higher education & training

Department:
Higher Education and Training
REPUBLIC OF SOUTH AFRICA

MARKING GUIDELINE

NATIONAL CERTIFICATE (VOCATIONAL)

LAW PROCEDURES AND EVIDENCE
NQF LEVEL 4

12 November 2024

This marking guideline consists of 8 pages.

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SECTION A

QUESTION 1

1.1 False✓
1.2 False✓
1.3 True✓
1.4 True✓
1.5 True✓
1.6 False✓
1.7 False✓
1.8 False✓
1.9 False✓
1.10 True✓

(10 × 1) **[10]**

QUESTION 2

2.1 *Zuma* 1995✓
2.2 35✓
2.3 28✓
2.4 Robbery✓
2.5 Supreme Court of Appeal✓
2.6 *Sinama* 1998✓
2.7 16✓
2.8 219✓
2.9 *Autrefois convict*✓
2.10 *Khumalo* 1991✓

(10 × 1) **[10]**

QUESTION 3

3.1 H✓
3.2 L✓
3.3 J✓
3.4 A✓
3.5 I✓
3.6 B✓
3.7 C✓
3.8 D✓
3.9 G✓
3.10 F✓

(10 × 1) **[10]**

TOTAL SECTION A: 30

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SECTION B

QUESTION 4

4.1 4.1.1 Accusatorial procedure

- It means that the crime is investigated by the police and after investigation has been completed all the evidence is provided to the prosecution.✓
- The prosecution then controls the process by formulating the charges and taking the case to court.✓
- The case is then between the accused and the prosecution, with a judge✓ or magistrate deciding on the matter
- without involvement unless in very specific circumstances.✓ (4)

4.1.2 Inquisitorial procedure

- The judge controls the process and is actively involved in the process.✓
- The judge performs the investigative process by questioning an arrested person

OR

- During the trial the judge does all the questioning.✓ (2)

4.2 **Any FIVE of the following for ONE mark each. Learner's own interpretation:**

(2)(b) any of the accused is absent from the proceedings, whether under the provisions of subsection (1) or without leave of the court,✓ if it is of the opinion that the proceedings cannot be postponed without undue prejudice,✓embarrassment or inconvenience to the prosecution or any co-accused✓ or any co-accused or any witness in attendance to subpoenaed to attend,✓ may -

(aa) in the case of paragraph (a), authorise the absence of the accused concerned from the proceedings for a period determined by the court✓and on the conditions which the court may deem fit to impose;✓and

(bb) direct that the proceedings be proceeded with in absence of the accused concerned.✓ (Any 5 × 1) (5)

4.3

- The purpose of arrest is to ensure that a suspect will be in court to answer to a charge and for the authorities to decide whether the person is guilty or not.✓
- The purpose is not to punish the arrested person for the commission of an alleged crime for which he/she has not been convicted.✓ (2)

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4.4 **Any SEVEN of the following for ONE mark each. Learner's own interpretation:**

(1) Any magistrate or justice may issue a warrant for the arrest of any person upon the written application of an attorney-general, a public prosecutor or a commissioned officer of police -✓
   (a) which sets out the offence alleged to have been committed; ✓
   (b) which alleges that such offence was committed within the area of jurisdiction of such magistrate or,✓ in the case of a justice, within the area of jurisdiction of the magistrate within whose district✓or area the application is made to the justice for such warrant,✓ or where such offence was not committed within such area of jurisdiction,✓ which alleges that the person in respect of whom the application is made, ✓ is known or is on reasonable grounds suspected to be within such area of jurisdiction; ✓ and
   (c) which states that from information taken upon oath there is a reasonable suspicion that the person in respect of whom the warrant is applied for has committed the alleged offence.✓

(2) A warrant of arrest issued under this section shall direct that the person described in the warrant shall be arrested by a peace officer in respect of the offence set out in the warrant✓ and that he be brought before a lower court in accordance with the provisions of section 50.✓

