higher education & training

Department:
Higher Education and Training
REPUBLIC OF SOUTH AFRICA

MARKING GUIDELINE

NATIONAL CERTIFICATE (VOCATIONAL)

CRIMINAL JUSTICE PROCESS
NQF LEVEL 4

20 November 2024

This marking guideline consists of 9 pages.

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SECTION A

QUESTION 1

1.1 C✓
1.2 A✓
1.3 B✓
1.4 A✓
1.5 B✓

(5 × 1) **[5]**

QUESTION 2

2.1 True✓
2.2 False✓
2.3 False✓
2.4 False✓
2.5 True✓

(5 × 1) **[5]**

QUESTION 3

3.1 K✓
3.2 F✓
3.3 J✓
3.4 G✓
3.5 B✓
3.6 A✓
3.7 C✓
3.8 E✓
3.9 M✓
3.10 D✓

(10 × 1) **[10]**

QUESTION 4

4.1 Probation officer
4.2 Detrimental to the accused
4.3 Pre-sentence report
4.4 External sentencing aid
4.5 Objective

(5 × 1) **[5]**

TOTAL SECTION A: 25

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SECTION B

QUESTION 5

5.1
- Primary evidence: It refers to the best evidence available.✓ It implies that no better or stronger evidence is available.✓
- Secondary evidence: It implies that better or stronger evidence does or did exist✓ but cannot be produced as evidence✓ for a reason acceptable to the court.✓ (2 × 1) (2)

5.2 Convicted persons may be admitted to prison only on presentation of a warrant (section 6 of the CSA):✓

a) Convicted persons are taken into custody at a prison.✓ This means that their freedom of movement is restricted.✓ Such a restriction can be authorised only by the necessary legal document. Section 6(1)(a) of the CSA clearly stipulates: "A person may not be committed to a prison without a valid warrant for his or her detention."✓
b) The warrant authorises the Commissioner to detain the person concerned at any prison.✓
c) The warrant must first be checked by the head of the prison (HOP). The reason for this is that the warrant must satisfy certain requirements.✓

The most important requirement is that at every prison there must be a register in which the following information is recorded:✓

- Information concerning the identity of an inmate.✓
- The reason and authority for the committal.✓
- The day and hour of admission and release.✓ (Any 6 × 1) (6)

5.3 The following general principles are applicable in cases where community-based sentences are imposed:
- The offender who is sentenced to community service must be 15 years of age or older.✓
- The community service must benefit the broader community.✓ In other words, it must not be imposed for the benefit of a specific group or a specific individual.✓
- The conditions in terms of which the service is rendered need not always be related to the crime that has been committed.✓
- Community service is an appropriate alternative to imprisonment.✓ Such a sentence may also be considered where the offender is not financially capable of paying a fine or compensating the victim.✓
- A strict selection process must be employed when considering whether or not to order an offender to render community service.✓ The mere fact that an offender expresses his or her willingness to render such service does not mean that he or she is suitable for community service.✓ (Any 3 × 1) (3)

[11]

QUESTION 6

6.1 Public or state prosecutors have a critical role to play in the course of the judicial process. ✓ The state prosecutor represents the NDPP and acts on behalf of the state. ✓ Arguments by state prosecutors are based on the premise that every accused who appears in court is innocent until the state has proven the accused guilty beyond reasonable doubt. ✓

As soon as the investigating officer is of the opinion that the case has been fully investigated ✓ and that the information in the docket can prove the case in court, ✓ it is presented to the DPP (public prosecutor) ✓ to decide whether to institute legal proceedings on the grounds of the facts. ✓ The decision is taken independently of the police. ✓ (Any 4 × 1) (4)

6.2 In terms of section 61 and 62 of the Correctional Service Act:

- A parolee or probationer who is required to seek employment must make a reasonable effort to find employment✓ and must furnish evidence✓ to the Commissioner of Correctional Services of the attempts that he/she has made in this regard.✓
- The Commissioner of Correctional Services must assist in the attempt to find employment.✓
- A parolee or probationer who is required to take up and remain in employment:
  - May not change his/her employment without permission.✓
  - Must perform the work to the best of his/her ability and comply with the conditions of the contract of employment.✓
  - May not leave the place of employment during working hours✓ for purposes unrelated to the employment without permission.✓

(Any 5 × 1) (5)

6.3
- The offender: Apology or shaming and community reintegration.
- The victim: The harm and the opportunity for forgiveness.
- The community: The restoration of relationships. (3)

6.4
- The victim receiving restitution for tangible losses and emotional damage.✓
- The offender accepting responsibility and bearing the consequences of the act as well as regaining dignity.✓

An important and recent conceptual development made provision for a community role in the process.✓ Many people still tend to associate restorative justice with victim/offender mediation✓ and a victim-centred approach.✓ The recent acceptance of the assumption that crime is embodied in a three-dimensional relationship (victim/criminal/community) provides new horizons for restorative justice.✓ All three parties must participate in the reaction to crime and the rebuilding of relationships.✓ (Any 3 × 1) (3)

