higher education & training

Department:
Higher Education and Training
REPUBLIC OF SOUTH AFRICA

MARKING GUIDELINE

NATIONAL CERTIFICATE

JUNE EXAMINATION

LEGAL PRACTICE N5

2 JUNE 2016

This marking guideline consists of 9 pages.

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SECTION A

QUESTION 1

1.1	1.1.1	True		
	1.1.2	False		
	1.1.3	True		
	1.1.4	False		
	1.1.5	False		
	1.1.6	True		
	1.1.7	False		
	1.1.8	False		
	1.1.9	True		
	1.1.10	True		
			(10 x 1)	(10)
1.2	1.2.1	Summons		
	1.2.2	Income and expenditure account		
	1.2.3	Remittance register		
	1.2.4	Centralised system		
	1.2.5	Without prejudice		
	1.2.6	Your Worship		
	1.2.7	Compulsory sequestration		
	1.2.8	Commissioner		
	1.2.9	Guardian		
	1.2.10	Liquor board		
			(10 x 2)	(20)
1.3	1.3.1	J		
	1.3.2	I		
	1.3.3	G		
	1.3.4	K		
	1.3.5	F		
	1.3.6	A		
	1.3.7	C		
	1.3.8	B		
	1.3.9	E		
	1.3.10	D		
			(10 x1)	(10)
1.4	1.4.1	Magistrate's court		
	1.4.2	Small claims court		
	1.4.3	High court		
	1.4.4	Constitutional court		
	1.4.5	Supreme court of appeal		
			(5 x 2)	(10)
				[50]

TOTAL SECTION A: 50

SECTION B

QUESTION 2

2.1
- Law is defined as a body of rules governing human conduct
- that is recognised as binding by the state and if necessary, enforced.

(2 x 2) (4)

2.2
- Common law
- Roman law
- Roman Dutch law
- English law
- Legislation
- Judicial precedence (Case law)
- Custom (7 x 1) (7)

2.3 2.3.1 A civil case is a dispute involving the legal interests of two or more persons and whereby the authority of the state is only indirectly binding.

2.3.2 A criminal case is introduced by the state against a person, the accused for transgression of a law which requires the penalty of punishment.

(2 x 2) (4)

2.4 2.4.1 Law society (1)

2.4.2
- His name and address
- Name and address of the attorney against whom the complaint is
- A simple explanation about the complaint and dissatisfaction
- Attached to the letter copies of any document as proof of his complaint (4 x 2) (8)

2.5 2.5.1
- Name and address of the client
- If the file refers to a court case, the names of the plaintiff as well as the defendant must appear on the file
- A reference number
- The rest of the file is used to record any other important information (4 x 2) (8)

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2.5.2
- Alphabetical filing system
  Filing done according to the surname of the client.
- Numerical system
  Often used in larger offices because of the greater diversity of numbers available. Each client receives a number and all files are then filed numerically.
- Centralised system
  Files are kept in a central repository with one filing clerk in charge.
- Decentralised system
  The attorney stores his/her own files. (4 x 2) (8)

2.5.3
- Ante-nuptial contracts
- Title deeds
- Wills
- Bonds
- Share certificates (Any 2 x 1) (2)

2.6
- Answer immediately
- Be courteous
- Speak clearly
- Use acceptable language (4 x 2) (8)

[50]

QUESTION 3

3.1 See ADDENDUM (10 x 1) (10)

3.2 3.2.1 Chief Justice

3.2.2 Magistrate

3.2.3 Judge

3.2.4 11 judges

(4 x 1) (4)

3.3 3.3.1 Charge sheet (1)

3.3.2
- The decision whether or not to institute criminal proceedings against an accused
- The decision whether or not to withdraw charges or stop the prosecution
- The decision whether or not to oppose an application for bail
- The decision about which crimes to charge an accused with and in which court the trial should proceed
- The decision whether or not to accept a plea of guilty tendered by the accused
- The decision about which evidence to present during the trial
- The decision about which evidence to present during sentence proceedings in the event of conviction
- The decision whether or not to appeal to a higher court

(Any 5 x 2) (10)

3.4 Discovery affidavit (1)

3.5
- Dispute the claims against him on factual or legal grounds.
- Admit that he is responsible for the amount claimed by signing the form for permission to judgement on the summons.
- Admit responsibility for and acknowledge the amount and undertake to pay instalments.
- Pay the amount owing plus the costs incurred by the plaintiff in which case the matter is concluded.
- Do nothing whatsoever and leave the following steps to the plaintiff, in which case the plaintiff is entitled to ask for judgement by default. (5 x 2) (10)

3.6
- The summons does not indicate a clear cause.
- The plea does not indicate a definite defence.
- Phrasing of documents is vague and ambiguous.
- Summons not compiled according to the rules of court.
- Summons not served in the correct way.
- Copy differs from the original. (6 x 2) (12)

