higher education & training

Department:
Higher Education and Training
REPUBLIC OF SOUTH AFRICA

NATIONAL CERTIFICATE

LEGAL PRACTICE N5

(13030115)

11 November 2022 (X-paper)
09:00–12:00

This question paper consists of 12 pages and 2 addenda.

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DEPARTMENT OF HIGHER EDUCATION AND TRAINING
REPUBLIC OF SOUTH AFRICA

NATIONAL CERTIFICATE
LEGAL PRACTICE N5
TIME: 3 HOURS
MARKS: 200

NOTE: If you answer more than the required number of questions, only the required number will be marked. All work you do not want to be marked must be clearly crossed out.

INSTRUCTIONS AND INFORMATION

1. SECTION A is COMPULSORY.
2. Answer any FIVE questions in SECTION B.
3. Read all the questions carefully.
4. Number the answers according to the numbering system used in this question paper.
5. Start each question on a new page.
6. Use only a blue or black pen.
7. All the answers must be in full sentences, except where indicated otherwise.
8. Write neatly and legibly.

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SECTION A

QUESTION 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 (1.1–1.10) in the ANSWER BOOK.

1.1 Choose the INCORRECT option. Lower courts include the …

A Small Claims Court.
B Income Tax Court.
C Children's Court.
D Civil Magistrate's Court.

1.2 The first step in a defensive civil action:

A Notice of intention to defend the action
B Closer particulars regarding the claim
C The letter of demand
D Written defence by the defendant

1.3 A short summons is used for … claims.

A liquid
B liquidated
C illiquid
D liquid and illiquid

1.4 An emoluments attachment order means that … can be taken from a debtor who fails to pay debts.

A money in an investment
B money from a legacy
C regular monthly deductions
D a claim against a third party for damages

1.5 The following example is an example of a …

I bequest my farm, Weltevrede, to my son Johann, on condition that he pays my daughter, Johandi, the amount of R600 000.

A modus
B substitution
C suspensive conditional bequest
D resolutive conditional bequest

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1.6 A claim up to … can be taken to the Small Claims Court.

A R30 000
B R15 000
C R13 000
D R20 000

1.7 An example of a criminal case:

A A divorce case
B Reckless driving leading to an accident
C Suing for non-payment of debts
D To be declared insolvent by a creditor

1.8 Choose the INCORRECT one. Formalities that summonses must meet:

A Court fees must be paid.
B It must be signed by the defendant's attorney.
C It must be signed by the plaintiff's attorney.
D All copies must be certified.

1.9 An addition to a will is called a …

A residue
B codicil
C demise
D modus

1.10 Stealing is a … law transgression.

A statutory
B customary
C judicial
D common

(10 × 1) **[10]**

QUESTION 2

Indicate whether the following statements are TRUE or FALSE by writing only 'True' or 'False' next to the question number (2.1–2.5) in the ANSWER BOOK.

2.1 All sources of the law are subject to the Constitution.

2.2 A magistrate's court has jurisdiction over mental capacity.

2.3 Further particulars regarding a claim are signed by the attorney of the plaintiff.

2.4 The swearing of a false oath is regarded as a civil offence.

2.5 An illiterate person can draw up a valid will.

(5 × 1) **[5]**

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QUESTION 3

Choose a term from COLUMN B that matches a description in COLUMN A. Write only the letter (A–L) next to the question number (3.1–3.10) in the ANSWER BOOK.

COLUMN A		COLUMN B	
3.1	An attorney paid by the state to assist the accused in the case of a serious criminal offence	A	commissioner
3.2	Number of days within which a defendant must respond to a summons	B	business account
3.3	An exact amount to be claimed	C	trust account
3.4	Person who draws up a will	D	dies induciae
3.5	This person never acquires ownership over the property	E	liquid claim
3.6	Includes assets and liabilities and balance available for distribution	F	liquidated claim
3.7	Person who swears an affidavit	G	deponent
3.8	Dying without a will	H	public defender
3.9	Presiding officer of the Small Claims Court	I	testator
3.10	Purchase price of property is paid upfront into this account	J	usufructuary
		K	liquidation account
		L	intestate succession

(10 × 2) **[20]**

QUESTION 4

Give ONE word or term for each of the following descriptions by writing it next to the question number (4.1–4.15) in the ANSWER BOOK.

4.1 A list of qualified, practising attorneys

4.2 An association that keeps a watchful eye on the activities of advocates

4.3 A section in a law firm that deals with the handling of court cases

4.4 Method of filing used where documents are rolled up and filed inside a tube

4.5 An account used in the attorney's office to pay all running expenses

4.6 Acting in the utmost good faith

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4.7 The most important law-making authority in South Africa

4.8 Let the decision stand

4.9 A court order that prohibits an individual from performing certain actions

4.10 Term used where a summons is served on a witness to appear at a civil hearing

4.11 A remedy of a landlord over the movable property of a lessee where the latter is in arrears with rent

4.12 Persons who come second in priority of distribution of debt before the unsecured creditors

4.13 Unwritten law

4.14 Filing system used where files are stored in one department

4.15 The account in which the money of all the attorney's clients is kept

(15 × 1) **[15]**

TOTAL SECTION A: 50

SECTION B

QUESTION 5

5.1 List any TEN types of work typically done by an attorney. (10)

You have been appointed as the legal secretary of H & I Attorneys. You are approached by a college to address the current N5 students on certain matters.

