

UNIVERSITY OF FORT HARE
NELSON R MANDELA SCHOOL OF LAW
(East London Campus)

CRIMINAL PROCEDURE 322 E
LCP322E

DEGREE MAIN EXAMINATION 2019
OCTOBER/NOVEMBER

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Time: 3 hours

Subject: CRIMINAL PROCEDURE 322 E

Marks: 100

This paper consists of THREE pages including the cover
page

Internal examiner

Adv. W. Moeketse

Internal Moderator

Prof. Van Coller

INSTRUCTIONS

1. Answer ALL questions.
2. Do not separate subsections of questions.
3. Pay careful attention to marks allocated.
4. WRITE LEGIBLY.

Question 1

Tapile Tswele a gentleman residing in Mdantsane has killed his wife Khaphetshu Tswele who was well known to be unfaithful to her husband for years. One night when they were together Tapile returned from work to find an unknown man in his bedroom with his wife out of fear the man ran away leaving the married couple at home to sort their issues out. Out of anger Tapile assaulted Khaphetshu to death. He pleads guilty to the charges levelled against him however indicating that he has a previous conviction of killing his ex- wife. The community members are chanting outside of the courtroom indicating that he must be found guilty by the court and the death penalty must be applied. You are the magistrate in the matter kindly enlighten or educate the community members regarding your verdict and sentence in this regard. At all material times referring to case law and legislation.

[25 marks]

Question 2

Kindly name and elaborate on each of the seven principles which govern a criminal trial. Refer to relevant case law.

[25 marks]

Question 3

Ntombi Sibisi a 21 year old lady resides in Empangeni in KZN, under the care of her aunt as her parents and siblings had passed away. She has a bit of a mental condition resulting from an accident that she had with her parents and siblings when she was a teenager. She would talk to herself and could be aggressive at times but people in her community always assisted her family in those episodes she would experience. One evening her uncle decides to approach her bedroom in the early hours of the morning and found her sleeping he went inside her bed and tried to rape her. Ntombi fought until she managed to stab him with a glass that was laying on the floor and he unfortunately died instantly. Ntombi is charged with the murder of her uncle. You are her legal representative kindly inform the family members of her plea and how best it would be handled.

Discuss the following:

- a. Discuss the particulars of the charge sheet and if there are defects on it whether it would be cured by evidence.
- b. Discuss arraignment and the plea of Ntombi as an accused. Guilty or not guilty plea (what happens in both circumstances?)
- c. Is there a way that she would be found not guilty by the court in a trial if so which provisions would be applicable and how so? At all material times refer to relevant case law.

[25 marks]

Question 4

- a. Discuss the rights and duties of the assessors. [10 marks]
- b. Kindly elaborate on the right to review and the review in general relating to relevant case law [15 marks]

TOTAL=100 MARKS