thereafter he may be called as a witness against the remaining accused. p246(253) 2.2
- (c) As soon as an assessor receives information detrimental to the accused which has not been proved in evidence, he must retire from the case. p201(206) 2.3 Matsego

- (d) In terms of the Witness Protection Act 112 of 1998, any witness who has reason to believe that his safety may be threatened by any person or group of persons, may report to the Director of Public Prosecutions (DPP) to be voluntarily placed in protection, and the DPP cannot refuse such application. [p241\(248\) 2.1](#)
- (1) All the statements are false.
 (2) All the statements are true.
 (3) Only statement (a) is true and statements (b), (c) and (d) are false.
 (4) Statements (a) and (b) are false and statements (c) and (d) are true.
(5) Only statement (c) is correct and statements (a), (b) and (d) are false.

Question 2

- (a) An accused may now be convicted upon an indictment which does not disclose an offence. [p186\(211\) 3](#)
 (b) The plea of *lis pendens* is not specifically provided for in the Criminal Procedure Act. [p218\(224\) 4.1](#)
 (c) Where the application for amendment of a plea from 'guilty' to 'not guilty' rests upon two bases namely coercion on the one hand and actual innocence on the other hand, the merits of the matter in relation to the guilt or innocence of the accused must also be taken into account. [p225\(231\) 4.2.6](#)
 (d) Where two persons are killed in the same road accident, it is proper to convict the accused on two counts of culpable homicide. [p190\(196\) 5.2](#)
- (1) All the statements are false.
 (2) All the statements are true.
 (3) Only statement (a) is true and statements (b), (c) and (d) are false.
(4) Statements (a), (b) and (c) are correct and statement (d) is false.
 (5) Only statement (c) is correct and statements (a), (b) and (d) are false.

Question 3

- (a) A charge sheet containing the following averments complies with all necessary requirements in terms of s 84(1) of the Criminal Procedure Act 51 of 1977: "That the accused is guilty of unlawfully and intentionally shooting Milly Jo, an adult female on the 21st of January 2008 at the Menlyn shopping centre in the district of Pretoria." [p182\(188\) 2.2](#)
 (b) Where an accused is convicted of both driving under the influence of liquor and reckless driving, and both counts are based on the same facts, it would not constitute an incorrect duplication of convictions. [p190\(196\) 5.1](#)
 (c) If assessors abscond during the trial without good reason and the magistrate continues with the trial without them, this amounts to a fatal irregularity which vitiates the proceedings. [p198\(204\) 2.1](#)
 (d) At the request of the prosecutor and before any evidence is tendered in a magistrate's court, an accused may be committed from that magistrate's court to a competent regional court. [p\(230\) 4.2.5](#)
- (1) All the statements are false.
(2) Only statements (b) and (c) are correct.
 (3) Only statements (a), (b) and (d) are correct.
 (4) Only statements (b), (c) and (d) are correct.
 (5) Only statements (a) and (b) are correct.

Question 4

- (a) The plea of *autrefois acquit* may only be raised before the commencement of the trial. [p234\(241\) 4.4.3](#)
 (b) The essentials of the plea of *autrefois acquit* are limited to the following: that the accused had previously been acquitted of exactly the same offence with which he is now charged; by a competent court; upon the merits. [p231\(238\) 4.4.3](#)
 (c) An accused has an absolute right at any stage of the proceedings to change his plea of 'not guilty' to one of 'guilty' to the offence charged. [p229\(235\) 4.3.5](#)
 (d) According to the traditional plea bargaining the prosecutor could not bind the court to a specific sentence. [p216\(222\) 3.1](#)
- (1) All the statements are false
 (2) All the statements are true
 (3) Only statements (a), (b) and (d) are correct
 (4) Only statements (b), (c) and (d) are correct
(5) Only statement (d) is correct

Question 5 2008 2nd – A1 q5

- (a) Either the prosecutor or the accused may compel the attendance of witnesses by way of a *subpoena*.
 - (b) Whenever the director of public prosecutions thinks that there is any danger that a witness can be intimidated or threatened he/she can apply for an order for the detention of the witness.
 - (c) A request for postponement to allow the accused to obtain work to pay for the services of his/her legal representative will in general be granted by the court.
 - (d) It is undesirable for separate trials to take place if the only purpose is to call as a witness someone accused of an offence arising from the same set of facts.
- (1) All the statements are true.
 - (2) Only statements (a), (b) and (d) are correct.**
 - (3) All the statements are wrong.
 - (4) Only statements (b) and (c) are correct.
 - (5) Only statements (b) and (c) are wrong.
-

