higher education & training

Department:
Higher Education and Training
REPUBLIC OF SOUTH AFRICA

MARKING GUIDELINE

NATIONAL CERTIFICATE

LEGAL PRACTICE N5

27 May 2021

This marking guideline consists of 10 pages.

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SECTION A (COMPULSORY)

QUESTION 1

1.1	1.1.1	False		
	1.1.2	True		
	1.1.3	True		
	1.1.4	True		
	1.1.5	False		
	1.1.6	False		
	1.1.7	False		
	1.1.8	False		
	1.1.9	True		
	1.1.10	False		
	1.1.11	True		
	1.1.12	False		
	1.1.13	False		
	1.1.14	False		
	1.1.15	True		
			(15 × 2)	(30)
1.2	1.2.1	C		
	1.2.2	F		
	1.2.3	I		
	1.2.4	B		
	1.2.5	J		
	1.2.6	M		
	1.2.7	A		
	1.2.8	H		
	1.2.9	K		
	1.2.10	E		
			(10 × 2)	(20)
				[50]

TOTAL SECTION A: 50

SECTION B

QUESTION 2

2.1 2.1.1

- Handles admission examinations for attorneys
- Advises candidate attorneys
- Appraises and evaluates certain cost accounting
- Supports attorneys
- Investigates complaints against attorneys
- Handles registration of clerkship
- Studies government legislation (Any 6 × 2) (12)

2.1.2 Bar Association (2)

2.1.3 The Law Society of South Africa (LSSA) is the professional regulatory body for attorneys which will investigate and discipline/reprimand any of its members who are guilty of misconduct/unethical practices. (2)

2.1.4
- No, the statement is not contradictory. The LSSA is the professional body for the attorney's profession and can act on behalf of the general public if they have complaints about the actions of attorneys/lawyers.
- Similarly, the LSSA can reprimand attorneys/lawyers for any unprofessional behaviour. (2 × 2) (4)

2.2
- Managing and controlling estates of minors supervised by a guardian or curator: The Master will instruct the curator or guardian to use proceeds from a minor's estate only if the use of such money/resources are necessary and in the best interests of the minor.
- Registration and controlling of trusts: The Master oversees that trusts are set up and regulated according to legal requirements and that trustees act according to their fiduciary duties.
- Supporting the interests of minors: The Master will always act in the best interests of a minor as the minor can be influenced to act to his/her own detriment.
- Compiling reports regarding interests of minors: The Master will regularly compile reports on progress or mismanagement of assets in the handling of a minor's estate.
- Act in an advisory capacity for both legal practitioners and the public: The Master's Office is always available to lawyers/attorneys who need clarification on matters concerning a minor's estate and also advises any member of the public on matters regarding deceased estates in general, the appointment of executors and documents to be notarised.
- Storing documentation: The Master's Office serves as a place where copies of lost documents may be requested and obtained at a minimum prescribed fee.

Each of the functions must also be explained to be allocated the second mark, if not, only one mark per fact/function is given. (Any 5 × 2) (10)
[30]

QUESTION 3

3.1 3.1.1 Generally, customary law is unwritten law. It is fixed practices in accordance with which people live because they regard it as the law and as such binding.

Requirements:

- The custom of the use of marijuana in Beaufort-West must have existed for a long time (an old custom).
- It must be accepted and practised by the people of the Beaufort-West community.
- The custom of using marijuana must be reasonable and just.
- Its content must be certain and clearly understood by all inhabitants of the Beaufort-West community/region. (4 × 2) (8)

3.1.2 Yes✓✓ – The South African Constitution recognises traditional authority and customary law under Section 211. (2)

3.2 3.2.1 Application for appointment as commissioner of oaths (1)

3.2.2 The language proficiency of any commissioner of oaths in as many of the official languages in South Africa as possible must be good (speak/read/write) because he/she mostly deals with members of the public✓ and the commissioner must be able to communicate✓ with any member of the public who approaches him/her for any service offered by the office of the commissioner of oaths. (2)

3.2.3 A commissioner of oaths is appointed across South Africa in each province and every possible district (geographical area) where the services of a commissioner of oaths are required. (2)

3.2.4 A commissioner of oaths is appointed as a result of the office (ex officio) he/she holds. Hence a commissioner will be appointed as a result of him/her holding a certain position/office in the daily job/execution of his/her daily tasks, e.g. college principal. (2)

3.2.5 No✓ – A campus head may or may not be appointed as a commissioner of oaths, but a college principal (CEO) will be appointed ex officio.✓✓ (3)

