higher education & training

Department:
Higher Education and Training
REPUBLIC OF SOUTH AFRICA

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NOVEMBER EXAMINATION

NATIONAL CERTIFICATE

LEGAL PRACTICE N5

(13030115)

17 November 2016 (X-Paper)
09:00–12:00

This question paper consists of 12 pages and 2 addenda.

GENERAL STUDIES

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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 of questions 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 and must be answered by ALL candidates in the ANSWER BOOK.
2. Answer any THREE 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. Neatness, style and a systematic exposition of facts are required. Where possible, answer questions in point form, but always in full sentences.
6. Write neatly and legibly.

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SECTION A (COMPULSORY)

QUESTION 1

1.1 Indicate whether the following statements are TRUE or FALSE. Choose the answer and write only 'true' or 'false' next to the question number (1.1.1–1.1.10) in the ANSWER BOOK.

1.1.1 Parliament is the most important lawmaking institution in the country.

1.1.2 Judicial precedence refers to the verdicts of the courts.

1.1.3 Murder is a common-law transgression.

1.1.4 Claims of up to the value of R50 000 can be heard in the small claims court.

1.1.5 Where someone has been accused of fraud to the value of R600 000, the court of first instance will be the magistrate's court.

1.1.6 Where a file is permanently removed, it can be done in pencil so that the information can be erased again when the file is returned.

1.1.7 An administration order issued by the court provides that the debtor is sequestrated.

1.1.8 An estate refers to the testator's assets and liabilities.

1.1.9 In the small claims court, one must always be represented by an attorney or an advocate.

1.1.10 The attorney may not withdraw money from the trust account without the client's permission.

(10 × 1) (10)

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1.2 Give ONE word or term for each of the following descriptions. Write only the word or term next to the question number (1.2.1–1.2.10) in the ANSWER BOOK.

1.2.1 In a firm of attorneys, all monies received are to be written in this document

1.2.2 A nominated person in a will who is responsible for minors

1.2.3 An attorney who appears in court on behalf of the state

1.2.4 The correct manner in which the magistrate in a court should be addressed

1.2.5 When a letter may not be used as evidence in a court case, it is marked like this

1.2.6 The intentional killing of another

1.2.7 A written document in which one grants his/her attorney the authority to act on his/her behalf

1.2.8 The type of sequestration for which creditors apply

1.2.9 A minimum qualification for an attorney in order to practice as an attorney

1.2.10 A filing system where each attorney has his/her own files in his/her office

(10 × 2) (20)

GENERAL STUDIES

1.3 Choose an item from COLUMN B that matches a description in COLUMN A. Write only the letter (A–N) next to the question number (1.3.1–1.3.10) in the ANSWER BOOK.

COLUMN A		COLUMN B	
1.3.1	Summons served in an extra-ordinary manner	A	magistrate
1.3.2	A statement made under oath where one declares that the information stated is the truth	B	hypothec law
1.3.3	An address used to serve a summons	C	intestate
1.3.4	The document that can be obtained against a debtor when a summons has been ignored	D	return of nulla bona
1.3.5	Type of creditors that have a right to specific assets in the estate as security for their debts	E	affidavit
1.3.6	A lessor granted a right to certain movable assets of the lessee which then serve as security for payment of rent	F	attorney
1.3.7	A magistrate refusing a verdict for either of the parties	G	illegitimate children
1.3.8	To die without a will	H	domicilium citandi
1.3.9	When there are no movable assets to seize	I	Hortors Diary
1.3.10	An official who belongs to the side-bar	J	insured creditors
		K	judgement by default
		L	absolution from the instance
		M	edictal citation
		N	administration rule

(10 × 1) (10)

GENERAL STUDIES

1.4 Indicate in each of the following cases the court where the case will be heard and the presiding officer of that particular court. Write the answer next to the question number (1.4.1–1.4.5) in the ANSWER BOOK.
Example: 1.4.1 Magistrate's court; magistrate

1.4.1 Tebogo and Karabo reside in Northcliff, Johannesburg. They have agreed to get divorced.

1.4.2 Clive was found guilty of murder in the North Gauteng High Court. His leave to appeal is later granted.

1.4.3 Johnny, a 19-year-old, is caught stealing cigarettes from a local store.

1.4.4 Maria and Cathy enter into a contract according to which Maria sells her antique painting to Cathy for R5 500. Cathy takes delivery of the painting, but refuses to pay.

1.4.5 Andile feels that his rights have been infringed upon by his employer who constantly discriminates against him on grounds of his beliefs. Andile wishes to take his employer to court.

