higher education & training

Department:
Higher Education and Training
REPUBLIC OF SOUTH AFRICA

MARKING GUIDELINE

NATIONAL CERTIFICATE (VOCATIONAL)

INTRODUCTION TO LAW
NQF LEVEL 2

2 March 2020

This marking guideline consists of 9 pages.

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SECTION A

QUESTION 1

1.1	1.1.1	A		
	1.1.2	B		
	1.1.3	D		
	1.1.4	B		
	1.1.5	D		
			(5 × 1)	(5)
1.2	1.2.1	E		
	1.2.2	G		
	1.2.3	B		
	1.2.4	F		
	1.2.5	H		
	1.2.6	D		
	1.2.7	A		
	1.2.8	C		
	1.2.9	J		
	1.2.10	I		
			(10 × 1)	(10)
1.3	1.3.1	True		
	1.3.2	True		
	1.3.3	False		
	1.3.4	True		
	1.3.5	True		
	1.3.6	True		
	1.3.7	False		
	1.3.8	False		
	1.3.9	True		
	1.3.10	False		
			(10 × 1)	(10)
1.4	1.4.1	Civil Law		
	1.4.2	Criminal Law		
	1.4.3	Maintenance Court		
	1.4.4	Prosecutor		
	1.4.5	Registrar of the High Court		
			(5 × 1)	(5)
				[30]

TOTAL SECTION A: 30

SECTION B

QUESTION 2

2.1 Note to the assessor: Accept any FIVE of the following and allocate a maximum of five marks for the description.

No professional lawyers practice indigenous law as an occupation.✓ The legal process is less formal in nature✓ and less confrontational (likely to cause arguments) than in Western legal systems.✓ Indigenous law is also largely unwritten,✓ and customary rules are passed on✓ verbally from generation to generation.✓ Customs and legal rules also differ✓ across different cultural groups in a country.✓ No single indigenous law system thus exists in a country.✓ Some characteristics are, however, similar across cultures.✓ (5)

2.2 Note to the assessor: Accept any THREE of the following and allocate a maximum of three marks for the description.

- Acts of Parliament with the written down rules of black customary law and customs.✓
- Decisions of the High Courts✓ and the Supreme Court of Appeal✓ that are based on indigenous law.✓
- Unofficial and unwritten indigenous rules,✓ social practices✓ and legal beliefs of indigenous communities.✓ (3)

2.3 Note to the assessor: Accept any FOUR of the following and allocate a maximum of four marks for the description.

In indigenous law, the family is very important,✓ and marriage is one of the most important aspects.✓ Talks take place between the two family groups✓ and the groom's family transfers property✓ (the marriage goods, also called lobolo,✓ ikhazi or bogadi✓) to the family of the bride.✓ The bride is then transferred from her family✓ to the family of the husband.✓ The marriage is a contract✓ and both family groups must agree to it.✓ (4)

[12]

QUESTION 3

Note to the assessor: Accept any EIGHT of the following and allocate a maximum of eight marks for QUESTION 3. The learner's answer must reflect the description or explanation underneath and is application to the theory. Therefore, you may allocate marks for examples and applicable explanations as well.

The reading of the charge is where the charges are read to the accused,✓ in other words, the state tells the accused exactly what offense they are going to be prosecuted for.✓ Serious cases are normally heard in the High Court,✓ because of the seriousness of the crime✓ or because the sentence may be high.✓ However, to decrease the workload of the High Court,✓ the charge is read to the accused✓ in the Magistrate's Court.✓ The accused then has to state his/her plea,✓ for example, 'not guilty'✓ The court will enter the plea of the accused on record.✓ If the plea of 'not guilty' is entered,✓ the magistrate enters the nature of the accused's defence✓ in other words, the accused's reason why he/she is not guilty,✓ if the accused is willing to provide this.✓ All accused people have the right to remain silent✓ at all stages during their trials.✓ After the plea is entered, the matter is then postponed,✓ and the prosecuting authority decides whether the matter should proceed✓ in the High Court✓ or in the regional court.✓ **[8]**

TOTAL SECTION B: 20

SECTION C

QUESTION 4

Note to the assessor: Accept any FIVE of the following and allocate a maximum of five marks for QUESTION 4.1. The learner may answer the question using examples.

