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higher education & training

Department:
Higher Education and Training
REPUBLIC OF SOUTH AFRICA

MARKING GUIDELINE

NATIONAL CERTIFICATE

NOVEMBER EXAMINATION

PUBLIC LAW N6

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This marking guideline consists of 10 pages.

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SECTION A

QUESTION 1

1.1 1.1.1 Private law is the law which determines the relationship between legal subjects.

1.1.2 Customary law is a body of rules, unofficial and generally unwritten, established through cultural or societal norms.

1.1.3 Interdict is a legal proceeding in which an individual asks a court to order someone to act in a particular way so that their rights are not interfered with.

1.1.4 Judicial precedents are the decisions taken by the courts.

1.1.5 International law is the law that deals with the relationships between governments, for example diplomatic links/trade agreements, et cetera.

(5 × 2) (10)

1.2 1.2.1 B
1.2.2 D
1.2.3 A
1.2.4 B
1.2.5 B

(5 × 2) (10)

1.3 1.3.1 LLB degree
1.3.2 Roman Dutch law
1.3.3 Administrative law
1.3.4 Criminal cases
1.3.5 Court orderly

(5 × 2) (10)

1.4 1.4.1 Principle of legality
1.4.2 Personality law
1.4.3 The doctrine of division of power
1.4.4 Preamble
1.4.5 Immaterial property

(5 × 2) (10)
[40]

TOTAL SECTION A: 40

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SECTION B

QUESTION 2

2.1 Private law

- Personal law
- Family law
- Personality law
- Law of wealth/Property law
- Law of contract/Law of agreement/Law of commitment

Public Law

- Administrative law
- International law
- Procedure law
- Law of proof
- Criminal law (Any 2 × 4) (8)

2.2 The internal relationship

- It develops when two government organs within a power base oppose each other.
- It must be determined as to whether the high organ gives an order to the lower organ and whether it has authority to change actions of the organs within its sphere of power.
- For example if within the same department, the director-general and the minister come into conflict or a conflict between the town manager and city council could develop.
- For example the Licensing board grants a trading licence and the city council cannot later revoke such a licence because the licence is already given to the owners.

The independent control relationship

- Here one organ has authority to approve the action of the other authority.
- The two organs function independently.
- For example a provincial premier cannot order a city council to act or not to act, but he has the authority to approve or reject the action of a city council. (Any 2 x 5) (10)

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2.3 It is used when an administrative proceeding is objected to. When administrative proceedings are invalid or against the Constitution or other legislation, the actions of the government body or organ will be subject to judicial review by a judicial authority.✓✓

Three forms exist:

Revision of case from lower courts to higher courts by means of notice of motion.✓✓
The common law revision of proceedings of administrative authorities where the law creates a revision or appeal.✓✓
Revision of proceedings of statutory bodies of which all administrative proceedings are subject to common law revision.✓✓
Courts can also review the proceedings of voluntary associations and bodies if they exceeded their authority or in case of an irregularity.✓✓ (5 × 2) (10)

2.4
- Issue or purpose of the administrative legal actions and by which the government enters into relationship with other organs or subjects.
- For example such subjects may be the two departments of health and education. The issue may be a health service at schools where the object is supplying medical services.
- Another example -- the subjects in an expropriation of land case in the defence department and a farmer. The object is the land to expropriate.

(Any 3 × 2) (6)

2.5 The golden rule of interpretation: the true meaning of the legislator should be followed.✓✓ ✓
Literal interpretation of law/fundamental rule: follow the meaning of the legislator as presented by the words of the law.✓✓ ✓
In other words the golden rule does not apply literal and grammatical interpretation. The basis is the meaning of the legislator. (Any 2 × 3) (6)
[40]

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QUESTION 3

3.1
- The official must have been acting as an official of the state.
- The official had committed the unlawful act within the scope of his/her official power.
- The state can only be held liable regarding the action or neglect of an official of state/department.
- The applicant or his/her legal representative must within seven days indicate whether they want to start proceedings against the relevant executive authority and serve a copy of the summons to the state attorney.

(4 × 2) (8)

3.2
- This is the valued source of administrative law.
- The legislative functions of the court set guidelines for further laws, proclamations or regulations.
- In South Africa courts have the power to review administrative actions, for example the department of education cannot transfer a teacher without listening to his/her opinion on the issue.
- The courts can review the cases and make changes. Because of this the court can influence administrative law. (4 × 1) (4)

3.3
- This includes all the legal rules which order society – statutory law and common law.
- It includes all laws, ordinances, and regulations which order our daily lives.
- It also includes other rules regarding transfer of immovable property, marriage, the functioning of courts, speed limits, et cetera.
- It includes all the rules regarding everyday life, commerce and industry.
- This is the law in the objective sense; it functions objectively and controls the day-to-day lives of people to guarantee an orderly society.

