higher education & training

Department:
Higher Education and Training
REPUBLIC OF SOUTH AFRICA

MARKING GUIDELINE

NATIONAL CERTIFICATE (VOCATIONAL)

CRIMINAL LAW
NQF LEVEL 3

8 November 2022

This marking guideline consists of 7 pages.

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SECTION A

QUESTION 1

1.1 C
1.2 D
1.3 D
1.4 A
1.5 B

(5 × 1) **[5]**

QUESTION 2

2.1 True
2.2 False
2.3 False
2.4 True
2.5 True

(5 × 1) **[5]**

QUESTION 3

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

(10 × 1) **[10]**

QUESTION 4

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

keep/stored/have in custody/control/supervise the use or distribution (2)

4.2 public road (1)

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

production/manufacturing/distribution/provisioning/transhipment/
importation/cultivation/collection/administration/supply/sale/
exportation/prescription/transmission (2)
[5]

TOTAL SECTION A: 25

SECTION B

QUESTION 5

5.1 **Note to marker:**
Award marks as indicated, allowing learner's own interpretation.

- When courts apply the law, they must consider previous judgements in similar cases.
- It is not compulsory, but is advised to ensure consistency.
- Courts are bound by their own decisions.
- Lower courts are bound by the decisions of higher courts. (4)

5.2 **Note to marker:**
Award TWO marks for the definition of punishment, allowing learner's own interpretation.

Any TWO of the purposes of punishment, with an explanation, can be given.
Award ONE mark for the purpose and ONE mark for the explanation (maximum of FOUR marks), allowing learner's own interpretation.

Definition of punishment:
Punishment is a penalty imposed by the court on a person who has been found guilty of a crime.✓
It can take the form of imprisonment, a fine or community service.✓

Purposes of punishment:

- **Retribution**✓
  Explanation: To correct the wrong done by the offender to society.✓

- **Prevention of crime**✓
  Explanation: To prevent the perpetrator to commit further crimes in future (life imprisonment/forfeiture).✓

- **Deterrence**✓
  Explanation: To deter people from committing that crime in future.✓

- **Rehabilitation**✓
  Explanation: To reform offender to become a law-abiding citizen again.✓ (6)

5.3 **Note to marker:**
Any THREE of the following, allowing learner's own interpretation:

- All perpetrators must have the required **intention** in respect of the same crime.
- All perpetrators must **act together** in association with one another.
- All the perpetrators must have the **same purpose**.
- All the perpetrators must **be at the scene of the crime together**.
- All perpetrators must be **aware** of the crime. (3)

5.4 Yes (1)
[14]

QUESTION 6

6.1 **Note to marker:**
Award ONE mark for each requirement, allowing learner's own interpretation.

- Conduct must be performed by a human.✓
- Conduct must be voluntary/Person must control the conduct by his/her own will or intellect.✓ (2)

6.2 **Note to marker:**
Award ONE mark for any suitable example, allowing learner's own interpretation.

- **Example of an exception to rule 1:**
  X incites his vicious dog to kill Y. Although the act of killing was not performed by a human, X will still be liable.✓
- **Example of an exception to rule 2:**
  X uses absolute force to put a knife in Y's hand and forces his hand to stab Z in the chest. Although it was Y who stabbed Z, the act was not voluntary.✓ (2)

6.3 **Causation/Causal link** shows that the consequence/result✓ was caused by the conduct/act.✓ (2)

6.4 **Factual Causation:**
- Court test by asking: Would the consequence/result still occurred if the conduct/act did not happen?✓
- If 'Yes', there is no factual causation. If 'No', it means that the conduct/act did indeed cause the consequence/result and factual causation is present.✓

Legal Causation:

- It must be reasonable and fair to conclude that the conduct/act has resulted in the consequence/result.✓
- The causation must be adequate/sufficient.✓
- There must not have been any new intervening event/*novus actus interveniens* rule.✓

(5)

6.5 **Note to marker:**
Award ONE mark for the type of intention, ONE mark for the explanation and ONE mark for a suitable example, allowing learner's own interpretation.

