

UNIVERSITY EXAMINATIONS



May/ June 2024

CPR3701

Criminal Procedure

80 Marks

Duration: 4 Hours

First examiner: M T Mokoena

Second examiner: M Mkhabela

This paper consists of 11 pages.

INSTRUCTIONS FOR A TAKE-HOME EXAM ON MYEXAMS

PLEASE READ THE FOLLOWING INSTRUCTIONS CAREFULLY BEFORE ANSWERING THE EXAMINATION QUESTIONS.

1. The examination question paper counts **80 (eighty) marks**.
2. The question paper consists of **4 sections, each with its own questions**. Answer **ALL** of the questions.
3. The duration of the examination on the timetable is **4 (four) hours**.
4. In addition to the duration of the examination indicated on the timetable, you are given **30 minutes to FINALISE the uploading of your exam file**. Your exam file must be uploaded via the myExams platform on **18 May 2024 BEFORE 12h30 (South African Standard Time)**.
5. This is a **closed-book examination**. While the examination is in progress, you are not permitted to consult
 - 5.1 any of your study material or any other source to obtain answers; and
 - 5.2 another person, whether directly or indirectly, to assist you to answer any of the questions contained in this question paper.
6. This examination is proctored via the Invigilator App. You are required to **activate (or log in to) the Invigilator app** between **07h45 and 08h30** (South African Standard Time).

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	CPR3701
Date:	18 May 2024

INSTRUCTIONS ON THE DAY OF ASSESSMENT:

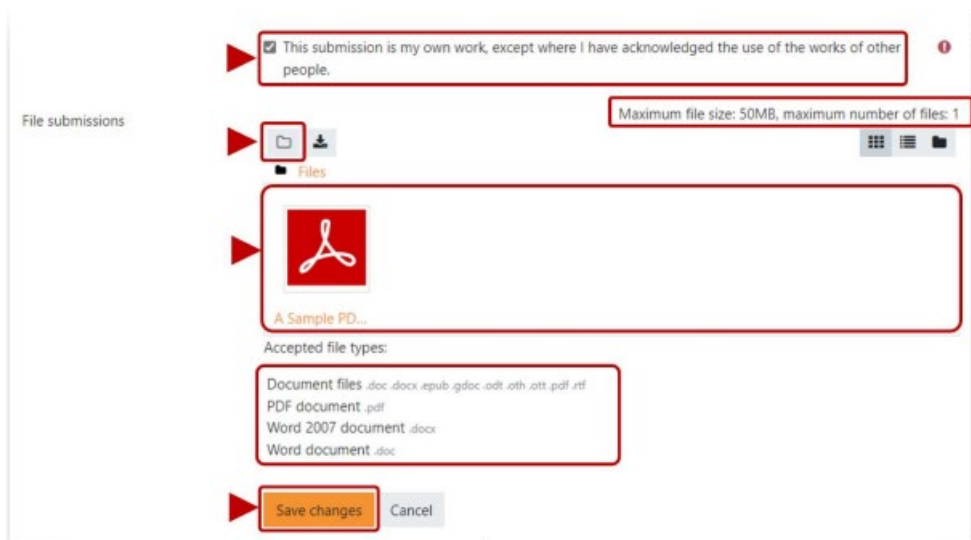
- Ensure you are connected to the internet in order to log into the Invigilator App and scan this QR code.
- If you encounter difficulty in scanning the QR code, you can alternatively enter the Exam Access Code below the QR code to start the invigilation.
- If you finish your assessment before the app timer has run out you need to press the 'Finish Assessment' button and follow instructions before you exit or minimise the app.
- Scan the QR code at the start time of the assessment, unless otherwise specified by your institution, note that you can only scan this QR code once.
- **The QR code is only scannable for a limited time and it should therefore be scanned as soon as possible after the assessment commencement time.**
- Keep the Invigilator App open on your smartphone for the full duration of the assessment. You are not allowed to minimise or leave the app during your assessment.
- You must adhere to the assessment time limit communicated to you by your institution. The timer displayed in the Invigilator may vary depending on the start time of invigilation.

