higher education & training

Department:
Higher Education and Training
REPUBLIC OF SOUTH AFRICA

MARKING GUIDELINE

NATIONAL CERTIFICATE (VOCATIONAL)

LAW PROCEDURES AND EVIDENCE
NQF LEVEL 4

XX February 2020

This marking guideline consists of 6 pages.

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SECTION A

QUESTION 1

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

(10 × 1) **[10]**

QUESTION 2

2.1 Constitution
2.2 40
2.3 29
2.4 inspector
2.5 163
2.6 diversion programme
2.7 criminal procedure
2.8 substantive law
2.9 high court
2.10 151

(10 × 1) **[10]**

QUESTION 3

3.1 H
3.2 E
3.3 L
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

LEARNER'S OWN INTERPRETATION MUST BE TAKEN INTO ACCOUNT.

SECTION B

QUESTION 4

4.1
- Accusatory criminal procedure system
- Presumption of innocence
- Right to remain silent
- Privilege against self-incrimination (4x1) (4)

4.2
- Is evidence is necessary in the interest of justice✓
- The evidence cannot be obtained without undue delay, expense or inconvenience✓
- If the witness resides in the Republic, the commissioner will be a magistrate✓
- If the witness resides outside the country, any competent person may be appointed✓.
- It is accepted that a person who asks for a commission is at a disadvantage as less weight may be attached to such evidence✓ (Any 5 × 1) (5)

4.3 Prosecution is instituted the moment the summons is issued to the accused.✓ The summons is issued by a peace officer.✓ When this is paid the accused does not have to appear in court.✓ The accused has a choice as to whether a fine must be paid or not.✓ If the fine has been paid, it indicates that the accused prefers not to be present at the actual conviction and sentencing.✓ Section 57 does not prescribe the types of crimes for which payment for admission of guilt can be determined.✓ It is usually done for certain statutory offences, but not for common law offences.✓ It is common practice for minor offences such as traffic offences.✓ (Any 6 × 1) (6)

4.4
- Whom has the power to arrest✓
- Who is reasonable suspected of having committed or of having attempted to commit an offence✓
- Who, in the peace officer's opinion, may be able to give the name and address of a suspect but who instead, gives what the peace officer suspects is false information.✓ In this situation, the peace officer may arrest the person giving the false details without a warrant✓ and detain the person for a period not exceeding 12 hours✓ until such name or address has been verified.✓ (Any 5 × 1) (5)

[20]

TOTAL SECTION B: 20

SECTION C

QUESTION 5

5.1
- According to Section 50 of the Criminal Procedure Act John, Tebogo and Shaun must be brought to the police station✓ or the place mentioned in the warrant as soon as possible after the arrest.✓
- The detained persons must also, as soon as reasonably possible, be informed of their rights:
- Remain silent✓
- Have a legal representative✓ and
- Apply for bail✓
- If the detained persons are not released because no charge is to be brought against them✓ or that bail is not granted to them they must be brought before a lower court not later than 48 hours after the arrest.✓
- The bringing of an accused before the lower court is called first appearance.✓ At the first appearance they must, if arrested for allegedly committing an offence:
- Be informed of the reason for their further detention; and✓
- Be charged and be entitled to apply to be released on bail.✓ (Any 8 × 1) (8)

5.2
- Effective crime control
- Protection of individual rights
- Reliable fact-finding (3)

5.3 Primary evidence is used to refer to the best evidence available.✓ It implies that no better or stronger evidence is available.✓

Secondary evidence implies that better or stronger evidence does or did exist,✓ but cannot, for a reason acceptable to the court, be produced as evidence.✓ (2 + 2) (4)

[15]

QUESTION 6

6.1 6.1.1 Section 40 of the Criminal Procedure Act. (1)

6.1.2 Any person who:

Resist or wilfully hinders or obstructs a member in the exercise of their powers✓ or the performance of their duties✓ or functions✓ wilfully interferes✓ with such member or their uniform or equipment or any part thereof. (4)

6.2 Section 27 of the Criminal Procedure Act provides that a police official may use force as may be reasonably necessary to overcome any resistance against search or entry.✓ The force may include breaking of any door or window✓ subject to the condition that the police official must first loudly demand admission to the premises and say why he wants to enter the premises.✓ The condition of first demanding admission is not applicable where the police official is on reasonable grounds of opinion that the article may be destroyed or disposed of if conditions are met.✓ (4 × 1) (4)

6.3
- Articles which are concerned in or are on reasonable grounds believed to be concerned in the commission✓ or suspected commission of an offence, whether within the Republic or elsewhere. ✓
- Articles which may afford evidence of the commission ✓or suspected commission of an offence, whether within the Republic or elsewhere. ✓
- Articles which are intended to be used ✓or are on reasonable grounds believed to be intended to be used in the commission of an offence.✓ (6)

[15]

TOTAL SECTION C: 30

SECTION D

QUESTION 7

7.1
- Previous convictions✓
- Mitigating 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.✓
- Factors which may have an aggravating influence on 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.✓ (6)

7.2
- The accused must be familiar with the identity of witnesses and with the evidence which they bring against him✓
- If the witnesses have already made statements and agreed to testify✓
- The investigation against the accused was completed✓
- The relationship between the accused and the witnesses and the extent that they could be influenced or intimidated✓
- How effective and enforceable bail conditions prohibiting communication between the accused and witnesses are likely to be✓
- If the accused has any access to the evidentiary material which must be presented at the trial✓
- The ease which evidentiary material could be concealed or destroyed✓
- Any other factor which the court should be taking into account✓ (8)

7.3
- If the accused answers in the affirmative,✓ he shall, except where the court on good cause shown allows otherwise,✓ be called before any other witness for the defence✓
- If the accused answers in the negative✓ but decides, after other evidence has been given on behalf of the defence, to give evidence himself,✓ the court may draw such inference from the accused's conduct as may be reasonable in the circumstances.✓ (6)

[20]

TOTAL SECTION D: 20
GRAND TOTAL: 100

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