2009 First Semester – Assignment 1**Question 1** 2010 2nd – A1 q1; 2010 1st – A1 q9

- (a) When a court has decided to impose a sentence of correctional supervision, it must determine the composition of the sentence as the conditions of sentence may not be left to the discretion of the Department of Correctional Services.
 - (b) Correctional supervision may not be imposed in conjunction with any other form of punishment.
 - (c) When considering conditions of suspension, negative conditions are the most common conditions and require of the offender not to repeat the crimes specified.
 - (d) Being sent to a reformatory is a severe punishment which resembles imprisonment.
- (1) Only statements (a) and (b) are correct.
 - (2) Only statements (c), (b) and (d) are correct.
 - (3) Only statements (a), (c) and (d) are correct.**
 - (4) All the statements are correct.
 - (5) All the statements are incorrect.

Question 2 2010 1st – A1 q10

- (a) The prosecutor should avoid any reference to evidence which may not be admissible, or to any contentious matter which may prejudice the case of the accused, even when they arise during the course of the trial.
 - (b) Section 213 of the Criminal Procedure Act provides that a written statement made by an accused will, in certain circumstances, be admissible as evidence to the same extent as oral evidence given by the accused.
 - (c) The prosecutor is not obliged to deliver an opening address in every case on trial.
 - (d) The general rule is that the prosecutor may interview all state witnesses at any given time.
- (1) Only statements (a), (b) and (c) are correct.
 - (2) Only statements (b) and (c) are correct.**
 - (3) Only statement (c) is correct.
 - (4) All the statements are correct.
 - (5) All the statements are wrong.

Question 3 2010 2nd – A1 q3

- (a) Only the accused person is allowed, in lieu of giving evidence under oath, to make an unsworn statement from the dock.
- (b) Where persons are jointly charged, the probability of prejudice is not sufficient to justify an order for separation of trial in such a case.
- (c) 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.
- (d) After every witness has been cross examined by the other party, the party who called the witness may re-examine the witness on any matter concerning the charges.

- (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 4 2010 2nd – A1 q4; 2008 2nd A1 q6

- (a) Fear for the safety of a witness and the safety of his/her family is a just excuse not to give evidence.
 - (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 such an application a proper refusal to order a separation of trials will amount to an infringement of an accused'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 has been led in respect of the charge in question.
- (1) All the statements are correct.
 - (2) Only statements (a) and (b) are correct.
 - (3) Only statements (b) and (c) are wrong.
 - (4) Only statements (b) and (d) are correct.**
 - (5) Only statements (a) and (d) are wrong.

Question 5 2010 2nd – A1 q5; 2008 2nd – A1 q7

- (a) With regard to the general appeal procedure, the law allows an absolute right of appeal against a decision or order of a provincial or local 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 fugitive convicted person also has a right of appeal against his/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.**

2008 Second Semester – Assignment 1

Question 1

- (a) There exists an absolute rule that failure to cross-examine a witness precludes the party in question from disputing the truth of that evidence.
 - (b) A presiding officer does have the authority to close the State's case if the prosecutor is not willing to do so.
 - (c) No rule of practice, to the effect that an accused must be informed that he/she may apply for his/her dismissal when the State has closed its case has yet been developed.
 - (d) The court must inform the accused that he/she does not necessarily have to give evidence from the witness-box, but may do so from the dock.
- (1) All the statements are false.**
 - (2) All the statements are true.
 - (3) Only statement (a) is false and statements (b), (c) and (d) are correct.
 - (4) Statements (a) and (c) are false and statements (b) and (d) are true.
 - (5) Only statement (b) is correct and statements (a), (c) and (d) are false.

Question 2

- (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 false.
 - (2) All the statements are correct.
 - (3) Only statements (a) and (b) are correct.
 - (4) Statements (a) and (d) are false and statements (b) and (c) are correct.**
 - (5) Only statements (c) and (d) are correct.

Question 3

- (a) A charge sheet containing the following averments complies with all the necessary requirements in terms of s 84(1) of the Criminal Procedure Act 51 of 1977: "That the accused is guilty of unlawfully and intentionally killing Joey Smith, an adult female on the 21st of January 2001 at Groenkloof in the district of Pretoria."
 - (b) Where an accused is convicted of both driving under the influence of liquor and reckless driving, and both counts are based on the same facts, it would not constitute an incorrect duplication of convictions.
 - (c) If assessors abscond during the trial without good reason and the magistrate continues with the trial without them, this amounts to a fatal irregularity which vitiates or invalidates the proceedings.
 - (d) An accused will evade a second prosecution by pleading *autrefois acquit* even though he was acquitted previously on the same charge.
- (1) All the statements are false.
 - (2) Only statement (c) is correct.**
 - (3) Only statements (a), (c) and (d) are correct.
 - (4) Only statements (b), (c) and (d) are correct.
 - (5) Only statements (a) and (d) are correct.

