higher education & training

Department:
Higher Education and Training
REPUBLIC OF SOUTH AFRICA

MARKING GUIDELINE

NATIONAL CERTIFICATE

NOVEMBER EXAMINATION

LEGAL PRACTICE N5

17 NOVEMBER 2016

This marking guideline consists of 10 pages.

Copyright reserved

SECTION A

QUESTION 1

1.1	1.1.1	True	
	1.1.2	True	
	1.1.3	True	
	1.1.4	False	
	1.1.5	False	
	1.1.6	False	
	1.1.7	False	
	1.1.8	True	
	1.1.9	False	
	1.1.10	True	
			(10 × 1) (10)

1.2	1.2.1	Remittance register	
	1.2.2	Guardian	
	1.2.3	Public prosecutor	
	1.2.4	Your Worship	
	1.2.5	Without prejudice	
	1.2.6	Murder	
	1.2.7	Power of attorney	
	1.2.8	Compulsory sequestration	
	1.2.9	LLB degree	
	1.2.10	Decentralised filing system	
			(10 × 2) (20)

1.3	1.3.1	M	
	1.3.2	E	
	1.3.3	H	
	1.3.4	K	
	1.3.5	J	
	1.3.6	B	
	1.3.7	L	
	1.3.8	C	
	1.3.9	D	
	1.3.10	F	
			(10 × 1) (10)

1.4	1.4.1	• High court; judge	
	1.4.2	• Supreme court of appeal; judge president/eleven judges	
	1.4.3	• Magistrate's court; magistrate	
	1.4.4	• Small claims court; commissioner	
	1.4.5	• Constitutional court; chief justice	
			(5 × 2) (10)
			[50]

TOTAL SECTION A: 50

SECTION B

QUESTION 2

2.1 2.1.1 No (1)

2.1.2
- Having sexual intercourse with a minor is a criminal offence (statutory rape).
- X's action is contrary to the rule of law (Child Justice Act and the Criminal Justice Act). (2 × 2) (4)

2.1.3
- The custom must be reasonable.
- The custom must have existed for a long time.
- The custom must be generally recognised and be served by the whole community.
- The content of the customary rule must not contradict any existing rule of law. (4 × 2) (8)

2.1.4 A body of rules governing human conduct that is recognised as binding by the state and if necessary, enforced. (2 × 2) (4)

2.1.5
- Common law
- Roman law
- Roman-Dutch law
- English law
- Legislation/Statute law/Acts
- Judicial precedence (Case law)
- Constitution
- Foreign law (Any 6 × 1) (6)

2.2
- He/she must always endeavour to maintain the law and the truth.
- He/she must have a sense of duty and honesty.
- He/she must have a practical and analytical aptitude.
- He/she must be of a sober and balanced nature and must be able to express his/her thoughts clearly.
- He/she must have precision and care in the execution of his/her tasks.
- He/she must have tact and comprehension, show sympathy and be able to negotiate with all kinds of people in all circumstances.
- He/she must be a good businessman/businesswoman.
- He/she must be intelligent and must not have any speech defect.

(Any 5 × 1) (5)

Copyright reserved

2.3
- Check for a signature and any annexures that should be included.
- Ensure that the address on the envelope and on the letter is the same.
- If the delivery is by hand, make sure that the street address has been used.
- Ensure that the address is clearly visible when making use of a window envelope.
- Seal the envelope securely.
- Ensure that the name of the sender appears on the back of the envelope.
- Letters to the same address are placed in one envelope to save postage.
- Ensure that the envelopes have been stamped with the correct postage.
- Keep record of postage.
- Obtain a receipt for registered mail and place it in the file concerned.

(Any 5 × 2) (10)

2.4
2.4.1 E
2.4.2 F
2.4.3 D
2.4.4 C
2.4.5 B
2.4.6 A

(6 × 2) (12)
[50]

QUESTION 3

3.1 3.1.1 Liquor licence (1)

3.1.2 Liquor Board (1)

3.1.3
- The applicant has a right to occupy the premises.
- The premises are or will on completion be suitable for the purpose for which it will be used under the licence.
- If the premises are situated in the vicinity of a place of worship or school or residential area, the business will be carried on in a manner that will not disturb the proceedings in these places.
- The granting of the licence is in the public interest.
- No harmful monopolistic condition will arise in the liquor trade.
- A notice of the application for a liquor licence must be posted on the premises, indicating a deadline for objections by the public.

(6 × 2) (12)

3.1.4 No (1)

3.2 **LAST WILL AND TESTAMENT OF**

I, 3.2.1 **Alice Manuel**,✓ an adult residing at 3.2.2 **18 Elgin Road, Milnerton, Cape Town**,✓ being of sound mind, declare this to be my last will and testament. I revoke all wills and codicils previously made by me.

ARTICLE I

I appoint 3.2.3 **Mr John Manamela**✓ as my Personal Representative to administer this Will, and ask that he/she be permitted to serve without court supervision.

ARTICLE II

I direct my Personal Representative to pay out of my residuary estate all of the expenses of my last illness, administration expenses, all legally enforceable creditor claims and estate taxes, without seeking reimbursement from or charging any person for any part of the taxes and charges paid, and if necessary, reasonable funeral expenses, including the cost of any suitable marker for my grave, without the necessity of an order of court approving said expenses.

