

## **COURSE: CRIMINAL PROCEDURE A: 2016**

### **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.

#### **CREDIT VALUE: 10**

This works out as follows:

18 hours	Approximately 24 lectures @ 45 min each
.75 hours	1 written test
2 hours	1 written examination
79.25 hours	Individual learning (pre- and post-lecture reading, 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

<b>OUTCOME</b> Students will be able to:	<b>LINKED CRITICAL OUTCOME</b>	<b>ASSESSMENT CRITERIA</b> (Note: references to relevant authority should be given in each instance)	<b>ASSESSMENT TASKS</b>
1. Describe <ul style="list-style-type: none"> <li>• nature of criminal procedure</li> <li>• stages of criminal procedure: pretrial, trial, post-trial</li> <li>• sources of SA law of criminal procedure</li> <li>• different types of criminal courts in SA</li> <li>• meanings of word 'jurisdiction'</li> <li>• rules relating to jurisdiction in regard to offence jurisdiction, area jurisdiction, sentence jurisdiction, procedure jurisdiction</li> <li>• identify from factual scenario whether a court has jurisdiction and why</li> </ul>	a, b, c, d,e,f	States: <ul style="list-style-type: none"> <li>• 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</li> <li>• Jurisdiction has four main meanings in the context of criminal procedure: area, offence, sentence, type of procedure (trial or appeal)</li> <li>• What the basic rules applying to the four types of jurisdiction are</li> <li>• Circumstances in which jurisdiction of magistrate's court/regional court is extended by virtue of s 90 of Magistrates' Courts Act</li> <li>• Correctly identifies problem and solution from scenario</li> </ul>	<ul style="list-style-type: none"> <li>• Class discussions: examining examples (formative)</li> <li>• Written test (summative): paragraph style description <u>or</u> factual problem requiring solution</li> <li>• Final examination (summative): paragraph style description <u>or</u> factual problem requiring solution</li> </ul>

<p>2. Describe</p> <ul style="list-style-type: none"> <li>• Ways of securing attendance of accused before court</li> <li>• Rules relating to securing attendance via the different ways: Warrant, Summons etc.</li> <li>• Concept of admission of guilt and rules relating to admission of guilt</li> <li>• Apply such rules in a factual scenario</li> </ul>	<p>a, b, c, d, e,f</p>	<p>States:</p> <ul style="list-style-type: none"> <li>• Four ways of securing attendance: arrest, summons, written notice, indictment</li> <li>• Rules applying to each</li> <li>• Admission of guilt a way of pleading guilty and paying fine without court appearance</li> <li>• Rules relating to admission of guilt Correctly identifies problem and solution from scenario</li> </ul>	<ul style="list-style-type: none"> <li>• Class discussions: examining examples (formative)</li> <li>• Written test (summative): paragraph style description <u>or</u> factual problem requiring solution</li> <li>• Final examination (summative): paragraph style description <u>or</u> factual problem requiring solution</li> </ul>
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<b>OUTCOME</b> <b>Students will be able to:</b>	<b>LINKED CRITICAL OUTCOME</b>	<b>ASSESSMENT CRITERIA</b>	<b>ASSESSMENT TASKS</b>
<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>	<p>a, b, c, d, e, f</p>	<p>States</p> <ul style="list-style-type: none"> <li>• What the nature of bail is</li> <li>• General principles applicable to bail applications</li> <li>• How s 60 of Criminal Procedure Act micromanages the issues to which courts should have regard when considering bail</li> <li>• What sort of conditions can be attached to bail</li> <li>• What action is taken in event of bail default or anticipated bail default</li> <li>• What principles apply to bail pending appeal after conviction and sentence</li> <li>• Correctly identifies problem and solution from scenario</li> </ul>	<ul style="list-style-type: none"> <li>• Class discussions: examining examples (formative)</li> <li>• Written test (summative): paragraph style description <u>or</u> factual problem requiring solution</li> <li>• Final examination (summative): paragraph style description <u>or</u> factual problem requiring solution</li> </ul>

<p>4. Describe rules relating to ascertainment of bodily features of accused (taking of fingerprints, specimens, etc, for comparison)</p>	<p>a, b, c, d, e, f</p>	<p>States</p> <ul style="list-style-type: none"> <li>• 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</li> <li>• 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)</li> <li>• 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.</li> <li>• Correctly identifies problem and solution from scenario</li> </ul>	<ul style="list-style-type: none"> <li>• Class discussions: examining examples (formative)</li> <li>• Written test (summative): paragraph style description <u>or</u> factual problem requiring solution</li> <li>• Final examination (summative): paragraph style description <u>or</u> factual problem requiring solution</li> </ul>
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<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>	<p>a, b, c, d, e, f</p>	<p>Sets out:</p> <ul style="list-style-type: none"> <li>• what a charge sheet should contain</li> <li>• when further particulars may be sought on a charge</li> <li>• when amendment of charge is</li> </ul> <p>Correctly identifies problem and solution from scenario</p>	<ul style="list-style-type: none"> <li>• Class discussions: examining examples (formative)</li> <li>• Written test (summative): paragraph style description</li> <li>• Final examination (summative): paragraph style description</li> </ul>
<p>6. Describe rules relating to</p> <ul style="list-style-type: none"> <li>• plea of guilty</li> <li>• plea of not guilty</li> </ul> <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"> <li>• Plea of guilty: covered by s 112 of Criminal Procedure Act</li> <li>• Procedure for conviction under s 112(1)(a): on plea alone, in simpler, less serious cases</li> <li>• Procedure for conviction in more serious/complex cases: questioning to establish correct plea and guilt (s 112(1)(b))</li> <li>• What happens if court not satisfied as to guilt, or</li> </ul>	<ul style="list-style-type: none"> <li>• Class discussions: examining examples (formative)</li> <li>• Written test (summative): paragraph style description <u>or</u> factual problem requiring solution</li> <li>• Final examination (summative): paragraph style description <u>or</u> factual problem requiring solution</li> </ul>

