

NATIONAL BAR EXAMINATION

Criminal Procedure and the Law of Evidence Relating to Criminal Cases Curriculum

NOTE: Where sections, chapters or Acts are referred to, they are given merely as guidance for candidates. The curriculum is not limited to these sections of the Criminal Procedure Act, 51 of 1977 (“the CPA”) only. Candidates may be examined on the whole of the CPA. They must have due regard where applicable to the common law, the practice in the various courts and in the division where the candidate wishes to practice, and decided cases. It will assist to consider the commentary to the prescribed sections in the CPA in the following literature:

Kriegler and Kruger, *Hiemstra’s Criminal Procedure*, LexisNexis loose leaf latest service issue

Etienne du Toit *et al*, *Commentary on the Criminal Procedure Act*, by Juta loose leaf latest service issue

Zeffert & Paizes, *The South African Law of Evidence*, 2nd Ed (2009)

C R Snyman, *Criminal Law*, 5th Edition LexisNexis 2008

Schmidt and Rademeyer, *Law of Evidence*, LexisNexis loose leaf latest service issue

Schwikkard and Van der Merwe, *Principles of Evidence*, by Juta, 3rd Edition 2008

A. CRIMINAL PROCEDURE

1. Bail

Chapters 9 and 10 of the CPA.

Section 35(1)(f) of the Constitution, Act 108 of 1996.

S v Dlamini; S v Dladla and others; S v Joubert; S v Schietekat 1999 (4) SA 623 (CC) *passim*

S v Mabena and another 2007 (1) SACR 428 (SA) para 3—7

S v Viljoen 2002 (2) SACR 550 (SCA) para 10—15

S v Botha and another 2002 (1) SACR 222 (SCA) para 2—21

S v Bruintjies 2003 (2) SACR 575 (SCA) paras 4, 5 and 8—10

2. **The charge**

Sections 80 – 104 of the CPA

S v Wannenburg 2007 (1) SACR 27 (C) at 32J—34C

S v Whitehead and others 2008 (1) SACR 431 (SCA) para 10

3. **The plea**

Sections 105-122 of the CPA

Inclusive of how pleas should be drafted (form and content) and plea and sentence agreements - section 105A

S v Esterhuizen and others 2005 (1) SACR 490 (T)

4. **Conduct of proceedings**

Sections 144—146 and Chapter 22 of the CPA

5. **Discharge**

Section 174 of the CPA

See: Commentary on the Criminal Procedure Act by Du Toit *et al*

S v Lubaxa 2001 (2) SACR 703 (SCA) paras 8—23

6. **Competent verdicts**

Chapter 26 of the CPA

7. **Sentencing**

Chapter 28 and 29 of the CPA

Sections 51-53 of the Criminal Law Amendment Act, 105 of 1997

S v Malgas 2001 (1) SAR 469 (SCA)

S v Karolia 2006 (2) SACR 75 (SCA)

S v Mthimkulu 2013 (2) SACR 89 (SCA)

8. **Appeals and reviews**

Chapters 30 and 31 of the CPA (sections 302-324)

(i) the difference between appeals and reviews

(ii) powers of the court on appeal and review

R v Dhlumayo 1948 (2) SA 677 (A) at 705-706

S v Rabie 1975 (4) SA 855 (A)

S v Van Aswegen 2001 (2) SACR 97 (SCA)

S v S 1999 (1) SACR 608 (W)

S v Bogaards 2013 (1) SACR 1 (CC)

S v Ross 2013 (1) SACR 77 (WCC)

B. EVIDENCE

1. Confirmation or cautionary rules in regard to:

- (i) Single witnesses:
Section 208 of the CPA;
- (ii) Evidence of identification:
S v Mthetwa 1972 (3) SA 766 (A) at 768A—C
- (iii) Complaints in matters of a sexual nature:
S v Jackson 1998 (1) SACR 470 (SCA);
- (iv) Children;
- (v) Confessions:
Section 209 of the CPA;
- (vi) Accomplices;
- (vii) Traps

See, generally, the commentary on the cautionary rule dealt with in Commentary on the Criminal Procedure Act by Du Toit *et al* under Section 208 of the CPA

2. Presumptions

- (i) Onus (on criminal cases in respect of defences pleaded);
- (ii) Particular presumptions
 - (a) Drugs and Drug Trafficking Act, 140 of 1992;
 - (b) The CPA;
 - (c) Sections 65(3) and (4) of the National Road Traffic Act, 93 of 1996;
- (iii) The effect of Section 35 read with Section 36 of the Constitution, 108 of 1996, and statutory presumptions.

S v Zuma 1995 (2) SA 642 (CC);

S v Bhulwana; S v Gwadiso 1995 (2) SACR 748 (CC); 1996 (1) SA 388 (C);

S v Mbatha; S v Prinsloo 1996 (1) SACR 371 (CC); 1996 (2) SA 464 (CC);
S v Coetzee and others 1997 (3) SA 527 (CC).

3. **Admissions and confessions**

- (i) Sections 217—220 of the CPA;
- (ii) The effect of Section 35 read with Section 36 of the Constitution on admissions and confessions.

S v Mekeba and another 2003 (2) SACR 128 (SCA);

S v Ralukukwe 2006 (SACR) 394 (SCA);

S v Yende 1987 (3) SA 367 (A);

S v Litako 2014 (2) SACR 431 (SCA);

S v Mhlongo; S v Nkosi 2015 (2) SACR 323 (CC).

