

ADVOCATES' EXAMINATION

PAPER 3

CRIMINAL PROCEDURE Regulations 7(9)(b) and 7(9)(i)

7 SEPTEMBER 2023

09:00 – 10:15

Candidates are allowed 15 minutes to peruse the paper before starting to answer the questions. No candidate may start writing in the answer book during this period. This is a one hour exam.

1. Candidates must answer all the questions.
2. Candidates must remember that marks are not awarded in accordance with the length of your answer but in accordance with the insight you demonstrate in your answer.
3. Please write only in pen on the right-hand pages, the left-hand pages must only be used for your own notes.
4. A pass for this paper is 50%. Candidates will be required to do an oral if a candidate achieves from 40% to 49%.
5. The legal writing and drafting paper (paper 5) does not have any orals.

Read all the text below and answer all the relevant questions.

Total marks [50]

QUESTION 1

[10]

Your Attorney, Ms Zodwa Khathazeka, needs your advice. Her client is a minor. His name is Tshepo Dlamini. He is 17 years old. He is very good at his schoolwork. He is already in Matric. But he is timid.

- Last week some Matric students persuaded him to place what they called dirty water into the drink of a Grade 11 student as a practical joke (a prank). He did.
 - The grade 11 pupil died.
 - The dirty water was a poison of some sort.
 - Tshepo had no idea. He is distraught. He is filled with remorse.
 - He feels he is stupid that some Matric students duped him into the prank.
 - They had promised him it was just to change the colour of the drink the Grade 11 pupil was drinking.
- Tshepo's mother has heard that her son will be charged with murder. Tshepo's parents are extremely worried. Tshepo is staying at home at the moment.

What advice would you give to Ms Khathazeka concerning this matter which she should convey to her clients, the parents of Tshepo Dlamini? You are expected to make recommendations in your advice.

QUESTION 2

[5]

Set out the competent verdicts for robbery?

QUESTION 3

[15]

Your Attorney, Ms Zodwa Khathazeka, needs your advice again.

- Last Sunday evening her client, Mr Alfred Pitso, a businessman who runs grocery chain stores in Johannesburg was travelling near Cape Town on the N2 highway. He had his wife, Thembi, and their two children, Jabulani and Nomvula, with him.
- They had driven from Johannesburg to Gqeberha (formerly Port Elizabeth).
 - On Saturday night they stayed in a hotel in Gqeberha.
 - They started their trip to Cape Town after lunch on Sunday.

- That last leg of the journey is approximately 750 kilometres to travel.
 - Thembi and Alfred took turns in driving.
 - Thembi drove for the first four and half hours.
 - Alfred drove for the second four and half hours.
 - After eight and a bit hours they were nearing Cape Town.
 - The sun had set and it was already dark.
- Suddenly, while travelling under the bridge of Baden Powell Drive, a rock shattered the windscreen. It opened a hole in the windscreen in front of Alfred. Alfred braked hard and dropped the speed of their vehicle to about 70 kilometres an hour. He was wearing his glasses for driving so his eyes were not affected by the shattered glass.
 - Then, to his horror, he saw a lot of people on the left side of the highway. They were carrying sticks, burning torches and objects in their hands. As he approached the people, they started pelting his vehicle with stones.
 - In the side pocket of the driver's door Alfred kept his licensed pistol.
 - It is a 9 mm Parabellum with eight rounds in its magazine.
 - Alfred always had nine rounds: one round was already in the chamber of the pistol to permit immediate discharge of the pistol in an emergency.
 - He needed the pistol to protect himself when he was on his frequent business trips in Johannesburg.
 - Alfred's wife started screaming at him to drive faster and not to stop.
 - Alfred put on his bright lights and fired one warning shot through the hole in the windscreen in the direction of the highway itself.
 - Even at 70 kilometres per hour the distance between his vehicle and the people was closing fast.
 - Two men from the group of people jumped directly in front of his vehicle.
 - He shot both of them, aiming at their torsos.
 - They fell down.
 - He steered his vehicle around them.
 - The people near the fallen men stayed out of the way and Alfred managed to direct his vehicle past the people without hitting anyone.
 - Then he accelerated away from the scene.
 - Thembi was crying.
 - The children were alarmingly quiet.
 - Alfred asked Thembi to see if the children were okay.
 - Then, to his relief, both Jabulani and Nomvula started to cry.

- Eventually Alfred saw a SAPS sign at the Old Faure Road exit.
 - He drove to the SAPS Faure Police Station and reported the incident.
 - The Police kindly escorted him and his family into the Cape Town city centre to their hotel at the Waterfront.
 - They were due to stay for a week's holiday in Cape Town.
 - Then they would drive back home.
- The day after, on Monday morning, Alfred took pictures of the damage to his vehicle. Then he took the vehicle to have the windscreen repaired.
- When he got back to the hotel, the Police were waiting for him.
 - They arrested him for murder.
 - Both the men he had shot on the highway were dead.
- Thembi (remember – Alfred's wife) was quick. She phoned their Attorney, Zodwa Khathazeka.
- Thembi instructed Zodwa to bring an urgent bail application. The family was supposed to be on holiday, she said in frustration.
- Zodwa was quick too.
 - She asked whether Alfred had an identity card or a passport with him.
 - Thembi told Zodwa he always carries both his ID card and his passport.
 - Alfred is proudly South African and loves to live and work in South Africa even though he travels a lot in Southern Africa for business.
 - Thembi told Zodwa that Alfred had been working in the grocery industry in Johannesburg for more than twenty-two years.
- Zodwa wants you to advise her what to do to succeed in an urgent bail application. The matter will be before the Bellville Magistrate's Court on Wednesday. You hardly have 48 hours.

Advise your Attorney, Zodwa Khathazeka so well she will not have to worry and so she will succeed to get bail for Alfred.

QUESTION 4**[20]**

Your Attorney, Ms Zodwa Khathazeka, is so pleased with your advice on how to get Alfred out on bail (she even succeeded in Cape Town!) that she is back for more advice. Zodwa wants your opinion on how to advise Alfred on the charges of murder.

- Should Alfred plead guilty and ask for a soft sentence?
- Should Alfred plead not guilty?
- If he pleads not guilty what could happen if he is found guilty of another crime, like culpable homicide?
- If she briefs you to run the Trial, what would you do to defend Alfred?
- Would you put in a statement under Section 112 of guilty? Or,
- Would you put in a statement under Section 115 of not-guilty?
- This is a serious opinion Zodwa requires from you.

You know the facts. They are set out above in question 3.

Write the opinion.