

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

CRIMINAL PROCEDURE
LCP313E

DEGREE EXAMINATIONS
June/July 2023

Time: 3 HOURS

Subject: CRIMINAL PROCEDURE A (LCP 313E)

Marks: 100

**This paper consists of (5) pages including the cover
page**

Internal Examiner: Ms A Mbolambi

Internal Moderator: Ms S Stal

INSTRUCTIONS

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- 1. Answer all questions.**
- 2. Do not separate subsections of questions.**
- 3. Pay careful attention to marks allocated.**
- 4. Refer to relevant case law / legislation, where applicable**

QUESTION 1

You are an Advocate and member of the Bisho Society of Advocates. You have been briefed to represent a client in criminal proceedings. You have consulted with the client and prepared consultation statement with the following facts. Your client is Dr Thandi Mandundumana, a 39 female medical doctor and resident of East London, South African. Dr Mandundumana was born and bred in Mathwebu Location, Bizana, Eastern Cape Province. She matriculated in Port Edward Senior Secondary and later completed her graduate studies at the University of the Witwatersrand in Johannesburg. She acquired the following qualifications: Bachelor of Health Sciences in Biomedical Sciences; and Bachelor of Medicine and a Bachelor of Surgery (MBCCHB) specialising in aesthetics. She is one of the most accomplished young female doctors in the country and earns R120 000 per month.

She is married to Dr Simba who is also a medical doctor specializing in paediatric. They have two children between the ages of 7 and 14 years old. Furthermore, they have been married for 10 years. While she was a medical student at University of the Witwatersrand, Dr Mandundumana once joined a modelling agency called Booty Agency. It is alleged that Thando Bester was the one running the modelling and promotions agency. Dr Mandundumana was one of the agency's promo girls. And that is how she met with Mr Bester in 2008.

Mr Thando Baxter is a 37-year-old male prisoner incarcerated at the Maximum Correctional Centre in East London. Mr Baxter was dubbed "Facebook rapist" because of the way he would lure and rape his victims. In 2011, he was found guilty of robbing and raping two other women. In 2012, he was also convicted for assaulting and killing Ms Nandipha Buthelezi, his model girlfriend. In the end, he was sentenced to life imprisonment in terms of Criminal Law Amendment Act 105 of 1977.

In addition, Mr Baxter became infamous for his criminal activities and con artistry. While imprisoned, he ran a scam construction company called Arum Properties allegedly with Dr Mandundumana, convincing several people to pay millions of rand for construction projects but never delivered the goods.

In May 2022 Mr Baxter escaped from the Maximum Correctional Centre in South Africa after faking his death. He was initially pronounced dead by suicide after setting himself on fire in his prison cell at Maximum Correctional Centre in East London. However, investigations revealed the body found in the cell was not his, and the individual had already died when the cell burnt down. Since the escape from prison, Mr Baxter has been hiding until a new post-mortem investigation revealed that the burnt body found in his cell was not his.

According to the investigation, it is alleged that Dr Mandundumana helped Thando Bester to escape prison in May 2022 by stealing three bodies from mortuaries in the Free State. According to investigating officer, Mr Baxter and Dr Mandundumana started living together at her Hyde Park mansion situated in 28 Grayston Drive in East London, Eastern Cape soon after his prison escape. On the 16 March 2023 the two were spotted in one of the stores buying groceries in Hemmingway's Mall, East London CBD. It is further alleged that they started staying together ever since Mr Bester escaped from custody in May 2022.

Following the revelations made pursuant to the investigations, a manhunt was launched in March 2023. The warrants of arrest were issued against both since they were at large. On 21 March 2023 Dr Mandundumana announced via Instagram that her clinic would be open for business from 29 March 2023. On 08 April 2023, Mr Baxter and Dr Mandundumana got caught in Arusha, Tanzania and were later deported to South Africa.

On 17 April 2023, they made their first appearance in the East London Magistrate Court. Mr Baxter will continue to serve his life sentence for rape and murder, but however the following additional charges have been levelled against him: fraud, defeating the ends of justice, and escaping, and violating a corpse.

The charges that have been levelled against Dr Mandundumana are as follows:

- (a) aiding and abetting escape of a convicted prisoner from lawful custody,
- (b) murder of the deceased's whose corpses were found in her possession,
- (c) Violation of a corpse; and,
- (d) fraud.

On the last appearance in court, the attorney representing Mr Baxter informed the court that his client abandons bail. Your client, Dr Mandundumana, wants to apply for bail application.

Instruction:

Using the set of facts provided above, you are required to do the following:

1.1 Draft an affidavit in support of bail application in respect of your client, Dr Mandundumana.

[20 MARKS]

15

1.2 In line with the schedule offence that you indicated on your affidavit in 1.1, critical evaluate the standard of proof that the accused person needs to adduce during bail proceedings so that if the court is satisfied, she can be granted bail. Refer to relevant provisions of the Criminal Procedure Act 51 of 1977 and recent cases authorities.

[15 MARKS]

5

QUESTION 2

X, a police official, forcibly opened the cellar of the accused, Y's, house without Y's consent and without a warrant to search. X searched the cellar and found a bag full of Mandrax tablets, 100 kg of dagga and documents that were addressed to Y's lawyer. During the trial at a later stage, Y argues that the search was illegal because X did not act upon a warrant and in accordance to the provisions of the Criminal Procedure Act, that X's evidence relating to the dependence producing substances and the documents must be excluded as evidence as they were obtained unlawfully. The prosecution argues that X acted lawfully and that the court must allow X's evidence. Discuss with reference to case law and the appropriate provisions of the Criminal Procedure Act, whether the arguments of Y or those of the state should be accepted by the court. Your answer must also reflect the classes of articles that are susceptible to seizure.

[25MARKS]

15

*Search & Seizure
Regulated by Chapter 2
of the CPA s19*

QUESTION 3

37 CPA

X is arrested and charged in connection with a robbery in which four men were killed. During X's first appearance in court, the state informs the magistrate that X had shot himself during the robbery and that the bullet is still lodged in his leg. The bullet is needed to perform ballistics tests as part of the investigation. However, X refuses to have it removed. Consequently, the magistrate grants an order compelling X to undergo surgery to remove the bullet. As part of the order, police are entitled to use 'necessary force' to transport X to hospital and to help doctors prepare him for surgery. Also, if X does not consent to the surgery, the magistrate authorises the sheriff of the court to sign the consenting documents on his behalf.

You act as X's legal representative. Your client wishes to appeal the order. Prepare a brief, yet well-founded, argument that you will present to the court of appeal to convince the court that the magistrate's order should be dismissed. Refer to applicable case law and/or legislation to support your argument.

[20 MARKS]

QUESTION 4

Section 35(3)(h) of the Constitution guarantees the right of every accused person to be presumed innocent, to remain silent and not to testify during the proceedings. Section 35(3)(j) affords every accused person the right not to be compelled to give self-incriminating evidence. Discuss these rights and their application as well as the values they underpin in the context of the criminal procedural law.

[20 MARKS]

.....END.....

Arrest

2/18
15
15
5
58

35 (1) upon arrest
35 (3) fair trial