Present your answers in the form of PowerPoint slides.

5.2.1 Telephone techniques and manners (6 x 1) (6)

5.2.2 The difference between *alphabetical* and *numerical filing* (2)

5.2.3 The trust account (5 × 2) (10)

5.2.4 The duty of the legal secretary to act *uberrima fides* (2)

[30]

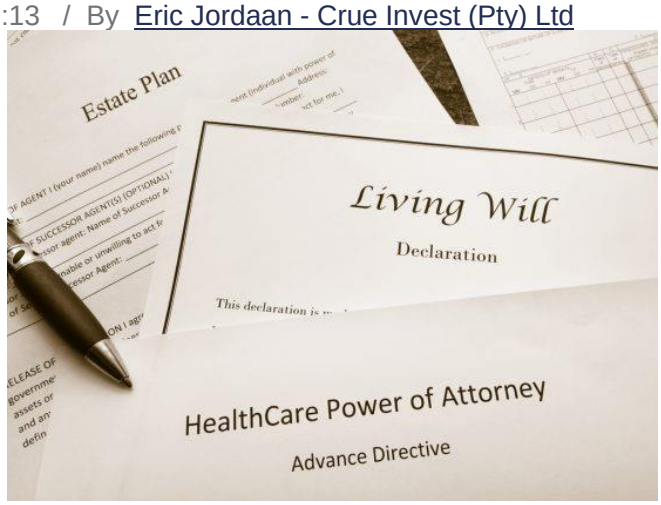
QUESTION 6

Read the incomplete article below and complete it. Write only the answer next to the question number (6.1–6.25) in the ANSWER BOOK.

Drafting a will: your questions answered

If you die intestate, the state appoints a legal guardian for your children.

17 September 2019 11:13 / By Eric Jordaan - Crue Invest (Pty) Ltd



Don't leave a significant gap between the last line of the will and the testator's signature – this could cause the will to be declared invalid. Image: Shutterstock

Who can draft a will?
Anybody who is older than (6.1) … and of (6.2) … mind can draft a will. By drafting a valid will, you can ensure that (6.3) …

A male person who drafts a will is known as a (6.4) …, while a female person drafting a will is known as a (6.5) …

What are the requirements of a valid will?
In order for a will to be valid, it must meet a number of criteria.
(6.6–6.9)

Can anyone witness a will?
Anyone who is (6.10) … years or older can witness a will, provided that they are of sound mind and capable of understanding the consequences of their actions. The law requires that two people witness the will, and that the testator signs in the presence of those witnesses.

How does guardianship for a minor work?
It can briefly be explained as follows:
(6.11–6.15)

What does the executor do in administering the deceased estate?
There are indeed a number of duties of an executor with regard to administering the deceased estate. Only NINE will be listed.
(6.16–6.24)

What is a codicil?
(6.25) … **[30]**

[Adapted from *https://www.moneyweb.co.za/financial-advisor-views/drafting-a-will-your-questions-answered/]*

QUESTION 7

7.1 Use the following information to complete the power of attorney on ADDENDUM A (attached):
High Court Division: Northern Cape
Plaintiff: J Rossouw, a subcontractor of 20 Cambridge Avenue, Kimberley.
Defendant: K Kleynhans of 32 Church Street, Kimberley
Claim: R34 900 for services rendered
Attorney's firm: Rossouw and Joubert, 22 Main Road, Kimberley
Make use of own witnesses and dates. (10)

7.2 Not everyone can afford to pay an attorney's legal costs to sue someone else for, for example, the rendering of a service for which you are now not paid. To assist the public with such claims, the Small Claims Court was established in 1984.

7.2.1 What is the maximum claim amount this court can rule upon? (1)

7.2.2 Briefly list the procedures to be followed when suing someone in the Small Claims Court. (14)

7.3 One of the requirements for a valid will is that it must be in writing and signed by the testator.

Discuss the options available to testators who are illiterate or handicapped and thus unable to sign their own wills. (5 × 1) (5)

[30]

QUESTION 8

8.1 Read the article below and then answer the questions.

Jun 28, 2019

Rental arrears? Is it worth trying to collect?

What can you do when your tenant falls into rental arrears?

Nobody wants to fall into rental arrears, but unfortunately it happens. Times are tough, and the economic climate isn't forecast to improve for some time yet, so it is all too common for tenants to default on their rental payments.



This is a stressful situation for both landlord and tenant, and it must be approached with caution and a full knowledge of the rights of each.

What's in the lease?

Depending on the specific lease agreement, in general, if a tenant is **seven days late** with their rental payment, they are then deemed, in the eyes of the law, to be in breach of the lease agreement.

