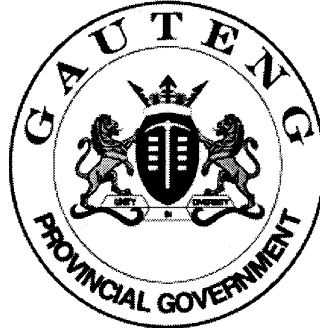


# SENIOR CERTIFICATE EXAMINATION



**FEBRUARY / MARCH**

**2007**

**LAW OF CRIMINAL  
PROCEDURE AND  
EVIDENCE**

**SG**

**902-2/0 E**

LAW OF CRIMINAL PROCEDURE & EVIDENCE SG



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SG

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**LAW OF CRIMINAL PROCEDURE AND EVIDENCE  
STANDARD GRADE**

**SENIOR CERTIFICATE EXAMINATION**

**MARCH 2007**

**TIME: 3 HOURS**

**MARKS: 300**

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**INSTRUCTIONS:**

1. Answer questions 1 to 8.
2. Answer only question 9 or 10.

## QUESTION 1

Choose the correct answer from the given possible answers, and mark only the correct answer in the fly leaf of the examination script (multiple choice questions) next to the corresponding question number. Mark only **one** letter (choice) per question. If more than **one** letter (choice) is marked per question, the whole question **will be** marked as **incorrect**. **Do not** repeat the whole answer in the examination script.

**EXAMPLE:**

The State President of South Africa is –

- A. George Bush.
- B. F W de Klerk.
- C. Thabo Mbeki.
- D. Jacob Zuma.
- E. None of the above.

**ANSWER:**

|   |   |              |   |
|---|---|--------------|---|
| A | B | <del>C</del> | D |
|---|---|--------------|---|

- 1.1 In considering the question whether to grant bail to an accused, the court decides the matter by weighing the interests of justice against the right of the accused to his or her personal freedom and in particular the prejudice he or she is likely to suffer if he or she were to be detained in custody. The following factors may be taken into account by the court:
- A. The time already spent by the police on the investigation of the case.
  - B. The state of health of the presiding officer.
  - C. The media coverage the case has already received.
  - D. A and C.
  - E. None of the above.
- 1.2 A police official may without a search warrant search any person for the purpose of seizing any article referred to in Section 20 ...
- A. if the person concerned consents to the search for and the seizure of the article in question.
  - B. if the police official on reasonable grounds believes that a search warrant will be issued to him if he applies for it and that the delay in obtaining such warrant would defeat the object of the search.
  - C. if the person concerned is on police premises.
  - D. A and B.
  - E. None of the above.

- 1.3 A person can make an affirmation in lieu of the oath, if that person ...
- A. objects to taking the oath.
  - B. does not consider the oath in the prescribed form as binding for his own conscience.
  - C. has no religious belief.
  - D. All of the above.
  - E. A and C.
- 1.4 A search warrant ...
- A. has the same effect as a warrant of arrest.
  - B. is issued by a magistrate or justice of peace.
  - C. is only issued in respect of Schedule 1 crimes.
  - D. A and B.
  - E. A, B and C.
- 1.5 A police official may take the fingerprints, palm-prints or foot-prints or may cause such prints to be taken of a person ...
- A. suspected of having committed a Schedule 1 offence.
  - B. upon whom a summons has been served in respect to any offence with reference to which the suspension, cancellation or endorsement of any licence is permissible or prescribed.
  - C. who has been discharged from prosecution in terms of Section 204 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977).
  - D. A and C.
  - E. A, B and C.
- 1.6 A search warrant ...
- A. can only be executed by a police official.
  - B. can only be issued during Monday to Friday.
  - C. can only be cancelled by the person who issued it or, if such person is not available, by a person with like authority.
  - D. A and C.
  - E. A, B and C.
- 1.7 An accused who gives evidence at criminal proceedings, shall not be asked or required to answer any question tending to show that he has committed or has been convicted of or has been charged with any offence other than the offence with which he is charged, or that he is of bad character, unless ...
- A. his legal representative asks any question of any witness with a view to establishing his own good character.
  - B. a search warrant has been issued.
  - C. the accused's appearance is indicative that he is of bad character.
  - D. A and B.
  - E. A, B and C.

