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higher education & training

Department:
Higher Education and Training
REPUBLIC OF SOUTH AFRICA

MARKING GUIDELINE

NATIONAL CERTIFICATE

PUBLIC LAW N6

10 September 2020

This marking guideline consists of 6 pages.

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SECTION A

QUESTION 1

1.1 True
1.2 False
1.3 True
1.4 True
1.5 False
1.6 False
1.7 True
1.8 True
1.9 True
1.10 False
1.11 True

(11 × 1) **[11]**

QUESTION 2

2.1 F
2.2 D
2.3 H
2.4 A
2.5 B
2.6 G
2.7 C
2.8 E
2.9 J
2.10 I

(10 × 2) **[20]**

QUESTION 3

3.1 Lower (2)

3.2 Unfair (2)

3.3 (a) Employers✓✓
(b) Employees✓✓ (4)

3.4 High (2)

3.5 Ordinary (2)

3.6 Subjects (2)

3.7 (a) International✓✓
(b) Nations✓✓ (4)

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3.8 (a) Mental✓✓
(b) Human✓✓ (4)

3.9 (a) Intention✓✓
(b) Meaning✓✓ (4)
[26]

TOTAL SECTION A: 57

SECTION B

QUESTION 4

4.1 4.1.1 Private-law relationship – created between two individuals or between an individual and a company or two or more companies.

4.1.2 Judicial review – when administrative proceedings have been declared invalid or contravenes the constitution or other legislation, the actions of the government body/organ will be subject to revision by judicial authority.

4.1.3 Civil liability – the state/government is held responsible for a wrongful act that was committed by an official of the state

4.1.4 Proclamations – the act of saying something in public, an official statement or announcement made by a person in power or by government

4.1.5 Law of commitment – regulates the relationship between one person (creditor) who has a right against another person (debtor) for performance and this person (debtor) has a duty to perform.

4.1.6 Performance – human conduct called the law of demand
(6 × 2) (12)

4.2
- Everyone has the right to administrative action that is lawful, reasonable and procedurally fair.
- Everyone whose rights have been adversely affected by administrative action has the right to receive written reasons for this action.
- National legislation must be enacted to give effect to these rights.

(Any relevent 3 × 2) (6)

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4.3
- As the result of an appeal from a judgement of the high court or the supreme court of appeal
- As a direct application to the court
- As the result of the high court or the supreme court of appeal declaring a piece of legislation invalid that requires confirmation by the constitutional court
- When Parliament requests the constitutional court to review a bill

(4 × 2) (8)

4.4 Ronald Lamola (2 × 1) (2)

4.5
- Hears appeals from criminal and civil cases
- Maintains an appeal
- Imposes any sentence and makes any order on legal points
- Delivers verdicts on what should have happened during a court case
- Decides appeals on constitutional matters, except matters over which the constitutional court has exclusive jurisdiction
- Declares an act of parliament, a provincial act or the conduct of the South African government unconstitutional (6 × 2) (12)

[40]

QUESTION 5

5.1
- Portrays the true meaning of the legislator
- Identifies the objects of that Act
- Contains a program of action
- Provides a declaration of intent with regard to the broad principles contained in the particular Act or statute (4 × 2) (8)

5.2
- Indigenous law contains unwritten customs that are conveyed orally from generation to generation.
- It differs from tribe to tribe and from one territorial basis to another.
- It mainly regulates the relationship between individuals.
- It is a communal or group-oriented system that contrasts with Western law. (4 × 2) (8)

5.3
- All the legal rules in the country
- Includes statutory and common law
- Regulates the relationship between persons
- A person is part of society with his/her own interests that might cause conflict between persons.
- OS maintains order and peace in a relationship.
- Rules governing our daily lives (6 × 2) (12)

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5.4
- Legislative administrative proceedings
- Judicial administrative proceedings
- Purely administrative proceedings
- Multilateral administrative proceedings
- Unilateral administrative proceedings (5 × 2) (10)

5.5 Internal control relationship
- Two organs in the same department oppose each other.✓✓
- This happens only if higher organ gave order/instruction to lower organ.✓✓
- Can only exist if higher organ has authority to change actions of lower organ. (Any two of the above)

Independent control relationship
- One government organ approves actions of another organ.✓✓
- The two organs function independently and function under their own name.✓✓ (4 × 2) (8)

5.6
- An order declaring the administrator's decision invalid
- Ordering the administrator to reconsider the decision
- Replacing the decision with the court's own decision
- Ordering the government to pay damages to the affected person

(4 × 2) (8)
[54]

QUESTION 6

6.1 Formal test
- Did government institute the body?✓✓
- Did legislation establish the authority and duties of the body?✓✓
- Does the body slot into the hierarchy of authority of government?✓✓
- Is there a higher government authority that influences orders given to lower organs?✓✓

Material test
- What is the nature of the organ's activities?✓✓
- Does the organ provide a service to the public?✓✓
- Is the organ profit oriented?✓✓
- Does the organ have government authority?✓✓ (8 × 2) (16)

6.2
- Parliament
- Provinces
- Proclamations
- Regulations (4 × 1) (4)

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6.3
- Administration of deceased estates
- Administration of insolvent persons in accordance with statutory provisions
- Protection of the interest of minors and legally incapacitated persons
- Protection and administration of minors' and absent heirs' funds
- Supervision and administration of companies and close corporations in accordance with statutory provisions
- Determination and assessment of estate duties in terms of the Estate Duty Act
- Supervision of trusts in terms of the Trust Property Control Act.
- Processing enquiries of executors, attorneys, beneficiaries and other interested parties
- Appointment of impartial and capable persons as executors, trustees, curators and liquidators (Any relevant 6 × 2) (12)

6.4
- The court does not hear evidence or question witnesses.
- It considers evidence heard in the original court that heard the matter.
- It works largely with written arguments that are presented to the court.
- The judges' work consists of analysing documents and preparing judgements and each judge has two full-time reseachers.
- Each judge sitting in a case must indicate his or her decision and the rulling is then determined by majority vote.
- The reasons for the decision are published in a written judgement.
- Once all evidence has been considered, the judges meet to discuss the possible outcome of the case. (7 × 2) (14)

6.5
- It is a set of rules or regulations that facilitates human interaction.
- It ensures order in society and ensures that the law is applied consistently.
- The rules/laws are applied or interpreted by institutions of the state with assistance from the police, traffic officers, et cetera. (3 × 1) (3)

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TOTAL SECTION B: 143
GRAND TOTAL: 200

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