YOUR EXAM QR CODE & EXAM ACCESS CODE**Exam Access Code: 9fdef388****FURTHER GUIDANCE**

- If you only have one device you may access your assessment in the application by pressing the 'Access Browser' button in the top right corner of your app.
- Once the QR code is scanned, ensure your media volume is turned up and place your smartphone next to you.
- The Invigilator App will notify you with a notification beep when you are required to action a photo request, which you should then perform as soon as possible.
- We recommend that you keep your smartphone on charge for the duration of the assessment.
- Ensure you are connected to the internet when commencing invigilation. You also need to be connected to the internet at the end of the assessment in order to upload the app data.
- If your assessment has multiple online sections, tests or attempts, you should NOT finish the invigilation until your entire assessment has been completed.
- Should you encounter any technical difficulty, please WhatsApp The Invigilator Helpdesk on +27 (0)73 505 8273

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- 6.1 **Please note:** If a student is found to have been outside the invigilator app for a total of 10 minutes during their examination session, they will be considered to have violated Unisa's examination rules and their marks will be withheld.
- 6.2 **You only have 10 minutes after the scheduled (timetabled) exam time to submit your script on the Invigilator App.**
- 6.3 You will have **48 hours from the date of their examination to upload their invigilator results from the Invigilator App.** Failure to do so will result in students deemed not to have utilised the invigilation or proctoring tools.
7. The uploading of your exam file on the myExams platform must be **finalised within 30 minutes of the scheduled (timetabled) end of the exam.**
- 7.1 When ready to submit, open the Take-Home (Assignment) assessment again and click on the Add Submission button.
- 7.2. Note the file requirements such as:
a. File size limit.
b. Number of files that can be submitted.
c. File formats allowed.
- 7.3. Check the acknowledgment checkbox and upload your answers document and then click on the Save changes button.



- 7.4. Review your submission information regarding the status and click on your submission file link to check if it's correct.

Submission status

Submission status	Submitted for grading
Grading status	Not marked
Due date	Saturday, 11 June 2022, 12:00 AM
Time remaining	37 days 8 hours
Last modified	Wednesday, 4 May 2022, 3:05 PM
File submissions	 A Sample PDF.pdf 4 May 2022, 3:05 PM
Submission comments	Comments (0)

- 7.5. If you need to resubmit a file, you can click on the Edit Submission button. **Do not click on the Remove submission button.** Note: You will need to delete any existing files by clicking on the file and then on delete.

Submission status

Submission status	Submitted for grading
Grading status	Not marked
Due date	Saturday, 11 June 2022, 12:00 AM
Time remaining	37 days 8 hours
Last modified	Wednesday, 4 May 2022, 3:05 PM
File submissions	 A Sample PDF.pdf 4 May 2022, 3:05 PM
Submission comments	Comments (0)



Edit submission

Remove submission

- 7.6 Use proper PDF conversion software to create the final file for upload. Free PDF conversion software is available on the Internet.

- 7.7 Add your student number and the module code in the file name. That will assist you to select the correct document to upload during submission.
- 7.8 You are advised to preview your submission (answer script) to ensure legibility and that the correct answer script file has been uploaded.
8. The cover page for your take-home exam must include your name, student number and the module code.
9. It is preferred that your take-home exam is typed. However, handwritten submissions will also be accepted. If the take-home exam is typed, the maximum length **3 - 4** pages (which includes the cover page, BUT NOT a bibliography and/ or footnotes). If the take-home exam is handwritten, the maximum length is **5 - 6** pages (which includes the cover page, BUT NOT a bibliography and/ or footnotes).
10. Whether your answers are typed or handwritten, your submission on the myExams platform on Moodle must be made in the form of **one PDF** document. Only the last file uploaded and submitted will be marked.
 - 10.1 The exam answer file that you submit must not be password protected or uploaded as a "read only" file.
 - 10.2 Your examination answer file will not be marked if:
 - 10.2.1 you send your examination answer file via email.
 - 10.2.2 you submit the incorrect examination answer file. A mark of 0% will be awarded.
 - 10.2.3 you submit your exam answer file on an unofficial examination.
 - 10.2.4 you submit your examination answer file in the incorrect file format.
 - 10.2.5 you submit a password-protected document.
 - 10.2.6 you submit your examination answer file late.
 - 10.2.7 you submit your answer file from a registered student account that is not your own.
 - 10.3 The mark awarded for an illegible examination answer file submission will be your final mark. You will not be allowed to resubmit after the scheduled closing date and time of the exam.
 - 10.4 Listening to audio (music) and utilising audio-to-text software has been strictly prohibited during your examination session, unless use of the software is related to a student's assistive device which has been declared. Listening to music, utilising such software and/or failing to declare the software is a transgression of Unisa's examination rules and the student's marks will be withheld.
11. If your answers are typed, ensure that the following requirements are adhered to. Items 11.3-11.6 applies to written assignments as well.

