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higher education & training

Department:
Higher Education and Training
REPUBLIC OF SOUTH AFRICA

MARKING GUIDELINE

NATIONAL CERTIFICATE

PUBLIC LAW N6

16 NOVEMBER 2018

This marking guideline consists of 9 pages.

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SECTION A

QUESTION 1

1.1	1.1.1	A		
	1.1.2	C		
	1.1.3	B		
	1.1.4	C		
	1.1.5	D		
			(5 × 2)	(10)
1.2	1.2.1	Judges		
	1.2.2	state		
	1.2.3	legal subjects		
	1.2.4	international law		
	1.2.5	Public Protector		
	1.2.6	judicial		
	1.2.7	Provinces		
	1.2.8	government organs		
	1.2.9	autonomous organ		
	1.2.10	Mandamus		
			(10 × 1)	(10)
1.3	1.3.1	E		
	1.3.2	C		
	1.3.3	B		
	1.3.4	D		
	1.3.5	A		
			(5 × 1)	(5)
1.4	1.4.1	False		
	1.4.2	False		
	1.4.3	False		
	1.4.4	True		
	1.4.5	False		
			(5 × 1)	(5)
1.5	1.5.1	Commissioner		
	1.5.2	Independent control relationships		
	1.5.3	The Principle of Legality		
	1.5.4	Assessors		
	1.5.5	The doctrine of division of powers		
			(5 × 1)	(5)
1.6	1.6.1	Legislative		
	1.6.2	An interdict		
	1.6.3	preamble		
	1.6.4	private		
	1.6.5	executive		
			(5 × 1)	(5)

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1.7 1.7.1 Small Claims Court
1.7.2 Divorce Court
1.7.3 Supreme Court of Appeal
1.7.4 High Court
1.7.5 Children's Court/Juvenile Court

(5 × 2) (10)
[50]

TOTAL SECTION A: 50

SECTION B

QUESTION 2

2.1 2.1.1
- Constitutional Law
- Administrative Law
- Criminal Law
- Procedural Law

(Any 3 × 1) (3)

2.1.2
- Law of persons
- Family law
- Law of personality
- Mercantile law
- Indigenous law
- Law of patrimony

(Any 2 × 1) (2)

2.2 Objective sense (positive law)
- Objects that rule our daily lives
- Law in the objective sense is all the legal rules that are applied in South Africa.
- It includes the whole South African national legal system, common law and statutory law.
- Objective sense regulates the relationship between persons through the rules of private law.
- It is a horizontal relationship between equals.
- The purpose of objective sense is to harmonise the relationships between the persons in such a way that society will be orderly and peaceful.

(Any 4 × 1)

Subjective rights (things we have a right to)
- Objective sense regulates the relationship between legal subjects (persons) through the concept of subjective rights.
- This means that a person can obtain subjective rights like a house which are regulated and protected by objective sense.
- Subjective rights can be found in a relationship between the legal subject and a legal object.
- This means that a person has subjective right to an object. (4 × 1)

(2 × 4) (8)

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2.3
- Handles deceased estates in his judicial area
- Ensures all documents and formalities are processed and the estate divided according to the deceased's last will.
- If there is a dispute, e.g. heirs cannot be found or the meaning of the last will is not clear, it is the duty of the Master to decide.
- The interest of all concerned must be protected, especially minors and unborn children.
- If both parents of a minor die, a trustee is appointed.
- Supervision of Trusts.
- Deals with insolvent persons.
- Supervises the administration of companies and close corporations.

(Any 4 × 2) (8)

2.4 2.4.1
- No one is above the law.
- It is not a legal rule, but an important principle in our judicial system.
- The state may not execute its powers arbitrarily.
- Individual liberty should be upheld.
- Everybody in the state is equal before the law.
- No person may be punished if a law of the state was not broken.
- The breach of law must be established in a court of law.
- Nobody is above the law and everybody is ruled by the same law and through the same courts.
- The constitution protects the rights and property of individuals and corporations.
- 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.
- The principle means the law rules and not a person or body. (13)

2.4.2 Two conditions must be met:
- The danger must be so bad that ordinary laws don't protect citizens.
- The action must be in proportion to the emergency, e.g. if someone hits you, you can hit back, but you may not shoot him. (2)

2.5 Advantages:
- Legal uniformity: The fact that all courts are bound by the judgement of the highest court ensures that the law is applied uniformly in the country.
- Legal certainty: The doctrine of precedent ensures that a court will be consistent in its decisions in similar cases.

Disadvantages:
- A precedent may have been incorrect and may not be the best legal decision but must be followed due to the doctrine.
- As the courts are bound by previous verdicts it is difficult to depart from them. (2 × 2) (4)

[40]

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QUESTION 3

3.1 3.1.1

- Any claim against an official of the State should be tried in a court of law if there is ground for the claim.
- The claim can arise from any contract lawfully entered into on behalf of the State that was broken.
- The claim can also arise from any unlawful act or wrongdoing by an official of the State when acting in his/her official capacity.
- A lawsuit based on the above must be instituted against the executive authority of the state institution, e.g. the minister of the relevant department – in this case the Minister of Health.
- The claim against the state must be for an amount and cannot be against a defendant or government property.
- The claim will then be settled or not according to the verdict of the court.
- If the claim is awarded by the court, it must be paid within 30 days of the date of the order or in the period agreed upon by the two parties. (7)

3.1.2 State Attorney (1)

3.1.3 High Court/Civil Court (1)

3.1.4

- *Civil cases* deal with damages and the amount to be paid.
- It forms part of private law.
- Parties: Plaintiff and defendant.

