higher education & training

Department:
Higher Education and Training
REPUBLIC OF SOUTH AFRICA

MARKING GUIDELINE

NATIONAL CERTIFICATE (VOCATIONAL)

CRIMINAL LAW
NQF LEVEL 3

13 November 2024

This marking guideline consists of 9 pages.

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SECTION A

QUESTION 1

1.1 B✓
1.2 D✓
1.3 C✓
1.4 D✓
1.5 D✓
1.6 B✓
1.7 B✓
1.8 C✓
1.9 C✓
1.10 C✓

(10 × 1) **[10]**

QUESTION 2

2.1 True✓
2.2 False✓
2.3 False✓
2.4 True✓
2.5 False✓
2.6 True✓
2.7 True✓
2.8 True✓
2.9 True✓
2.10 True✓

(10 × 1) **[10]**

QUESTION 3

3.1 K
3.2 F
3.3 M
3.4 L
3.5 C
3.6 B
3.7 O
3.8 H
3.9 G
3.10 I

(10 × 1) **[10]**

TOTAL SECTION A: 30

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SECTION B

QUESTION 4

(Note to marker: ONE mark for each of the following concepts, allowing learner's own interpretation)

- Act must be indecent or offensive to others:
  Jane's act will offend the general moral sense of the community.✓
- In public:
  Jane's act took place on a public beach.✓
- Intention:
  Jane intentionally committed the indecent act.✓
- Unlawfulness:
  Jane had no grounds of justification for what she did.✓
- Likelihood of being seen:
  Jane performed the act in circumstances where it is likely to be seen by others.✓ **[5]**

QUESTION 5

5.1 (Note to marker: ONE mark for each of the following concepts, allowing learner's own interpretation)

- There must be a legal duty on the person to have acted.✓
- The omission must be voluntary.✓/It must have been possible for the person to have acted willingly✓and knowingly, yet he did not.✓ (2)

5.2 (Note to marker: ONE mark for any THREE of the following examples, allowing learner's own interpretation)

- When a person who holds a public office that places a legal duty on him or her to act, omits to do so, like police officials who fail to act when a crime is committed in their presence.✓
- When a person omits to act when legislation requires him or her to act, like when a person fails to report a motor vehicle accident to the police when the Road Traffic Act compels one to do so.✓
- When a person fails to ensure the safety of a potentially harmful situation, like a builder who fails to ensure that scaffolding is safe.✓
- When citizens omit to report high treason to the police.✓
- Failing to comply with a court order.✓
- Breach of contractual duty.✓
- Failing to control a dangerous object or animal. ✓
- Failing to protect a person from harm that is in a protective relationship, like refusing to feed children.✓
- Omitting to prevent harm resulting from a previous positive act, like not properly putting out a fire that was made, which later results in damage or death.✓ (3)

[5]

QUESTION 6

6.1 Lisa can offer private defence/self-defence✓ as a ground of justification. (1)

6.2 (Note to the marker: Any TWO of the following✓ for the element and✓ for the explanation, allowing learner's own interpretation)

Imminent threat:✓ There must be an immediate and real threat of harm or danger. In this case, the intruder breaking into Lisa's home and advancing towards her with a knife presents an imminent threat.✓

Proportional force:✓ The force used in self-defence must be proportional to the threat faced. Since the intruder was armed with a knife and Lisa had reason to believe her life was in danger, the use of a firearm to neutralise the threat could be considered proportional.✓

Genuine belief:✓ Lisa must genuinely believe that she had no other reasonable means to protect herself from the threat. Her fear for her life and her decision to use the firearm in response to the intruder's aggression contribute to this belief.✓
No provocation:✓ The person claiming self-defence should not have provoked the attack or engaged in any unlawful behaviour that led to the confrontation.✓
Immediate response:✓The use of force should be a direct response to the imminent threat and should cease once the threat is neutralised.✓

(4)

6.3 (Note to the marker: ONE mark for any TWO of the following, and ONE mark for a suitable example of each, allowing learner's own interpretation)

1. **Necessity**✓
   Example:
   A person exceeds the speed limit in order to get a critically ill child to the hospital. ✓

2. **Impossibility**✓
   Example:
   A severely physically disabled person without help failed to report to the police station as per court order.✓

3. **Consent**✓
   Example:
   A person gives consent to a tattoo artist for his face to be cut for the purpose of body-modification.✓

4. **Right of chastisement**✓
   Example:
   A parent uses moderate corporal punishment to discipline his child.

