higher education & training

Department:
Higher Education and Training
REPUBLIC OF SOUTH AFRICA

# MARKING GUIDELINE

## NATIONAL CERTIFICATE (VOCATIONAL)

## CRIMINAL LAW
### NQF LEVEL 3

**17 November 2023**

**This marking guideline consists of 9 pages.**

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## SECTION A

### QUESTION 1

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

(10 × 1) **[10]**

### QUESTION 2

2.1 True
2.2 True
2.3 False
2.4 True
2.5 False

(5 × 1) **[5]**

### QUESTION 3

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

(10 × 1) **[10]**

### QUESTION 4

4.1 Co-perpetrator
4.2 Principal/Primary perpetrator
4.3 Indirect perpetrator
4.4 Attempt
4.5 Incitement

(5 × 1) **[5]**

**TOTAL SECTION A: 30**

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## SECTION B

## QUESTION 5

5.1 **NOTE TO MARKER: ONE mark ✓ for each of the following concepts, allowing the 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 gets committed in their presence.
- When a person omits to act when legislation requires him 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

**NOTE TO THE MARKER: One mark✓ for any FIVE of the following, and✓ for a suitable example of each, allowing learner's own interpretation**

1. Private defence/Self-defence.

   Example:
   A person shoots and kills another person who attacks him with a knife (the attack must be imminent or must have commenced).

2. Necessity

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

3. Impossibility

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

4. Consent

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

5. Right of chastisement

   Example:
   A parent uses moderate corporal punishment to discipline his child.

6. Acting on an order

   Example:
   A police officer arrests a person on instruction of his superior.

7. Official capacity

   Example:
   A police officer locks up a suspect in a police cell after arrest.

8. Spontaneous agency/presumed consent

   Example:
   A person enters his neighbour's property without consent to fix a broken window while the neighbour is on holiday and cannot be reached.

9. 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. **[10]**

**QUESTION 7**

Common-law perjury:
**NOTE TO MARKER: Any FOUR of the following + ONE mark for a relevant example, allowing the learner's own interpretation**

- Making a 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.✓

Example: Any relevant example of a person intentionally presenting a false statement under oath during judicial proceedings✓

Defeating or obstructing the course of justice:
**NOTE TO MARKER: Any FOUR of the following + ONE mark for a relevant example, 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 or 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 been intentional.✓

Example: Any relevant example of a person intentionally doing something to misdirect or prevent the normal judicial processes.✓ **[10]**

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## QUESTION 8

8.1 **NOTE TO MARKER: Any TWO of the following, allowing the learner's own interpretation**

Criminal law:
- Deals with the relationship between the state and its people.✓
- The state prescribes norms/rules/laws that are binding on the people.✓
- If a person does not adhere to these norms/rules/laws, the state can punish them.✓
- The state must prove that the person has broken the law. ✓
- Guilt must be proven beyond reasonable doubt.✓

Example:✓
**NOTE TO MARKER: Any similar example**
There is a law that says that a person may not be naked in public. A person found naked in public will be in contravention of this law and may be punished by the state.

**NOTE TO MARKER: Any TWO of the following, allowing the learner's own interpretation**

Civil law/Private law
- Deals with legal relationships between individuals. ✓
- The accuser must prove the case. ✓
- Guilt must be proven on a balance of probabilities. ✓

Example:✓
**NOTE TO MARKER: Any similar example**
When a person signs a legal contract (e.g., a rental contract) with another person and the other person does not adhere to the terms of the contract (e.g., does not pay the agreed monthly rent), the first person can take legal action against the second person. (6)

8.2 **NOTE TO MARKER: ONE mark✓ for any TWO of the following**
- Provide for timeous law enforcement to prevent crime.
- Discourage people to influence each other to commit crime.
- Prevent group criminality. (2)

**[8]**

**TOTAL SECTION B: 33**

## SECTION C

## QUESTION 9

9.1 **NOTE TO MARKER:✓ as indicated**

**No**, the publication named the crime incorrectly.✓ (1)

9.2 **NOTE TO MARKER:✓ as indicated**

Two crimes were committed, namely
housebreaking✓
and
theft✓ (2)

9.3 **NOTE TO MARKER:✓ as indicated, allowing the learner's own interpretation**

Substantiation:

Housebreaking:
Is committed when a person unlawfully and intentionally✓ breaks into✓ a building or structure and enters or penetrates it✓ with the intention to commit a crime.✓
In this scenario, the perpetrators entered the house through a window with the intention to steal the money.✓

Theft:
Is committed when a person unlawfully and intentionally✓ appropriates someone else's ✓ moveable and corporeal or tangible property.✓
In this scenario, money was taken that belonged to the owner of the house.✓

Robbery:
Is committed when the perpetrator removes property belonging to another or commits theft ✓ through the unlawful and intentional✓ use of violence or threats of violence.✓
In this scenario, no violence or threats of violence were used to remove the property of the victim from his possession. ✓ (12)

**[15]**

## QUESTION 10

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

10.2 **Substantiation:**

10.2.1 Sitting in the driver's seat of a motor vehicle while 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✓
- Justin got into the driver's seat of his motor vehicle voluntarily before he passed out.✓ (3)

10.2.2 Public road:
**NOTE TO MARKER: ONE mark ✓ for the following, allowing learner's own interpretation**
- Any road, street, 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 lot of the club is a thoroughfare commonly used by the public and will be regarded as a public road.✓ (4)

10.2.3 Proof that Justin must have been under the influence of liquor or drugs while driving:
**NOTE TO MARKER: ONE mark ✓ for the following, allowing learner's own interpretation**
- Justin drank eight beers and 12 shots before he attempted to drive.✓
- Justin passed out behind the steering wheel of his motor vehicle. (2)

**[10]**

## QUESTION 11

11.1 **NOTE TO MARKER: ONE mark ✓ for the following, allowing learner's own interpretation**

**Perpetrators:** Costa and Pete ✓

Substantiation:
- They committed the crime. ✓
- Costa and Pete 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:** Zola ✓

Substantiation:
- Zola participated in the crime ✓ but did not have common purpose ✓ with Costa and Pete as he 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:** Tumi ✓

Substantiation:
- Tumi helped the perpetrators to commit the crime✓ but did not meet all the elements of the crime herself.✓ (3)

11.4 **NOTE TO MARKER: One mark ✓ for the following, allowing the learner's own interpretation**

**Accessory after the fact:** Pule✓

Substantiation:
- Pule helped the perpetrators after✓ the crime had been committed with the intention to prevent them from being caught.✓ (3)

**[12]**

**TOTAL SECTION C: 37**
**GRAND TOTAL: 100**

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