(Any 4 × 2) (8)

3.4 3.4.1 Administrative law refers to the law that organises and rules✓ the organisation, powers and actions of civil servants. ✓ (2)

3.4.2 This is because administrative law rules the organisation, powers and actions of the administration of the state.✓✓ Administration of the state includes all the government bodies and organs which fall within the executive authority of the state in the state departments, provincial and local managements.✓ Because of that it is part of public law.✓ (4)

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3.5 Internal aid

- Another text
- The preamble/preface
- The elaborated title
- Chapters and article heading
- Margin headings, division of paragraphs, punctuations
- Articles of definitions of words
- Addendums

External aid

- The source of the article
- Deliberation at the acceptance of the law
- Peripheral circumstance
- Earlier and later law
- Ingrained customs and interpretation
- Vocabulary
- Text books
- The law of interpretation (Any 2 × 7) (14)

[40]

QUESTION 4

4.1
- Delegation of powers is done to aid the division of work, because one person cannot do everything.
- The holder of the power stays responsible for the acts of the person or body who will then exercise the power or function delegated to them.
- The power is transferred from a higher person or body to a lower person or body.
- If a power has been delegated to a lower organ, such an organ may not sub-delegate it.
- It can be seen as the legal means by which the delegator authorises the delegate to act on their behalf. (Any 4 × 2) (8)

4.2 4.2.1 Interpret the law literally
- This is the point of departure.
- The interpreter has the law in front of him and the intention of the legislator can only be found in the words of the law.
- Here the interpreter interprets law in their grammatical and literal meaning.
- They interpret the words of law to determine the intentions of the legislature.
- If the meaning of the words is misleading, or if a literal interpretation of the law would result in unfair or absurd results, then the court may deviate from the literal meaning of the words of a law. In such case, the court will turn to the golden rule of interpretation to find the intention of the legislature. (5 x 1) (5)

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4.2.2 The interpreter may not step outside the wording of the law.

- A basic rule of interpretation is that no additions or subtractions from the words used in legislation are allowed.
- Here the interpreter interprets the law not legislation.
- A court should be careful not to extend the meaning of the legislation beyond the words used.
- The words of a statute should never in interpretation be added to or subtracted from, without absolutely being a necessity.
- The interpreter interprets the law by not stepping outside the words needed to be interpreted or deviating from the words of the law. (5 x 1) (5)

4.3 4.3.1 There are eleven (11) members.✓
Four (4) are appointed by the president from the ranks of judges of the supreme court in consultation with the cabinet and chief judge.✓
Six (6) are appointed from the list of names compiled by the Judicial Service Commission.✓
The court is independent.✓
It is composed of representatives of all races and gender.✓ (5)

4.3.2
- The court will only consider the validity of a bill if requested by a minimum of a third of all members of the legislature.
- If the court declares a law to be invalid, the court may demand that the legislature concerned correct the mistake within a set period.
- When the court declares the conduct of the executive organ invalid, the court can order such organ to refrain from such conduct within a set time limit or to exercise its conduct in another way.
- When a law has been passed before the Constitution took effect and was declared invalid, execution of that law before the invalidation is invalid.
- The president of the Constitutional Court, with the chief judge, compile a list of rules regarding the way in which the court may be approached and other matters regarding the working of the court. (5 x 1) (5)

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4.4
- It means that the state may not execute its power arbitrarily.
- Individual liberty must be upheld.
- Everybody is equal before the law.
- The law rules and not a person or body.
- No person may be punished without following the law.
- No person's rights may be interfered with by someone if the law of the state was not broken.
- The breach of the law must be established in a court of law.
- Nobody is above the law and everybody is ruled by the same laws and through the same courts.
- The constitution guarantees individual rights and privileges to all.
- People are protected against arbitrary governance, dictatorship and mob rule.
- It aims to ensure a stable government.
- It aims for economic and social development of society. (Any 6 x 2) (12)

[40]

QUESTION 5

5.1
- Registers immovable property in the name of the owner, for example a house.
- Registration of mortgages
- Registration of leasehold
- Cessions of registered mortgages
- Antenuptial contracts
- Deeds of lease and mineral rights awarded lawfully by the government.
- Personal or land servitudes
- Sub-letting and notarial deeds
- The general plans of land and plots
- Notarial prospecting contracts (Any 8 × 1) (8)

5.2 5.2.1
- Laws originate in parliament; because of this parliament is a source of administrative law.
- Laws are passed during sessions in parliament.
- In these sessions they formulate or prescribe the composition and functions of the administrative body of state. (Any 2 × 2) (4)

5.2.2
- The province receives power or authority from parliament to form provincial laws (ordinances).
- This legislation rules the power and functions of provincial authorities and its officials.

(2 × 2) (4)

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5.2.3
- A constitution is a body of fundamental principles according to which the state is governed.
- It prescribes the power of government institutions at all levels of government.
- It determines the power and responsibility of departments.
- It also determines the relationship between departments and citizens of the country; because of this it contributes to administrative law. (Any 2 × 2) (4)

5.3
- Long established
- Reasonable
- Definite
- Constant observance (4 x 1) (4)

5.4 These are those administrative procedures which are not legislative or judicial in nature and use the name to indicate normal proceedings of the organ.

There are two types of purely administrative proceedings:

Multilateral administrative proceedings✓
- It means the co-operation of more than one subject in an individual relationship.✓
- It involves the co-operation between government and private individuals when they enter into an agreement.

Multilateral administrative proceedings including the following:

Collective labour agreements✓
- This is agreement between the employer and employees (trade union).
- This agreement is approved by government in the form of law.✓

City and town planning schemes✓
- The condition for establishment is set out by agreement and cannot be changed by an administrative organ.✓

Agreement for the supply of service✓
- Agreement between government bodies (two departments) or between government and private individuals.✓
- Contract with officials✓
- Officials must sign contract that bind them.✓

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5.4 Unilateral administrative proceedings✓
- Here only the prescribed task is done.✓

Two types of unilateral administrative proceedings

- Mechanical administrative proceedings✓
- It can be delegated without authorisation.✓
- Limited discretion proceedings✓
- It is done by the authorised organ and may not be delegated.✓

(Any 16 × 1) (16)
[40]

TOTAL SECTION B: 160
GRAND TOTAL: 200

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