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higher education & training

Department:
Higher Education and Training
REPUBLIC OF SOUTH AFRICA

N1400**(E)**(N16)H

NATIONAL CERTIFICATE

PUBLIC LAW N6

(13030136)

16 November 2018 (X-Paper)
09:00–12:00

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DEPARTMENT OF HIGHER EDUCATION AND TRAINING
REPUBLIC OF SOUTH AFRICA

NATIONAL CERTIFICATE
PUBLIC LAW N6
TIME: 3 HOURS
MARKS: 200

INSTRUCTIONS AND INFORMATION

1. Answer ALL the questions.
2. Read ALL the questions carefully.
3. Number the answers according to the numbering system used in this question paper.
4. Write neatly and legibly.

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SECTION A

QUESTION 1

1.1 Various options are given as possible answers to the following questions. Choose the answer and write only the letter (A–D) next to the question number (1.1.1–1.1.5) in the ANSWER BOOK.

1.1.1 The functions of the deeds office are as follows:

A Sub-letting and notarial deeds
B Registration of movable property
C Drafting of antenuptial contracts
D Registration of personal loans

1.1.2 The golden rule of interpretation means:

A to interpret legislation, it must first be read and analysed.
B if the law applies to a common situation, the application of the law should be common.
C the true meaning of the legislator should be followed.
D the meaning of the legislator as presented by the words of the law should be followed.

1.1.3 Which type of appeal does NOT exist in South Africa:

A Statutory appeal from a lower court to a higher court
B Statutory appeal from a lower court to another lower court
C Statutory appeal from a higher court to a Supreme Court of Appeal
D By a statutory body

1.1.4 The 'characteristics of law' can be summarised as follows:

A It is a set of rules that are inconsistent with the Constitution.
B It ensures disorder in society and ensures that the law is applied consistently.
C It is a set of rules or regulations that facilitate human interaction.
D The rules and laws are interpreted and applied by the citizens of the country.

1.1.5 Which ONE of the following is NOT a source of South African Constitutional Law:

A Legislation
B Common Law
C Customary Law
D British Law

(5 × 2) (10)

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1.2 Complete the following sentences by writing down the missing word or words next to the question number (1.2.1–1.2.10) in the ANSWER BOOK.

1.2.1 ... presides in the higher courts in South Africa.

1.2.2 The state can only be held liable for the action or neglect of an official of the …

1.2.3 Private Law regulates the relationship between two …

1.2.4 Foreign Law is also known as …

1.2.5 The … was set up in terms of the Constitution to receive and investigate complaints from the public against government officials.

1.2.6 Decisions made by administrative bodies are subject to ... review.

1.2.7 … are authorised by parliamentary legislation to issue ordinances.

1.2.8 Internal governmental relations take place between …

1.2.9 Decentralisation is the transfer of powers and functions from a higher organ to an … organ.

1.2.10 … is an order from a superior court to any administrative body to do what that body is obliged by law to do.

(10 × 1) (10)

1.3 Choose an item from COLUMN B that matches a description in COLUMN A. Write only the letter (A–E) next to the question number (1.3.1–1.3.5) in the ANSWER BOOK.

	COLUMN A	COLUMN B
1.3.1	Regulates the relationship between the state and its subjects	A real rights
1.3.2	Rights with respect to performance	B common law
1.3.3	Rules that are valid for the entire country	C personal rights
1.3.4	An impartial and independent official of the court	D sheriff
1.3.5	Rights with respect to things	E public law

(5 × 1) (5)

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1.4 Indicate whether the following statements are TRUE or FALSE. Choose the answer and write only 'True' or 'False' next to the question number (1.4.1–1.4.5) in the ANSWER BOOK.

1.4.1 All courts are bound by previous verdicts.

1.4.2 Material law determines the way a case must be practically handled when a legal rule has allegedly been violated.

1.4.3 Judicial precedents are the decisions of the lower courts.

1.4.4 Mechanical administrative proceedings may be delegated without authorisation.

1.4.5 Decentralisation is the simplest form of delegation.

(5 × 1) (5)

1.5 Give ONE word or term for each of the following descriptions. Write only the word or term next to the question number (1.5.1–1.5.5) in the ANSWER BOOK.

1.5.1 The presiding officer of the Small Claims Court

1.5.2 One government organ has the authority to approve the actions of another authority.

1.5.3 Section 33 of the Constitution

1.5.4 They assist legal functionaries in court and should have experience in judicial process

1.5.5 This doctrine means that specific functions, duties and responsibilities are allocated to different institutions.

(5 × 1) (5)

1.6 Choose the correct word or words from those given in brackets. Write only the word or words next to the question number (1.6.1–1.6.5) in the ANSWER BOOK.

1.6.1 (Judicial/Legislative) proceedings are the decisions taken by legislative bodies to carry out administrative action.

1.6.2 (A mandamus/An interdict) is a legal proceeding in which you ask a court to order someone to act in a particular way so that your rights are not interfered with.

