

COURSE: CRIMINAL PROCEDURE A: 2023

OVERVIEW

PURPOSE OF THE COURSE:

For the student to acquire a basic knowledge of criminal procedure, especially as applied in the lower courts (magistrate's court and regional court) in South Africa.

HOW THIS FITS INTO THE OVERALL DEGREE STRUCTURE:

As a procedural (adjectival) law subject, this course equips the student to apply the substantive criminal law in courts in South Africa. It also has close ties with the law of evidence and criminal law.

CREDIT VALUE: 10

This works out as follows:

18 hours 24 lectures @ 45 min each

2 hours 1 written test (Online)

4 hours 1 written examination (Online)

79.25 hours Individual learning (pre- and post-lecture reading, formative assessments at the end of each unit, researching and writing assignment, test and examination preparation)

Total: 100 hours of work

ASSUMPTIONS OF PRIOR LEARNING

General exposure to the idea of legal principles (legal theory, constitutional law, interpretation of statutes). Ability to read and interpret statute law, read and interpret decided cases in law reports, apply the doctrine of precedent. Ability to analyse a set of facts; identify the legal problem contained therein, apply the appropriate law to derive a solution.

OUTCOMES

CRITICAL CROSS-FIELD OUTCOMES (CCFOs)

This course should contribute to the following critical outcomes:

- a) identify and solve problems
- b) collect, analyse and evaluate information
- c) communicate effectively
- d) recognise problem solving contexts
- e) reflect on and explore effective learning strategies
- f) critique existing legal rules
- g) work with a detailed major statute governing most of the law on a single subject

SPECIFIC INTENDED OUTCOMES

OUTCOME Students will be able to:	LINKED CRITICAL OUTCOME	ASSESSMENT CRITERIA (Note: references to relevant authority should be given in each instance)	ASSESSMENT TASKS
<p>1. Describe</p> <ul style="list-style-type: none"> • nature of criminal procedure • stages of criminal procedure: pretrial, trial, post-trial • sources of SA law of criminal procedure • different types of criminal courts in SA • meanings of word ‘jurisdiction’ • rules relating to jurisdiction in regard to offence jurisdiction, area jurisdiction, sentence jurisdiction, procedure jurisdiction • identify from factual scenario whether a court has jurisdiction and why 	<p>a,b,c,d,e,f</p>	<p>States:</p> <ul style="list-style-type: none"> • Criminal procedure is adjectival (procedural) law; found in statute law, common law and Constitution; based on English rules of criminal procedure after British occupied Cape in 1806 • Jurisdiction has four main meanings in the context of criminal procedure: area, offence, sentence, type of procedure (trial or appeal) • What the basic rules applying to the four types of jurisdiction are • Circumstances in which jurisdiction of magistrate’s court/regional court is extended by virtue of s 90 of Magistrates’ Courts Act • Correctly identifies problem and solution from scenario 	<ul style="list-style-type: none"> • Class discussions: examining examples (formative) • Written test (summative): paragraph style description or factual problem requiring solution • Final examination (summative): paragraph style description or factual problem requiring solution • Formative assessment at the end of the unit
<p>2. Describe</p> <ul style="list-style-type: none"> • Ways of securing attendance of accused before court • Rules relating to securing attendance via the different ways: Warrant, Summons etc. • Concept of admission of guilt and rules relating to admission of guilt • Apply such rules in a factual scenario 	<p>a,b,c,d,e,f</p>	<p>States:</p> <ul style="list-style-type: none"> • Four ways of securing attendance: arrest, summons, written notice, indictment • Rules applying to each • Admission of guilt a way of pleading guilty and paying fine without court appearance • Rules relating to admission of guilt • Correctly identifies problem and solution from scenario 	<ul style="list-style-type: none"> • Class discussions: examining examples (formative) • Written test (summative): paragraph style description or factual problem requiring solution • Final examination (summative):

			<p>paragraph style description or factual problem requiring solution</p> <ul style="list-style-type: none"> • Formative assessment at the end of the unit
<p>3. Describe nature of bail and rules relating thereto, up to time of sentence and thereafter pending appeal Apply such rules in a factual scenario</p>	a,b,c,d,e,f	<p>States</p> <ul style="list-style-type: none"> • What the nature of bail is • General principles applicable to bail applications • How s 60 of Criminal Procedure Act micromanages the issues to which courts should have regard when considering bail • What sort of conditions can be attached to bail • What action is taken in event of bail default or anticipated bail default • What principles apply to bail pending appeal after conviction and sentence • Correctly identifies problem and solution from scenario 	<ul style="list-style-type: none"> • Class discussions: examining examples (formative) • Written test (summative): paragraph style description or factual problem requiring solution • Final examination (summative): paragraph style description or factual problem requiring solution • Formative assessment at the end of the unit
<p>4. Describe rules relating to ascertainment of bodily features of accused (taking of fingerprints, specimens, etc, for comparison)</p>	a,b,c,d,e,f	<p>States</p> <ul style="list-style-type: none"> • S 37 of Criminal Procedure Act authorises the ascertainment of bodily features of the accused for comparison purposes; different rules apply to who may take which type of sample; what the more important rules are 	<ul style="list-style-type: none"> • Class discussions: examining examples (formative) • Written test (summative): paragraph style description or factual problem

