

UNIVERSITY EXAMINATIONS



May/June 2025

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** 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 **30 May 2025 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).



	CPR3701
Date:	30 May 2025

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 Invigilator App may request you to take photos of your examination script after the assessment. Please follow the instructions on the app and take note that your academic institution may still require you to submit your script on the relevant portal.
- **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



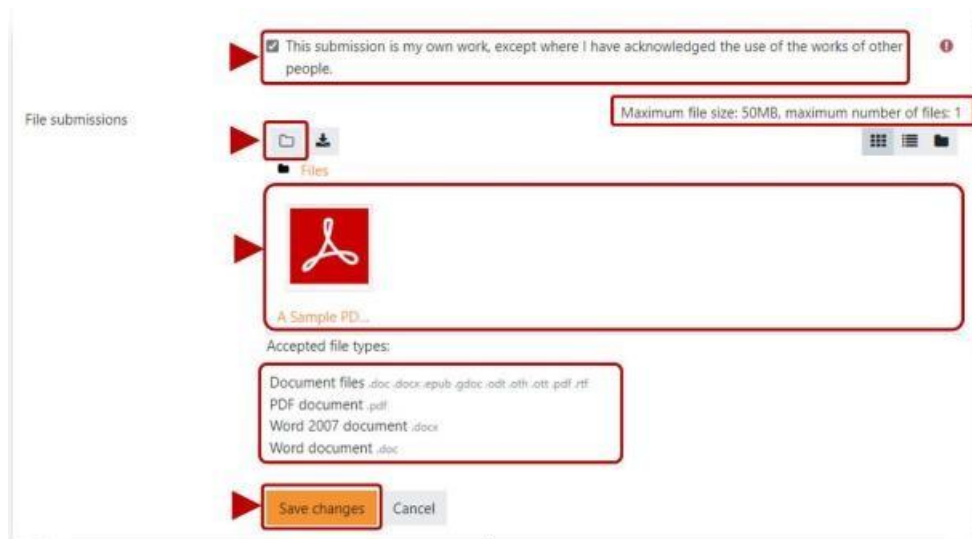
Exam Access Code: 3e0e536f

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:
- File size limit.
 - Number of files that can be submitted.
 - 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
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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 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.

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- 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:

P, the daughter of K, disappears from the neighbourhood where they stay. Police investigations uncover a few clues, which lead to the conclusion that K “sold P to some people for money”. The investigations further reveal that K was assisted, in the commission of the crime, by her friend L and boyfriend B. According to the objective facts, none of the accused were actually seen taking the child into a motor vehicle. However, the child was never seen again. The investigating officer relies largely on circumstantial facts which point to the notion that the accused had something to do with the disappearance. Essentially, the only eyewitnesses to the taking of P are K, L and B.

Section 1

- 1.1 The Criminal Procedure Act 51, 1977 (CPA) contains a Schedule (list) of offences in respect of which different crimes are classified. Name the main charge (one only) to be preferred against K, L and B, and the Schedule under which the crime is classified in terms of the CPA. (2)
- 1.2 Name any court (according to the *hierarchy of courts*, not the location) which may enjoy trial jurisdiction in respect of the charge set out in 1.1 above, and the reason why the case may be heard in said jurisdiction. (2)
- 1.3 After K, L and B’s first appearance, the court sets down the case to a different date for further investigations. Briefly explain whether the further ‘setting down’ of the case to a different date constitutes a *postponement* or an *adjournment* (and why you say so). (2)

PLEASE NOTE: You will not be awarded marks for describing the difference between *postponement* and *adjournment* or providing a definition of either.

- 1.4 During the subsequent trial, the magistrate, M, decides that she is, in fact, *dominus litis*, and therefore has the duty to prepare the charges against the accused. Briefly discuss the accuracy or otherwise of M’s assertion. (2)
- 1.5 It also transpires during further investigations that L was not actually responsible for taking P but was only responsible for hiding P at a “safehouse” after the initial taking. Briefly explain whether L may be designated as perpetrator or accomplice, and why you say so. (2)

NB: you will not be awarded marks for merely giving the definitions or differences between an *accomplice* and a *perpetrator*. **[10]**

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Section 2

- 2.1 L subsequently turns state witness against K and B, in return for which the case is withdrawn against her. However, A, P's biological father and legal guardian, is unhappy about this outcome (to withdraw the case against L), particularly because P has not yet been found. He thereupon decides to institute a private prosecution against L. Briefly evaluate whether A has *locus standi* to institute private prosecution against L in terms of section 7 of the Criminal Procedure Act 51, 1977. (4)

- 2.2 Upon A's application to institute private prosecution, he is informed by the Director of Public Prosecutions (DPP) to "rather institute civil action ... and that proceeding with a private prosecution will only harm your chances of success (in civil proceedings) if the private prosecution falls through".