3.7 3.7.1 Messenger of the court

3.7.2 Registrar of the supreme court.

(2 x 1) (2)
[50]

QUESTION 4

4.1
- All documents must be clear, legible and typed or printed in permanent black or blue ink.
- The paper must be of a good quality white A4 size.
- Use only one side of the paper.
- All documents must have a margin of more or less 3 cm in order to facilitate binding without covering the words or letters.
- Documents must be typed in double line spacing.
- The names and addresses of the attorneys concerned must appear on the first page of all sworn statements (affidavits) which are filed with the registrar.
- All combined summonses and all the other pleas of the supreme court must be signed by the attorney and advocate while all magistrate documents must be signed by an attorney.
- The name and address of the attorneys representing both parties must appear on each document.
- The heading of each court document must contain:
  – The court where the case is to be heard
  – The case number
  – Names of the parties involved (Any 5 x 2) (10)

4.2 4.2.1 The main aim of an order of sequestration is to pin down an estate and place it in the hands of a curator so that he can convert cash from the sale of the insolvent's assets in order to effect an equal division amongst his creditors in order of their preference. (5 x 1) (5)

4.2.2
- Pension money
- Compensation for loss or damage as result of slander or personal injury
- Clothes, bedding, household furniture, equipment and other essential means of livelihood
- Insurance policies e.g. workman's compensation and unemployment compensation. (4 x 1) (4)

4.2.3 Article 65 (1)

4.2.4
- Compulsory sequestration
- Voluntary sequestration (2 x 1) (2)

4.3
- Defendant gives notice of defence even though he does not really have a defence
- Wants to buy time for the payment of the claim or in order to avoid payment
- Plaintiff applies for summary judgement if claims based on liquid documents e.g. cheques
- Claims on liquidated amounts e.g. supply of movable goods
- Claims for eviction (5 x 2) (10)

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4.4
- Summons
- Knowledge of intention to defend
- More particulars in connection with the claim
- Further particulars of claim
- Written defence
- More particulars in connection with defence
- Further particulars of defence
- Counterplea (8 x 1) (8)

4.5
4.5.1 Rent Interdict
4.5.2 Will/Testament
4.5.3 Verdict
4.5.4 Plaintiff
4.5.5 Notarial document
(5 x 2) (10)
[50]

QUESTION 5

5.1 Executor (1)

5.2
- Single will
- Mutual testaments/Joint testament
- Massed estate (3 x 1) (3)

5.3
- May sign by means of a cross or a thumb print
- Another person may also legally sign on behalf of the testator
- It must take place in the presence of two witnesses and a magistrate or commissioner of oaths
- The commissioner of oaths must certify that:
  - He is satisfied with the identity of the testator
  - The testament/will belongs to the testator
  - The mark or thumb print was made by the testator
  - The testament was signed by someone else on behalf of the testator

(Any 5 x 2) (10)

5.4 5.4.1
- To my children I bequeath block of flats, situated at ... (address)
- Block of flats becomes property of the children in equal parts.
- Registered in their names at the Deeds Office
- Deeds of transfer stipulate subject to usufruct
- of the surviving spouse who will enjoy income, till her death
- Spouse does not become the owner
- but has a right to the income of the bequeathment (Any 5 x 2) (10)

5.4.2
- The testator bequeaths his block of flats to his spouse
- on condition that it will pass to his/her children on her death.
- He/She becomes the full owner.
- He/She may not alienate the property. (4 x 2) (8)

5.5 5.5.1 The wife (Candice) will inherit everything (2)

5.5.2
- Half of the estate will go to Candice because they are married in community of property.
- Candice further gets a child's portion or a minimum amount as determined by the Minister of R125 000.
- The children inherit the residue in equal parts. (3 x 2) (6)

5.5.3
- Indicates a person who has to care for a minor child or handicapped child instead of the parent
- Usually the surviving spouse
- Usually nominated in a will or if not nominated the Master nominates amongst the interested parties (3 x 2) (6)

5.5.4
- Illegitimate children will inherit from their mother
- under the Intestate Hereditary Act and not from their father.

(2 x 2) (4)
[50]

TOTAL SECTION B: 150
GRAND TOTAL: 200

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ADDENDUM

QUESTION 3.1

Telephone Message	
To: Mr Lindel **OR Lindel & Lindel**	
From: Johanna Daniels, Mr Motsepe's secretary	
Company: Motsepe Foundation	
Telephone Number: 011 682 1180	Email Address: Cmotsepe@mfoundation.co.za
Date:	Time:
Message: Mr Motsepe's secretary called to speak to Mr Lindel regarding the firm's new recruitment	
strategy and to reschedule a new appointment for 10 May.	
Call taken by: Thuli Ngoma	

(10 x 1) (10)

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