- 11.1 The text must be typed in Arial font, size 12 with single line spacing within the paragraph, and double line spacing after the paragraph.
- 11.2 The text must be justified.
- 11.3 All of the pages must be numbered in the right hand corner at the bottom of the page.
- 11.4 All margins must be 2.5cm, but the left margin must be 3cm.
- 11.5 South African English and not American English should be used. For example, the correct spelling is “Labour” and not “Labor”.
- 11.6 Do not use abbreviations or SMS language.
- 11.7 All quotes that are two lines long (or less), must form part of the main text, be written in italics, and be bracketed by quotation marks. Where a quotation is longer than two lines, it must be typed in a separate paragraph in italics in size 11 font and must be indented by 1 cm. No quotation marks are required when the quotations stand alone. Use quotations very sparingly. In this take-home exam, a maximum of 5% of the text may be quoted.
- 12. When answering the take-home exam questions, remember that the assessment is a test at a higher level where memory is tested as much as insight. You are, therefore, expected to prove that you can use information, rather than merely repeat it. In brief, what is being tested is factual knowledge, understanding and the correct application thereof, not memory skills. For this reason, you do not earn marks by merely detailing a list of all the information that you think might be relevant to a particular question. This gives no indication that you know what statutory or other provisions are applicable in a specific context. You are expected to identify precisely what information applies, and then explain why you think so.
- 12.1 Also, because you have the guide available when answering questions, we do not give marks for direct quotations from the guide. You are therefore assessed on your level of understanding of the legal principles by looking at how well you applied the principles to the questions.
- 12.2 **PLEASE DO NOT CUT AND PASTE ANSWERS FROM THE STUDY GUIDE (OR ANY OTHER SOURCE).**
- 13. The arguments that you make must be logical, well-structured and substantiated by all of the relevant legal principles. Use the time given wisely.

- 13.1 Ensure that you give reasons for each answer. Substantiate your answers by referring to ALL of the relevant authorities, e.g. sections from relevant legislation and/or court cases in the text or in your footnotes.
- 13.2 You are required to have read and summarised the prescribed cases yourself. The summaries in the Study Guide are not sufficient for this exam. When using case law to support your answer, please include complete references to the relevant cases in your footnotes. This means that you must not only include the name of the case but also the exact page and section and/or paragraph where the information can be found. The same applies to articles and books used.
- 13.3 A number of students lose marks because they do not approach problem-type questions correctly. When answering such questions, it is important to first clarify for yourself the area of work where the answer must be sought. Once you have done this, set out the relevant legal principles. Deal only with those principles that relate to the given facts. Next, apply these principles to the facts. This is where most of the students lose marks - they set out the law in some detail, but then do not illustrate how it applies to the factual situation they have been asked to solve. Finally, state your conclusion.
14. You must complete the online declaration of own work when submitting.
- 14.1 By ticking the Honesty Declaration, you confirm that you have read (i) the University's [Policy on Copyright Infringement and Plagiarism](#) and the [Student Disciplinary Code](#), which are both available on myUnisa: www.unisa.ac.za/unisarules, and (ii) the information relating to student values and plagiarism that is found at <https://www.unisa.ac.za/sites/myunisa/default/Study-@-Unisa/Student-values-and-rules>.
- 14.2 Students suspected of dishonest conduct during the examinations will be subjected to disciplinary processes. Students may not communicate with any other person or request assistance from any other person during their examinations. The use of Telegram, WhatsApp or any other instant messaging services with any other person (except when asking for technical assistance via official channels of the SCSC or the Invigilator WhatsApp line) are strictly prohibited. Plagiarism is a violation of academic integrity and students who plagiarise, copy from published works or use Artificial Intelligence Software (eg ChatGPT) or online sources (eg course material) will be in violation of the Policy on Academic Integrity and the Student Disciplinary Code and may be referred to a disciplinary hearing. Unisa has a zero tolerance for plagiarism and/or any other forms of academic dishonesty.
- 14.3 Unless a student is exempted because of disability or incarceration, students who have not utilised invigilation or proctoring tools will be deemed to have transgressed Unisa's examination rules and will have their marks withheld.

