INSTRUCTIONS

1. Students are requested, in their own interests, to write legibly.
2. This paper consists of **NINE (9)** pages. Please make sure you have them all.
3. Answer **BOTH** questions in Section A, and **TWO** questions from **Section B**.
4. Relevant legislation is attached to the paper.
SECTION A

ANSWER BOTH QUESTIONS FROM THIS SECTION.

QUESTION 1

Critically examine the mandatory and minimum sentencing regime in South African law, in particular addressing the question of constitutionality.

[TOTAL Q1: 25 MARKS]

QUESTION 2

You are a regional court magistrate and are required to hand down sentence based on the following circumstances. Alpheus discovers that his neighbour, Mrs T, has shaved off the eyebrows of his 3-year-old son. Alpheus’s brother, Thomas, urges Alpheus to take action, saying that Mrs T is a witch. Alpheus is both extremely angry and very fearful of witchcraft. He goes to Mrs T’s house with a cane-knife (panga) and a can of petrol. At the entrance to the house he encounters Mrs T’s teenage son, S, who he drives away with a stick, hitting him several times. He then kills Mrs T’s dogs with the cane-knife. On entering the house, he discovers Mrs T hiding inside. Using the petrol, he then sets the building alight. Mrs T is burnt to death. Alpheus is charged with murder (of Mrs T), assault (of S) and malicious injury to property (killing of the dogs). Thomas is charged with a contravention of section 1(a) of the Witchcraft Suppression Act 3 of 1957. Both accused were convicted as charged. Apart from the above factors, the following factors may be taken into account: both accused are first offenders, both have secure employment, and both provide for three dependants. Alpheus is 22 years old, while Thomas is 35 years old. Thomas has a disability, as a result of which he has lost the use of one arm. Neither accused exhibits any remorse.

Taking all relevant factors into consideration, you are required to sentence the accused. [See attached legislation for more information.]

[TOTAL Q2: 25 MARKS]

[TOTAL SECTION A: 50 MARKS]
SECTION B

ANSWER TWO QUESTIONS FROM THIS SECTION.

QUESTION 3
Explain the significance of the case of DPP, Western Cape v Prins 2012 (2) SACR 183 (SCA).

[TOTAL Q1: 10 MARKS]

QUESTION 4
(a) Explain the cumulative effect of multiple sentences, and how this may be mitigated

(b) When would a court seek to impose s 276(1)(i) imprisonment?

[TOTAL Q2: 10 MARKS]

QUESTION 5
(a) Explain the operation of s 51(6) of the Criminal Law Amendment Act 105 of 1997.

(b) Write a short note on the nature of periodical imprisonment, and the decision to impose such form of imprisonment.

(c) What is the reason for the Adjustment of Fines Act 101 of 1991, and how does this Act function?

[TOTAL Q3: 10 MARKS]
QUESTION 6

Discuss the utilitarian theoretical justifications for punishment, explaining the rationale for each of these justifications.

[TOTAL Q4: 10 MARKS]

QUESTION 7

Assess the significance of the notion of proportionality in sentencing.

[TOTAL Q5: 10 MARKS]

[TOTAL SECTION B: 20 MARKS]
CRIMINAL LAW AMENDMENT ACT 105 OF 1997
To make provision for the setting aside of all sentences of death in accordance with law and their substitution by lawful punishments; to amend certain laws so as to repeal provisions relating to capital punishment; to provide for minimum sentences for certain serious offences; and to provide for matters connected therewith.

Preamble
WHEREAS the Constitution of the Republic of South Africa, 1996, provides that everyone has the right to life;
AND WHEREAS the Constitutional Court has ruled that the sentence of death is unconstitutional and therefore invalid;
AND WHEREAS it is necessary to make provision for the setting aside of all such sentences in accordance with law and their substitution by lawful punishments,
BE IT THEREFORE ENACTED by the Parliament of the Republic of South Africa, as follows:—

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) ......  
[Sub-s. (4) omitted by s. 1 of Act 38 of 2007.]

(5) (a) Subject to paragraph (b), the operation of a minimum sentence imposed in terms of this section shall not be suspended as contemplated in section 297 (4) of the Criminal Procedure Act, 1977 (Act 51 of 1977).