Question 4

- (a) Where an accused is caught selling dagga, he may be convicted only of selling and not also of possession of the rest of the unsold dagga.
 - (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 to the court a possible lighter sentence.
 - (c) If an accused has previously been acquitted on an indictment for murder and is now indicted on the same set of facts, and convicted of assault, he may on appeal upset the conviction with a plea of *autrefois acquit*.
 - (d) A co-accused should be questioned separately and the answers to the questions must be fully recorded.
- (1) All the statements are incorrect.
 - (2) All the statements are correct.**
 - (3) Only statements (a), (b) and (d) are correct.
 - (4) Only statements (b), (c) and (d) are correct.
 - (5) Only statements (a), (c) and (d) are correct.

Question 5

- (a) Either the prosecutor or the accused may compel the attendance of witnesses by way of a *subpoena*.
- (b) Whenever the director of public prosecutions thinks that there is any danger that a witness can be intimidated or threatened he/she can apply for an order for the detention of the witness.
- (c) A request for postponement to allow the accused to obtain work to pay for the services of his/her legal representative will in general be granted by the court.
- (d) It is undesirable for separate trials to take place if the only purpose is to call as a witness, someone accused of an offence arising from the same set of facts.

- (1) All the statements are true.
- (2) Only statements (a), (b) and (d) are correct.**
- (3) All the statements are incorrect.
- (4) Only statements (b) and (c) are correct.
- (5) Only statements (b) and (c) are incorrect.

Question 6

- (a) Fear for the safety of a witness and the safety of his/her family is a just excuse not to give evidence.
 - (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 such an application a proper refusal to order a separation of trials will amount to an infringement of an accused'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 has been led in respect of the charge in question.
- (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) With regard to the general appeal procedure, the law allows in all instances an absolute right of appeal against a decision or order of a provincial or local 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, 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 fugitive convicted person also has a right of appeal against his/her conviction or sentence.
- (1) Only statement (a) is correct.
 - (2) All statements are incorrect.
 - (3) All statements are correct.
 - (4) Only statements (b) and (c) are correct.
 - (5) Only statement (b) is correct and (a), (c) and (d) are incorrect.**

Question 8

- (a) A constitutional matter includes any issue involving the interpretation, protection or enforcement of the Constitution. Therefore, a court does not have discretion to refuse to entertain a constitutional challenge before the accused pleads and the court has to decide the constitutional issue then.
 - (b) The Supreme Court of Appeal must confirm an order of constitutional invalidity relating to an Act of Parliament before it becomes enforceable.
 - (c) The only difference between an appeal and a review is that an appeal must be brought within a certain time limit whereas it is not relevant in respect of reviews.
 - (d) A court of review has the power to increase a sentence *per se*.
- (1) All the statements are incorrect.**
 - (2) Only statements (b) and (c) are correct.
 - (3) Only statement (d) is correct.
 - (4) Only statement (a) is correct.
 - (5) All the statements are correct.

Question 9

- (a) When an accused is disruptive and improper in his behaviour which obstructs the conduct of the proceedings, the court has to order his removal and will direct that the trial proceed in the absence of the accused.

- (b) In order to find the presence of judicial bias, it has to be clear that there is a suspicion that the judicial officer would be biased.
- (c) An application for the accused's discharge in terms of section 174 at the close of the state's case will be decided by the judicial officer together with the assessors as members of that court.
- (d) A convicted person who was at the time of the commission of the offence 19 years of age and not assisted by a legal representative at the time of conviction in a regional court where he was sentenced to 9 years imprisonment partly suspended, will be allowed an unlimited right to appeal his conviction and sentence without requesting leave to appeal.

(1) All the statements are incorrect.

- (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 correct.

Question 10

- (a) The state is not obliged to the summary of substantial facts accompanying the indictment and cannot be precluded from leading evidence which contradicts it.
- (b) An assessor is a person who, in the opinion of the presiding judge, has experience in the administration of justice or skill in any matter which may be considered at the trial.
- (c) When a magistrate recuses himself from presiding at the trial, the accused is not entitled to a verdict after he has pleaded.
- (d) The Supreme Court of Appeal may pardon a convicted person.

(1) All the statements are incorrect.

(2) Only statements (a) and (c) are correct.

- (3) Only statements (b) and (c) are correct.
- (4) Only statement (d) is incorrect.
- (5) All the statements are correct.