3.3 3.3.1 An attorney's business account is used to manage and pay all the operating expenses (overheads) of the attorney's legal firm. The trust account may not be used for the same purpose. All clients' monies (whether prepaid or paid for services already rendered) are deposited into the trust account. (2)

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3.3.2 Money or funds found in a trust account are either money which clients have prepaid into the account for future jobs that the attorney will do/render for the clients or money paid by clients (via direct deposit/cash/cheque or EFT) as a result of clients being invoiced (for work already done by the attorney for them). (2)

3.3.3 Funds in the trust account must stay there untouched and may only be taken/used/withdrawn once the law firm (attorney or lawyer) has done/finished and completed work which the client instructed the attorney/lawyer to do on his/her behalf. (2)

3.3.4 Yes, it would be unethical✓✓
- All money received from clients are deposited into the trust account.
- It is only when a client has been billed (sent a statement of account for services rendered by the lawyer or attorney) that such money owed is transferred out of the trust account into the attorney's business account.
- When in doubt, the right thing is to deposit the money into the trust account where it is safe until a decision regarding the money can be made. (2 × 2) (4)

[30]

QUESTION 4

4.1 4.1.1 Step 1: Contact the other party.

- The plaintiff contacts the other party owing money (debtor)
- If the other party does not respond to claim of payment …

Step 2: Write a letter of demand.

- Send a letter of demand to the defendant.
- Keep proof that letter of demand was served on defendant.

Step 3: Go to the clerk of the SCC.

- Send a letter of demand to the defendant.
- Keep proof that the letter of demand was served on the defendant.
- Give the defendant 14 days to respond to the letter of demand. If there is no response, visit the nearest small claims court and enquire.
- Show the letter of demand and proof that such letter was served to the clerk of the court.

Step 4: Send summons to the defendant.

- Summons will be served on the defendant.
- The case hearing will be done on the day stated in the summons.

Step 5: The hearing

- The messenger of the court will keep the return of service.
- The defendant will report to the court on a specific date and time.
- The plaintiff must have all the necessary documents ready.
- During the hearing, the plaintiff will state his/her case.
- The defendant thereafter will state his/her case too.
- Witnesses may be called by the plaintiff and defendant.

Step 6: After judgement has been given

- The commissioner will give a ruling.
- The party who loses carries the costs.

(Any relevant 6 × 2) (12)

4.1.2 R20 000 (revised and effective from 1 April 2019) (1)

4.1.3 The commissioner is either a lawyer or attorney. (2)

4.1.4 The plaintiff and defendant may not use the services of a lawyer or an attorney to represent them in the SCC. (2)

4.1.5 Yes✓ – Only under very exceptional cases would it be possible to appeal the judgement of the commissioner of the SCC (these circumstances are not required here).✓✓ The popular opinion is that it is not possible to appeal as textbooks state that the commissioner's judgement is final, however, the official website for the small claims court states otherwise. (3)

4.2
- Litigation
- Debt collection
- Conveyancing
- Commercial/Business advice
- Wills

(5 × 2) (10)
[30]

QUESTION 5

5.1
- Attorney accused of theft of money from the client
- Exorbitantly high fees payable to the attorney
- Failure to keep the client informed
- Failure to carry out the client's instructions (4)

5.2
- A valid will (testament) must be in written format only.
- A will (testament) must be signed by the testator.
- The testator must be 16 years or older.
- The testator must be of sound mind at the time of signing the will.
- The testator must not act under duress (forced to sign the will).
- Where a will (testament) consists of more than one page, the testator must sign on every page.
- The testator must sign the will (testament) in the presence of two competent witnesses.
- The witnesses must sign every page in the presence of the testator and each other (all three parties must be in each other's presence at the signing of the will).
- A witness to a will must be at least 14 years of age and must be capable of testifying in a court of law.
- The will (testament) must be dated. (Any 7 × 2) (14)

5.3 **LEASE AGREEMENT SET OUT UNDER THREE COMPONENTS OF AN AGREEMENT**

Heading✓✓ (provide short summary of type of agreement)

Lease agreement between
Mary Philander (hereinafter called 'the tenant')
AND
Thabo Baloyi (hereinafter called 'the landlord')✓

Address of tenant: 12 Troy Road, Mitchells' Plain, Cape Town, 7785
Address of landlord: 518 The Iron Works, Main Road, Woodstock, Cape Town, 7925✓

Introduction✓✓ (set out reason/s why parties are entering into the agreement)

The landlord and tenant agree that the tenant shall pay a monthly rental of R17 000✓ for the rented property situated at 307 Blue Water Bay, Beach Road, Sea Point, Cape Town, 8001 (the *domicilium citandi et executandi of the tenant)*.✓

