



UNIVERSITY OF JOHANNESBURG
KINGSWAY CAMPUS

FACULTY OF LAW

JUNE EXAMINATIONS 2020 -
SUPPLEMENTARY EXAMINATION

SUBJECT NAME: ENGLISH FOR LAW
SUBJECT CODE: 200EFL41Y0

DURATION: 2 (3) HOURS
MARKS: 60

EXAMINER: MS MIRIAM LEAR

THIS PAPER RUNS TO 4 PAGES.

**CAREFULLY READ THE TEXT BELOW AND THEN ANSWER THE QUESTIONS THAT FOLLOW. REMEMBER TO WRITE FULL SENTENCES AND TO USE YOUR OWN WORDS.
 PLEASE NOTE THAT YOU ARE NOT ALLOWED TO CONTACT ANYBODY FOR HELP WHILE WRITING THIS EXAM.**

ALTERNATIVE SENTENCING IN SOUTH AFRICA

With South Africa's unacceptably high crime rate and ever-growing prison population, the hope is often expressed that non-custodial sentencing options or 'alternative sentencing' will relieve the overcrowding and its associated ills. The current situation in our prisons is, however, not the result of a lack of creative alternative sentencing options – indeed, these have been on the statute books for decades. Instead, prison overcrowding is caused by the slow administration of justice, resulting in a large awaiting trial population. Another factor is the propensity of South African courts to hand down long prison and prison-based sentences. The introduction in 1997 of legislation prescribing minimum mandatory sentences has also led to an increase in the sentenced prison population. (1)

Alternative sentencing probably has its origin in the realisation that imprisonment is not suitable for all offenders and can have a severely detrimental impact on certain types of offenders. Further reasons include the greater chances of

successful reintegration of offenders, a reduction in the prison population, and that the offender's family is not victimised by the imprisonment. (2)

There is a range of petty offences for which a prison sentence would not be appropriate, especially when the age and personal circumstances of the offender are taken into account. A ten-year review of community service orders in Cape Town (Muntingh, 1997) revealed that, of those who received this sentence, almost equal proportions had committed crimes against property (44%) as those who had committed victimless crimes (42%). Only 15% were convicted for crimes against the person. The most common offences were driving under the influence (31%), theft (20%) and shoplifting (4%). The remaining types of offences varied widely, ranging from environmental crime and bigamy to possession of counterfeit money. Of the total, 49% were first offenders and a further 30% had one prior conviction. Under half (46%) of the offenders were younger than 25 years, and most (85%) were males. (3)

Non-custodial sentences such as community service orders were found to be not only appropriate for certain offences, but also for certain types of individual offenders. The same study found that offenders with the highest compliance rate were: non-drug users, those convicted of victimless crimes, first offenders, those who were married, older than 22 years, employed, and more highly educated (Muntingh, *ibid*). (4)

The strongest argument for the increased use of non-custodial measures is around the issue of cost reduction – an argument that is particularly favoured by the Department of Correctional Services (DCS). According to its annual report, the daily cost of managing a probationer/parolee was R9.54 in 1999/00 compared to R80.82 for prisoners. Another benefit is that the ideal staff to probationer/parolee ratio is 1:33 compared to the 1:5 for prisoners. However, though the figures look promising, reductions in the prison population as a result of non-custodial sanctions would have virtually no impact on the maintenance costs of prisons. For example, if each prison had 10% fewer prisoners, this would have very little if any effect on the amount of personnel needed, the programme costs or the daily management of the prison. In addition, non-custodial sentences inevitably entail various 'hidden' costs. (5)

In terms of the Criminal Procedure Act (51 of 1977) a person may be sentenced to correctional supervision as an alternative to imprisonment. Within certain parameters, the lifestyle of a probationer (as they are referred to) can be severely curtailed through strict monitoring, drug and alcohol testing, and unannounced visits by a correctional officer. This option does not seem to be favoured by the judiciary: over the period 2001/02-2003/04, the total number of persons placed under DCS supervision grew by 7.5%, while the total sentenced prison population increased by 17%. (6)

Another sentencing option is that of community service orders, usually as a condition of a postponed or suspended sentence. Since the mid-1990s the Department of Social Services has been responsible for the administration and

supervision of community service. Although accurate statistical information is not available, all indications are that the popularity of this sentencing option has dwindled to insignificant numbers. (7)

The restorative content of community service when applied as part of correctional supervision is questionable. The 'payment' to society through providing free labour for public benefit non-profit activities is largely symbolic and hidden from society's view. (8)

In conclusion, alternative sentencing options such as correctional supervision and community service orders are not widely used by magistrates and judges in South Africa. The large-scale use of such sentencing will only be achieved if stricter guidelines are given to those handing down sentence. Moreover, if non-custodial sentences are to contribute towards restorative justice, the conditions of such sentences must reflect at least some restorative principles. In addition, it must be remembered that the process of administering justice is important and should be based on an empowerment approach, involving all parties concerned in the decision-making process. (9)

(Adapted from: <http://www.iss.co.za/pubs/Monographs/No111/Chap9.pdf>
accessed 14 10 10)

QUESTION 1

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

[5]

QUESTION 2

Paraphrase paragraph 1.

[10]

QUESTION 3

Summarise paragraphs 3 and 4 in point form.

[10]

QUESTION 4

The author of this text has used certain “linking” words and phrases to help structure it. In the paragraphs indicated, find and write down these words:

- a) To indicate emphasis (paragraphs 1, 3 and 5)
- b) To indicate additional information (paragraph 1 – two examples)

[5]

QUESTION 5

Write an essay, based on these texts (but without resorting to plagiarism), and your prior knowledge of the topic, 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}

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