- 1.8 A peace officer may call upon any person whom he has the power to arrest, to furnish such peace officer with his full name and address:
- A. Who may be able to give evidence in regard to the commission or suspected commission of any offence.
  - B. Who is reasonably suspected of having committed or of having attempted to commit an offence.
  - C. Any person who furnishes to the peace officer a name or address which the peace officer reasonably suspects to be false, may be arrested forthwith without a warrant and be detained for a period not exceeding 48 hours until such name or address has been verified.
  - D. A and B.
  - E. All of the above.
- 1.9 In bail proceedings the court may ...
- A. postpone such proceedings.
  - B. in respect of matters that are not in dispute between the accused and the prosecutor, require of the prosecutor or the accused, as the case may be, that evidence be adduced.
  - C. in respect of matters that are in dispute between the accused and the prosecutor, acquire in an informal manner the required information.
  - D. none of the above.
  - E. A, B and C.
- 1.10 If no criminal proceedings are instituted in connection with any article referred to in Section 20, that has been seized, or where such article is not required at the trial, such article ...
- A. shall be returned to the person from whom it was seized, if such person may lawfully possess such article.
  - B. shall, if no person may lawfully possess such article or if the police official charged with the investigation does not know of any person who may lawfully possess such article, become the property of the person who seized it.
  - C. shall be destroyed.
  - D. A and B.
  - E. B and C.
- 1.11 A police official may ...
- A. use force in arresting a person even if such person does not resist arrest.
  - B. arrest a person if a telegraphic communication from a magistrate states that a warrant has been issued for the arrest of the concerned person.
  - C. arrest a person and detain him for a period of 12 hours to verify such person's name and address.
  - D. B and C.
  - E. None of the above.

- 1.12 A peace officer may without warrant arrest any person ...
- A. who is a member of the South African Defence Force.
  - B. who commits a crime in his presence.
  - C. whom he reasonably suspects of having committed a Schedule 2 Part 1 offence.
  - D. A and B.
  - E. A, B and C.
- 1.13 The attendance of an accused in court may be secured by means of ...
- A. a search warrant.
  - B. a permit
  - C. an indictment.
  - D. A and C.
  - E. None of the above.
- 1.14 A person who has been arrested ...
- A. shall as soon as possible be brought to a police station.
  - B. shall, in the case of an arrest by warrant, be brought to any court.
  - C. shall be released if no charge is to be brought against him.
  - D. A and C.
  - E. None of the above.
- 1.15 The following offences qualify as Schedule 1 offences:
- A. Fraud, culpable homicide and sedition.
  - B. Bestiality, murder and attempted rape.
  - C. Indecent assault, robbery and incitement to arson.
  - D. A and C.
  - E. A, B and C.
- 1.16 In terms of Section 25 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), a magistrate or justice may issue a warrant authorizing a police official to enter premises, if it appears from information on oath that there are reasonable grounds for believing that ...
- A. the internal security of the Republic is likely to be endangered by or in consequence of any meeting which is being held or is to be held in or upon any premises within his area of jurisdiction.
  - B. a juvenile person is in or upon any premises within his area of jurisdiction.
  - C. a person to whom bail was granted is in or upon any premises within his area of jurisdiction.
  - D. A and C.
  - E. A, B and C

- 1.17 An accused who is in custody in respect of an offence, may be released on warning in lieu of bail by a police official, if ...
- A. the accused pays the amount determined for release.
  - B. the offence is not an offence referred to in Part II or Part III of Schedule 2.
  - C. the accused is mentally ill.
  - D. A and B.
  - E. A and C.
- 1.18 The following crimes qualify as Part II Schedule 2 crimes:
- A. High treason, conspiracy to robbery and offences relating to the coinage.
  - B. Public violence, murder and attempted rape.
  - C. Common assault, breaking into premises with intent to commit an offence and incitement to arson.
  - D. A and C.
  - E. A and B.
- 1.19 When an accused pleads to a charge, he may, in accordance with the provisions of Section 106 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), plead ...
- A. that he is mentally ill.
  - B. that the prosecutor has no title to prosecute.
  - C. that he cannot remember what happened.
  - D. All of the above.
  - E. A and B.
- 1.20 A person who is lawfully in charge or occupation of any premises, may at any time, if a police official is not readily available, enter such premises for the purpose of searching such premises and any person thereon or therein, if he reasonably suspects that ...
- A. stolen stock or produce, as defined in any law relating to the theft of stock or produce, is on or in the premises concerned.
  - B. any article has been placed thereon or therein, in contravention of any law relating to intoxicating liquor.
  - C. any article has been placed thereon or therein, in contravention of any law relating to arms and ammunition.
  - D. any article has been placed thereon or therein, in contravention of any law relating to explosives.
  - E. All of the above.

[40]

P.T.O.

## QUESTION 2

Fill in the missing words. Write down the number and correct word(s) only. **Do not** repeat the whole paragraph.

