UNIVERSITY OF KWAZULU-NATAL, PIETERMARITZBURG

EXAMINATIONS: NOVEMBER 2011

SUBJECT, COURSE AND CODE: SENTENCING (Elective) (LAWS4SN)

DURATION: 2 HOURS+15 minutes reading time               TOTAL MARKS: 70

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Internal examiners: Prof SV Hoctor
External examiner: Prof J Lund

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STUDENTS ARE REQUESTED IN THEIR OWN INTERESTS TO WRITE LEGIBLY

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Instructions: Answer ALL questions in Section A and FOUR questions in Section B.

This paper consists of THREE (3) pages; please see that you have them all.

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SECTION A [30 MARKS]

1. (a) What types of conditions can apply to a suspended sentence? (2)

   (b) Give an example of each type of condition. (2)

2. Section 297(1)(c) of the Criminal Procedure Act 51 of 1977 states that a caution and discharge ‘shall have the effect of an acquittal’. Is a caution and discharge simply an acquittal, or does it amount to something more? (3)

3. How should the exact age of a young offender be determined? (3)

4. Explain the difference between the retributive and utilitarian theories of punishment. (2)

5. Briefly describe the retributive theories of punishment. (4)

6. Set out the basic sentencing jurisdiction of the courts in respect of (i) crimes excluded from jurisdiction; (ii) maximum imprisonment; (iii) maximum fine (9)

7. Explain how the (i) s 276(1)(i) imprisonment and (ii) periodical imprisonment function. (5)
SECTION B [40 MARKS]

Answer any FOUR questions.

1. Explain the history and functioning of the minimum sentencing provisions in s 51 of Act 105 of 1997 (attached). (10)

2. Write a note on the purposes, advantages and disadvantages of imprisonment. (10)

3. In terms of s 286A of the Criminal Procedure Act 51 of 1977, provision is made for a sentence of declaration as a dangerous offender. Discuss how the court will assess ‘dangerousness’, and how it will decide to impose this sentence. (10)

4. Explain the significance of the notion of proportionality in sentencing. (10)

5. “The most difficult problem relating to the imposition of a fine as punishment relates to the means of the offender”. Explain. (10)

6. List the guidelines set out in S v Nkosi 2002 (1) SACR 135 (W) at 147F-I relating to the exercise of a court’s discretion in deciding the suitability of an appropriate form of punishment for a child offender, and place these in the context of the new framework introduced by the Child Justice Act 75 of 2008. (10)
CRIMINAL LAW AMENDMENT ACT 105 OF 1997

51 Discretionary minimum sentences for certain serious offences

(1) Notwithstanding any other law, but subject to subsections (3) and (6), a regional
court or a High Court shall sentence a person it has convicted of an offence referred to in
Part I of Schedule 2 to imprisonment for life.

(2) Notwithstanding any other law but subject to subsections (3) and (6), a regional
court or a High Court shall sentence a person who has been convicted of an offence referred to in-

(a) Part II of Schedule 2, in the case of-
(i) a first offender, to imprisonment for a period not less than 15 years;
(ii) a second offender of any such offence, to imprisonment for a period not less than 20 years; and
(iii) a third or subsequent offender of any such offence, to imprisonment for a period not less than
25 years;
(b) Part III of Schedule 2, in the case of-
(i) a first offender, to imprisonment for a period not less than 10 years;
(ii) a second offender of any such offence, to imprisonment for a period not less than 15 years; and
(iii) a third or subsequent offender of any such offence, to imprisonment for a period not less than
20 years; and
(c) Part IV of Schedule 2, in the case of-
(i) a first offender, to imprisonment for a period not less than 5 years;
(ii) a second offender of any such offence, to imprisonment for a period not less than 7 years; and
(iii) a third or subsequent offender of any such offence, to imprisonment for a period not less than
10 years:

Provided that the maximum term of imprisonment that a regional court may impose in
terms of this subsection shall not exceed the minimum term of imprisonment that it must
impose in terms of this subsection by more than five years.

(3) (a) If any court referred to in subsection (1) or (2) is satisfied that substantial and
compelling circumstances exist which justify the imposition of a lesser sentence than the
sentence prescribed in those subsections, it shall enter those circumstances on the record of
the proceedings and must thereupon impose such lesser sentence: Provided that if a
regional court imposes such a lesser sentence in respect of an offence referred to Part 1 of
Schedule 2, it shall have jurisdiction to impose a term of imprisonment for a period not
exceeding 30 years.

(aa) When imposing a sentence in respect of the offence of rape the following shall
not constitute substantial and compelling circumstances justifying the imposition of a lesser
sentence:

(i) The complainant's previous sexual history;
(ii) an apparent lack of physical injury to the complainant;
(iii) an accused person's cultural or religious beliefs about rape; or
(iv) any relationship between the accused person and the complainant prior to the offence being
committed.

(4) ......