



SCHOOL OF LAW

NLLB 202 LAW OF EVIDENCE

END OF FIRST SEMESTER EXAMINATIONS

NOVEMBER/DECEMBER 2023

LECTURER: MR N MAPHOSA

DURATION: 3HRS

GENERAL INSTRUCTIONS TO CANDIDATES

1. Do NOT write your name on the answer sheet.
2. Write legibly.
3. Students **MAY NOT** take any material into the examination.
4. Answer **ALL** questions.
5. You are advised to read all questions carefully before attempting to answer any.
6. Begin your answer for each question on a new page.
7. Cite **RELEVANT** authorities to support your arguments.
8. This examination paper consists of five pages.

QUESTION ONE

I. The accused person, Mdlalova Mabulala, has been arraigned at the High Court in Bulawayo on a charge of murder in contravention of section 47 of the Criminal Law (Codification and Reform) Act [*Chapter 9:23*]. The prosecution alleges that on the 5th of September 2011, and at Velabahleke Ranching Compound (farm), Plumtree in Mangwe District, Matebeleland South, the accused unlawfully and intentionally stabbed and killed Mpumelelo Masuku, a male adult aged 25 years at the time of his death. The accused pleads not guilty to the charge.

In his defence outline, the accused avers that on the day in question he was indeed at the farm where there was a party being hosted by one Melusi Sibanda. As the night progressed copious amounts of alcohol were consumed by the accused, the deceased and other persons. The accused was involved in an altercation with one Mandla Moyo. The accused admits that he was involved in a fist fight with Mandla. The fight was stopped by Melusi Sibanda. The accused alleges that he was thereafter assaulted by several persons, before he fled the scene. The accused denies stabbing the deceased and denies ever engaging in an exchange of blows with the deceased. The accused further denies ever carrying a knife on the day in question. His version is that deceased was stabbed by someone else as there were several other persons involved in the scuffle. As regards the knife which was allegedly used in the commission of the crime, the accused stated that he had no knowledge of such knife.

The state tendered the outline of the state case into the record of proceedings as exhibit 1. The affidavit of Constable Nicholas Sibanda who conveyed the body of the deceased to the United Bulawayo Hospitals was tendered as exhibit 3. The post mortem report number 601/597/2011 was produced as exhibit 4. With the production of these documents the trial commenced. Before the commencement of the trial the state and defence counsel advised that the murder weapon, being the knife could not be produced as part of the evidence as it had been accidentally destroyed by the police.

The state called its first witness Melusi Sibanda to testify. This witness was central to this case as the murder occurred at his compound at the farm. He hosted the fundraising party event that subsequently resulted in the tragic death of Mpumelelo Maseko (the deceased). His evidence was to the effect that between 0200 hours and 0300 hours on this fateful day, the accused and one Mandla Moyo were involved in a misunderstanding over a girlfriend. The witness stepped in between the deceased and Mandla and managed to stop the fight. During the commotion, one Reason who was heavily intoxicated staggered and fell on the music system (DVD player) causing it to crush to the ground. This sound system belonged to the deceased, who was enraged by the damage caused to his DVD player. The deceased believed that the accused had caused the damage to his music player and immediately attacked the accused person.

Melusi Sibanda once again intervened and stopped the fight. It is evident that most of the persons attending the function were drunk. The deceased went behind the house to switch off the generator as it was clear that the fights had spoiled the function. The witness stated that at the stage, he observed the accused removing his trousers and pulling out something which he then hid behind his back. A little while later Melusi states that the accused pulled up his trousers again and announced in a threatening tone that no one should come near him. The deceased then charged

from the back of the house and engaged the accused in a fight. The witness heard the deceased utter words to the effect that “the boy has stabbed me” (referring to the accused). Melusi states that the deceased lifted up the accused and threw him to the ground and stamped upon his body several times.