Conclusion✓✓ (parties sign and date agreement plus place where concluded)

This agreement is signed at _____ on the ___ day of _____ 2020.✓

…… ……
Signature of tenant Signature of landlord✓ (12)
[30]

QUESTION 6

6.1 **LIQUOR LICENCE APPLICATION – CHECKLIST**

Evidence submitted with application	Yes	No
The applicant must not have been sentenced to imprisonment without an option of fine in the last 10 years.		
In the previous 10 years (to the application) the applicant must not have been found guilty of a crime under the Liquor Act.		
The applicant must be a South African citizen.		
The applicant must be a rehabilitated insolvent (where applicable).		
The applicant must be 21 years and older (have full contractual capacity).		
The applicant may not have stayed outside South Africa for more than two years in the last five years from the day of application.		
The applicant must have a record of good conduct.		

Accept if candidates did not design a to-do checklist (as shown above).

(7 × 2) (14)

6.2 Commission for Conciliation, Mediation and Arbitration (2)

6.3
- Answer the phone immediately (a phone should not ring more than twice before it is answered.✓/Incoming calls (on a switchboard) should not have to wait before it is attended to.✓
- Answer politely and courteously✓ (clients can detect your mood by the tone of your voice and it might discourage them from phoning again).✓
- Always answer the call by providing the name of the law firm first.✓ (**HINT**: Always say - 'Jackson & Associates law firm. Good morning, Jacky speaking, how may I assist you?)✓
- Always have a pen and notebook nearby to write down important information. (As one gets more experienced and relaxed in taking telephone messages, a notebook can be replaced with a (preprinted) telephone message pad.)✓✓
- Always ensure that you take down the following vital information with each call:

  - Date of the call
  - Time of the call
  - Name of the person/client must be recorded
  - Telephone number of the incoming caller (client)
  - Name of the person for whom the call is intended
  - Clearly written message

  Max 2

- Where the caller is an existing client, all recorded information must be filed in the client's file.✓✓
- When the reception area is not busy, deliver all messages to its rightful recipients and return to your workstation.✓✓ (Any 7 × 2) (14)

[30]

QUESTION 7

7.1 7.1.1 It is a receipt issued by a law firm to clients who paid the attorney for work done and for future work to be done. The money is deposited/paid into the law firm's trust account; hence a receipt issued for all money received is regarded as a trust receipt.

7.1.2 The difference is the date when the receipt was completed/ printed/issued and the actual date when the money was received by whoever receives the money on behalf of the law firm. There might be a difference of hours or even days between these two dates. Such difference is not accepted (unless there is good reason for it since it can have serious consequences for the law firm and the work that is being undertaken by the attorneys and/or lawyers).
(Any relevant answer)

7.1.3 The means of payment is important for audit, office management and financial control purposes. (Any relevant answer)

7.1.4 The names of the client and the (third) person who has paid on behalf of the client (important reference purposes).

7.1.5 It serves as reference to which (parts of cases) of the client's work the attorney or lawyer is being paid for. It is a vital reference for reconciliation purposes (financial and auditing/control purposes).

7.1.6 The firm can trace/control and check exactly who (which employee), whether designated or not, has accepted money/funds on behalf of the firm.

7.1.7 It serves as a double check/administrative control. With two people signing receipts, fraudulent actions by the person who writes out a receipt and accepts/handles money/funds on behalf of the business is minimised since there are now two people overseeing receipts being issued. (Any relevant answer)

7.1.8 It is only good practice (best practice) to operate a second receipt book (one receipt book each for the trust and business accounts for the law firm). Keeping two separate receipt books is also beneficial for financial reconciliation and audit purposes.
(8 × 2) (16)

7.2 7.2.1 No – Both the person living overseas and the Master cannot act as executor as the Master cannot substitute for any appointed executor in any case.

7.2.2 No – A mentally ill person cannot act as executor of a deceased estate. Not even where he/she is assisted by a curator.

7.2.3 No – Attorneys may act as executor, but any drafter of a will may not and in this instance the attorney drafted the deceased's will.

(3 × 2) (6)

7.3
- Ordinary agreement between two or more persons/parties
- Compiled and entered into by the parties
- Parties themselves draw up the agreement (no notary need to be present)
- No witnesses needed for signing, except in cases where it is required by law as guarantee of validity
- Either oral or written
- Sometimes it is only legal if written, e.g. hire purchase contract

(Any 4 × 2) (8)
[30]

TOTAL SECTION B: 150
GRAND TOTAL: 200

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