higher education & training

Department:
Higher Education and Training
REPUBLIC OF SOUTH AFRICA

MARKING GUIDELINE

NATIONAL CERTIFICATE

LEGAL PRACTICE N5

11 November 2022

This marking guideline consists of 10 pages.

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SECTION A

QUESTION 1

1.1 B
1.2 C
1.3 B
1.4 C
1.5 C
1.6 D
1.7 B
1.8 A
1.9 B
1.10 D

(10 x 1) **[10]**

QUESTION 2

2.1 True
2.2 False
2.3 False
2.4 False
2.5 True

(5 × 1) **[5]**

QUESTION 3

3.1 H
3.2 D
3.3 E
3.4 I
3.5 J
3.6 K
3.7 G
3.8 L
3.9 A
3.10 C

(10 × 2) **[20]**

QUESTION 4

4.1 Roll
4.2 Bar Association
4.3 Litigation
4.4 Tubular method
4.5 Business account
4.6 Uberrima fides
4.7 National government/Parliament

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4.8 Stare decisis
4.9 Interdict
4.10 Subpoena
4.11 Tacit hypothec
4.12 Preferential creditors
4.13 Common law
4.14 Centralised filing
4.15 Trust account

(15 × 1) **[15]**

TOTAL SECTION A: 50

SECTION B

QUESTION 5

5.1
- Arguing a client's case in court
- Arguing a client's case before a council, for example, the liquor council
- Drawing up contracts and agreements for clients
- Advising clients regarding domestic, financial and business matters
- Establishment of companies and assistance regarding the management of companies and advice concerning tax and insolvency
- Drawing up wills and administering estates
- Preparing court documents
- Consulting with advocates
- Debt collecting
- Can do conveyancing if he/she obtained additional qualification
- Deals with divorces (10 × 1) (10)

5.2 5.2.1
- How you answer the phone is an advertisement for a firm.
- Answer immediately.
- Provide the name of the firm.
- Be polite.
- Write down the time, date and name of person for whom call was intended.
- Take down the message correctly/clearly.
- Indicate the correct telephone number.
- File information in client's file for reference. (Any 6 × 1) (6)

5.2.2
- Alphabetical: Files arranged according to the alphabet – surname of the client
- Numerical: A number is allocated to each client and files are arranged according to these allocated numbers. (2)

5.2.3
- Money of all attorney's clients kept here
- Money for future services is also kept in this account, for example, when property is bought, and deposit is paid.
- Attorney may not withdraw any money without client's permission.
- Separate receipt and cheque book are reserved for this account.
- No trust fund money may be paid into business account.

(5 × 2) (10)

5.2.4 Means to act in good faith
May not disclose any information received from a client (2)
[30]

QUESTION 6

NOTE: ALL QUESTIONS, WITH THE EXCEPTION OF 6.11–6.15, COUNT FOR ONE MARK EACH.

6.1 16 years

6.2 sound mind

6.3 the people you want to inherit will be identified/you do not die intestate

6.4 testator

6.5 testatrix

6.6 The will must be in writing.

6.7 Two persons of 14 or older must act as witnesses.

6.8 Each page must be initialled. The last page must be signed.

6.9 If the will is signed by means of making a mark or if another person signs on behalf of testator, the Commissioner of Oaths must attach a certificate to state that he or she has satisfied himself or herself as to the identity of the testator.

NOTE: ANSWERS FOR 6.6–6.9 CAN BE IN ANY SEQUENCE.

6.10 14 years

6.11 A guardian is a person who takes care of minors or a mentally or physically disabled individual.✓✓

6.12 Guardians and curators are appointed to see to the financial needs of dependants.✓✓

6.13 This is always the surviving spouse, and divorced parents may only appoint a guardian in the event of the death of both parents.✓✓

6.14 Only a recognised court may divest a parent from his/her natural guardianship.✓✓

6.15 It is advised to name a guardian for minors in your will after obtaining the permission of that person first.✓✓

Additional possible points:
- Such a guardian must meet certain legal requirements.
- Guardians receive a percentage compensation.
- Should no guardian have been appointed, the Master of the High Court will contact all concerned parties and appoint one of them as guardian.
- The minor has the right to maintenance from the guardian fund after all legal requirements have been met.

