higher education & training

Department:
Higher Education and Training
REPUBLIC OF SOUTH AFRICA

MARKING GUIDELINE

NATIONAL CERTIFICATE

LEGAL PRACTICE N5

28 September 2020

This marking guideline consists of 10 pages.

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SECTION A (COMPULSORY)

QUESTION 1

1.1	1.1.1	True
	1.1.2	True
	1.1.3	True
	1.1.4	True
	1.1.5	True
	1.1.6	False
	1.1.7	False
	1.1.8	True
	1.1.9	True
	1.1.10	True
	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	D
	1.2.2	L
	1.2.3	I
	1.2.4	M
	1.2.5	G
	1.2.6	E
	1.2.7	A
	1.2.8	C
	1.2.9	F
	1.2.10	N

(10 × 2) (20)
[50]

TOTAL SECTION A: 50

SECTION B

Answer any FIVE questions in this section.

QUESTION 2

2.1 LLB degree (2)

2.2 Roll of attorneys (2)

2.3
- Arguing a client's case in court
- Arguing a client's case before council
- Drawing up contracts and agreements for clients
- Advising clients on domestic and financial matters
- Advising and assisting in legal establishment of companies
- Debt collection – recovery of debts from debtors
- Conveyancing – transfer of immovable property and bonds
- Preparing court documents (summonses, etc.)
- Consulting with advocates (where needed)
- Wills – drawing up wills and administration of deceased estates

(Any 4 × 2) (8)

2.4

ATTORNEY	ADVOCATE
• Requires a two-year training before admission • Deals with clients directly • Can only represent clients in the lower courts • All practising attorneys must belong to the Law Society	• One year's training before admission • Does not deal directly with the client • Can appear on behalf of clients in all courts • All advocates must belong to the Bar Association

(4 × 2) (8)

2.5
- A will is valid only if it complies with the following formalities stipulated by the Wills Act and the Common Law:
- It must be in writing.
- The testator must be 16 years or older.
- It must be written with a clear intention of constituting a will.
- It should be made independently of any beneficiaries.
- Testator must be of sound mind at the time of signing the will.
- Testator must not have acted under duress.
- The testator must sign the will.
- The testator must sign the will in the presence of two competent witnesses.
- 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 witnesses must sign every page, in the presence of the testator and each other.
- When a will consists of more than one page, the testator must sign on every page.
- The will must be dated.

(Any 5 × 2) (10)

[30]

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QUESTION 3

3.1
- All documents must be printed in black.
- A4 paper of a good quality.
- Font size must not be too small.
- Only printed on one side of the paper.
- Should have margins of approximately 3 cm.
- In some cases, double-line spacing is required.
- Summons and pleadings must be signed by the attorney and advocate; and provide their names and addresses.
- Each affidavit entered must have a clear certificate drawn up by the firm of attorney. (Any 6 × 2) (12)

3.2
- A formal declaration that a debtor is insolvent
- It is granted in two ways: voluntary or by compulsory court order.
- The purpose of sequestration is to allow equitable distribution of the debtor's estate among his creditors.
- It is the debtor's estate, not the debtor himself, that gets sequestrated.

(4 × 2) (8)

3.3 3.3.1 The Law Society of South Africa (2)

3.3.2
- Before filing a formal complaint, make an appointment with the attorney in question and discuss the matter.
- If no decision is made, then contact the nearest provincial LSSA.
- Direct a letter to LSSA. In the letter, identify yourself, the attorney concerned, the complaint and reasons for your unhappiness.
- The client can attend the session or choose to remain anonymous. (4 × 2) (8)

[30]

QUESTION 4

4.1 *Domicilium citandi et executandi* = In basic terms it means the physical (home) address where you reside (live).✓✓
In a legal sense it is more complicated than that as it means the address nominated by a party in a legal contract where legal notices (summonses, etc.) and other documents may be sent. (2)

4.2 4.2.1 Yolanda Krutani (2)

4.2.2 The affidavit was made (by Yolanda Krutani) to list the names of all the next of kin (alive and deceased) of the deceased (her father – Johannes Krutani) (2)

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4.2.3 Yes✓
Affidavits are legally binding. Once the document is signed, the deponent may be charged with perjury if the affidavit is found to contain false statements of fact (information)✓✓ (3)

4.2.4 Yes✓
Affidavits may be handwritten or typed. However, all affidavits must be notarised, meaning, a notary public or other public official must witness you signing it in their presence✓✓ (3)

4.2.5 All affidavits are required to be signed✓ by the deponent in the presence of a magistrate, justice of the peace, commissioner of oaths, notary public or other official authorised by law.✓

A notary public (or other officials mentioned above) attests to the authenticity of the deponent's person and signature by checking identification, signing and stamping the document/affidavit.✓ (3)