**EXAMPLE: 2.1 (a) BLUE**

- 2.1 Section 42 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), states that any private person may (a) ..... arrest any person who commits or attempts to commit (b) ..... or whom he reasonably suspects of having committed an offence referred to in (c) ....., whom he reasonably believes to have committed any offence and to be (d) ..... and to be (e) ..... by a person whom such private person reasonably believes to have authority to arrest that person for that offence, whom he is (f) ..... authorized to arrest in respect of any offence specified in that law, whom he sees (g) ..... Any private person who may (h) ..... arrest any person under subsection (1)(a) may forthwith (i) ..... that person, and any other private person to whom the purpose of the (j) ..... has been made known, may join and (k) ..... therein. The (l) ....., (m) ..... or person (n) ..... on or in respect of which any person is found committing any offence, and any person authorized thereto by such persons, may (o) ..... arrest the person so found.

(15)

- 2.2 Section 68 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), states that any court before which a charge is pending in respect of which bail has been granted, whether the accused has been (a) ..... or not, upon (b) ..... that the accused is about to (c) ..... or is about to (d) ..... in order to (e) .....; the accused has (f) ..... or (g) ..... or (h) ..... with (i) .....; the accused has (j) ..... or (k) ..... to defeat the ends of justice; the accused (l) ..... to the (m) ..... or of a (n) .....; the accused has not disclosed or has not correctly disclosed all his or her previous convictions in the bail proceedings or where his or her true list of previous convictions has come to light after his or her release on bail; further evidence has since become available or factors have arisen, including the fact that the accused has furnished false information in the bail proceedings, which might have affected the decision to grant bail; or it is in the (o) ..... to do so, issue a warrant for the arrest of the accused and make such order as it may deem proper, including an order that the bail be (p) ..... and that the accused be (q) ..... until the conclusion of the relevant criminal proceedings.

(17)

[32]



## QUESTION 3

Write down only the number of the statement or word in **column a** and next to it the letter of the appropriate answer from **column b**. **Do not** repeat the whole answer. **Example: 1.1 b**

| COLUMN A  | COLUMN B   |
|---|--|
| 3.1 Frank and honest answering of incriminating questions   | a. Court may require of the prosecutor or the accused that evidence be adduced   |
| 3.2 Search warrant  | b. Inadmissible  |
| 3.3 Breaking open of premises for purpose of arrest   | c. Court can acquire information in an informal manner   |
| 3.4 Extra-judicial admission by accused made under compulsion   | d. Discharge from prosecution in terms of Section 204  |
| 3.5 Confession made to a magistrate and reduced to writing by him   | e. Admissible  |
| 3.6 Matters in bail proceedings that are not in dispute between the accused and the prosecutor              | f. An offence other than an offence referred to in Part II or Part III of Schedule 2   |
| 3.7 Matters in bail proceedings that are in dispute between the accused and the prosecutor                  | g. Time allowed to a person to claim property from the State after such person was informed in writing that he may take possession of property, before it is declared forfeited to the State |
| 3.8 30 days   | h. Written notice  |
| 3.9 48 hours  | i. Warning   |
| 3.10 Recognisances in an amount not exceeding R2 000  | j. Summons   |
| 3.11 Imprisonment for a period not exceeding 2 years  | k. An official of the State who certifies a copy of an official document as true, knowing that such copy is false  |
| 3.12 12 hours   | l. Not guilty  |
| 3.13 Effect of arrest   | m. Lawful custody  |
| 3.14 Granting of bail by police officer before first appearance of accused in lower court                   | n. Period of detention to enable peace officer to verify name and address of person called upon to furnish such  |
| 3.15 Plea   | o. Audibly demands entry   |
| 3.16 Issued in respect of an offence other than an offence referred to in Part II or Part III of Schedule 2 | p. Maximum period of detention from time of arrest to appearance before a lower court  |
| 3.17 Duplicate original is forwarded to the clerk of the court which has jurisdiction                       | q. Cancelled by person who issued or person with like authority  |
| 3.18 Accused must be in possession thereof 14 days before appearance in court                               | r. Binding over of person to keep the peace  |

[36]

P.T.O.

### QUESTION 4

Are the following statements **TRUE** or **FALSE**? **DO NOT** discuss. Only write down whether the statement is **TRUE** or **FALSE**.

- 4.1 "Day" in terms of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), may be defined as any space of time between sunset and sunrise.
- 4.2 Any non-commissioned officer of police may issue a warrant for the arrest of any person upon the written application from any public prosecutor.
- 4.3 A police official who may lawfully search any premises, may reasonably break down a door of such premises to overcome any resistance against such search.
- 4.4 A person who has been warned by the court to remain in attendance at criminal proceedings and who fails to remain in attendance at such proceedings, shall be guilty of an offence.
- 4.5 An accused who is arrested, is only entitled to the assistance of his legal adviser when he appears in court.
- 4.6 A police officer can under all circumstances arrest a person without a warrant.
- 4.7 A police official who has arrested a person upon any charge, may cause a blood sample to be taken of the person concerned.
- 4.8 Unsworn or unaffirmed evidence is admissible if the concerned person, from ignorance arising from youth, is found not to understand the nature and import of the oath or the affirmation.
- 4.9 A search warrant issued by a judicial officer, shall also be of force in Lesotho.
- 4.10 A court must, at the conclusion of criminal proceedings, hand seized property to the person who seized it.
- 4.11 A witness summons shall be of force throughout the Republic.
- 4.12 A witness who answers frankly and honestly all incriminating questions put to him, may be discharged from prosecution in terms of Section 204 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977).
- 4.13 A person may only give evidence if such evidence is tendered under oath.
- 4.14 A police official who acts contrary to the authority of a search warrant, shall be guilty of an offence.
- 4.15 An affirmation made in lieu of an oath, does not have the same legal force and effect as an oath.