(5 × 2) (10)
[50]

TOTAL SECTION A: 50

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SECTION B

QUESTION 2

2.1 X, a 42-year-old male living in Lusikisiki in Umtata, was diagnosed with HIV. He was later informed by a traditional healer that he could be cured of the virus if he had sexual intercourse with a virgin. X then kidnapped Y, a 13-year-old girl from a nearby village, without either her or her parents' consent, with the intention of sleeping with her and making her his wife in order to cure himself of the virus. X has a firm belief that what he has done is not illegal, that it is custom (ukuthwala) and that this practice has been passed on from generation to generation.

2.1.1 Can X rely on the defence of custom as a valid defence action? (1)

2.1.2 Give reasons for your answer to QUESTION 2.1.1. (2 × 2) (4)

2.1.3 Discuss the requirements for a custom to be recognised as a rule of law. (4 × 2) (8)

2.1.4 Briefly discuss the concept of law. (2 × 2) (4)

2.1.5 Besides custom, list ALL the other sources of the South African legal system. (6)

2.2 Attorneys and advocates often have to plea in court on behalf of their clients; a job which is always demanding and causes tension, especially in cases where the life of a person is at stake.

State FIVE character traits a person should have to become an attorney. (5)

2.3 With the help of technology, email is the easiest and fastest way to correspond, but the ordinary postal system is still used and all outgoing mail should be seen as advertisement for the firm.

Discuss the functions of the postal clerk with regard to outgoing mail. (5 × 2) (10)

GENERAL STUDIES

2.4 A distinction can be made between various kinds of summons.

Choose an item from COLUMN B that matches a description in COLUMN A. Write only the letter (A–F) next to the question number (2.4.1–2.4.6) in the ANSWER BOOK.

COLUMN A		COLUMN B	
2.4.1	The court costs and costs of the summons are included in this kind of summons.	A	supreme court summons
2.4.2	This kind of summons allows the lessor to make use of the hypothec.	B	provisional sentence summons
2.4.3	This kind of summons is used solely for liquidated claims.	C	combined summons
2.4.4	This type of summons is used for illiquid claims.	D	short summons
2.4.5	The defendant is informed of the claim against him as well as the day on which the case will be heard.	E	magistrate's court summons
2.4.6	A power of attorney first needs to be filed before the attorney can issue such a summons.	F	rent interdict summons

(6 × 2) (12)
[50]

GENERAL STUDIES

QUESTION 3

3.1 Read the article below and answer the questions.

KHAYELITSHA – A local tavern in Cape Town has been shut down after eight people died when a staircase collapsed.

Six young girls died on the scene, while two others died en route to hospital following a stampede as people tried to enter the premises.

The tavern, which has been operating for more than five years, was closed down after it emerged that most of those who died were under age.

At least 10 more people aged between 17 and 24 years were injured.

Anathi Zokufa, 15, and her friend died en route to hospital. A relative said, 'We know her as a young girl who liked attending church. Even when she would visit her friends she would be home early, before 11. It was very shocking to hear that she came to such a place.'

Police have launched an investigation into the tragedy.

[Source: *www.enca.co.za*]

3.1.1 Name the legal document that the owner of the tavern must have before he/she can start selling alcohol. (1)

3.1.2 Name the institution to which one must apply in order to obtain the document mentioned in QUESTION 3.1.1. (1)

3.1.3 In order to curb incidents of a nature mentioned in the article above, the institution mentioned in QUESTION 3.1.2 must look into the premises of the tavern.

Discuss the state of the premises which will enable the owner to receive the document mentioned in QUESTION 3.1.1. (6 × 2) (12)

3.1.4 Suppose the tavern owner's wife is currently in jail, serving a sentence of eight years for culpable homicide.

Will the tavern owner be reissued with the document mentioned in QUESTION 3.1.1? (1)

GENERAL STUDIES

3.2 Use the information below to complete ADDENDUM A.

Alice Manuel, a 62-year-old widow, resides at 18 Elgin Road in Milnerton, Cape Town. She wants to make her will as she feels that her health is starting to deteriorate. Alice's identity number is 460518 5656 083. She has elected John Manamela of M&M Attorneys to be the person to manage her estate subsequent to her death. She informs Mr Manamela that she wishes to leave her primary residence and her holiday home on 45 Indwe Road, Port Alfred, to her eldest son Marshal Manuel. All her investments at Liberty Group and Investec must go to her daughter, Silvia Manuel. The residue of her estate must be shared between the Brooklyn Home for the Elderly and the Holy Cross Children's Home at 60% and 40% respectively. Her neighbours Melisa Block and Sharnay Naidoo signed as witnesses. (15 × 1) (15)

3.3 In an attorney's office mainly two types of accounts, namely a trust account and a business account, are used for all financial transactions.