Direct Intention✓
The person understands the nature of the unlawful act as well as the consequences/results of that act and still proceeds with the act.✓

Example:✓
X wants to kill Y. He gets a knife and stab Y in the heart and kills him. X knows that the act is unlawful, but still goes ahead.

Indirect Intention✓
The person wants to perform an act, and he knows that there will be another unlawful consequence/result, but still proceeds with the act.✓

Example:✓
X wants to shoot a bird that is sitting in front of his neighbour's window. He knows that the shot will also break the window, but he goes ahead, shoots the bird and breaks the window.

Eventual Intention/*Dolus Eventualis*✓
The person wants to perform an act and knows that there is a possibility that the act may have an unlawful consequence/result. He accepts the possibility and goes ahead with the act. The act then has the foreseen unlawful consequence/result.✓

Example:✓
X shoots his firearm through a locked door to chase away an intruder, knowing that he may injure or kill the person on the other side. The other person is killed. (9)

[20]

QUESTION 7

Note to marker
Award marks as indicated, allowing learner's own interpretation.

7.1 **Perpetrators:** Peter and Siphiwe✓
Substantiation:
They committed the crime.✓
Peter and Siphiwe are co-perpetrators and are equally responsible as they had common purpose in that they acted together to commit the crime.✓ (3)

7.2 **Joiner-in:** Xola✓
Substantiation:
Xola participated in the crime✓ but did not have common purpose✓ with Peter and Siphiwe as he did not act with them to commit the crime. (3)

7.3 **Accomplice:** Godfrey✓
Substantiation:
Godfrey helped the perpetrators to commit the crime✓ but does not meet all the elements of the crime himself.✓ (3)

7.4 **Accessory after the fact:** Costa✓
Substantiation:
Costa helped the perpetrators after✓ the crime was committed with the intention to prevent them from being caught.✓ (3)
[12]

TOTAL SECTION B: 46

SECTION C

QUESTION 8

Note to marker
Award marks as indicated, allowing learner's own interpretation.

8.1 **Crime:** Incitement✓
Incitement occurs when a person unlawfully communicates✓ with another✓ with the intention of influencing him/her to commit a crime.✓ (4)

8.2
- To enable law enforcement to prevent crime timeously/before it occurs.
- To discourage people to influence others to commit a crime.
- To prevent group criminality. (3)

[7]

QUESTION 9

Note to marker
Award marks as indicated, allowing learner's own interpretation.

9.1 **Crime:** Perjury (1)

9.2
- **Declaration:**✓
  Stan made an actual declaration during his testimony in the court case.✓
- **False statement:**✓
  Stan did not tell the truth✓ and he was fully aware✓ that he was lying to protect his affair.
- **Under oath:**✓
  Stan made the statement while he was testifying under oath✓ before a competent authority✓ (the magistrate, in this case).
- **Legal proceedings:**✓
  Stan made the statement during a legal proceeding while he appeared in a court of law.✓
- **Unlawfulness:**✓
  Stan made the false statement intentionally✓ and there were no valid grounds for justification. ✓

(10)
[11]

QUESTION 10

Note to marker
Award marks as indicated, allowing learner's own interpretation.

10.1 **Murder:**
A person commits murder when they **unlawfully**✓ and **intentionally**✓ **cause the death**✓ of another **human being**✓ by means of a **positive act**✓ or **an omission.** ✓ **Example**: A person stabs another with a knife.✓

Culpable Homicide:
A person commits culpable homicide when they **unlawfully**✓ and **negligently**✓ **cause the death**✓ of another **human being**✓ by means of a **positive act**✓ or **an omission. Example**: A person lost control of his vehicle and killed a pedestrian on the pavement.✓ (8)

10.2
- Would a reasonable person in the same circumstances have foreseen that the death may result from the conduct of the accused?
- If 'Yes', would the reasonable person have tried to prevent this from happening?
- If 'Yes', was the conduct of the accused different from what the reasonable person would have done?

(3)
[11]

TOTAL SECTION C: 29
GRAND TOTAL: 100

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