		<ul style="list-style-type: none"> • Constitutional issue relating to ascertainment of bodily features: whether it violates right to self-incrimination (correct answer is no), whether it infringes right to bodily integrity (correct answer is it is usually a reasonable limitation to the right to bodily integrity) • Some particular manifestations of the taking of bodily samples that are common (identity parades, finger prints) or controversial (surgical operation to recover spent bullet from body), and procedures relating to such. • Correctly identifies problem and solution from scenario 	<ul style="list-style-type: none"> • requiring solution • Final examination (summative): paragraph style description or factual problem requiring solution • Formative assessment at the end of the unit
<p>5. Describe rules relating to the drafting of a valid charge in a lower court; provision of further particulars to charge; curing of defects in charge Apply such rules in a factual scenario</p>	a,b,c,d,e,f	<p>Sets out:</p> <ul style="list-style-type: none"> • what a charge sheet should contain • when further particulars may be sought on a charge • when amendment of charge is • Correctly identifies problem and solution from scenario 	<ul style="list-style-type: none"> • Class discussions: examining examples (formative) • Written test (summative): paragraph style description • Final examination (summative): paragraph style description • Formative assessment at the end of the unit
<p>6. Describe rules relating to</p> <ul style="list-style-type: none"> • plea of guilty • plea of not guilty 	a,b,c,d,e,f	<p>States</p> <ul style="list-style-type: none"> • Plea of guilty: covered by s 112 of Criminal Procedure Act 	<ul style="list-style-type: none"> • Class discussions: examining

<ul style="list-style-type: none"> Apply such rules in a factual scenario 		<ul style="list-style-type: none"> Procedure for conviction under s 112(1)(a): on plea alone, in simpler, less serious cases Procedure for conviction in more serious/complex cases: questioning to establish correct plea and guilt (s 112(1)(b)) What happens if court not satisfied as to guilt, or correctness of plea: conversion to plea of not guilty (s 113); effect of things admitted during plea and not affected by conversion to not guilty Plea of not guilty: covered by s 115 of Criminal Procedure Act; accused not obliged to disclose defence; if deciding to disclose whether aspects not in dispute can be regarded as formal admissions; effect of aspects not disputed but not reduced to formal admissions Correctly identifies problem and solution from scenario 	<ul style="list-style-type: none"> examples (formative) Written test (summative): paragraph style description or factual problem requiring solution Final examination (summative): paragraph style description or factual problem requiring solution Formative assessment at the end of the unit
<p>7. Describe rules relating to principle that accused who has pleaded is entitled to verdict, and exceptions thereto; rules relating to separation of trials</p> <p>Apply such rules in a factual scenario</p>	<p>a,b,c,d,e,f</p>	<p>States</p> <ul style="list-style-type: none"> Accused who pleads normally entitled to verdict Certain exceptions apply, listing the more significant ones and explaining their features. Class discussions: examining examples (formative) Written test (summative): paragraph style 	<ul style="list-style-type: none"> Final examination (summative): paragraph style description or factual problem requiring solution Formative assessment at the end of the unit

		<p>description or factual problem requiring solution</p> <ul style="list-style-type: none"> • Meaning of separation of trials • Approach of courts to separation of trials when one accused in a case pleads guilty and co-accused pleads not guilty • Correctly identifies problem and solution from scenario 	
<p>8. Describe course of trial and applicable rules from plea stage to end of case (acquittal or sentence)</p>	<p>a,b,c,d,e,f</p>	<p>States</p> <ul style="list-style-type: none"> • Principle that trials generally held in public • Prosecutor entitled to make opening address • Prosecutor leads evidence of State witnesses, in sequence of his/her choice; prosecutor not obliged to lead all available evidence, but under duty to disclose evidence favourable to other side • Defence may cross-examine State witnesses • Purpose of cross-examination, effect of failure to cross-examine • Prosecutor may re-examine witnesses • Prosecutor closes prosecution case after finishing leading of State evidence • Accused may be discharged at end of State case if evidence inadequate; describes test for discharge • Presentation of defence case (roles for examination in chief, cross-examination, re-examination reversed) 	<ul style="list-style-type: none"> • Class discussions: examining examples (formative) • Written test (summative): paragraph style description or factual problem requiring solution • Final examination (summative): paragraph style description or factual problem requiring solution • Formative assessment at the end of the unit