Critically analyse the DPP's position with reference to South African jurisprudence. (4)

- 2.3 During the subsequent trial, L refuses, when called upon to do so by the court, to take the oath, and also to testify.

Name and briefly describe the designation of L as a witness in South African law, and why she is regarded as such. (3)

- 2.4 *"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."*

Critically analyse whether, in the absence of any other evidence (as set out in the facts above), an objective finding might, in your view, be arrived at, justifying the notion that there are "reasonable grounds" to arrest K, L and B for the commission of the crime set out in 1.1, above. (10)

- 2.5 The arrest of K, L and B was effected by members of the community who, after seeking explanations from them regarding the disappearance of P (the child), were not satisfied with the seemingly "unsatisfactory and cheeky responses from the suspects". Briefly explain the legality of the action of the community members in arresting K, L and B. (4)

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Section 3

K and B decide to apply for bail, based on the classification of the offence to be preferred against the accused as set out in 1.1, above,

3.1 P, the prosecutor, argues that the onus of proof to justify release lies with the accused; (2)

3.2 P, the prosecutor, also argues that the standard of proof in respect of the offence set out in 1.1 is *proof beyond any reasonable doubt*. (2)

Briefly evaluate the accuracy or inaccuracy of both the prosecutor's assertions.

3.3 During the bail application, M, the magistrate, poses the following questions to the accused, namely,

- (i) "Have you ever been previously convicted of any criminal offence?;
- (ii) Do you have any outstanding cases in respect of which you are attending court as we speak?"

Both accused respond through their attorney, L, in the negative to both questions. However, N, the investigating officer, reveals, during his testimony in the bail application that B was, in fact, convicted of *assault with intent to do grievous bodily harm* five years earlier, and given a wholly suspended 5-year sentence. K, on the other hand, has a pending case at a different court for the unlawful possession of mandrax tablets. She was released on warning in respect of said charge, and the case was set down to a different date for further investigations. L (the accused's attorney) argues, however, that: "*It is a long-established principle of the Law of Evidence that the court should not be exposed to the accused's previous convictions or outstanding cases, to avoid assuming pre-conceived notions against the accused, which may result in bias.*"

Critically discuss L's assertions against prevailing bail legislation. (10)

3.4 In terms of section 84(1) of the Criminal Procedure Act 51, 1977, an indictment or charge sheet must explain the charges against the accused in clear and unambiguous terms. Equally, section 35(3)(a) of the Constitution of the Republic of South Africa, 1996, advocates the right to a fair trial, which includes the right "to be informed of the charge with sufficient detail to answer it".

At the start of the trial, the following charge is put to the accused:

"The accused are charged with the offence of taking the victim P."

Critically evaluate whether the content of the charge sheet complies with the legislative and Constitutional imperatives set out above. (10)

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Section 4

- 4.1 During the subsequent trial, B refuses to take the prescribed oath. He informs the court that he essentially regards himself “non-religious”, and does not, therefore, regard the oath as binding on his conscience. Briefly state the applicable rule of procedure when it comes to the taking of the oath, and also explain the procedure which is supposed to follow B’s refusal to take the prescribed oath. (6)
- 4.2 At the conclusion of the prosecution’s case, the accused are called upon to testify, after the denial of their application for a discharge in terms of section 174 of the Criminal Procedure Act 51, 1977. The accused elect not to testify in their own defence, or to call witnesses. L (the accused’s attorney) argues that “the State does not have a case against the accused upon which to answer”.

PLEASE NOTE: the question does not require a discussion of section 174 of the Criminal Procedure Act 51, 1977.

- 4.2.1 Critically evaluate the legitimacy of the accused’s posture (through their attorney) and the advantages / consequences that may follow from such defence; and (7)
- 4.2.2 Write your own conclusion, based on the facts set out above, and refer to the advantages / consequences for the accused, in light of the merits of this case if they decline the right to present evidence. (3)

[16]

[TOTAL: 80]