(3) A warrant of arrest may be issued on any day and shall remain in force until it is cancelled by the person who issued it✓ or, if such person is not available, by any person with like authority, or until it is executed.✓

(Any 7 × 1) (7)
[20]

TOTAL SECTION B: 20

SECTION C

QUESTION 5

5.1 5.1.1 **Any SIX of the following for ONE mark each. Learner's own interpretation:**

(a) In order to impose a valid sentence, a court must have jurisdiction to try the relevant offence.✓Please note that a lower court consists of either a magistrate's court (district court) or a regional court.✓
   (i) A magistrate's court may try all cases except murder, treason, rape and compelled rape (see s 89 of the Magistrate' Court Act 32 of 1944). Therefore, in principle this court may try 'dealing in dagga'.✓
   (ii) A regional court may try all cases except treason (see s 89 of the Magistrates' Court Act 32 of 1944). Accordingly, it is also competent to try 'dealing in dagga'.✓

(b) Jurisdiction in respect of punishment
   (i) A district court may sentence an accused to a fine of R60 000 and/or three years' imprisonment per charge.✓
   (ii) A regional court may sentence someone to a fine of R300 000 and/or 15 years' imprisonment per charge.✓
   (iii) The jurisdiction in respect of punishment may expressly be increased by law, but it is not relevant to this question. Hence the fine of R60 000 is regular in both courts.✓
   Constitutional matters – a lower court has jurisdiction with respect to a constitutional matter only if an Act of Parliament provides it with such jurisdiction.✓ (Any 6 × 1) (6)

5.1.2 **Any FIVE of the following for ONE mark each. Learner's own interpretation:**

Any accused tried in a lower court who is of the opinion that any part of the proceedings in that court was irregular✓ (not done according to the correct procedures), and that the irregularity has resulted in a failure of justice,✓ may apply to the high court to have proceedings reviewed.✓

- If the trial took place in a magistrate's court and the sentence that was imposed exceeds certain prescribed limits,✓ the case is automatically sent to the Supreme Court for review.✓
- If a court that reviews a case is satisfied that a failure of justice did not result,✓it will confirm the conviction and sentence.✓
- However, if it is of the opinion that a failure of justice has resulted,✓ it may:
  - Set aside the conviction and/or sentence and replace it with a proper conviction and/or sentence,✓or
  - Refer the case back to the trial court to impose a new sentence or for a retrial.✓ In the case of a retrial, the new trial will be held before a different magistrate.✓
- Any accused's appeal to the high court can be based on the fact that the trial court erred✓(made a mistake) in deciding on the
- evidence that their guilt was proven beyond reasonable doubt,
- or that the sentence that was imposed was too severe.✓

(Any 5 × 1) (5)

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5.2
- Appeal on the merits or on sentence alone, with leave of the trial court.✓ The application for leave may be accompanied by an application to lead further evidence.✓
- Appeal on the ground of a special entry, granted by the trial court based on an alleged irregularity.✓
- Reservation of a question of law by the trial court, whether *mero motu* or on application by the state or the accused.✓
- Appeal by the Director of Public Prosecutions against a sentence passed by a superior court.✓ (Any 4 × 1) (4)

[15]

QUESTION 6

6.1 6.1.1 Yes. (1)

6.1.2 **Any SIX of the following for ONE mark each. Learner's own interpretation:**

A police official may without a search warrant search any person✓or container✓ or premises✓ for the purpose of seizing any article referred to in section 20 -✓

a) If the person concerned consents to the search for the seizure of the article in question,✓ or if the person who may consent to the search of the container✓ or premises consents to such search and the seizure of the article in question;✓or
b) If the police official on reasonable grounds believes -
   i. that a search warrant will be issued to the person under paragraph (a) of section 21 (1) if he applies for such warrant;✓and
   ii. that the delay in obtaining such warrant would defeat the object of the search.✓ (Any 6 × 1) (6)

