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
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 Dlada 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)
**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);
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.

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;

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;
**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

**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

**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**

   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 andre* 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 Rebuzzi* 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