

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

CRIMINAL PROCEDURE A
LCP 313E

SUPPLEMENTARY EXAMINATION
June/July 2023

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Time: 3 HOURS

Subject: CRIMINAL PROCEDURE A (LCP313E)

Marks: 100

**This paper consists of (3) 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. Refer to relevant case law / legislation, where applicable**

QUESTION 1

Mr Covid and Mr Omicron, two policemen on duty are investigating a murder charge, whereupon their investigations point to the fact that Mr Vaccine, a possible witness who has not yet been interviewed by the police is the last person to be seen in the presence of the accused and the deceased. Upon the arrival of Mr Covid and Mr Omicron at Mr Vaccine's house, he informs them that he 'saw what he saw' but will not repeat it to anyone else, least of all the police. Finally, he tells them to 'do their worst' as he is not afraid of them and their so-called 'General'. Bemused and frustrated, Mr Covid and Mr Omicron leave Mr Vaccine's house not knowing what to do next.

With reference to decided case authorities and legislation, advise Mr Covid and Mr Omicron on any legal course (if there is indeed any) which may be pursued hereon. **(25 MARKS)**

QUESTION 2

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. **(25 MARKS)**

QUESTION 3

Linda has been charged of multiple counts of murder arising out of the shootout involving two taxis in separate incidents, resulting in the deaths of the one taxi driver and six passengers and the wounding of 11 others- two of whom are in critical condition.

The police believe the murders are related to a taxi war that has broken out because of the dispute between taxi operators belonging to rival association. Linda's uncle is an operator belonging to one of these associations and Linda works for him as a conductor over weekends.

Linda's background circumstances are to the effect that he is 22 years old and lives with her mother and four siblings in Amalinda, East London. None of them are employed although his mother receives a pension of R1900 per month. The two younger siblings are at school. Linda earns R100 over weekends working for his uncle as a taxi conductor. He is also working as a gardener two days a week for an elderly woman who she pays him R50 a day. He has been doing this for the past ten years – starting on weekends when he was at school and now working during the week since he has completed school. He has applied (and been accepted) to do LLB degree at University of Fort Hare. His study is due to commence in July 2022.

The police are strongly opposed to Linda being released on bail on the basis that this is a very serious offence and further that the taxi violence is ongoing. Many of the suspects involved have not yet been arrested and there is fear of widespread intimidation of witnesses. It is also felt that all those involved should be removed from the society as their presence in the community is likely to provoke acts of revenge and further violence.

Prepare the following:

1. Assumes you are Linda's attorney, and he instructs you to draft an affidavit in support of his bail application. **[20 MARKS]**
2. Assume you are a public prosecutor. Argue in favour of denial of Linda being released on bail application. **[15 MARKS]**
3. Assume you are a magistrate. Give a considered judgment as to whether the accused should be released on bail- including any conditions upon which Linda should be released. **[15 MARKS]**