(b) Not more than half of a minimum sentence imposed in terms of subsection (2) may be suspended as contemplated in section 297 (4) of the Criminal Procedure Act, 1977, if the accused person was 16 years of age or older, but under the age of 18 years, at the time of the commission of the offence in question.

(6) This section does not apply in respect of an accused person who was under the age of 16 years at the time of the commission of an offence contemplated in subsection (1) or (2).

(7) If in the application of this section the age of an accused person is placed in issue, the onus shall be on the State to prove the age of that person beyond reasonable doubt.

(8) For the purposes of this section and Schedule 2, 'law enforcement officer' includes-

(a) a member of the National Intelligence Agency or the South African Secret Service referred to in section 3 of the Intelligence Services Act, 2002 (Act 65 of 2002); and

(b) a correctional official of the Department of Correctional Services or a person authorised under the Correctional Services Act, 1998 (Act 111 of 1998).

(9) The amounts mentioned in respect of the offences referred to in Part II of Schedule 2 to the Act, may be adjusted by the Minister from time to time by notice in the Gazette.  
[S. 51 amended by s. 33 of Act 62 of 2000 and by s. 36 (1) of Act 12 of 2004 and substituted by s. 1 of Act 38 of 2007.]

[Date of commencement of s. 51: 1 May 1998.]

Schedule 2

PART I

Murder, when-

(a) it was planned or premeditated;

(b) the victim was-

(i) a law enforcement officer performing his or her functions as such, whether on duty or not; or

(ii) a person who has given or was likely to give material evidence with reference to any offence referred to in Schedule 1 to the Criminal Procedure Act, 1977 (Act 51 of 1977), at criminal proceedings in any court;
(c) the death of the victim was caused by the accused in committing or attempting to commit or after having committed or attempted to commit one of the following offences:
   (i) rape or compelled rape as contemplated in section 3 or 4 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, respectively; or
   (ii) robbery with aggravating circumstances as defined in section 1 of the Criminal Procedure Act, 1977 (Act 51 of 1977);
(d) the offence was committed by a person, group of persons or syndicate acting in the execution or furtherance of a common purpose or conspiracy;
(e) the victim was killed in order to unlawfully remove any body part of the victim, or as a result of such unlawful removal of a body part of the victim; or
[Para. (e) added by s. 5 (a) of Act 38 of 2007.]
(f) the death of the victim resulted from, or is directly related to, any offence contemplated in section 1 (a) to (e) of the Witchcraft Suppression Act, 1957 (Act 3 of 1957).
[Para. (f) added by s. 5 (a) of Act 38 of 2007.]
Rape as contemplated in section 3 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007-
(a) when committed-
   (i) in circumstances where the victim was raped more than once whether by the accused or by any co-perpetrator or accomplice;
   (ii) by more than one person, where such persons acted in the execution or furtherance of a common purpose or conspiracy;
   (iii) by a person who has been convicted of two or more offences of rape or compelled rape, but has not yet been sentenced in respect of such convictions; or
   (iv) by a person, knowing that he has the acquired immune deficiency syndrome or the human immunodeficiency virus;
(b) where the victim-
   (i) is a person under the age of 16 years;
   (ii) is a physically disabled person who, due to his or her physical disability, is rendered particularly vulnerable; or
   (iii) is a person who is mentally disabled as contemplated in section 1 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007; or
(c) involving the infliction of grievous bodily harm.
Compelled rape as contemplated in section 4 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007-
(a) when committed-
   (i) in circumstances where the victim was raped more than once by one or more than one person;
   (ii) by a person who has been convicted of two or more offences of rape or compelled rape, but has not yet been sentenced in respect of such convictions; or
   (iii) under circumstances where the accused knows that the person committing the rape has the acquired immune deficiency syndrome or the human immunodeficiency virus;
(b) where the victim-
   (i) is a person under the age of 16 years;
   (ii) is a physically disabled person who, due to his or her physical disability, is rendered particularly vulnerable; or
   (iii) is a person who is mentally disabled as contemplated in section 1 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007; or
(c) involving the infliction of grievous bodily harm.
Any offence referred to in section 2, 5, 6, 7, 8, 9, 10 or 14 (in so far as it relates to the aforementioned sections) of the Protection of Constitutional Democracy against Terrorist and Related Activities Act, 2004, when it is proved that the offence has-
   (a) endangered the life or caused serious bodily injury to or the death of, any person, or any number or group of persons;
   (b) caused serious risk to the health or safety of the public or any segment of the public; or
   (c) created a serious public emergency situation or a general insurrection.
Trafficking in persons for sexual purposes by a person contemplated in section 71 (1) or (2) of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007.