NOTE: ANSWERS FOR 6.11–6.15 CAN BE IN ANY SEQUENCE.

6.16 Interviewing next of kin

6.17 Reporting the estate

6.18 Opening an estate file

6.19 Obtaining valuations of estate assets and liabilities

6.20 To take custody of all the assets in the estate

6.21 To place a notice in the *Government Gazette* and local newspaper

6.22 To open an estate cheque account

6.23 To submit an additional inventory (section 26)

6.24 To complete and pay an income tax return form

Additional possible points:
- To determine the solvency of the estate
- To determine and use a suitable method of liquidation
- To handle maintenance claims
- To pay interim advances under certain circumstances
- To pay estate liabilities/debts
- To draft the liquidation and distribution account
- To advertise that account is open for inspection
- To take objections to the account
- To submit the last evidence to the Master
- To make final payment of estate money
- Request a filing slip from the Master
- To receive executor's payment

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NOTE: ANSWERS FOR 6.16–6.24 CAN BE IN ANY SEQUENCE

6.25 An addition or addendum to an existing will.

[30]

QUESTION 7

7.1

SPECIAL POWER TO SUE AND DEFEND

In the High Court of South Africa

(Northern Cape✓ **Division)**

J Rossouw✓

Plaintiff

Versus

K Kleynhans✓

Defendant

In the matter of

A claim for R34 900 for services rendered✓

I/we, the undersigned

J Rossouw✓

Do hereby nominate, constitute and appoint

Rossouw and Joubert,✓

With power of substitution, to be my/our true and lawful Attorney(s) and Agent(s) in my/our name, place and stead, to appear before the above named Honourable Court or wherever else may be necessary and then and there as:

To pay all fees of Council and Witnesses; to make all and any payments whatsoever which may be necessary and desirable for the proper conduct of the case, hereby ratifying, allowing and confirming, and promising and agreeing to ratify, allow and confirm all and whatsoever my/our said Attorney(s) and Agent(s) shall lawfully do or cause to be done by virtue of these presents.

Given under my hand at 22 Main Road, Kimberley✓

This 2nd **day of** November 2021 **in the presence of the**✓

undersigned witnesses

WITNESSES:

1. SSompetha✓

2. BMahanglu✓

(10)

7.2 7.2.1 R20 000 (1)

7.2.2
- Send a letter of demand to the defendant.
- Keep proof of all servings.
- If person does not respond within 14 days, go to the nearest Small Claims Court.
- Show the letter of demand and the proof to the clerk.
- A summons will then be issued and served upon the defendant.
- The case will come up for hearing on the day and time determined by the summons.
- The messenger will keep the return of service (proof of delivery).
- Report to the court on the specific day and time.
- Have all the necessary documentation ready.
- During the hearing, the plaintiff will state his case.
- Thereafter the defendant will state his case.
- Eyewitnesses may be called.
- The commissioner will give a ruling.
- The party who loses, carries the costs. (14)

7.3
- A testator can make a mark, usually a thumb print, cross, rubber stamp or signet ring impression.
- Where a mark has been made or where someone has signed on behalf of the testator, the Commissioner of Oaths must certify that he has ascertained the identity of the testator.
- Certificate can be attached to any page of the will.