		<ul style="list-style-type: none"> • Duty of court to advise undefended accused of various aspects of presenting his/her case • Effect if defence elects to close case without leading evidence • Power/duty of court to call witnesses • Power of court to deal with recalcitrant witnesses • Power of court to adjourn a case, approach of court to application for adjournment • Right of parties to address court at close of defence case • Court gives judgment after final argument; reasons for judgment to be given • Court can sometimes convict of competent verdict; what competent verdict is, when court can convict of competent verdicts, some examples of common competent verdicts (general and for some specific crimes) • After conviction State can prove previous convictions of accused • How material gathered and presented relating to sentence • What is approach of court to sentence • Types of sentence • What are compensation orders; effect of; when appropriate • Correctly identifies problem and solution from scenario. 	
9.	a, b, c, d, e, f	States	•

Describe nature of appeal and review; describe rules relating to these two processes; compare these two processes		<ul style="list-style-type: none"> • What automatic review is, and reasons therefor • Rules relating to which cases automatically reviewable • Procedures relating to review • Power of High Court on review • What appeal is • When can there be an appeal from decision in lower court in criminal case, and procedures relating thereto • Powers of court on appeal • Correctly identifies problem and solution from scenario 	
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TEACHING METHODS

- Lectures (mainly with the aid of PowerPoint slides)
- Skeletal slides for teaching purpose only
- Case Reading list captured in this outline for each topic
- Class discussion and group discussion
- Assignment
- Test and examination

RESOURCES AND OWN NOTE MAKING

NB: Skeletal lecture slides WILL BE MADE AVAILABLE to students.

Students are expected to engaged with relevant cases and the recommended textbook and to make their own notes.

TEXT BOOKS/ KEY STATUTE:

- The Constitution of the Republic of South Africa 1996.
- Criminal Procedure Act 51 of 1977 (Latest edition)
- Constantine Theophilopoulos (ed) *Criminal Procedure in South Africa* (2019) Oxford University Press – Link to E-Book: <https://o-search.ebscohost.com.wam.seals.ac.za/login.aspx?direct=true&db=nlebk&AN=2433587&site=ehost-live&scope=site> (NB. If you are off campus you will be prompted for your library logins, ensuring that we do not infringe copyright).
- Joubert (ed) *Criminal Procedure Handbook* (2017) 12th edition JUTA.
- Other recommended reading: Du Toit et al: *Commentary on the Criminal Procedure Act*

COMPLEMENTARY BOOKS

(You do not have to purchase these books)

- Schwikkard PJ & Van der Merwe SE *Principles of Evidence* 4rd edition (2016) JUTA (Important aspects of the process in a criminal trial are addressed in this book).

- Adrian Bellengere et al (eds) The Law of Evidence in South Africa (2019)-Oxford. (Important aspects of the process in a criminal trial are addressed in this book).

NB. Students will also be provided with outline notes on statutory law, cases etc that they will be required to study in more detail. Note that these notes are not complete in themselves, i.e. they will merely serve as pointers to where further reading is to be found. Latest cases too will be pointed out.

COURSE CONTENT

TOPIC 1

What is criminal procedure
Three stages: Pretrial, trial, post-trial
Sources
Different types of court
Jurisdiction

TOPIC 2

Four methods of securing attendance of accused at court
Arrest, Summons, Written Notice, Indictment.
Arrest

TOPIC 3

Arrest (continued): Procedure after arrest

TOPIC 4

Other methods of securing attendance: summons, written notice, indictment
Admission of guilt

TOPIC 5

Bail: pretrial and up to end of trial
All aspects of Bail applications in detail

TOPIC 6

Bail pending appeal

TOPIC 7

Ascertainment of bodily features of accused.

TOPIC 8

Trial in a magistrate court -Essentials of a valid charge.
Further particulars

TOPIC 9

Curing of defects in charge

TOPIC 10

Pleas: Plea of guilty

TOPIC 11

Plea of not guilty

TOPIC 12

Accused who has pleaded entitled to verdict

Exceptions
Separation of trials

TOPIC 13
A contested trial: Up to end of State case
CPA – s174 Discharge

TOPIC 14
The defence Case

TOPIC 15
Verdict

TOPIC 16
Sentence
Compensation orders.

TOPIC 17
Appeal from Lower courts

TOPIC 18
Distinctions between review and appeal
Automatic review from the magistrate's court
Forms of statutory review.

SUMMATIVE ASSESSMENT TASKS

1. Exam 70% (June 2023)
2. Classwork 30%
 - a) Assignment 15% (the word count for the assignment is 1000 words, including references and bibliography- (Due date: **20th March 2023**).
 - b) Test 15% (writing date: **25th April 2023**).