4. **Documentary evidence**

Section 212, particularly ss 212(1), (4), (8), (9), (11) and (12); and Sections 213, 221, 233, 234 and 236 of the CPA.

5. **Mental capacity of accused persons**

Chapter 13 of the CPA;

Criminal Law Amendment Act, 1 of 1988.

S v Eadie 2002 (1) SACR 663 (SCA) paras 2, 3 & 25—70

S v Cunningham 1996 (1) SACR 631 (A) at 635G—636C

S v Scholtz 2006 (1) SACR 442 (E)

De Vos NO & others v Minister of Justice and Constitutional Development 2015 (2) SACR 217 (CC).

6. **Search and seizures**

Sections 20-22 of the CPA

Mandela and others v Minister of Safety and Security and another 1995 (2) SACR 397 (W) at 397C—399J; 404G—405C

Minister of Safety and Security & others v Mohamed & another 2012 (1) SACR 321 (SCA) paras 20—24, 28, 29

Sello v Grobler and others 2011 (1) SACR 310 (SCA)

Powell NO & others v Van der Merwe NO & others 2005 (1) SACR 317 (SCA) para 59;

NDPP v Zuma 2008 (1) SACR 258 (SCA) and, on further appeal, Thint (Pty) Ltd v NDPP; Zuma v NDPP 2008 (2) SACR 421 (CC).

7. **Entrapment**

Section 252A of the CPA.

Case law references in the commentary (Du Toit *et al*), including:

S v Hammond 2008 (1) SACR 476 (SCA) paras 20—28

S v Kotzé 2010 (1) SACR 100 (SCA) paras 3, 16—36

8. **The status of evidence illegally obtained**

(Having regard to Sections 35 and 36 of the Constitution and the commentary under Section 225 of the CPA in Du Toit *et al*)

Khan v S 1997 (4) All SALR 435; 1997 (2) SACR 611 (SCA) at 615D—F; 617H—621I

S v Naidoo 1998 (1) BCLR 46 (D)

S v Soci 1998 (3) BCLR 376 (E)

S v Mphala and another 1998 (1) SACR 388 (W)

Key v Attorney-General, Cape Provincial Division and another 1996 (4) SA 187 (CC)

Director of Public Prosecutions, Western Cape v Killian 2008 (1) SACR 247 (SCA)

S v Mthembu 2008 (2) SACR 407 (SCA) paras 21—37

S v Tandwa and Others 2008 (1) SACR 613 (SCA) paras 113—128

9. **Unreasonable delay / Permanent stay**

Sections 168 and 342A of the CPA

S v Pennington and another 1997 (4) SA 1076 (CC)

S v Motsasi 1998 (2) SACR 35 (WLD)

S v Motsasi en andere 2000 (1) SACR 574 (WLD)

Broom v Director of Public Prosecutions, Western Cape and others 2008 (1) SACR 178 (C) paras 44—48

Sanderson v Attorney-General, Eastern Cape 1998 (1) SACR 227 (CC)

Wild and another v Hoffert NO and others 1998 (2) SACR 1 (CC)

S v Sochop 2008 (1) SACR 552 (C)

S v Jackson and others 2008 (2) SACR 274 (C)

Bothma v Els and others 2010 (1) SACR 184 (CC)

C. **LEGISLATION**

1. **Constitution of the Republic of South Africa, Act 108 of 1996**
Sections 35 and 36

2. **Regulation of Interception of Communications and Provision of Communication-Related Information Act, 70 of 2002**
S v Naidoo and another 1998 (1) SACR 479 (N)
S v Kidson 1999 (1) SACR 338 (W)
S v Du Toit en andere 2005 (2) SACR 367 (T)
S v Cwele and another 2011 (1) SACR 409 (KZP) paras 7—26

3. **The Law of Evidence Amendment Act, 45 of 1988**
(Hearsay)
S v Ndhlovu and others 2002 (2) SACR 325 (SCA)
S v Ralukukwe 2006 (2) SACR 394 (SCA)
S v Shaik and others 2007 (1) SACR 247 (SCA) paras 168—179
S v Litako 2014 (2) SACR 431 (SCA)

4. **Accused's right of access to information contained in the State brief / Police docket**
(Having regard to the provisions of Sections 35 and 36 of the Constitution.)
Shabalala and others v Attorney General, Transvaal and another 1996 (1) SA 725 (CC) (1995 (2) SACR 761 (CC))

5. **Preservation, confiscation, restraint and forfeiture orders**
Sections 34 and 35 of the CPA
Chapters 5 and 6 of the Prevention of Organised Crime Act, 121 of 1998
Phillips and others v NDPP 2003 (6) SA 447 (SCA)
NDPP v Rebuzzzi 2002 (2) SA 1 (SCA)
NDPP v Basson 2002 (1) SA 429 (SCA)
NDPP v Parker 2006 (3) SA 198 (SCA)
NDPP v Elran 2013 (1) SACR 429 (CC)
NDPP v Van Staden and others 2013 (1) SACR 531 (SCA)

Falk & another v NDPP 2012 (1) SACR 265 (CC)

NDPP v Van der Merwe and another 2011 (2) 188 (WCC)

S v Shaik and others 2008 (2) SACR 165 (CC)

NDPP v Van Staden and others 2007 (1) SACR 338 (SCA)

6. **Prevention and Combating of Corrupt Activities, 12 of 2004**
Section 34