Certain crimes are common law crimes.✓
It means that the crimes are not covered in laws passed by parliament.✓
Crimes such as murder,✓ robbery,✓ theft✓ and high treason are all common law crimes.✓
The legal position on these crimes,✓ the definitions of these crimes✓ and the defences available to a person accused of one of these crimes,✓ are all rules of common law.✓
They are therefore to be found in Roman-Dutch law✓ and in the past cases were decided in courts that dealt with these crimes.✓ **[5]**

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QUESTION 5

5.1 Note to the assessor: Accept any THREE of the following and allocate a maximum of three marks for QUESTION 5.1. The learner may provide other examples.

Once must keep to the speed limit of 60 km per hour when driving a motor vehicle in a built-up area.✓
One must keep to the speed limit of 120 km per hour when driving a motor vehicle on a highway.✓
One may not drive a motor vehicle without a valid driver's license.✓
A country, or state, will prosecute and punish those who break legal rules.✓ (3)

5.2 Note to the assessor: Accept any FIVE of the following and allocate a maximum of five marks for QUESTION 5.2. The learner may answer the question using examples.

The Constitution is the highest law of the country✓ and overrides any other form of law.✓
Legislation overrides any other form of law✓ including common law.✓
When there is conflict between two existing sources of law,✓ the courts decide on which action to be taken.✓
So the courts interpret the statutes or legislation✓ in light of common law.✓
The Constitutional Court is the highest court for constitutional matters✓ and the Supreme Court of Appeal is the highest authority in all other legal matters.✓ (5)

5.3 5.3.1 Note to the assessor: Accept any FOUR of the following and allocate a maximum of four marks for QUESTION 5.3.1. The learner may answer the question using examples.

Law can be described as rules or norms,✓ prescribed by national or international authorities,✓ which control or regulate human conduct.✓ Norms are general rules✓ that determine human behaviour✓ and include morality,✓ ethics,✓ social conventions,✓ etiquette✓ and customs.✓ Laws are sometimes called social laws✓ and are expressed in different acts,✓ statutes,✓ rules,✓ regulations,✓ codes✓ and standards.✓ The aim is to control or standardise people's conduct.✓ (4)

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5.3.2 Note to the assessor: Accept any FOUR of the following and allocate a maximum of four marks for QUESTION 5.3.2. The learner may answer the question using examples.

People should follow certain moral rules.✓
Morals control one's behavior.✓
Moral rules come from religious beliefs,✓ one's own ideas of what is right and what is wrong,✓ those of the people around you and your view of the world✓ and your place in it.(✓)
One's morals may be formed by the way you were brought up✓ or by the way people of your own age behave around you.✓
E.g. you may believe that it is morally wrong to drink alcohol, because it changes the way that you behave.✓
Moral rules help a person to decide whether certain acts are right or wrong.✓ (4)

5.3.3 Note to the assessor: Accept any FOUR of the following and allocate a maximum of four marks for QUESTION 5.3.3. The learner may answer the question using examples.

Equality before the law is regarded as the basis for justice.✓ Based on the law all courts treat people equally,✓ regardless of their beliefs,✓ colour,✓ nationality,✓ or gender (sex).✓ Impartiality of treatment is closely associated with equality before the law.✓ When we say that something is just, we mean that it is morally right and fair.✓ In the same way, justice is what is fair,✓ correct✓ and right.✓ Justice is also the system by which people are judged in courts of law.✓ When we say that everyone should be treated with justice, we mean they should not be treated in an unfair way✓ and that laws should be applied to everybody in the same way.✓ (5)

5.4 Note to the assessor: Accept any FIVE of the following and allocate a maximum of five marks for QUESTION 5.4. The learner may answer the question using examples.

- Business law is also known as commercial law.✓
- It is the law that governs business and commerce.✓
- Business law controls corporate contracts,✓ hiring practices✓ and the manufacture and sales of consumer goods.✓
- An example of business law is the way in which banks charge interest on overdrawn accounts.✓
- The bank and the consumer do not need to agree on the payment of interest beforehand.✓
- It automatically forms part of the contract.✓
- This trade usage became a legal rule✓ because it meets the four needs of customary law.✓ (4)

[25]

TOTAL SECTION C: 30

SECTION D

QUESTION 6

6.1 Note to the assessor: Any of the following with a maximum allocation of 10 marks. The learner may also explain with practical examples. (Theory put into practice.)