- *Criminal cases* deal with an offence committed and a possible sentence.
- It forms part of public law.
- Parties: State and accused. (Any 4 × 1) (4)

3.2 The power/authority of the administration must be authorised by law.

- The principle of legality is applied in the following instances:
- Administrative action must be lawful or pursue a lawful aim.
- Administrative action must comply with the rules of natural lawfulness and the law.
- Administrative action must be fair.
- Administrative action must be reasonable.
- Administrative action must be in the public interest.
- Administrative action must comply with both the law and common law.
- Administrative action may not be executed in an arbitrary way.
- Authority of government bodies may not cause extreme hardship.
- Nobody may be intently wronged.
- No discrimination is allowed against individuals or groups.
- Administrative bodies must act with respect for the principles of equality, proportionality, justice, impartiality and good faith. (Any 8 × 1) (8)

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3.3 Legislation

- This is the most important source and appears in statutes, acts, ordinances, regulations and proclamations.
- Laws on marriage, insolvency, criminal procedure, company law, civil liability.
- Courts must apply legislation.
- The principle of legality must be applied to see whether a measure has legislative status.

Parliament

- Laws originate in Parliament, thus Parliament is a source of administrative law
- Laws passed in Parliament describe the composition and function of administrative bodies
- Minister or President promulgate subsidiary legislation to enhance Parliament
- Laws promulgated for establishment of organs to execute laws.

Provinces

- Provinces authorised by Parliament legislation to issue laws.
- Ordinance rules powers and functions of Provinces authorities and officials
- Provinces can issue Ordinance.

Proclamations

- State President can issue Proclamations according to Parliament legislation✓
- Is subsidiary legislation and are issued into existing legislation✓
- Premier of Provinces can also issue proclamations✓

Regulations

- A written instrument containing rules having the force of law
- Include by-laws by municipalities
- Include rules of city councils
- Include rules of wage councils
- Include rules of licence boards (Any 15 × 1) (15)

3.4

- It must be long established; known for a long time.
- It must be reasonable; not against the law or public interest or unfair.
- It must be definite; enough witnesses must prove custom exists.
- It must be constantly observed and acknowledge by community. (4 × 1) (4)

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QUESTION 4

4.1 Private law relationship:

- Individuals (legal persons) are involved in a legal relationship.
- It is a relationship between two people or a person and a company.
- E.g. buy a house and sign a contract

Administrative law relationship:

- One subject must be vested in government authority.
- The government body must be vested in government authority
- E.g. when the State buys land from a private individual or award a contract to a company (2 × 3) (6)

4.2 Mandate

- Simplest form of delegation
- Higher organ decides and instructs lower organ to do something
- Higher organ stays responsible as instruction was carried out in its name
- E.g. Minister instructs the Director-General to build houses

De-concentration

- Certain powers & functions are transferred from higher to lower organ
- Lower organ again delegates functions to people below
- The delegate does everything in the name of the delegator
- E.g. Director-General acts in the name of the Minister
- Higher organ can at any time withdraw delegation and do task self
- The higher organ must exercise control over the lower organ

Decentralisation

- Powers and functions are transferred to an autonomous organ
- The organ performs the functions in its own name.
- The higher organ has no right to interfere after delegation
- E.g. Minister appoints board of experts to grant licences; Minister cannot issue licences (14)

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4.3 The administrator who took it:
- was not authorised to do so by the empowering provision.
- acted under a delegation of power which was not authorised by law.
- was biased or reasonably suspected of bias.

The action was:
- procedurally unfair.
- materially influenced by an error of law.

The action was taken:
- for a reason not authorised by the empowering provision.
- for an ulterior purpose or motive.
- because irrelevant considerations were taken into account or relevant considerations were not considered.
- because of the unauthorised or unwarranted dictates of another person or body.
- in bad faith.
- arbitrarily or capriciously.

The action itself:
- contravenes a law or is not authorised by law.
- consists of a failure to take a decision.
- is so unreasonable that no reasonable person could have exercised the power or performed the function.
- is otherwise unconstitutional or unlawful. (Any 10 × 1) (10)

4.4
- Revision of cases from lower courts by means of notice of motion.
- Common Law revision of proceedings of administrative authorities where law creates a revision or appeal.
- Revision of proceedings of statutory bodies (Licence Boards) 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.

(4 × 2) (8)

4.5 *Mechanical administrative proceedings* may be delegated without authorisation, e.g. renewal of vehicle licence can be done by any official.

Limited discretion may not be delegated. It is executed within limits of prescribed discretion. (2 × 1) (2)

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QUESTION 5

5.1
- The interpreter must interpret the law literally
- This rule concentrate on the literal meaning of the words of the law
- The interpreter must indicate the legislator's intention
- Words must be taken to have their usual meaning
- Words must be interpreted according to its grammatical and literal meaning
- According to the trade or profession of which the words are part
- Common words must be interpreted in their common usage
- If law apply to a common situation, the application should also be common.
- If the wording of a regulation says 'no person shall' it should mean exactly that
- The interpreter may not step outside the wording of the law
- No additions or subtractions from the words used in legislation are allowed
- Each word must have meaning
- It means that a meaning must be assigned to every word
- No word or sentence should be regarded as unnecessary or redundant (14)

5.2 Preamble/Preface✓✓
- Preamble states the reason for legislation✓
- It shows the meaning of the legislator✓

Long title/Elaborated title✓✓
- Short summary of the subject matter of the law✓
- Info in the long title is used to determine the purpose of legislation✓

Chapter and article headings✓✓
- Headings of chapters which the interpreter can refer to✓
- Used for doubtful parts in the law✓
- Used by courts to determine purpose of legislation if rest is unclear✓

Addendum/Schedules✓✓
- Occur at end of law✓ (16)

[30]

TOTAL SECTION B: 150
GRAND TOTAL: 200

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