PLEASE NOTE:

If you experience challenges with the Invigilator app, please send a WhatsApp **message** to the technical helpdesk on 073 505 8273. Do not contact the lecturers.

For all other exam-related challenges, you may contact the SCSC on 080 000 1870 or e-mail Examenquiries@unisa.ac.za or refer to [Get-Help](#) for the list of additional contact numbers.

IMPORTANT NOTICE

All four (4) sections of this paper are compulsory and must be completed on one examination script.

NB: PLEASE NOTE THAT ALL THE QUESTIONS BELOW REFER TO THE SET OF FACTS SET OUT BELOW:

In 1988 Ed Crooke and two accomplices, Adam Swindler and Petty Thief allegedly committed the crimes of robbery with aggravating circumstances, in the *Republic of Zamunda*, where they were visitors. Ed is subsequently arrested by the police in the Republic of South Africa in 2010. Ed is 72 years old at the time of his arrest.

Section 1

- 1.1 *Substantive Law* governs the rules which determine whether or not particular conduct constitutes a crime. According to the facts set out above, which part of the facts constitutes substantive law? (1)
- 1.2 *Adjectival/ Procedural Law* determines the rules of procedure which must be followed in criminal proceedings. According to the facts set out above, which part of the scenario deals with Procedural/ Adjectival Law? (1)
- 1.3 The prosecutor, *Cruella Persecutor*, is of the view that the charge of *robbery with aggravating circumstances* may be tried in the district court. Briefly explain whether this is possible. If so, why, and if not, why not. (2)
- 1.4 In terms of section 18 of the *Criminal Procedural Act 51 of 1977*, the right to prosecute offences by the State lapses after a period of 20 years from the time when the offence was originally committed. Briefly explain whether Ed and his accomplices may be prosecuted in a South African court on the basis of the alleged offence. (2)
- 1.5 On a charge of robbery with aggravating circumstances in the subsequent trial, Ed and his accomplices plead not guilty, briefly explain whether the State may withdraw the case at this stage of the proceedings? Give reasons for your answer. (2)

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- 1.6 When the South African authorities contemplate the arrest of Ed and his accomplices, the arrest of the suspects must be based on a “reasonable ground” or belief that the arrest is, indeed, necessary. Provide two instances in which a police officer effecting the arrest of the suspects will, objectively, be deemed to have “reasonable grounds to effect arrest”.

(2)

[10]

Section 2

- 2.1 In South Africa, the prosecution applies for, and obtains warrants for the arrest of *Ed Crooke, Adam Swindler* and *Petty Thief*. In the meantime, the information relayed from Zamunda to the South African authorities is that Ed is a dangerous criminal, who should be apprehended with the utmost circumspection, care and planning, as he is known to “carry heavy artillery”. A large contingent of police officers led by Captain Trigga Happi, is sent to Ed’s house to arrest him. Captain Trigga Happi is a 43 year-old, physically strong and robust individual, who takes personal pride in his physical built and fitness. Meanwhile, Ed sees the police through the window, and makes a spirited attempt to escape through the back door of the house. He is spotted by one of the officers, who alerts Captain Trigga Happi. Captain Trigga Happi thereupon orders Ed to stop, however, Ed ignores the instruction and retorts, in the process, “I’m not going back to the slammer, not me!”. He continues to hobble away in the opposite direction. Captain Trigga Happi fires two warning shots in the air, whilst, once more, instructing Ed to stop. Ed continues to ignore the instruction, and gingerly makes his way into the street. Captain Trigga Happi fires a shot at Ed, hitting him on the left leg. Ed is arrested on the spot.