Indicate in each of the following cases into which account the monies will be paid:

3.3.1 Jo-ann, an intern, receiving a salary of R2 500

3.3.2 The company's telephone account amounting to R1 900

3.3.3 R500 000 pay-out from the Road Accident Fund for Luthando who was involved in a car accident

3.3.4 Joey paying R40 000 transfer duty to the firm for the property that he is purchasing

3.3.5 R500 worth of stationery

(5 × 2) (10)

3.4 Discuss the small claims court under the following headings:

3.4.1 Advantages (3 × 2) (6)

3.4.2 Types of claims that can be heard (2 × 2) (4)

[50]

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QUESTION 4

4.1 Zintle, a famous celebrity, was invited to a radio interview where she made false allegations against Bokang. Bokang has since lost major endorsements because of the allegations as sponsors no longer wanted to be associated with her tainted image. Bokang now wants to institute legal action against Zintle for defamation and loss of income.

4.1.1 Will Bokang institute criminal or civil action against Zintle? (1)

4.1.2 Serving a summons is a first step to take when instituting civil proceedings.

List the other documents/pleadings that Bokang will have to complete should she wish to institute civil proceedings in the correct sequence. (7 × 1) (7)

4.1.3 Bokang's attorney, Mr Mpofu, has instructed his administrative clerk to prepare documents for submission in court for Bokang's case.

Discuss the rules that Mr Mpofu's administrative clerk will have to adhere to when preparing court documents. (6 × 2) (12)

4.1.4 Use the information below to complete the attached MESSAGE PAD (ADDENDUM B). Write your EXAMINATION NUMBER in the space provided.

You are Siphokazi Tembo, administrative clerk of Mr Mpofu. Suzanne Marais, secretary of Adams Attorneys, phones to speak to Mr Mpofu to discuss a meeting to be held with advocate Black tomorrow, 22 December 2016. Mr Mpofu is not available to take the call. Advocate Black will not be able to attend the meeting. It is your responsibility to give the message to the applicable person. Advocate Black's telephone number is 011 556 1617. (10)

GENERAL STUDIES

4.2 Identify the legal principle in each of the following cases. Write only the answer next to the question number (4.2.1–4.2.6) in the ANSWER BOOK.

4.2.1 The person who lays a charge in a civil case

4.2.2 The type of summons used to sue for the payment of rent in arrears

4.2.3 The sale of a debtor's assets to the highest bidder in order to pay a judgement debt

4.2.4 When a magistrate takes a decision on a matter

4.2.5 A written document that sets out how one's assets are to be distributed after one's death

4.2.6 The type of documents to be compiled and attested by a notary

(6 × 2) (12)

4.3 Discuss instances when a court can issue a garnishee order. (4 × 2) (8)
[50]

QUESTION 5

5.1 Discuss the THREE different types of wills. (3 × 2) (6)

5.2 What is the position of an illegitimate child upon the death of the father? (2)

5.3 The general rule is that a testator may bequeath his/her assets to whoever he/she deems fit.

Explain the term *usufruct* by making use of an example. (5 × 2) (10)

5.4 List FOUR persons who may not be appointed as an executor. (4)

5.5 Section 18 of the Administration of Estates Act allows the master to appoint an executor dative.

Discuss instances when the master can appoint an executor dative. (4 × 2) (8)

5.6 State any FIVE functions of an executor. (5 × 2) (10)

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

State in detail the options available to testators who are illiterate or handicapped and unable to sign their own wills. (5 × 2) (10)
[50]

TOTAL SECTION B: 150
GRAND TOTAL: 200

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ADDENDUM A **STUDENT NUMBER**

LAST WILL AND TESTAMENT OF

I, 3.2.1 _____, an adult residing at 3.2.2 _____

_____ , 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 _____ 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 _____ to 3.2.5 _____.

I devise, bequeath, and give my 3.2.6 _____ to

3.2.7 _____.

ARTICLE IV

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

3.2.8 _____% to 3.2.9 _____

3.2.10 _____% to 3.2.11 _____

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ADDENDUM A (continued) **STUDENT NUMBER**

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 _____
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 _____ day of _____ 20____.

_____
Testator

3.2.14 _____
Witness

3.2.15 _____
Witness

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ADDENDUM B **STUDENT NUMBER**

MESSAGE

To: ……

From: ……

Telephone number: Date:

☐ Phoned ☐ Please phone back

☐ Will phone again ☐ Came to see you

Message:

……

……

……

Time:

Taken by:

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