It is up the landlord to inform the tenant in writing of the arrear rental, but the landlord does not have the right to immediately evict the tenant. Through this official notice, the landlord is giving the tenant the opportunity to resolve the breach of the lease agreement. A landlord can blacklist the tenant with credit bureaux at this point. A special remedy at the disposal of the landlord is the tacit hypothec.

[Adapted from *https://www.sdlaw.co.za/blog/rental-arrears-is-it-worth-trying-to-collect/*]

8.1.1 A rental interdict summons can be issued to the tenant when he/she is in arrears with rent.

Which formalities must be met by this summons? (3 × 2) (6)

8.1.2 What is the meaning of a tacit hypothec? (2)

8.1.3 Briefly explain the consequences of a rental interdict summons. (3 × 2) (6)

8.1.4 What will the consequences of only a simple summons be? (2 × 2) (4)

8.2 Use the following information to complete the MESSAGE PAD on ADDENDUM B (attached). Write your EXAMINATION NUMBER in the space provided. (12)

You are Khaya Tondo, secretary for the attorneys MASETU & JOUBERT. Mrs Khayenisha, a lawyer at A & K Legal Firm's, secretary, Kim Timm, phones to speak to Mr Masetu to discuss the meeting to be held on 20 November. Mr Masetu is not available to take the call. Mrs Khayenisha will not be able to attend the meeting and requests that the meeting be postponed until 27 November.

It is your responsibility to give this message to the applicable person. Mrs Khayenisha's telephone number is 011 357 3784 and her e-mail address is khayenisha3@gmail.com

The call came through on 10 November at 11:00.

[30]

QUESTION 9

9.1



AFFIDAVITS – THE TRUTH?

9.1.1 Define an *affidavit*. (2)

9.1.2 What is the person called who swears an affidavit? (1)

9.1.3 List any TWO examples of where an affidavit might be made. (2)

9.1.4 A commissioner of oaths may sign an affidavit.

List TWO things that the commissioner hereby guarantees. (2)

9.1.5 List any TWO persons who can act as a commissioner of oaths. (2)

9.2 Magistrates play a very important role in the legal system of South Africa.

With regard to this statement, answer the following questions.

9.2.1 In which court is a magistrate a presiding officer? (1)

9.2.2 Briefly discuss the twofold duties of a magistrate. (4 × 2) (8)

92.3 Indicate in each of the following cases whether a magistrate has the jurisdiction to act.

(a) Eviction of a person from a premise
(b) Declaring a person a prodigal
(c) Deciding on the validity of a will
(d) Drug trafficking
(e) Dealing with a case where a person drives under the influence of alcohol
(f) Treason

(6 × 2) (12)
[30]

QUESTION 10

10.1 Civil cases can be heard by a number of courts. The parties involved must remember that the higher in the hierarchy a specific court, the higher the legal costs will be.

With regard to this statement, answer the following questions:

10.1.1 List any FOUR courts of first instance where a civil matter can be heard. (4)

10.1.2 List any SIX documents that must be completed and submitted in a civil case. (6)

10.1.3 A plaintiff may apply for a summary judgment.

List FOUR cases in which this judgment can be implemented. (4)

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10.2 Indicate in each of the following cases in which court the following hearings will take place. Write the answer next to the question number (10.2.1–10.2.10) in the ANSWER BOOK.

10.2.1 While driving to work, Jerry jumps a traffic light and receives a fine. He ignores all demands for payment.

10.2.2 James owes a local stokvel R3 800. The chairperson of the stokvel wants to take James to court to recover the debt.

10.2.3 Luphelo wishes to contest the will of his late wife on the basis that it is invalid and that she had an updated version.

10.2.4 The employer did not want to promote Amelia because of her gender.

10.2.5 A bus driver from Gauteng who caused an accident in which eight learners died, was found guilty of murder. He wishes to appeal against this outcome.

10.2.6 Jacy and Wilna live in Cape Town. They have decided to get a divorce.

10.2.7 Landile did plumbing at a client's house. The client refuses to pay the outstanding amount of R4 000.

10.2.8 Amelia has been caught stealing jewellery from a shop.

10.2.9 Patricia neglected to pay an outstanding fine of R1 000 for exceeding the speed limit.

10.2.10 Conway was arrested for selling dagga. This was his first offence.

(10 × 1) (10)

10.3 Discuss the THREE ways in which rehabilitation can take place. (6)

[30]

TOTAL SECTION B: 150
GRAND TOTAL: 200

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ADDENDUM A **EXAMINATION NUMBER:** | | | | | | | | | | | | | |

QUESTION 7.1

SPECIAL POWER TO SUE AND DEFEND

In the High Court of South Africa

(Division)

Plaintiff

Versus

Defendant

In the matter of

I/we, the undersigned

Do hereby nominate, constitute and appoint

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 …….

This ……..day of …… 20….., in the presence of the undersigned witnesses.

WITNESSES:

1. ……..

2. …….

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ADDENDUM B **EXAMINATION NUMBER:**

QUESTION 8.2

TELEPHONE MESSAGE	
To:	
From:	
Company:	
Telephone:	E-mail address:
Date:	Time:
Message:	
Call taken by:	

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