higher education & training

Department:
Higher Education and Training
REPUBLIC OF SOUTH AFRICA

MARKING GUIDELINE

NATIONAL CERTIFICATE (VOCATIONAL)

LAW PROCEDURES AND EVIDENCE
NQF LEVEL 4

16 NOVEMBER 2023

This marking guideline consists of 7 pages.

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SECTION A

QUESTION 1

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

(10 × 1) **[10]**

QUESTION 2

2.1 *S v Roman and Others* 1994(1) SACR 436 (A)
2.2 20
2.3 Reprimand
2.4 309
2.5 High court
2.6 21
2.7 Criminal Procedure Act
2.8 Crime
2.9 Magistrate
2.10 Not be suspended

(10 × 1) **[10]**

QUESTION 3

3.1 H
3.2 E
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 The following SIX for ONE mark each. Candidate's own interpretation:

- Who commits or attempts to commit in their presence a Schedule 1 offence✓ – or whom they reasonably suspect of having committed a Schedule 1 offence.✓
- Whom they reasonably believe to have committed any offence and to be escaping from✓ and to be freshly pursued by a person whom such private person reasonably believes to have authority to arrest that person for the offence.✓
- Whom they are by law authorised to arrest without warrant in respect of any offence specified in that law.✓
- Whom they see engaged in a fight/affray.✓ (Any 6 × 1) (6)

4.2 The following SEVEN for ONE mark each. Candidate's own interpretation:

Criminal procedural powers are the powers conferred upon certain persons by the law which empower them to lawfully interfere with the rights of others✓ in order to bring criminals to justice and to have them tried.✓
Under normal circumstances these powers, for example to search, arrest and detain a person, would be inconsistent with the Constitution✓ as they have a severe impact on the right of the person to freedom and privacy.✓
The Bill of Rights does, however, contain a provision that some rights may be encroached/intruded upon✓ in certain specified and limited circumstances.✓
If an authorised person encroaches upon the rights of another in circumstances that do not fall under the specified and limited circumstances,✓ then whatever evidence is collected will be invalid. (Any 7 × 1) (7)

4.3 Any FIVE of the following for ONE mark each. Candidate's own interpretation:

Section 27 of the Criminal Procedure Act provides that a police official:

- may lawfully search any person;
- may lawfully search any premises;
- may enter any premises under Section 26;
- may use such force as may be reasonably necessary to overcome any resistance against such search or entry.
- The force may include the breaking of any door or window.
- This is however, subject to the condition that the police official must first demand, loudly enough to be heard,
- to be admitted to the premises and say why he/she wants to enter the premises.
- The condition is not applicable where the police official is on reasonable grounds of the opinion that the article may be destroyed
- or disposed of if the conditions are met. (Any 5 × 1) (5)

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4.4 Any ONE of the following with explanation for TWO marks each. Candidate's own interpretation:

- Freely and voluntarily✓ – This means that the accused must not have been threatened to make the confession.✓
- By a person in sound and sober senses – The mental capacity of the person must not be impaired or damaged by the consumption of alcohol.
- Without having been unduly influenced thereof – Influence need not come from a person in authority. (Any 1 × 2) (2)

[20]

TOTAL SECTION B: 20

SECTION C

QUESTION 5

5.1 5.1.1 The following THREE for ONE mark each. Candidate's own interpretation:

Regional courts have jurisdiction over family matters like divorces, maintenance,✓ custody matters and civil matters between R200 000,00 and R400 000,00.✓
A regional magistrate's court can impose fines up to R600 000 and give prison sentences up to 15 years.✓ (3)

5.1.2 The following THREE for ONE mark each. Candidate's own interpretation:

Direct evidence✓ – Direct evidence is direct proof of a fact,✓ such as testimony by a witness about what that witness personally saw or heard or did.✓ (3)

5.2 Any FOUR of the following for ONE mark each. Candidate's own interpretation:

Presumption of innocence means that a person is regarded as innocent until properly convicted by a court.✓
The right is contained in Section 35(3)(h) the Constitution which provides that an accused person has a right to a fair trial,✓ which includes the right to be presumed innocent,✓ to remain silent and not to testify during the proceedings.✓ In practice, it requires that the prosecution must prove the guilt of an accused beyond reasonable doubt. As a result of this presumption the onus to prove the guilt rests on the prosecution and the accused does not have to prove his or her innocence. (Any 4 × 1) (4)