Marriage in community of property.

When people marry in community of property, their separate estates✓ are joined together in one estate,✓ which they then own together.✓

If they get divorced, the estate is divided✓ in two equal parts,✓ even if one spouse had a larger estate✓ than the other before they married.✓

However, the problem was that the husband had the so-called marital power.✓ He decided how the joint property should be dealt with.✓ This power severely limited the wife's right✓ to act✓ or do anything✓ about the things that made up their joint estate.✓ (10)

6.2 Note to the assessor: Any of the following with a maximum allocation of 10 marks. The learner may also explain with practical examples. (Theory put into practice.)

Marriage out of community of property.

Marriage out of community of property is where the estates of the two spouses stay separate,✓ as if they have never been married.✓

To do this, the parties enter into an antenuptial contract✓ (a type of agreement)✓ before the marriage.✓ The contract states that if the parties divorce,✓ each spouse would keep his or her separate estate.✓

In real life, this system was not fair to the wife.✓ Often, the wife would walk out with nothing✓ although she helped to build up the estate of her husband.✓

She would normally have stayed at home,✓ raised children✓ and supported her husband✓ in his career✓ or business,✓ often without receiving a salary.✓ The property,✓ usually the house where the family lived,✓ would be registered in his name.✓ Even if their estates were of equal size✓ when they got married,✓ we would now have a situation where all the growth took place✓ in his estate,✓ while the value of her estate✓ stayed the same✓ as on the day of marriage,✓ or even less.✓

So, a marriage in community of property✓ worked unfairly towards the wife✓ during the marriage✓ while a marriage out of community of property worked unfairly towards the wife after the marriage.✓ (10)

[20]

OR

QUESTION 7

7.1 Note to the assessor: The learner may also explain using practical examples. (Theory put into practice.)

Three authorities and their purpose.

AUTHORITY		PURPOSE	
Legislative authority	✓	Makes the laws	✓
Executive authority	✓	Carries out the laws	✓
Judicial authority	✓	Interprets the laws and deals with people who break the law	✓

(6)

7.2 Three levels of government in South Africa
- National government✓
- Provincial government✓
- Local government✓

(3)

7.3 Note to the assessor: Any of the following with a maximum allocation of 11 marks. The learner may also explain using practical examples. (Theory put into practice.) If the learner has provided an additional example with any explanation of a category, a maximum of ONE additional mark may be allocated for the entire question.

CATEGORY		EXPLANATION OR EXAMPLE	
Crimes against another person	✓	• These are crimes that harm a person✓ • These include: o common assault✓ o assault to do grievous bodily harm✓ o indecent assault✓ o rape✓ o kidnapping✓ o murder✓ o culpable homicide✓	✓
Crimes against the property of another person	✓	• These are crimes that interfere with the property rights of another person✓ • These include: o theft✓ o housebreaking✓ o robbery✓ o purposely damaging another person's property✓	✓

Crimes against the values and morals of society	✓	• An example is incest✓ or public indecency✓ • Incest refers to sexual intercourse between two persons who are forbidden to marry because of their blood relationship✓ • This includes a sexual relationship between: o A parent and child✓ o Child and uncle/aunt✓ o Child and grandfather/ grandmother✓ • Public indecency is where someone does something which offends the public's sense of moral behaviour✓ • E.g. a man exposing himself to a group of ladies✓	✓
Crimes against the interest of the state	✓	• E.g. high treason✓ • High treason refers to any act committed by a person with the intention to overthrow,✓ threaten,✓ or endanger✓ the existence,✓ independence✓ or security✓ of the state✓	✓
Crimes against the administration of justice	✓	• E.g. contempt of court✓ or perjury✓ • Contempt of court happens when a person does or says something that harms the dignity✓ and authority✓ of a judicial officer (judge/ magistrate)✓ or judicial body (such as a court)✓ while they are performing their duties.✓ • E.g. you know that you need to be in court, but you don't show up.✓	✓

(10 × 1 = 10 + (1)) (11)
[20]

TOTAL SECTION D: 20
GRAND TOTAL: 100

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