The witness observed the deceased collapse to the ground. He shouted out to his wife to bring some water. The deceased got up as soon as water was poured over him. The deceased, however, fell down a few metres outside the farm compound. The deceased never got up again and died as a result of the injuries sustained in the stabbing. The witness gave his evidence well but a few lingering questions remained unanswered. Under cross-examination, the witness admitted that he did not observe the actual stabbing. The witness indicated that although he had noticed the accused place his hand behind his back he did not notice a knife. From his account it cannot be inferred that accused was seen on the night in question in possession of a knife. The witness conceded that the lighting was not that good as the generator that provided lighting had been switched off. From the evidence of this witness, it cannot be said with absolute certainty that the accused caused the fatal stabbing.

The state then called one Silibaziso Moyo as its second witness. This witness knew the accused as a herd boy and workmate at the farm where they were both employed. The witness also knew the deceased as a farm worker employed at the farm. On the 5th of September 2011 Constable Laita and other detectives from Plumtree police station arrived at the farm and showed her a knife. The witness who was rather dramatic and graphic in the manner she testified indicated that she positively identified the knife, which she said belonged to her. Upon being shown the knife, she stated that she recalled that she had earlier lent the knife to her sibling one Kelton Nyathi.

When she demanded her knife back she was informed that the knife had been handed over to the accused who had asked to use it. Her efforts to recover the knife from Kelton Nyathi hit a brick wall, when the accused stated that he had since lost the knife. She described the knife, indicating that it had a white handle and a blade with an emblem of a crocodile. The knife was blood stained. When cross-examined as to whether she was certain that the knife shown to her was the one used in the murder the witness indicated that she could not be certain. It may very well be, that the knife shown to the witness was the one used in the murder but the fact of the matter was that there was no evidence placed before the court to indicate whether or not that was the knife used in the fatal stabbing. Further, there was no evidence to prove that the accused used that knife to stab the deceased. The evidence of Silibaziso Moyo consequently took the state case no further.

The accused gave his evidence under oath. He stuck to his defence which one could easily describe as a bare denial. His version was that he had a fist fight with one Mandla Moyo, following a dispute concerning a girlfriend. He was overpowered in the fight and ended up on the receiving end. Several persons attending the party joined in the fight and trampled upon him. He sustained serious injuries in the process and does not know how, and who, stabbed the deceased. He testified that the following day he learnt from his workmates that the deceased had been stabbed and had died the previous day.

The state in this matter was left in an invidious position. The only eye-witness, Melusi Sibanda could not confirm that the accused had in his possession a knife at the time of the fatal stabbing.

The witness could also not confirm that without any doubt, it was the accused and no one else who stabbed the deceased. Several persons were in attendance at the party that night. There were fist fights that broke out. Evidently, the accused and his companions were somewhat intoxicated. The state could not avail the evidence of the rest of the witnesses mentioned in the outline of the state case. The witnesses could not be located by the police as they had relocated to South Africa, presumably in search of greener pastures.

Based on the above facts, discuss the legal consequences of and the decisional law developed pursuant to section 269 of the Criminal Procedure and Evidence Act [*Chapter 9:07*]. **[15 Marks]**

II. Discuss the reasons behind the exclusion of irrelevant evidence. **[15 Marks]**

QUESTION TWO

I. The onus of proof in civil matters is slightly more complicated than the onus of proof in criminal matters. Describe how different issues may generate different onuses of proof in civil matters. **[10 Marks]**

II. Discuss whether there are any formal requirements for the handing in of objects such as weapons or prohibited substances such as dagga. **[10 Marks]**

QUESTION THREE

Make a list of the tips which you would give prospective presiding officers concerning the evaluation of evidence. **[10 Marks]**

QUESTION FOUR

I. Discuss recent legislative reforms brought forth by the Cyber and Data Protection Act [*Chapter 12:07*] in so far as the admissibility of electronic/ cyber-evidence is concerned. **[8 Marks]**

II. Write brief notes on the following:

a) Proof beyond a reasonable doubt. **[5 Marks]**

b) Corroboration. **[5 Marks]**

c) Expert evidence **[5 Marks]**

QUESTION FIVE

I. Discuss the approach which a court takes when relying on and assessing circumstantial evidence. **[10 Marks]**

II. Explain the evidential value of Deoxyribonucleic acid (DNA) and fingerprinting in establishing identity. **[8 Marks]**

TOTAL MARKS:

100

END OF EXAMINATION PAPER