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5.3 Any FIVE of the following for ONE mark each. Candidate's own interpretation:

- A court may make an order contemplated in Subsection (2) only if facilities therefore are readily available✓ or obtainable and if it appears to the court that to do so would;✓
- prevent unreasonable delay;✓
- save costs;✓
- be convenient;✓
- be in the interest of the security of the State or of public safely or in the interests of justice or the public; and
- prevent the likelihood that prejudice or harm might result to any person if he or she testifies or is present at such proceedings. (Any 5 × 1) (5)

[15]

QUESTION 6

6.1 Any FIVE of the following for ONE mark each. Candidate's own interpretation:

An arrested person must be brought to a police station✓ or the place mentioned in the warrant as soon as possible after the arrest.✓ The detained person must also, as soon as reasonably possible, be informed of their right to:✓

- remain silent;✓
- have a legal representative;✓ and
- apply for bail. (Any 5 × 1) (5)

6.2 The following FOUR for ONE mark each. Candidate's own interpretation:

The bringing of the two accused before the lower court is called first appearance.✓ At the first appearance, they were arrested for allegedly committing an offence. ✓ They will:

- be informed of the reason for their further detention.✓
- be charged and be entitled to apply to be released on bail.✓ (4)

6.3 Any SIX of the following for ONE mark each. Candidate's own interpretation:

- There is a likelihood that the accused, if released on bail, will endanger the safety of the public ✓
- or any particular person✓ or
- commit a Schedule 1 offence.✓
- There is a likelihood that the accused, if released on bail, will attempt to evade his or her trial.✓
- There is likelihood that the accused, if released on bail, will attempt to influence✓ or
- intimidate witnesses or conceal or destroy evidence.✓
- There is a likelihood that the accused, if released on bail, will undermine
- or jeopardize the objectives or the proper functioning of the criminal justice system, including the bail system; or
- In exceptional circumstances, there is a likelihood that the release will disturb public order or
- undermine the public peace and security. (Any 6 × 1) (6)

[15]

TOTAL SECTION C: 30

SECTION D

QUESTION 7

7.1 The following FOUR for ONE mark each. Candidate's own interpretation:

- The arrest was completed as contemplated in Section 39 of the Criminal Procedure Act.✓
- The arrest was for the commissioning of a crime.✓
- The arrest was lawful and in terms of a valid warrant✓ or if the arrest was without a warrant, that it was justified on one of the grounds referred to in Section 40 of the Criminal Procedure Act.✓ (4)

7.2 The following FOUR for ONE mark each. Candidate's own interpretation:

- The court will establish if the accused understands the charge or charges against him/her.✓
- The court will establish if the accused admitted to the charge.✓
- If the court is in doubt that the accused admitted to the charge, a plea of not guilty will be recorded✓
- and the trial will proceed.✓
- If the court is satisfied that the accused understands the charge against him or her and admitted to it;
- The court may find the accused guilty.
- The trial ends and the sentencing stage starts. (Any 4 × 1) (4)

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

- Previous conviction(s).✓
- Mitigating factors✓ – those factors which are favourable to the accused and which generally will lead to a lighter sentence. Evidence in this regard must be related to the accused and the particular crime. ✓
- Aggravating factors✓– those factors which may have an aggravating influence on the sentence and will generally lead to a heavier sentence.✓ They must be relevant and necessary and usually presented in convictions for serious crime.✓
- The probation officer's report✓– specifically in the case of juvenile offenders. (Any 5 × 1) (5)

7.4 The following SEVEN for ONE mark each. Candidate's own interpretation:

- The informer provided information in confidence and with the understanding that the informer's identity will not be made public.✓
- The disclosure of the identity of the informer will adversely affect the relationship between the police and the informer.✓
- It is in the interest of the community that persons be encouraged to provide information to the police about the type of criminal activity on which the informer provided information.✓
- The disclosure of the identity of the informer will not serve to prove the innocence of the person accused in the trial in which the police official testifies.✓
- The informer is not a police official.✓
- The identity of the informer is not yet publicly known.✓
- The communication of the information by the informer to the police official does not in itself constitute a crime (such as perjury).✓ (7 × 1) (7)

[20]

TOTAL SECTION D: 20
GRAND TOTAL: 100

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