P.T.O.

- 4.16 An accused and the wife or husband of an accused shall be a competent witness for the defence at every stage of criminal proceedings, whether or not the accused is charged jointly with any other person.
- 4.17 If a person would commit an offence if he performed any act without being the holder of a licence, permit, permission or other authority or qualification, an accused shall, at criminal proceedings upon a charge that he committed such an offence, be deemed not to have been the holder of the necessary authority, unless the contrary is proved.
- 4.18 A private person may, without a warrant, arrest any person whom he sees engaged in an affray.
- 4.19 A plea that the prosecutor has no title to prosecute may be pleaded together with a plea of not guilty.
- 4.20 A police official who may lawfully search any premises, must in all circumstances first audibly demand entry to the premises and notify the purpose for which he seeks to enter such premises.
- 4.21 A sheriff is qualified to serve a witness summons.
- 4.22 The State may seize anything which may afford evidence of the commission or suspected commission of an offence within Britain.
- 4.23 A summons must be served on an accused so that he is in possession thereof at least fourteen (14) weeks (*Sundays and public holidays excluded*) before the date appointed for the trial.
- 4.24 A confession made by any person shall be admissible as evidence against another person.
- 4.25 In bail proceedings the accused, or his or her legal adviser, is not compelled to inform the court whether the accused has previously been convicted of any offence.
- 4.26 Where an offence is committed in the presence of the court, the prosecutor may order the arrest of the offender.
- 4.27 The person who issued a search warrant may in writing authorise the execution thereof by night.
- 4.28 If any person to whom the oath is administered wishes to take the oath with uplifted hand, he shall be permitted to do so.
- 4.29 Escaping from lawful custody is an offence referred to in Schedule 1 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), where the concerned person is in custody in respect of fraud.
- 4.30 A court must always grant bail to an accused when an accused applies for it.

**QUESTION 5**

- 5.1 The court may refuse to grant bail and order the detention of an accused in custody, if the court is of the opinion that it is in the interest of justice. Name the grounds on which the court can base its decision. (8)
- 5.2 Mention the crimes that appear in Part III of Schedule 2 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977). (7)
- 5.3 In terms of Section 217 of the Criminal Procedure Act, 1977 (Act No.51 of 1977), a confession has to meet certain requirements before it will be allowed in evidence against the person who made it. Name these requirements. (8)
- 5.4 The wife or husband of an accused shall be competent, but not compellable, to give evidence for the prosecution in criminal proceedings, but shall be competent and compellable to give evidence for the prosecution where the accused is charged with certain offences. Mention these offences. (9)  
[32]

**QUESTION 6**

- 6.1 Give an exposition of the provisions relating to the issuing of a search warrant. (17)
- 6.2 Give an exposition of the provisions regarding the payment of bail money by a third person. (10)  
[27]

**QUESTION 7**

- 7.1 Give an exposition of the provisions relating to the search of an arrested person and seizure of an object found on him. (16)
- 7.2 Describe the effect of bail. (12)  
[28]

**QUESTION 8**

- 8.1 Give an exposition of the provisions of Section 56 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), relating to the issuing of a written notice by a peace officer to an accused as a method to secure the attendance of such an accused in court. (12)
- 8.2 Discuss the provision that private persons must assist a police official with an arrest when they are called upon to do so. (9)
- 8.3 When shall a person who made a written statement be entitled to a copy thereof? (4)

[25]

ANSWER ONLY QUESTION 9 OR QUESTION 10.

**QUESTION 9**

- 9.1 Give an exposition of the provisions relating to the use of force in effecting an arrest. The provisions relating to the use of deadly force (*justifiable homicide*) need not be discussed. (10)
- 9.2 Describe the powers of a peace officer to demand from certain persons to furnish their names and addresses. (10)

[20]

OR

**QUESTION 10**

- 10.1 The court may refuse to grant bail to an accused where there is a likelihood that the accused will attempt to evade his or her trial. Name the factors the court may take into account in considering whether this likelihood has been established. (10)
- 10.2 How must an article be disposed of where no criminal proceedings are instituted or where the article is not required for criminal proceedings? (10)

[20]

**TOTAL: [300]**

**END**