ARTICLE III

I devise, bequeath, and give my 3.2.4 **primary residence and holiday home in Port Alfred**✓ to 3.2.5 **Marshal Manuel**.✓

I devise, bequeath, and give my 3.2.6 **investments at Liberty Group and Investec**✓ to 3.2.7 **Silvia Manuel**.✓

ARTICLE IV

I devise, bequeath, and give all of the rest and remainder of my residuary estate as follows:

3.2.8 **60%**✓ to 3.2.9 **Brooklyn Home of the Elderly**✓
3.2.10 **40%**✓ to 3.2.11 **Holy Cross Children's Home**✓

ARTICLE V

Should any beneficiary not survive me by 30 days, his or her share shall be distributed to his or her then surviving children in equal shares.

3.2.12 **Alice Manuel**✓
TESTATOR

SELF-PROVING AFFIDAVIT

This instrument, consisting of this and one (1) other typewritten page, was signed and acknowledged by the Testator as his/her Last Will and Testament in our presence, and we, at his/her request, and in his/her presence, and in the presence of each other, have subscribed our names as witnesses.

Under penalties for perjury, we, the undersigned Testator and witnesses declare:

1. That the Testator executed this instrument as his/her Will;

2. That in the presence of witnesses, the Testator signed or acknowledged his/her signature already made, or directed another to sign for him/her in his/her presence;

3. That the Testator executed the Will as his/her free and voluntary act for the purposes expressed in it;

4. That each of the witnesses, in the presence of the Testator and of each other, signed the Will as witness;

5. That the Testator was of sound mind; and

6. That, to the best of his/her knowledge, the Testator was at the time eighteen (18) or more years of age.

All of which is attested to this 3.2.13 **25** day of **March 2015**.✓

Alice Manuel
Testator

3.2.14 **Melisa Block**✓
Witness

3.2.15 **Sharnay Naidoo**✓
Witness

(15 × 1) (15)

3.3 3.3.1 Business account
3.3.2 Business account
3.3.3 Trust account
3.3.4 Trust account
3.3.5 Business account

(5 × 2) (10)

3.4 3.4.1
- The procedure is so simple that any person is capable of handling his own case.
- Legal representation by an attorney or advocate is not allowed.
- The costs are minimal. (3 × 2) (6)

3.4.2
- Civil claims not exceeding R15 000 (amount stipulated by the Minister)
- Claims for damages, claims for delivery or the transfer of goods as well as for matters concerning hire-purchase contracts.

(2 × 2) (4)
[50]

QUESTION 4

4.1 4.1.1 Civil action (1)

4.1.2
- Knowledge of intention to defend
- More particulars in connection with the claim
- Further particulars of the claim
- Written defence
- More particulars in connection with the defence
- Further particulars of defence
- Counterplea (7 × 1) (7)

4.1.3
- 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 and size A4.
- Only one side of the paper must be used.
- 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 (affidavit) which are filed with the registrar.
- All combined summons 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 (6 × 2) (12)

Copyright reserved

4.1.4

MESSAGE

To: **Mr Mpofu**✓

From: **Advocate Black**✓

Telephone number: **011 556 1617**✓ Date: **21 December 2016**✓

x✓ Phoned back	☐ Please phone
☐ Will phone again you	☐ Came to see

Message: **Mrs Suzanne Marais, secretary of advocate Black, phoned to say that advocate Black will not be able to attend the meeting tomorrow, 22 December 2016**.✓✓✓

Time: (**Any time**)✓

Taken by: **Siphokazi Tembo**✓

(10 × 1) (10)

4.2
4.2.1 Complainant
4.2.2 Rent interdict summons
4.2.3 Auction
4.2.4 Verdict
4.2.5 Will
4.2.6 Notarial document

(6 × 2) (12)

4.3
- The debtor does not have any tangible assets but does possess other advantages or fictitious assets, for example:
- He/She might be entitled to a legacy.
- He/She has a fixed deposit or investment at a bank.
- He/She has a claim against a third party from which he/she will receive money for damages. (4 × 2) (8)

[50]

QUESTION 5

5.1
- Single will
  This is the type of will in which a person, married or unmarried, makes his/her own separate will.

- Mutual testament/Joint will
  A single will made jointly by two or more persons.

- Massed estate/Reciprocal will
  A joint will which provides for the testators to pass their assets to one another in the event that one dies before the other. After the death of one of the partners, the surviving party has to compile a new will. (3 × 2) (6)

5.2
- Illegitimate children will inherit from their mother
- Under the Intestate Hereditary Act and not from their father (2)

5.3
- To my children I bequeath the block of flats, situated at ... (address)
- The block of flats becomes the property of the children in equal parts.
- It is registered in their names at the deeds office subject to usufruct.
- The surviving spouse will enjoy income, till her death.
- The spouse does not become the owner, but has a right to the income of the bequest. (5 × 2) (10)

5.4
- Minors
- Demented persons
- Insolvent persons
- The drafter of the will
- Witnesses
- Legal persons (Companies) (Any 4 × 1) (4)

5.5
- The deceased dies without leaving a will.
- The will is declared invalid.
- The executor nominated by the will for some or other reason does not or will not act as executor.
- The nominated person is predeceased.
- The nominated person refuses to act as executor. (Any 4 × 2) (8)

5.6
- Draws up a list of inventory
- Informs creditors
- Arranges for payment of tax, et cetera
- Opens a bank account in the name of the estate
- Prepares liquidation and distribution account
- Pays creditors and distributes the estate to the heirs
- Lodge receipts and relevant documents (deed of property) with master
  (Any 5 × 2) (10)

Copyright reserved

5.7
- He/She may sign by means of a cross or a thumbprint.
- 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 thumbprint was made by the testator.
  - The testament was signed by someone else on behalf of the testator.

(5 × 2) (10)
[50]

TOTAL SECTION B: 150
GRAND TOTAL: 200

Copyright reserved