In case of many pages, Commissioner of Oath has to sign the other pages as well, whereby he/she certifies that:
- the identity of the testator has been ascertained
- the testator intended to draw up the will
- he/she was present when the testator made his/her mark
- he/she was present when someone signed on behalf of testator (Any 5 × 1) (5)

[30]

QUESTION 8

8.1 8.1.1
- Attorney's costs for the issuing thereof
- A pleading is added as an appendix to the indictment
- The sheriff must receive written instruction to serve the lease indictment. (3 × 2) (6)

8.1.2 The tacit hypothec means that a landlord can take the moveable assets of the tenant that are on the leased premises for outstanding rent. (2)

8.1.3
- The sheriff will draw up an inventory of all moveable assets on the premises.
- The lessee is prohibited from removing any assets during the dies induciae period.
- Should the lessee remove some of the property, the landlord will maintain his rights on said property. (3 × 2) (6)

8.1.4
- The lessee will have a certain dies induciae in which he or she has to respond to the summons.
- The landlord has no right concerning the assets of the lessee during this time.
- Should the lessee remove his property from the leased site, the landlord will lose his hypothec right. (Any 2 × 2) (4)

8.2

TELEPHONE MESSAGE

To: Mr Masetu

From: Kim Timm✓

Company: A & K Legal Firm✓

Telephone number: 011 357 3784✓

E-mail address: khayenisha3@gmail.com✓

Date: 10 November 2021✓

Time: 11h00✓

Message:

Mrs Khayenisha will not be able to attend the meeting to be held on 20 November 2021.✓✓ She requests that it be postponed until 27 November 2021.✓✓

Call taken by: Khaya Tondo✓

(12)
[30]

QUESTION 9

9.1 9.1.1 An affidavit is a written declaration under oath that is made before a commissioner of oath. OR An affidavit is a declaration by the deponent that the entire written content signed by him or her is the truth. (2)

9.1.2 Deponent (1)

9.1.3
- Declaration of status
- To swear that your name, address and identity number is correct.
- Where you declare that you are insolvent.
- Where you lost, for example, your ID, and you need it for some or other reason, for example, applying for a post.
- It can be used in court cases.

OPEN MEMO – IF EXAMPLES ARE CORRECT (Any 3 × 1) (3)

9.1.4
- The deponent knows and understand the content.
- The document was signed in his/her presence. (2)

9.1.5
- An attorney
- The police
- The postmaster
- The principal of a college (Any 3 × 1) (3)

9.2.1 Lower courts/Court of first instance/district court (1)

9.2.2 Court work/administering justice:✓✓ hears criminal and civil cases in the lower court; delivers suitable verdicts; handles preliminary investigations into more serious cases
(plus✓✓ for any example)
Administrative cases/district administration:✓✓ contracting a marriage, inquests; registering of births; handling of deaths
(plus✓ for any example) (4 × 2) (8)

9.2.3 (a) Yes
(b) No
(c) No
(d) Yes
(e) Yes
(f) No (6 × 2) (12)

[30]

QUESTION 10

10.1.1
- Provincial division of the High Court
- Local division of the High Court
- Magistrate's court
- Small Claims Court (4)

10.1.2
- The letter of demand
- The summons
- Notice of intention to defend
- Closer particulars regarding the claim (optional)
- Further particulars regarding the claim
- Written defence/plea by the defendant
- Closer particulars regarding the written defence (optional)
- Further particulars regarding the written defence
- Counterplea (Any 6 × 1) (6)

10.1.3
- A claim based on a liquid document, for example a cheque, or admission of guilt.
- A claim for a liquidated amount, for example, for an amount mentioned in a rental agreement
- The serving of a specified moveable property
- For ejectment (Any 4 × 1) (4)

10.2.1 Magistrate's court
10.2.2 Small Claims Court
10.2.3 High Court – Provincial
10.2.4 Labour Court
10.2.5 High Court of Appeal
10.2.6 Provincial High Court/lately also Magistrates' Courts
10.2.7 Small Claims Court
10.2.8 Magistrate's Court
10.2.9 Magistrate's Court
10.2.10 Magistrate's Court

(10 × 1) (10)

10.3
- If all the debts can be paid by the proceeds of the sale in execution, the debtor may immediately apply for a rehabilitation order at the court.
- If only a dividend has been paid, the debtor can apply for a rehabilitation order after four or five years.
- After ten years, the debtor is automatically rehabilitated without having to apply at court. (3 × 2) (6)

[30]

TOTAL SECTION B: 150
GRAND TOTAL: 200

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