6.2
1. **The crime**✓ – the degree or the harm or the seriousness of the violation must be taken into account.✓
2. **The criminal**✓ – the personal circumstances of the offender must be considered.✓
3. **The interests of society**✓ – society must be protected from a dangerous criminal and the community must be deterred from crime by seeing that punishment takes place.✓ (3 × 2) (6)

6.3 **Any TWO of the following for ONE mark each. Learner's own interpretation:**

The accused has a constitutional right to be present at the trial and this right is guaranteed in section 35 of the Constitution which, *inter alia*,✓ provides that an accused person has a right to a fair trial,✓ which includes the right to:

- A public trial before an ordinary court;✓
- Be present when tried;✓ and
- Adduce and challenge evidence.✓ (Any 2 × 1) (2)

[15]

TOTAL SECTION C: 30

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SECTION D

QUESTION 7

7.1 **Any SIX of the following for ONE mark each. Learner's own interpretation:**

Section 49(2) of the Criminal Procedures Act provides if any arrestor attempts to arrest a suspect and the suspect resists the attempt,✓ or flees, or resists the attempt and flees,✓when it is clear that an attempt to arrest him✓or her is being made, and the suspect cannot be arrested without the use of force, the arrestor may,✓ in order to effect the arrest, use such force as may be reasonably necessary and proportional in the circumstances to overcome the resistance✓ or to prevent the suspect from fleeing: Provided that the arrestor is justified in terms of this section in using deadly force that is intended✓ or is likely to cause death or grievous bodily harm to a suspect, only if he or she believes on reasonable grounds-✓

(a) that the force is immediately necessary for the purposes of protecting the arrestor,✓ any person lawfully assisting the arrestor or any other person from imminent or future death or grievous bodily harm;✓
(b) that there is a substantial risk that the suspect will cause imminent or future death or grievous bodily harm if the arrest is delayed;✓or
(c) that the offence for which the arrest is sought is in progress and is of a forcible and serious nature and involves the use of life-threatening violence✓ or a strong likelihood that it will cause grievous bodily harm.✓

(Any 6 × 1) (6)

7.2 **Any FIVE of the following for ONE mark each. Learner's own interpretation:**

After the arrested person has been brought to the police station, he or she can be:

- Released because no charge is brought against him or her;✓
- Released on bail;✓and
- Detained for up to 48 hours.✓

After the expiry of the 48 hours from the time that the arrested person has reached the police station, release is obligatory✓ – in other words, the person has to be released.✓ In order to detain an arrested person for longer than 48 hours, he or she must be brought before a lower court within the 48-hours period✓ and the lower court may order the further detention of the arrested person.✓

(Any 5 × 1) (5)

7.3 **Any FIVE of the following for ONE mark each. Learner's own interpretation:**

- The fact that the accused is familiar with the identity of witnesses and with the evidence which they may bring against him or her.✓
- Whether the witnesses have already made statements and agreed to testify.✓
- Whether the investigation against the accused has already been completed.✓
- The relationship of the accused with the various witnesses and the extent to which they could be influenced or intimidated.✓
- How effective and enforceable bail conditions prohibiting communication between the accused and witnesses are likely to be.✓
- Whether the accused has access to evidentiary material which is to be presented at his or her trial. ✓
- The ease with which evidentiary material could be concealed or destroyed.✓
- Any other factor which in the opinion of the court should be taken into account.✓

(Any 5 × 1) (5)

7.4 **Any FOUR of the following for ONE mark each. Learner's own interpretation:**

According to the Criminal Procedures Act, Act 51 of 1977 a document is defined as any device by means of which information is stored or recorded.✓ According to section 246 and 247 it includes any book, pamphlet, letter, circular letter, list, record, placard or poster.✓

Documentary evidence consists of statements made in writing which are intended to be relied upon. In general, the following rules must be complied with for documents to be admissible:✓

- The statement(s) contained in the document must be relevant and admissible.✓
- The authenticity of the document(s) must be proved, in other words that they are genuine.✓
- The original document(s) must normally be produced.✓

(Any 4 × 1) (4)
[20]

TOTAL SECTION D: 20
GRAND TOTAL: 100

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