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higher education & training

Department:
Higher Education and Training
REPUBLIC OF SOUTH AFRICA

MARKING GUIDELINE

NATIONAL CERTIFICATE

PUBLIC LAW N6

14 November 2022

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 True
1.7 False
1.8 True
1.9 True
1.10 False

(10 × 1) **[10]**

QUESTION 2

2.1 Things (2)

2.2 (a) Public
(b) Procedure
(c) court (2 × 3) (6)

2.3 Constitutional (2)

2.4 Police (2)

2.5 (a) Sovereign
(b) Permanent (2 × 2) (4)

2.6 Public (2)

2.7 Criminal (2)
[20]

QUESTION 3

3.1 3.1.1 Court orderlies
3.1.2 Clerk of the court
3.1.3 Attorney.
3.1.4 Judge

(2 × 4) (8)

3.2 (a) Plaintiff – the person who initiates the case and institutes a claim.
(b) Defendant – is the person against whom the action is instituted and who may raise a defence against the action.
(c) 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.

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(d) Proclamations – can be defined as the act of saying something in a public or official statement or an announcement made by a person in power or by a government.
(e) Mercantile law – law that deals with commerce and industry.
(f) Law of obligation – regulates the relationship where one person has a right against another for performance and the other person has a duty to perform.

(2 × 6) (12)
[20]

TOTAL SECTION A: 50

SECTION B

QUESTION 4

4.1
- Interpret the law literally✓✓ – the meaning of the words must be interpreted according to its grammatical meaning.✓✓
- Words must be taken to have their ordinary meaning✓✓ – technical words must be understood, not according to their ordinary meaning but according to their common usage.✓✓
- Common words must be interpreted according to their common usage✓✓ – if the law applies to a common situation, the application of the law should also be common.✓✓
- 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 a meaning/every word is important✓✓ – meaning must be assigned to every word and words must be understood according to their ordinary meaning.✓✓ (Any 4 × 5) (20)

4.2
- Portrays the true meaning of the legislator.
- Identifies the objectives of that Act.
- Contains a programme of action.
- A declaration of intent with regard to the broad principles contained in a particular Act. (2 × 4) (8)

4.3
- 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. (2 × 4) (8)

4.4
- One person or body holds the power and authorises another person or body to exercise the power or function on their behalf.
- The holder of the power stays responsible for the acts of the person.
- The power is transferred from the higher person or body to the lower person or body.
- It can be seen as the legal means by which the delegator authorises the delegatee to act on their behalf. (2 × 4) (8)

4.6 Ronald Lamola (2)
[46]

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QUESTION 5

5.1 Formal test✓✓

Under the formal test, the following questions may be asked:
- Was the body instituted by the government?✓✓
- Were the authorities and duties of the body established by legislation?✓✓
- Is the body slotted into the hierarchy of authority of government?✓✓
- Is there a higher government authority that influences orders given to the lower organ?✓✓

Material test✓✓

Under the material test, the following questions may be asked:
- What is the nature of activities of the organ?✓✓
- Does the organ provide a service to the public?✓✓
- Is the organ profit oriented?✓✓
- Is the organ a bearer of government authority?✓✓

(2 × 10) (20)

5.2 (a) Parliament✓ – is the highest organ that can pass legislation.✓✓

(b) Provinces✓ – are authorised by parliamentary legislation to issue ordinances that rule the organisation and functions of the provincial authorities and its officials.✓✓

(c) Proclamations✓ – can be defined as the act of saying something in public.✓✓

(d) Regulations✓ – refer to written instrument containing rules having the force of law.✓✓

(3 × 4) (12)

5.3
- The nature of the decision
- The identity and expertise of the decision-maker
- The range of factors relevant to the decision
- The reasons given for the decision
- The nature of competing interests ✓
- The impact of the decision (2 × 6) (12)

5.4
- Place the child under the supervision of a probation officer.
- Place the child under the care of a suitable person (parent).
- Refer the child to a reformatory. (2 × 3) (6)

[50]

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QUESTION 6

6.1.1 Civil claim/State liability (2)

6.1.2 Civil claim is when a state or government is being held liable for the delict or wrongful act of the official of the state when busy executing his/her duties as state official. (2)

6.1.3 Against Minister of the Department of Health,✓✓ because civil claims must be instituted against the highest authority of that particular department.✓✓ (4)

6.1.4
- Any claim against the state, if the claim is against an official of the state.
- The claim can arise from any contract lawfully entered into on behalf of the state, that was broken.
- Any unlawful act or wrongdoing by an official of the state when acting in his or her official capacity.
- A lawsuit on the basis of the above, must be instituted against the executive authority of the state institutions.
- 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.
- The claim against the state must be of a specific amount. (Any 2 × 6) (12)

6.2
- The danger may not be averted by the application of laws.
- The emergency measures must be in proportion to the emergency. (2 × 2) (4)

6.3
- Legislative authority – it has the power to make, amend and repeal rules of law.
- Executive authority – the power to execute and enforce rules of law.
- Judicial authority – the power to determine what the law is and how it should be applied in disputes. (2 × 3) (6)

6.4
- Restore land rights to people who have been dispossessed in terms of racial discrimination.
- Restore the original land.
- Provide alternative state land.
- Award compensation. (Any 3 of the above) (Any 2 × 3) (6)

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6.5

Mandate	Deconcentration	Decentralisation
• Higher authority instructs lower authority.	• Authority is further delegated to a lower organ.	• Authority is transferred to an autonomous authority.
• Lower organ acts in the name of the higher organ.	• Lower organ acts in the name of the higher organ.	• Autonomous organ acts in its own name.
• Control lies with superior.	• Control lies with the higher organ through reports.	• The autonomous organ acts in its own name.
• Lower organ has no discretionary powers and must do as instructed.	• Higher organ prescribes how the function must be carried out.	• Control lies with board appointed by the minister.
• Supervisor stays responsible.	• Higher organ prescribes how the function must be carried out.	• Autonomous organ can act on its own discretion.
• Delegation can be easily withdrawn by superior.	• Higher organ stays responsible.	• HODs are responsible and report to board.

(18)
[54]

TOTAL SECTION B: 150
GRAND TOTAL: 200

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