1.6.3 The (preamble/long title) states the circumstances and background of legislation.

1.6.4 The law of patrimony forms part of (private/public) law.

1.6.5 The (executive/judiciary) is made up of the president and the cabinet at national level.

(5 × 1) (5)

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1.7 State which court has jurisdiction to try each case below. Write only the answer next to the question number (1.7.1–1.7.5) in the ANSWER BOOK.

1.7.1 Logan bought an entertainment system from Xavier's furnishers to the value of R10 000. After a week he realises that the DVD has a defect and wants to claim his money back.

1.7.2 Jean and Scott have been married for ten years in community of property. After their marriage broke down irretrievably, Jean now wants to file for a divorce.

1.7.3 Tony wishes to appeal against a decision of the High Court after he was found guilty of premeditated murder.

1.7.4 Eric was found guilty of fraud. The case was heard in the Port Elizabeth Regional Court and he was sentenced to 15 years imprisonment or a fine of R300 000. Eric now wishes to appeal against the decision of the Magistrate.

1.7.5 Storm, a 15-year-old, was caught stealing lipstick from the Beauty Bar. She was arrested and charged with theft.

(5 × 2) (10)
[50]

TOTAL SECTION A: 50

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SECTION B

QUESTION 2

2.1 2.1.1 List THREE types of public law. (3)

2.1.2 List TWO types of private law. (2)

2.2 Distinguish between *objective sense* and *subjective rights*. (8)

2.3 A Master of the High Court is appointed for every provincial division of the High Court of South Africa by the Minister of Justice and Constitutional Development.

Discuss the functions of the Master of the High Court. (4 × 2) (8)

2.4 Read the extract below and answer the questions.

LexisNexis

The **Rule of Law**, in its most basic form, is the principle that no person is above the law. The rule follows from the idea that truth, and therefore law, is based upon fundamental principles which can be discovered, but which cannot be created through an act of will.

https://www.lexisnexis.co.za/about/rule-of-law

2.4.1 Explain the principle of the Rule of Law. (13)

2.4.2 What are the conditions that the state must consider in an emergency before they can take action or declare war? (2)

2.5 Briefly discuss the advantages and disadvantages of judicial precedents. (4)
[40]

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QUESTION 3

3.1 Read the following case study and answer the questions.

Dr Y treated Mrs X for complications arising from sepsis in the abdomen and a surgical wound following a total hysterectomy done at the ABC State hospital on 8 April 2018. The sepsis was a complication of the hysterectomy for which Dr Y was the surgeon.

When she was admitted for a painful abdomen, she was treated with a mixture of high potency antibiotics despite which the infection did not clear up.

Dr Y suspected a deep foreign body in the wound or abdominal cavity and operated on Mrs X. This was a major operation under anaesthetic, being an open laparotomy. He found an abdominal swab left in the pelvic cavity at the time of the hysterectomy. The swab was removed, the abdominal cavity was washed out and closed with an internal drain, and appropriate antibiotic treatment given.

Mrs X recovered well. The drains were removed on the fifth postoperative day and she was discharged on the ninth postoperative day. She was subsequently seen at outpatients on several occasions and had fully recovered.

Mrs X had no problems with the scar nor abdominal pain after the second operation after a recovery period. However, the swab which had been left behind at the hysterectomy delayed her recovery and caused her abdominal pain and agony. Dr Y reported that she would have been unable to work for approximately a month following an uncomplicated hysterectomy but because of the complications this was extended to six months.

Mrs X had suffered for months from pain and severe anxiety; she feared the general inability to enjoy life and obviously the need to undergo a second dangerous operation.

3.1.1 Advise your client on the articles of the Law of State Liability. (7)

3.1.2 Which legal functionary will defend the state? (1)

3.1.3 If Mrs X has grounds to institute an action against the State, which court will hear the matter? (1)

3.1.4 Briefly write an explanatory note on the difference between *criminal cases* and *civil cases*. (4)

3.2 Briefly describe the principle of legality and explain the application thereof in administrative proceedings. (8)

3.3 Discuss legislation as a source of Administrative Law and all the components that are part of this source of Administrative Law. (15)

3.4 Explain the requirements for the court to regard a custom as a legal rule. (4)

[40]

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QUESTION 4

4.1 Identify the TWO types of Administrative Law relationships and explain each briefly by means of examples. (6)

4.2 Name and discuss the THREE types of delegation within administrative authority. (14)

4.3 When does a court or tribunal have the power to judicially review an administrative action? (10)

4.4 List the forms of judicial review found in South Africa. (4 × 2) (8)

4.5 What is the difference between *mechanical administrative proceedings* and *limited discretion*? (2)
[40]

QUESTION 5

5.1 Briefly explain each fundamental rule of interpretation. (14)

5.2 Name and discuss internal aids regarding the interpretation of laws. (16)
[30]

TOTAL SECTION B: 150
GRAND TOTAL: 200

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