		<p>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</p> <ul style="list-style-type: none"> <li>• 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</li> <li>• Correctly identifies problem and solution from scenario</li> </ul>	
<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 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"> <li>• Accused who pleads normally entitled to verdict</li> <li>• Certain exceptions apply, listing the more significant ones and explaining their features.</li> <li>•</li> </ul>	<ul style="list-style-type: none"> <li>• Class discussions: examining examples (formative)</li> <li>• Written test (summative): paragraph style description <u>or</u> factual problem requiring solution</li> </ul>

		<ul style="list-style-type: none"> <li>• Meaning of separation of trials</li> <li>• Approach of courts to separation of trials when one accused in a case pleads guilty and co-accused pleads not guilty</li> <li>• Correctly identifies problem and solution from scenario</li> </ul>	<ul style="list-style-type: none"> <li>• Final examination (summative): paragraph style description <u>or</u> factual problem requiring solution</li> </ul>
<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"> <li>• Principle that trials generally held in public</li> <li>• Prosecutor entitled to make opening address</li> <li>• 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</li> <li>• Defence may cross-examine State witnesses</li> <li>• Purpose of cross-</li> </ul>	<ul style="list-style-type: none"> <li>• Class discussions: examining examples (formative)</li> <li>• Written test (summative): paragraph style description <u>or</u> factual problem requiring solution</li> <li>• Final examination (summative): paragraph style description <u>or</u> factual problem requiring solution</li> </ul>



		<p>examination, effect of failure to cross-examine</p> <ul style="list-style-type: none"><li>• Prosecutor may re-examine witnesses</li><li>• Prosecutor closes prosecution case after finishing leading of State evidence</li><li>• Accused may be discharged at end of State case if evidence inadequate; describes test for discharge</li><li>• Presentation of defence case (roles for examination in chief, cross-examination, re-examination reversed)</li><li>• Duty of court to advise undefended accused of various aspects of presenting his/her case</li><li>• Effect if defence elects to close case without leading evidence</li><li>• Power/duty of court to call witnesses</li><li>• Power of court to deal with recalcitrant witnesses</li><li>• Power of court to adjourn a</li></ul>	
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		<p>case, approach of court to application for adjournment</p> <ul style="list-style-type: none"><li>• Right of parties to address court at close of defence case</li><li>• Court gives judgment after final argument; reasons for judgment to be given</li><li>• 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)</li><li>• After conviction State can prove previous convictions of accused</li><li>• How material gathered and presented relating to sentence</li><li>• What is approach of court to sentence</li><li>• Types of sentence</li><li>• What are compensation orders; effect of; when appropriate</li><li>• Correctly identifies problem and solution from scenario.</li></ul>	
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<p>9. Describe nature of appeal and review; describe rules relating to these two processes; compare these two processes</p>	<p>a, b, c, d, e, f</p>	<p>States</p> <ul style="list-style-type: none"> <li>• What automatic review is, and reasons therefor</li> <li>• Rules relating to which cases automatically reviewable</li> <li>• Procedures relating to review</li> <li>• Power of High Court on review</li> <li>• What appeal is</li> <li>• When can there be an appeal from decision in lower court in criminal case, and procedures relating thereto</li> <li>• Powers of court on appeal</li> </ul> <p>Correctly identifies problem and solution from scenario</p>	
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## **TEACHING METHODS**

Lectures - PowerPoint slides

Skeleton handouts

Reading list

Class discussion

Assignment and Test Dates: **See 2016 Penultimate Schedule**

## **COURSE CONTENT**

### **TOPIC 1**

What is criminal procedure

Three stages: Pretrial, trial, post-trial

Sources

Different types of court

Jurisdiction

Prosecution of Crime central to the Right to a fair trial.

Public –Private prosecution. Independence and Accountability

Structure of NPA – Discretion and performance of core functions.

### **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

### **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

## **TOPIC 14**

The defence Case

## **TOPIC 15**

Verdict

## **TOPIC 16**

Sentence  
Compensation orders.

## **TOPIC 17**

Appeal from lower court

## **TOPIC 18**

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

## RESOURCES

**TEXT BOOK:** **Criminal Procedure Act 51 of 1977** (up to date version)  
**Other recommended reading:** Du Toit et al: *Commentary on the Criminal Procedure Act*

There are also other works on various aspects of criminal procedure available in the library.

See for example P M Bekker *et al: Criminal Procedure Handbook* (8<sup>th</sup> ed).  
Joubert *et al: Criminal Procedure Handbook* ( Latest Edition)

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

## MARK ALLOCATION

Examination	70 marks
Class test	15 marks
Class assignment	15 marks
Total	100 marks

## ASSESSMENT CRITERIA

(For written assignments, and, with due allowance for time and other constraints, for tests and examinations)

<b>Presentation:</b>	10%
<b>Structure:</b>	10%
<b>Content:</b>	20%
<b>Understanding:</b>	30%
<b>Insight</b>	30%