Critically evaluate whether Captain Trigga Happi’s actions comply with the *requirements for the use of force when effecting arrest*, in the context of section 49(2) of the Criminal Procedure Act 51 of 1977.

(21)

- 2.2 After the arrest, the investigating officer, *Warrant Officer Truth Seeker*, tries to extract information from Ed through interrogation. However, Ed bluntly refuses to answer any questions, intimating that “in terms of the Constitution, the police do not have a right” to question him.

Briefly discuss the rights and duties of Truth Seeker and Ed in this regard.

(6)

- 2.3 In terms of section 50(1)(c) of the Criminal Procedure Act 51 of 1977 “*an arrested person ... shall be brought before a lower court as soon as reasonably possible, but not later than 48 hours after the arrest*”. Due to the injury sustained during the arrest, Ed is only made to appear in court two weeks after the arrest.

Explain the lawfulness of bringing Ed to court outside 48 hours in his injured state.

(5)

[32]

Section 3

- 3.1 During the bail application the prosecutor, *Cruella Persecutor*, informs the court that the charge (robbery with aggravating circumstances) against the accused, should, for the purposes of the bail application, be classified under Schedule 6 of the Criminal Procedure Act 51 of 1977. The court agrees with the assertion. Briefly discuss,

- 3.1.1 the *standard of proof* which must be discharged in bail applications in general; and (1)
- 3.1.2 the *onus* which is required to be discharged in respect of Schedule 6 offences, including the *party* which is required to discharge such onus. (2)

- 3.2 Section 84 (1) of the Criminal Procedure Act 51 of 1977, and section 35(3)(1)(a) of the Constitution of the Republic of South Africa, 1996, require the indictment or charge sheet to be compiled in sufficient detail for the accused to be able to answer it.

In the subsequent trial the accused, Ed, Adam and Petty are arraigned on the charges committed in Zamunda. One of the charges in the charge sheet reads as follows:

“The accused Ed Crooke, Adam Swindler and Petty Thief are charged with the crime of robbery with aggravating circumstances of an amount of \$1 million, which took place in Pretoria in 1988.”

- 3.2.1 Briefly explain whether a South African court has jurisdiction over the accused on the charge set out in the charge sheet since the crime was allegedly committed in Zamunda, and not in the Republic. If so, why/ and if not, why not? (4)
- 3.2.2 Evaluate whether the charge as set out in the charge sheet complies with the requirements of section 84(1) of the Criminal Procedure Act 51 of 1977. (15)
- 3.3 At the conclusion of the State’s case, the court calls upon the accused, *Ed Crooke, Adam Swindler and Petty Thief* to present their own case. The accused have, however, already concluded, on the basis of the evidence already presented by the prosecution that “the State has a weak case” against them. They decide not to answer the State’s case, but to close their case without testifying, or leading any defence witnesses.

Critically evaluate the efficacy (workability) or otherwise of the accused’s strategy in the context of prevailing South African law. (6)

[28]

Section 4

4.1 At the close of the defence case, the court comes to the realization that the elements of the offence established through the evidence do not support a conviction of *robbery with aggravating circumstances*, but notes instead, that the evidence, in fact, points to a related crime(s) other than that which is cited in the charge sheet. Briefly explain,

4.1.1 The concept of competent verdicts in general; and (2)

4.1.2 The applicable competent verdict(s) in respect of the charge of robbery. (4)

4.2 Ed (who is 72 years old) is subsequently convicted on a charge of *theft*. The prosecutor, Cruella Persecutor, presents a record of Ed's previous convictions for two crimes of theft committed in the past few years.

(NB: You can assume for the purposes of the facts above, that the previous convictions in question are correctly presented, in respect of time frames which apply to the relevance and applicability of previous convictions)

Briefly explain the applicability of *mitigating* and *aggravating* factors, in light of the facts set out above. (4)

[10]

[TOTAL: 80]