

UNIVERSITY EXAMINATIONS



October/November 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 **15 October 2024 BEFORE 12:30 (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).



- 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.

File submissions

☒ This submission is my own work, except where I have acknowledged the use of the works of other people.

Maximum file size: 50MB, maximum number of files: 1

Files

A Sample PDF...

Accepted file types:

- Document files .doc, .docx, .epub, .gdoc, .odt, .ott, .pdf, .rtf
- PDF document .pdf
- Word 2007 document .docx
- Word document .doc

Save changes Cancel

- 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
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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 is **3 - 4** pages (which includes the cover page, BUT NOT a bibliography and/ or footnotes). If the takehome 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.

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- 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

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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 Vermeulen, a town in the Northern Cape, South Africa, two rival gangs, the *Hard Dyings* and the *Live to Die* are involved in a long-standing territorial struggle. One afternoon, a group from the *Live to Die* gang attacks another from the *Hard Dyings*, at Strasso Street, Vermeulen. The members of the *Live to Die* gang attack those of the *Hard Dyings* with an assortment of weapons. A, a member of the *Hard Dyings*, is subsequently found dead by the police at the scene of the altercation.

Section 1

- 1.1 C, an alleged member of the *Live to Die* gang, is arrested in Johannesburg, Gauteng, for the alleged murder of A during the gang-related altercation. Upon the police charging C, the prosecutor, P, is of the view that the case should be heard in the district court. Briefly discuss the accuracy or otherwise of the prosecutor's view in this regard.

(2)

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- 1.2 In any instance where the DPP declines to prosecute for an alleged offence, the Criminal Procedure Act 51 of 1977 (hereinafter, “the CPA”) permits aggrieved individuals to institute and conduct a prosecution in respect of the alleged offence in any competent court. H, A’s brother, is not satisfied with the prosecutor’s decision not to proceed with the case against C. Briefly discuss whether H has *locus standi* to proceed with a private prosecution against C. (2)
- 1.3 In terms of section 35(1)(d)(i) of the Constitution of the Republic of South Africa, 1996 (hereinafter, “the Constitution”), and section 50 of the CPA, an arrested person must be brought to court within 48 hours of arrest. C was arrested by the police on Tuesday morning at around 11h00. The investigating officer, Sergeant Nosey Kekana, still needs to conduct further investigations. As a result, he makes C to appear in court on Thursday of the same week, at 15h00. Briefly explain whether Sergeant Kekana acted within the ambit of the law set out above. (2)
- 1.4 In terms of South African law, the courts of the Republic may only exercise jurisdiction in respect of offences committed on South African territory. The investigating officer, Sergeant Nosey Kekana, receives information from the authorities in Botswana that C is being sought in Botswana in connection with the alleged robbery of the *Botswana People’s Bank (BPB)*. P, the prosecutor, is not keen on extraditing C to Botswana. Briefly discuss whether the charges (relating to the offences committed in Botswana) may be tried in South Africa, or in Botswana. (2)
- 1.5 During the subsequent proceedings, the matter against C is “held over” several times for further investigations, *before C pleads to the charges*. Briefly explain whether the holding over of the proceedings constitute *adjournments* or *postponements*, and the reason behind your answer. (2)

[10]

Section 2

- 2.1 Section 39 of the CPA deals with the “pillars” that underpin lawful arrests. Sergeants Skop Madonoro and Piet Pompies pursue suspects running in a direction away from the altercation between the *Live to Die* and *Hard Dyings* gangs. They accost D, a young man, running away in the opposite direction of the gang fight. Sergeant Madonoro orders D to stop, and he (D) obliges. Sergeant Pompies requests D to “come with us to the police station”. D thereupon inquires after the reason for accompanying the two police officers. Sergeant Madonoro responds, upon D’s inquiry to D “not to ask nonsense”, and that D “knows exactly what he and his friends were up to earlier at Strasso Street”. He also tells D that he will “donner” him if D “does not want to co-operate”. D sees an opportunity and runs away. Critically evaluate whether the actions of the two police officers, and those of D comply with

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South African legal prescripts.