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5. **Acting on an order**✓
   Example:
   A police officer arrests a person on instruction of his superior.✓

6. **Official capacity**✓
   Example:
   A police officer locks up a suspect is a police cell after arrest.✓

7. **Spontaneous agency/presumed consent**✓
   Example:
   A person enters his neighbour's property without consent to fix a broken window when the neighbour is on holiday and cannot be reached.✓

8. **Trifling nature/paltriness**✓
   Example:
   Trivial charges like when a person cuts a few twigs and leaves off the separating hedge and the neighbour lays a charge of malicious damage to property.✓ (6)

[11]

QUESTION 7

7.1 Scenario 1: **Common-law perjury**✓
Scenario 2: **Defeating or obstructing the course of justice**✓ (2)

7.2 **Common-law perjury:**
(Note to marker: Any FOUR of the following, allowing the learner's own interpretation)

- Making verbal or written declaration/statement✓
- The declaration/statement must be false.✓
- Made under oath or equivalent to an oath✓
- During judicial proceedings✓
- False statement/declaration must be unlawful. / No valid grounds for justification✓
- False statement/declaration must have been made intentionally.✓

Defeating or obstructing the course of justice:
(Note to marker: Any FOUR of the following, allowing the learner's own interpretation)

- There must be some form of action/conduct.✓
- The conduct must have prevented justice from having been done or interfered with the legal process.✓
- The course of administration of justice / The usual way that the process of justice is supposed to proceed must have been affected.✓
- The conduct must have been unlawful. / No valid grounds for justification✓
- The conduct must have taken place intentionally.✓ (8)

[10]

QUESTION 8

8.1 Scenario 1: **Incitement**✓
Scenario 2: **Conspiracy**✓ (2)

8.2 (Note to marker: ONE mark✓ for any THREE of the following, allowing the learner's own interpretation)

Elements of incitement:

- **Intent to incite**: The person encouraging the illegal act must have the intention to provoke or prompt another person to commit the crime.✓
- **Communication:** There needs to be a communication, whether verbal, written, or symbolic, that conveys the encouragement or inducement to commit the illegal act.✓
- **The actual crime does not need to be committed.**✓

Elements of conspiracy:

- **More than one party:** A single party cannot conspire to commit an offence.
- **Communication:** The parties must have been in direct communication with each other.✓
- **Unlawfulness:** The parties must have unlawfully conspired to commit a crime.✓
- **Agreement:** Two or more individuals must come to an agreement to commit a criminal offence.✓
- **Intention:** The conspirators must have the intention to engage in the planned criminal act.✓
- **Knowledge:** The parties must have knowingly agreed to commit the crime and they must have known that their agreement would be an offence.✓
- **The actual crime does not need to be committed**.✓ (6)

[8]

TOTAL SECTION B: 39

SECTION C

QUESTION 9

9.1 Scenario 1: Theft✓
Scenario 2: Robbery✓ (2)

9.2 (Note to marker: Allocate marks as indicated, allowing the learner's own interpretation.)

Motivation

Theft:
Is committed when a person **unlawfully and intentionally**✓ appropriates **someone else's**✓ **moveable and corporeal/tangible property.**✓
In this scenario, Pule intentionally appropriated/took the backpack that belongs to Sipho.✓

Robbery:
Is committed when the perpetrator **removes property belonging to another/commits theft**✓ through the **unlawful** and **intentional**✓ **use of violence or threats of violence.**✓
In this scenario, Alex used threats of violence to remove the **property** of the victim from her possession.✓ (8)

[10]

QUESTION 10

10.1 **Offence:** Driving under the influence✓ (1)

10.2 **Motivation:**

10.2.1 **Sit in the driver's seat of a motor vehicle when the engine is running:**

(Note to marker: ONE mark✓ for the following, allowing learner's own interpretation)

Motor vehicles only✓
Irrelevant whether the motor vehicle cannot move for any reason ✓
Jess got into the driver seat of her motor vehicle voluntarily before she passed out.✓ (3)

10.2.2 **Public road:**

(Note to marker: ONE mark✓ for the following, allowing learner's own interpretation)

Any road, street or thoroughfare or edge, bridge or object forming part of it✓ which is commonly used by the public✓ or to which the public has a right of access✓

The parking bays on the side of the street are regarded as part of the road that is commonly used by the public and will be regarded as a public road.✓ (4)

10.2.3 **Proof that Jess must have been under the influence of liquor or drugs while driving:**

(Note to marker: Any TWO of the following, allowing learner's own interpretation)

- Jess drank eight alcoholic coolers and 10 shots of Jägermeister before she attempted to drive.✓
- Jess staggered out of the house.✓
- Jess passed out behind the steering wheel of her motor vehicle.✓ (2)

[10]

QUESTION 11

11.1 (Note to marker: ONE mark✓ for the following, allowing learner's own interpretation)

Perpetrators: Siswe and Joseph✓

Motivation:
They committed the crime.✓
Siswe and Joseph are co-perpetrators and are equally responsible as they had common purpose in that they acted together to commit the crime.✓ (3)

11.2 (Note to marker: ONE mark✓ for the following, allowing learner's own interpretation)

Joiner-in: Sarah✓

Motivation:
Sarah participated in the crime✓ but did not have common purpose✓ with Siswe and Joseph as she did not act with them to commit the crime. (3)

11.3 (Note to marker: ONE mark✓ for the following, allowing learner's own interpretation)

Accomplice: Mark✓

Motivation:
Mark helped the perpetrators to commit the crime but did not meet all the elements of the crime.✓ (2)

11.4 (Note to marker: ONE mark✓ for the following, allowing learner's own interpretation)

Accessory after the fact: Jenny✓

Motivation:
Jenny helped one of the perpetrators after✓ the crime was committed with the intention to prevent him from being caught.✓ (3)
[11]

TOTAL SECTION C: 31
GRAND TOTAL: 100

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