ASSESSMENT CRITERIA

(For written assignments, and, with due allowance for time and other constraints, for tests and examinations). Marks will be allocated to cater for presentation, Structure, Content, Understanding and Insight.

NB. For assignments, detailed assessment criteria will be provided in the assignment question.

Students who fail to write test/submit assignment in time, but with a valid LOA- This category of students will have an oral test/assignment in my office. The make-up test/assignment will not be written. The test/assignment will be between 20 to 30 minutes. Dates for the oral test/assignment will be communicated in due course.

NON-EXHAUSTIVE LIST OF CASES

- Charge sheets
- S v Fhetani 2007 (2) SACR 590 (SCA)
 - S v Kuse 1990 (1) SACR 191 (E)

- S v Wannenburg 2007 (1) SACR 27 (C)
- S v Stephans & another case number 201/97 (WLD unreported decision)
- S v Mahlangu 1997 (1) SACR 338 (T)
- S v Nambela 1996 (1) SASV 356 (OK)
- S v Whitehead & others 2008 (1) SACR 431 (SCA)

Arraignment and plea

- Du Toit et al Commentary on the Criminal Procedure Act Chapter 15.2 – 15.26 (Section on plea bargaining)
- S v Mahlangu 1993 (1) SACR 183 (BG)
- S v Basson 2005 (12) BCLR 1192 (CC)
- Qoko v La Grange NO & others 2004 (2) SACR 521 (E)
- S v Seleke & another 1980 (3) SA 745 (A)
- S v Hendricks 1995 (2) SACR 177 (A)
- S v Sassin & others [2003] 4 All SA 506 (NC)
- S v Solomons 2005 (2) SACR 432 (T)
- S v Armugga & others 2005 (2) SACR 259 (N)

Joinder and separation of trials

- S v Hendricks 1995 (2) SACR 177 (A)
- S v Makganje 1993 (2) SACR 621 (B)
- S v Plaatjies 1997 (2) SACR 280 (O)

Conduct of trial

- S v Lubaxa 2001 (2) SACR 703 (SCA)

Verdict

- S v Chauke & another 1998 (1) SACR 453 (V)
- S v Fielies & Cupido Case 17/1946/03 28 Jan 2004 (C)
- S v Whitehead & others 2008 (1) SACR 431 (SCA)

Sentencing

- S v Zinn 1969 (2) SA 537 (A)
- S v Malgas 2001 (1) SACR 469 (SCA)
- S v Dodo 2001 (1) SACR 594 (CC)
- S v M (Centre for Child Law as amicus curiae) 2007 (2) SACR 539 (CC)
- S v Bull & another; S v Chavulla & others 2001 (2) SACR 681 (SCA)
- Article:
- Mujuzi JD “The prospect of rehabilitation as a “substantial and compelling” circumstance to avoid imposing life imprisonment in South Africa: A comment on S v Nkomo’ (2008) 1 SACJ 1

Review

- S v Nkosi 2008 (1) SACR 87 (N)
- S v Khalema & five similar cases 2008 (1) SACR 165 (C)
- Ebrahim v Minister of Justice 2000 (2) SACR 173 (W)
- S v Ndou 2006 (2) SACR 497 (T)
- S v Engelbrecht & others 2005 (2) SACR 383 (C)

Appeal

- Matshona v S [2008] 4 All SA 68 (SCA)

- S v Bailey 2007 (2) SACR 1 (C)
- Director of Public Prosecutions v Olivier 2006 (1) SACR 380 (SCA)

ROLES AND RESPONSIBILITIES OF THE LEARNER

The roles and responsibilities of the learner include the following:

- Compulsory class attendance;
- Active participation in class and assessment activities;
- Participation in group / team work activities;
- Taking personal responsibility for their own learning including making personal notes and reading relevant cases;
- Prepare extensively for every class;
- Strict adherence to submission dates;
- Completion of practice questions and upkeep of a portfolio of evidence;
- Participation in student evaluation of the module;
- Engaging in self-directed learning;
- Identifying own Learning style;
- Participating in the e-learning platform of RU Connected;
- Professional and ethical conduct; and
- Active involvement and participation in self-assessment and peer assessment.

ROLES AND RESPONSIBILITIES OF THE LECTURER

The roles and responsibilities of the lecturer include the following:

- The lecturer will take up all scheduled lectures and alternative arrangements will be made and communicated to the class directly or via the class representative should this be impossible to do;
- Be available during consultation hours and via e-mail;
- Prepare extensively for class;
- Undertake to give feedback on assessment tasks timeously and before the next assessment task is due (where practicable);
- Provide the necessary guidance and support to help students succeed;
- Liaise with the class representatives regarding any potential challenges;
- Point students to the relevant support service structures within the University; and
- Liaise with the CHETL for the evaluation of teaching