



**UNIVERSITY OF JOHANNESBURG**  
**KINGSWAY CAMPUS**

**FACULTY OF LAW**

**JUNE EXAMINATIONS 2020**

**SUBJECT NAME:** ENGLISH FOR LAW  
**SUBJECT CODE:** 200EFL41Y0

**DURATION:** 2 (3) HOURS  
**MARKS:** 60

**EXAMINER:** MS MIRIAM LEAR

**THIS PAPER RUNS TO FOUR PAGES**

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**READ THE FOLLOWING TEXT CAREFULLY AND THEN ANSWER THE QUESTIONS BELOW. REMEMBER TO WRITE FULL SENTENCES AND TO USE YOUR OWN WORDS. YOU ARE NOT ALLOWED TO ASK ANYONE FOR HELP WHILE WRITING THIS EXAMINATION.**

**CUSTODIAL AND NON-CUSTODIAL MEASURES: ALTERNATIVES TO INCARCERATION**

Prison populations around the world are increasing, placing enormous financial burdens on governments. In the meantime, there is growing recognition that imprisonment does not achieve some of its most important stated objectives, as well as being harmful – to offenders, to their families and, in the long term, to the community. (1)

Imprisonment has several objectives. It keeps persons suspected of having committed a crime under secure control before their guilt or innocence is determined by a court. It punishes offenders by depriving them of their liberty after they have been convicted of an offence. It keeps them from committing further crimes while they are in prison and, in theory, allows them to be rehabilitated during their period of imprisonment. The goal of rehabilitation is to address the underlying factors that led to criminal behaviour and by so doing, reduce the likelihood of re-offending. However, it is precisely this objective that is generally not being met by imprisonment. On the contrary, evidence shows that prisons not only rarely rehabilitate, but they tend to further criminalise individuals, leading to re-offending and a cycle of release and imprisonment, which does nothing to reduce overcrowding in prisons or to build safer communities. (2)

## 2.

The majority of prisoners worldwide come from economically and socially disadvantaged backgrounds. Poverty, unemployment, lack of housing, broken families, histories of psychological problems and mental illness, drug and alcohol abuse, and domestic violence are realities that are likely to be found in most offenders' lives. Many are in prison for non-violent or minor offences. By using prison as an answer to all offences committed by such individuals, not only is the issue of safety in the community not addressed in any sustainable manner, but the cycle of impoverishment, loss of jobs, weakening of employment chances, damage to relationships, worsening of psychological and mental illnesses, and continued or increased substance abuse is perpetuated. There are also many health risks associated with overcrowded prisons, including the spread of infectious disease, such as tuberculosis and HIV. In many countries, violence is a common element of prison life, especially when there is overcrowding. (3)

Overcrowding can be decreased either by building new prisons or by reducing the number of people staying in them. Practice shows that trying to overcome the harmful effects of prison overcrowding through the construction of new prisons does not provide a sustainable solution. Indeed, several European countries have embarked on extensive programmes of prison building, only to find their prison populations rising in tandem with the increased capacity acquired by their prison estates. In addition, building new prisons and maintaining them is expensive, putting pressure on valuable resources. Instead, numerous international instruments recommend a rationalization in sentencing policy, including the wider use of alternatives to prison, seeking to reduce the number of people being isolated from society for long periods. (4)

In this context it is important to emphasize that alternatives on their own will have relatively little effect on the size of the prison population. In order to meet the objective of reducing the number of prisoners, comprehensive reform of criminal legislation needs to be undertaken and sentencing practices need to be changed. Measures that can be introduced include decriminalizing certain acts and providing shorter terms of imprisonment for selected offences, in addition to introducing a wide range of non-custodial sentences as an alternative to prison and widening possibilities for parole (conditional release). (5)

However, the goal of introducing alternatives to prison is not only to address the problem of overcrowding in prisons. The wider use of alternatives reflects a fundamental change in the approach to crime, offenders and their place in society, shifting the focus of penitentiary measures from punishment and isolation to restorative justice and reintegration. When accompanied by adequate support for offenders, it assists some of the most vulnerable members of society to lead a life without having to relapse into criminal behaviour patterns. Thus, the implementation of penal sanctions within the community, rather than through a process of isolation from it, offers better protection for society in the long term. (6)

### 3.

There are also economic arguments in favour of alternatives. In western societies, the supervision of offenders within a probation system is normally much less costly than the upkeep of a prisoner. (7)

On the other hand, western style probation services may not be practical options for many countries, where resources are too scarce to set up and maintain a probation system with adequate staff and finances. In these circumstances, the development of existing structures and the use of existing staff (for example staff of magistrate's courts, municipal authorities, social agencies, administration staff of institutions where community service is implemented) and volunteers for the supervision of non-custodial sentences may be more viable and effective options. (Successful examples include Zimbabwe, Latvia and Russia). (8)

There are certain pitfalls associated with the introduction of alternatives. In undertaking legislative reforms, for example, care needs to be taken to ensure that the changes lead to a reduction in imprisonment and greater use of alternatives, rather than to an increase in the overall volume of sanctions. (9)

In order to ensure effective implementation, the role of the judiciary must be well understood. In many countries, the reason alternatives to imprisonment are not used, despite their availability in legislation, is due to the lack of confidence of judges and magistrates in the enforcement of community sanctions. The support of the public is essential. (10)

The human rights of offenders also need to be protected. A number of international instruments prescribe the ethical, legal and executive framework in which non-custodial sanctions can be applied. An underlying principle with sanctions that oblige offenders to perform certain acts is that they require the offenders' consent. This is particularly relevant in the case of community service sanctions. Further, offenders performing certain acts under supervision must have recourse to a formal complaints system. (11)

In view of the above, an assessment of a system of alternatives to incarceration may seek the answers to some or all of the following questions:

- does the system effectively contribute to a reduction of the prison population?
- does it enable the offence-related needs of the offender to be met?
- is it cost-effective?
- does it contribute to the reduction of crime in the community?; and,
- are there legal safeguards in place protecting the human rights of the offender? (12)

(adapted from  
[https://www.unodc.org/documents/justice...prison.../3\\_Alternatives\\_Incarceration.pdf](https://www.unodc.org/documents/justice...prison.../3_Alternatives_Incarceration.pdf) accessed 05/15/17)

4.

**QUESTION 1**

***IN YOUR OWN WORDS***, write a sentence in which you express the main idea of this article.

[5]

**QUESTION 2**

Paraphrase paragraph 2.

[10]

**QUESTION 3**

In point/bullet form, summarise paragraphs 8 – 11.

[10]

**QUESTION 4**

The author of this text has used certain “linking” words and phrases to help structure it. Find and write down the ones used in the paragraphs indicated:

- a) To indicate contrast (paragraph 2 – three examples), and (paragraph 8).
- b) To indicate emphasis (paragraph 4)

[5]

**QUESTION 5**

Using information obtained from this article (but without resorting to plagiarism), and any other knowledge you have on the topic, write a brief (1.5 – 2 pages) essay in which you argue for or against the following claim:

The South African judiciary should make far greater use of alternative sentencing options.”

[30]

**TOTAL {60}**