6.5 Secondary victimisation refers to the way in which the criminal justice system,✓ the fringe professions like health and welfare,✓ and the community at large✓ may actually victimise the victim once more✓ by blaming the victim,✓ ignoring his or her role in the criminal justice process✓ and by their insensitive treatment.✓ (4)

[19]

TOTAL SECTION B: 30

SECTION C

QUESTION 7

7.1 Inmates must be held in cells that meet the requirements prescribed by regulations in respect of floor space, cubic capacity, lighting, ventilation, sanitary installations and general health conditions.✓ These requirements must be adequate for detention under conditions of human dignity (section 7(1) of the CSA).✓ These stipulations correspond with international standards as stipulated in the Standard Minimum Rules for the Treatment of Offenders (SMR),✓ namely:

- Where sleeping accommodation is in individual cells or rooms, each inmate shall occupy by night a cell or room by himself.✓
- If it becomes necessary for the central prison administration to make an exception to this rule for special reasons such as temporary overcrowding,✓ it is not desirable to have two inmates in a cell/ room.✓
- Where dormitories are used, inmates who have been carefully selected as being suitable to associate with one another in those conditions shall occupy them.✓ There shall be regular supervision by night in keeping with the nature of the institution (Rule 9(2)).✓
- All accommodation provided for the use of inmates and, in particular, all sleeping accommodation shall meet all requirements of health.✓ Due regard must be paid to climatic conditions and particularly cubic content of air, minimum floor space, lighting, heating and ventilation (Rule 10).✓
- The sanitary installations shall be adequate to enable every inmate to comply with the needs of nature when necessary and in a clean and decent manner (Rule 12).✓
- Adequate bathing and shower installations shall be provided so that every inmate can have a bath or shower at a temperature suitable to the climate,✓ as frequently as necessary for general hygiene according to reason and geographical region,✓ but at least once a week in a temperate climate (Rule 13).✓

<u>Separate accommodation</u>:
According to section 7 of the CSA, the separation of the different categories of inmates is another important issue, namely:✓

- Sentenced inmates must be kept separate from unsentenced inmates.✓
- Male inmates must be kept separate from female inmates.✓
- Inmates who are children must be kept separate from adult inmates and in accommodation appropriate to their age.✓
- Inmates of specific age, health or security risk categories must be kept separate and must be prescribed by regulation.✓

There may be departures from these provisions if they are approved by the HOP (Head of Prison),✓ effected under supervision of a correctional official and undertaken for the purpose of providing development or support services or medical treatment,✓ but under no circumstances may there be departures in respect of sleeping accommodation.✓ The above stipulations from the CSA are also consistent with Standard Minimum Rule 8.✓ (Any 5 × 1) (5)

7.2 Prescribed sentences are sentencing periods that have been determined by law✓ and that cannot be easily changed:✓

- Parole or day parole:✓ The stipulated non-parole period is determined by the court and may not exceed two-thirds of the sentence✓ or, if no non-parole period was determined, half of the sentence.✓
- Correctional supervision:✓ One-sixth of the sentence.✓
- Habitual criminals:✓ Seven years.✓
- Life imprisonment:✓ 25 years of the sentence ✓ or cumulative sentences.✓

(Any 5 × 1) (5)

7.3 The police have been granted powers by means of legislation to enter premises,✓ if necessary with the use of force,✓ to take statements from persons.✓ Special powers are further granted on the grounds of which public prosecutors may summon people to appear before the court✓ and to answer questions in connection with the commission of a crime.✓ In addition, provision has been made for the interception of private communication✓ between persons where serious crimes are involved.✓ The SAPS have also been granted powers to examine certain physical features of persons who are suspected of having been involved in the commission of certain crimes.✓

(Any 5 × 1) (5)
[15]

QUESTION 8

8.1 **Plea bargaining**

- Yes, it is fair.✓
- Plea bargaining must take place before the trial begins.✓
- It is sometimes regarded as part of the judicial phase✓ since it is connected to the sentencing of the accused.✓
- The state prosecutor and the two accused people must reach an agreement✓ on how they are going to plead on the charges against them in court.✓
- They also negotiate the sentence to be imposed on the accused.✓
- The accused may agree to plead guilty on a lesser charge✓ and receive a more lenient sentence.✓

(5)

8.2

- The reporting of a crime.
- The investigation by the police.
- The decision on prosecution by the National Director of Public Prosecutions (NDPP) or public prosecutors.
- The arrest of the offender.
- Pre-trial detention, bail or release on own recognisance.
- Plea bargaining.

