higher education & training

Department:
Higher Education and Training
REPUBLIC OF SOUTH AFRICA

NATIONAL CERTIFICATE (VOCATIONAL)

LAW PROCEDURES AND EVIDENCE
NQF LEVEL 4

(8021004)

12 November 2024 (X-paper)
09:00–12:00

This question paper consists of 8 pages.

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DEPARTMENT OF HIGHER EDUCATION AND TRAINING
REPUBLIC OF SOUTH AFRICA

NATIONAL CERTIFICATE (VOCATIONAL)
LAW PROCEDURES AND EVIDENCE
NQF LEVEL 4
TIME: 3 HOURS
MARKS: 100

INSTRUCTIONS AND INFORMATION

1. Answer all the questions.
2. Read all the questions carefully.
3. Number the answers according to the numbering system used in this question paper.
4. Use only a black or blue pen.
5. Write neatly and legibly.

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SECTION A

QUESTION 1

Indicate whether the following statements are TRUE or FALSE by writing only 'True' or 'False' next to the question number (1.1–1.10) in the ANSWER BOOK.

1.1 Our criminal procedure is contained in the Criminal Procedure Act 53 of 1977.

1.2 The accused must always be present during the trial to ensure that witnesses tell the truth.

1.3 A peace officer may arrest a person without a warrant of arrest.

1.4 The Correctional Services Act 111 of 1998 deals with, *inter alia*, the escaping of arrested persons in the period between arrest and placement in prison.

1.5 Section 20 of the Criminal Procedure Act 51 of 1977 allows the State to seize three classes of articles.

1.6 In terms of section 71 of the Criminal Procedure Act 51 of 1977, an accused may be released on warning in lieu of bail.

1.7 Seven different pleas are listed under section 106 of the Criminal Procedure Act 51 of 1977.

1.8 Section 35(3)(q) of the Constitution of 1996 gives every accused the right to have recourse by way of appeal to, or review by, a higher court.

1.9 A fine and committal to a reform school is not an appropriate sentence in terms of the Criminal Procedure Act 51 of 1977.

1.10 Section 217 of the Criminal Procedure Act 51 of 1977 deals with the requirements for a confession to be admissible.

(10 × 1) **[10]**

QUESTION 2

Choose the correct term from those given in brackets and write only the answer next to the question number (2.1–2.10) in the ANSWER BOOK.

2.1 (*Zuma* 1995/*Makwanyane* 1995) the judge remarked that the rights of arrested, detained and accused persons have been recognised as basic principles of our law for 150 years.

2.2 Section (35/158) of the Constitution of 1996 provides that, *inter alia*, an accused has a right to a fair trial.

2.3 Section (26/28) of the Criminal Procedure Act 51 of 1977 deals with wrongful search by the police.

2.4 (Fraud/Robbery) is one of the crimes that form part of the Schedule 6 offences.

2.5 The (High Court/Supreme Court of Appeal) has jurisdiction within the whole geographical area of South Africa.

2.6 (*Sinama* 1998/*Scheepers* 1977) the court ruled that the interests of society require that those who attack and murder police officials should be severely punished when a sentence is imposed.

2.7 Any accused under (16/18) years of age, at the time of the commission of the offence, may note the appeal without having to apply for leave to appeal against a conviction.

2.8 Section (218/219) of the Criminal Procedure Act 51 of 1977 provides that no confession made by any person shall be admissible as evidence against another person.

2.9 (*Autrefois convict/Autrefois acquit*) is when the accused has previously been convicted on the same facts.

2.10 (*Khumalo* 1991/*Mholongo* 1991) accordingly noted that the state always bears the burden of proof if the accused raises an alibi.

(10 × 1) **[10]**

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QUESTION 3

Choose a description from COLUMN B that matches each item in COLUMN A. Write only the letter (A–L) next to the question number (3.1–3.10) in the ANSWER BOOK.

COLUMN A		COLUMN B	
3.1	Criminal procedure	A	Exclusion of privileged documents from being subject to seizure confirmed
3.2	Section 35 of the Constitution of 1996.	B	Giving of false evidence after having sworn under oath to tell the truth
3.3	Section 158 of the Criminal Procedure Act 51 of 1977	C	To restrict within limits
3.4	*Bogoshi vs Van Vuuren and others* 1996	D	Section 163 of the Criminal Procedure Act 51 of 1977
3.5	Hearsay evidence	E	Almost but not quite
3.6	Perjury	F	The high court possesses a power of review
3.7	Circumscribe	G	Child Justice Act 75 of 2008
3.8	Affirmation in lieu of oath	H	Starts when a crime is allegedly committed
3.9	Sentencing of juvenile offenders	I	Evidence on issues not personally seen or heard by the witness
3.10	Quasi-judicial bodies	J	Criminal proceedings to take place in presence of accused
		K	Where there is an attempt to set aside an acquittal made in error
		L	Arrested, detained and accused persons