(15)

- 2.2 “A person can ... be said to have ‘reasonable grounds’ to believe or suspect something if he or she actually believes or suspects it, if this belief or suspicion is based on facts from which he or she has drawn an inference, and if any reasonable person would, in view of those facts, have drawn the same inference”. C is accosted by the police whilst walking in a direction opposite to the altercation at Strasso Street. C is adorned with a skull and bones tattoo on his shoulder, which is a known mark of the *Live to Die Gang*. He is also found in possession of a concealed ‘Rambo’ knife. Critically expatiate, in light of the facts provided above, whether, in your view, C’s arrest may be said to be based on “reasonable grounds”. (7)

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Section 3

- 3.1 “In terms of section 205 of the CPA, a Director of Public Prosecutions or prosecutor may, upon request to a presiding officer, require the attendance of any person who may provide relevant and material information regarding the commission of an alleged offence before him or her or any other judge, regional court magistrate or magistrate, for examination”. Sergeant Nosey Kekana learns that K was a witness to the altercation between the two gangs, and can provide material information in resolving the case. Sergeant Kekana visits K’s home to ask questions to K. K informs Sergeant Kekana that he “knows what he knows”, but that he is “no snitch” and that he “does not talk to the police”. Critically evaluate, in the context of section 189, the actions which Sergeant Kekana may pursue in light of K’s attitude. **(NB: please note that your answer should not contain the process outlined in section 205 of the CPA).** (4)
- 3.2 During the ensuing trial in which C, D and N are the accused, J, a journalist for the *Morning Newspaper*, wishes to attend the court proceedings. The accused, C and D are adults, whereas N is 16 years old. J is of the view that “exceptional circumstances” exist which justify her attendance and reporting of the proceedings and also revealing N’s identity. Critically discuss whether J’s assertions, including the *test* for admittance by the court, are indeed, correct. (8)
- 3.3 During C’s bail application, the prosecutor, P and C’s attorney, G, are at odds regarding the Schedule under which the alleged offence of *murder*, as set out in the facts above, is classified, in terms of the CPA. P insists that the offence should be classified under Schedule 6, whereas G contends that the matter, in fact, falls under Schedule 1 of the CPA. Briefly:

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- 3.3.1 state the Schedule under which the alleged offence should be classified, in your view; and (1)
- 3.3.2 elaborate on the reason for your answer in 3.3.1, above; and (3)
- 3.3.3 state the requisite *burden* (i.e. which party bears the *burden* of proof) and the *standard* of proof in respect of the Schedule to which you referred in 3.3.1, above (3)
- 3.4 During the ensuing trial the prosecutor, P, conducts *examination-in-chief* on one of the state witnesses, Q. Critically discuss whether,
- 3.4.1 P may conduct *cross-examination* on Q. If so, why, and if not, why not. (3)
- 3.4.2 G, the accused's attorney may conduct *re-examination* on Q. If so, why, and if not, why not. (3)

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Section 4

4. 1 V is a member of the *Live to Die* gang who was present during the altercation on the day in question. After his arrest, he informs the investigating officer, Sergeant Kekana, that he fears the "whole affair could be heaped on me to the exclusion of everyone else". V thereupon agrees to testify against the other gang members in exchange for immunity from prosecution. However, V is wary of incriminating himself. Critically discuss the *process* which may be followed which ensures that V testifies without implicating himself, and the implications thereof. (10)
- 4.2 In terms of section 51 of the Criminal Law Amendment Act 105 of 1997 (the so-called "Minimum Sentences Act"), a minimum sentence of 25 years imprisonment may be imposed for the commission of the crime of *murder*, unless the court is satisfied that there are "exceptional circumstances" justifying a lesser sentence than that prescribed for the particular crime. N (who was 15 years during the commission of the offence but has since turned 16) is convicted of murder and sentenced to 25 years imprisonment. Critically evaluate:
- 4.2.1 the correctness or otherwise, of the *standard* required for the imposition of a minimum sentence, as set out in section 51 of the Criminal Law Amendment Act 105 of 1997; (4)
- 4.2.2 the appropriateness or otherwise, of the sentence imposed on N; (5)
- 4.2.3 the mitigating factors which should have been considered before N's sentencing. (Please note that your answer in this regard must only concentrate on the relevant aspects and *why* they should be considered as such). (4)

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