(Any 5 × 1) (5)
[10]

TOTAL SECTION C: 25

SECTION D

QUESTION 9

9.1 The accused has the right to legal representation during the trial.✓ The presiding officer has a legal obligation✓ to inform an unrepresented accused promptly that he/she has the right to legal representation.✓ The presiding officers must carefully consider an application for a postponement✓ in order for the accused to obtain legal representation.✓

Section 73 of the Criminal Procedure Act provides that every person charged with an offense is entitled to:

- State his/her defence at his/her trial.✓
- Have witnesses cross-examined by his/her counsel or advocate if the trial is conducted in a high court.✓
- Have witnesses cross-examined by his/her counsel or advocate if the trial is conducted in a lower court.✓
- Be assisted by his/her legal guardian if the accused is under the age of 18.✓

The task of legal advisors is to provide their clients with the necessary legal advice.✓ Once the accused have placed their case in the hands of legal representatives, the latter (representatives) have complete control of the case.✓ According to the professional code it is regarded as unethical✓ if counsel or an attorney deliberately presents false facts as the truth while conducting the case of the accused.✓ The legal representatives may accept their clients' explanation of the case in good faith, but must advise them to speak the truth.✓

The following rules of courtesy should be observed at all times:

- The legal advisor of the accused may not interview state witnesses without the prosecutor's permission.✓ This restriction applies not only during the period before the witness gives evidence✓ but also after giving evidence✓ until the court has returned a verdict.✓
- The prosecutor may not suppress any evidence that favours or can favour the accused.✓ The prosecutor should communicate to the defence which witnesses he/she does not intend to call on to give evidence.✓ If the state is not going to call on someone as a state witness, the defence may call such a person to testify on behalf of the accused.✓
- No party may, without the knowledge of the other party,✓ interview its own witness after the witness has given evidence.✓ (Any 15 × 1) (15)

9.2 **Examination of witnesses by the court is just and fair**

The judicial officer should observe certain fundamental principles of the administration of justice,✓ such as impartiality,✓ judging only on evidence adduced in an open court,✓ informing the accused of his/her basic rights and hearing both sides.✓ The standards which a judicial officer should maintain in the questioning of witnesses and the accused have been summarised in the case of *S vs Mabuza 1991 (1) SACR 636 (O)*:✓

- The court should not conduct its questioning in such a manner that its impartiality can be questioned or doubted. ✓
- The court should not intimidate or upset the witness or the accused so that his/her answers are weakened or his/her credibility shaken.✓
- The court should control the trial in such a way that its impartiality, its open-mindedness, its fairness and reasonableness are apparent to all who have an interest in the trial.✓
- The court can and must recall witnesses to clear up uncertainties in the interest of justice.✓ (5)

[20]

OR

QUESTION 10

10.1 Reception is a process in which aspects of another legal system are voluntarily received,✓ added to and put into action in an existing legal system.✓ This can happen by deliberate decision or through a process of acceptance over a period. ✓

Elements of reception:

- Aspects are parts or portions of something; not the whole thing.✓
- Voluntarily refers to the way in which something is done without force or obligation, but out of own free will.✓
- Received is the process of having obtained and accepted something.✓
- Existing legal system refers to a current legal system that is in place in a territory at the time.✓

Reception refers thus to a situation where the people in a territory have their own legal system in place,✓ but allow parts of another legal system to become integrated in their system.✓

Other examples of reception are:

- The adoption of Roman law into the Germanic legal systems, including that of the Netherlands and particularly the Province of Holland.✓
- Canon law into the Germanic and English law in Europe and England.✓
- English law into Roman-Dutch law in South Africa.✓

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TRANSPLANTATION

Dutch settlers came to the southern tip of Africa in the 17th century. They wanted to establish a refreshment station for the Vereenigde OostIndische Compagnie (VOC) at the Cape of Good Hope as they called Cape Town and surroundings in those days.✓ They brought with them their own laws and legal system as practised in the Province of Holland in the Netherlands.✓ Their legal rules were known as Roman-Dutch law.✓ When an entire legal system is adopted from one community✓ and voluntarily implemented by another community without an existing legal system,✓ we it as transplantation.✓

Elements of transplantation:
- Entire: a word used to refer to something as a whole; a complete unit.✓
- Adopted: the process of having accepted and incorporated something.✓
- Implemented refers to a process whereby we have started to use or apply something.✓
- Voluntarily refers to a way in which something is done without force or obligation, but out of own free will.✓

Thus, the Dutch settlers copied the system of Holland✓ and started using it for their own purposes.✓ However, it was not the same case with indigenous people living in the same area.✓ (Any 15 × 1) (15)

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Other examples of reception are:
- The adoption of Roman law into the Germanic legal systems, including that of the Netherlands and particularly the Province of Holland.✓
- Canon law into the Germanic and English law in Europe and England.✓
- English law into Roman-Dutch law in South Africa.✓ (5)

[20]

TOTAL SECTION D: 20
GRAND TOTAL: 100

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