(10 × 1) **[10]**

TOTAL SECTION A: 30

SECTION B

QUESTION 4

4.1 Explain the difference between the following as stipulated in the South African criminal procedure system:

4.1.1 Accusatorial procedure (4)

4.1.2 Inquisitorial procedure (2)

4.2 Discuss the exceptions to the rule if any of the accused are absent from the proceedings according to section 159(2)(b) of the Criminal Procedure Act 51 of 1977. (5)

4.3 Describe the purpose of arrest as provided in terms of the law. (2)

4.4 Explain who may issue a warrant of arrest and provide the information that the application must contain to issue such warrant according to section 43 of the Criminal Procedure Act 51 of 1977. (7)

[20]

TOTAL SECTION B: 20

SECTION C

QUESTION 5

Study the information below and answer the questions.

TWO ACCUSED SENTENCED FOR DEALING IN DAGGA

KWAZULU-NATAL – On Monday 3 April 2023 – the Pietermaritzburg Magistrate's Court convicted and sentenced Simon Mbanjwa (48) and Sandile Cebekhulu (44) for dealing in dagga.

Mbanjwa and Cebekhulu were arrested by members of the Hawks from the Pietermaritzburg Serious Organised Crime Investigation, in May 2020. They were arrested in the vicinity of Mkondeni where they were caught red-handed offloading 57 bags of dagga from a minibus.

They were charged with dealing in dagga and were released on bail. The two appeared in court several times until they were convicted on Monday. Both accused were sentenced to 10 years' imprisonment of which five years were suspended. They will serve five years' direct imprisonment or pay a R60 000 fine.

[Adapted from: *The SAPS Media,* 5 April 2023]

5.1 5.1.1 Mbanjwa and Cebekhulu were convicted and sentenced to 10 years' imprisonment by the magistrate's court of which five years were suspended. Discuss the jurisdiction of the court in respect of (a) the offence committed and (b) the sentence. (6)

5.1.2 In the case of Mbanjwa and Cebekhulu, briefly explain their right to recourse by way of appeal to, or review by, a higher court other than the court of first instance in terms of Section 35(3)(o) of the Constitution of 1996. (5)

5.2 Explain FOUR ways in which a criminal case, heard at first instance in a superior court, can be taken to the Supreme Court of Appeal. (4)

[15]

QUESTION 6

Study the information below and answer the questions.

POLICE MEMBERS SUSPECT WITH UNLICENSED FIREARM

WESTERN CAPE: 5 SEPTEMBER 2023 – The determination to rid communities of firearms which is regarded as a major contributor to serious and violent crime, led to the arrest of a 30-year-old man who was found in possession of an unlicensed firearm and ammunition on Monday.

Members of the Anti-Economical Crime Task Team were busy with crime prevention operations in Mfuleni area when they saw a man approaching from the bush. When the man saw the police, he started running away. The members chased the suspect on foot and apprehended him. He was found in possession of a 9 mm pistol. He could not produce a firearm licence and was arrested and detained.

The suspect will appear on the mentioned charges in the Blue Downs Magistrate's court on Wednesday.

[Adapted from: *The SAPS Media,* 05 September 2023]

6.1 6.1.1 Do you think it was lawful for the police to seize, search and arrest the 30-year-old man who ran away from the police with an unlicensed firearm? Answer only 'Yes' or 'No'. (1)

6.1.2 Explain your answer to QUESTION 6.1.1 by referring to the relevant provisions as set out in section 22 of the Criminal Procedure Act 51 of 1977. (6)

6.2 Name and explain THREE main considerations that the courts must take into account when a sentence is being imposed. (3 × 2) (6)

6.3 Explain the stipulation that an accused has a constitutional right to be present at the trial in terms of section 35 of the Constitution of 1996. (2)

[15]

TOTAL SECTION C: 30

SECTION D

QUESTION 7



7.1 State the circumstances in terms of which section 49(2) of the Criminal Procedure Act 51 of 1977 makes provision for the use of force in order to effect an arrest. (6)

7.2 Explain the importance of the 48-hour procedure after arrest. (5)

7.3 Briefly explain factors that can prevent the court from granting bail to an accused, if he/she attempts to influence or intimidate witnesses or to conceal or destroy evidence. (5)

7.4 Describe a document, in terms of what it must consist of as well as the rules that it must comply with, so that it may qualify as admissible evidence in court. (4)

[20]



TOTAL SECTION D: 20
GRAND TOTAL: 100

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