PART II
Murder in circumstances other than those referred to in Part I.
Robbery-
   (a) when there are aggravating circumstances; or
   (b) involving the taking of a motor vehicle.
Any offence referred to in section 13 (f) of the Drugs and Drug Trafficking Act, 1992 (Act 140 of 1992), if it is proved that-
   (a) the value of the dependence-producing substance in question is more than R50 000,00;
   (b) the value of the dependence-producing substance in question is more than R10 000,00 and that the offence was committed by a person, group of persons, syndicate or any enterprise acting in the execution or furtherance of a common purpose or conspiracy; or
   (c) the offence was committed by any law enforcement officer.
Any offence relating to-
   (a) the dealing in or smuggling of ammunition, firearms, explosives or armament; or
   (b) the possession of an automatic or semi-automatic firearm, explosives or armament.
Any offence relating to exchange control, extortion, fraud, forgery, uttering, theft, or an offence in Part 1 to 4, or section 17, 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004-
   (a) involving amounts of more than R500 000,00;
   (b) involving amounts of more than R100 000,00, if it is proved that the offence was committed by a person, group of persons, syndicate or any enterprise acting in the execution or furtherance of a common purpose or conspiracy; or
   (c) if it is proved that the offence was committed by any law enforcement officer-
       (i) involving amounts of more than R10 000,00; or
       (ii) as a member of a group of persons, syndicate or any enterprise acting in the execution or furtherance of a common purpose or conspiracy.
Any offence referred to in section-
   (a) 2, 5, 6, 7, 8, 9, 10 or 14 (in so far as it relates to the aforementioned sections) of the Protection of Constitutional Democracy against Terrorist and Related Activities Act, 2004, in circumstances other than those referred to in Part I; or
   (b) 4 or 13.
PART III
Rape or compelled rape as contemplated in section 3 or 4 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, respectively in circumstances other than those referred to in Part I.
Sexual exploitation of a child or sexual exploitation of a person who is mentally disabled as contemplated in section 17 or 23 or using a child for child pornography or using a person who is mentally disabled for pornographic purposes, as contemplated in section 20 (1) or 26 (1) of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, respectively.
Assault with intent to do grievous bodily harm on a child under the age of 16 years.
Any offence in contravention of section 36 of the Arms and Ammunition Act, 1969 (Act 75 of 1969), on account of being in possession of more than 1000 rounds of ammunition intended for firing in an arm contemplated in section 39 (2) (a) (i) of that Act.

PART IV
Any of the following offences, if the accused had with him or her at the time a firearm, which was intended for use as such, in the commission of such offence:
Treason;
Sedition;
Public violence;
Robbery, other than a robbery referred to in Part I or II of this Schedule;
Kidnapping;
An offence involving an assault, when a dangerous wound is inflicted with a firearm, other than an offence referred to in Part I, II or III of this Schedule;
Breaking or entering any premises, whether under the common law or a statutory provision, with intent to commit an offence;
Escaping from lawful custody.

WITCHCRAFT SUPPRESSION ACT 3 OF 1957
To provide for the suppression of the practice of witchcraft and similar practices.

1 Offences relating to the practice of witchcraft and similar practices

Any person who-
   (a) imputes to any other person the causing, by supernatural means, of any disease in or injury or damage to any person or thing, or who names or indicates any other person as a wizard;
shall be guilty of an offence and liable on conviction-
   (i) in the case of an offence referred to in paragraph (a)...in consequence of which the person in respect of whom such offence was committed, has been killed, or where the accused has been proved to be by habit or repute a witchdoctor or witch-finder, to imprisonment for a period not exceeding 20 years.