4.2.6 Yes✓
An affidavit may be revoked and amended, but under certain conditions.✓ In order to revoke or amend an affidavit, you first need to identify the authority to which you submitted it and contact them immediately.✓ (3)

4.2.7 Generally, if you've made a minor mistake, such as a typo, you won't have to prepare a new affidavit and may take it to a lawyer or notary public to correct any minor mistakes.✓✓
If you have made a serious (material or critical) error, it's likely you'll have to prepare a new affidavit, explaining why you've changed it.✓✓ (2 × 2) (4)

4.2.8 No✓
There is no age limit or requirement for the deponent when signing an affidavit.✓✓ (3)

4.2.9 As long as the deponent is of sound mind,✓ and old enough to understand the significance of the oath ✓and affirmation of facts, they may sign it. (2)

4.2.10 If you lie in your affidavit, you have committed perjury.✓
You have committed fraud, and thus opened yourself up to numerous consequences. Consequences could include fines, community service, or even a jail sentence.✓✓ (3)
[30]

QUESTION 5

5.1 5.1.1 It is the formal acceptance by a person who is appointed by the Master as executor to a deceased estate or
(in more formal terms) it is an undertaking and acceptance of the Master's directions by an executor/executrix.
Where a candidate writes J155, award ONE mark only. (2)

5.1.2 To have proof of (on record) the acceptance of the duties and responsibilities conferred upon the executor by means of the Master's directions in terms of section 18(3) of the Estates Act, 1965 (2)

5.1.3 The applicant is the executor testamentary or executor dative who will oversee the administration of the deceased person's will. (2)

5.1.4 The person appointed must meet the approval of the spouse of the deceased.
The executor can be any relative or blood relation to the second degree of the deceased. (2 × 2) (4)

5.1.5 No.
Although Yolanda is a relative (daughter to deceased), she is a minor and therefore may not be appointed as executor to her father's estate. (2)

5.1.6 The executor declares that he or she is not insolvent at the time of accepting the appointment by the Master.

OR

(Alternatively: The person accepting the nomination of executor by the Master, declares that he or she is not in a position whereby he/she is insolvent and has not yet undergone the period of rehabilitation.) (2)

5.2 5.2.1 Ask the person how many tasks (things) he or she wants the proxy (attorney or person) to do/handle for him or her OR, alternatively, must the power of attorney be for a single task only or for more than just one task? (2)

5.2.2 Special (limited) power of attorney✓✓ (just to handle the transfer of the house onto the person's name)
Reason: Special power of attorney is only for a specific task or for a single case.✓✓ (2 × 2) (4)

5.2.3 General power of attorney (2)

5.2.4 Where a high degree of trust exists between the grantor and the proxy, a general power of attorney can be given. If there is only one task or little trust exists or there is reason to think so, the grantor should give a special (limited) power of attorney for each task he/she wants the proxy to do.
Where the grantor has more than one task he/she wants the proxy to handle and there is a position of trust between them, a general power of attorney would be advisable, but it must be noted that with a general power of attorney, more rights are extended/more power entrusted to the person/proxy.
(ANY ANSWER SIMILAR TO ABOVE IS ACCEPTABLE) (2)

5.2.5 YES✓✓
Where a power of attorney is granted to an attorney (X, in this case), it is acceptable that (irrespective of what type of power is given) power of attorney is given to all partners in the law firm, UNLESS it is otherwise stipulated (relevant section is deleted) on the power of attorney form.✓✓ (2 × 2) (4)

5.2.6 Permission is granted in the power of attorney that any other partner in the law firm (not just the attorney/partner mentioned) can carry out (handle) the instruction as specified in the power of attorney. (2)
[30]

QUESTION 6

6.1
- Insolvent person may not incur debts.
- If married in community of property, the joint estate is considered insolvent.
- If married out of community of property, debtor must prove ownership of property.
- Any inheritance during period of insolvency forms part of insolvent estate.
- Debtor must present monthly statements to the curator. (5 × 2) (10)

6.2

MESSAGE

To: __Mr W. Luzet✓_____

From: __Mr S. Sibeko✓_____

Telephone:__Any number✓_____ Date:__25 May 2020✓_

X✓✓	Phoned	Came to see you	
	Please phone back	Request an appointment	
	Will phone again	Returned call	

Message: Mr Sibeko called✓, he wants to cancel the meeting scheduled for 28 May✓

Time:……10:00✓

Taken by: Lucy Diale✓

(10)

6.3
- Take down the message on a pad.
- Put the pad on Mr Luzet's table/desk.
- Write in his diary to alert him to the message.
- Make a note on the calendar on 28 May, and write 'cancellation of meeting'.
- Make a note in your diary to confirm cancellation with client after Mr Luzet. has consented to cancel meeting of 28 May. (5 × 2) (10)

[30]

QUESTION 7

7.1 7.1.1 The tips are very useful as it will help me in solving our problem and challenge at hand.
The centralised alphabetical filing system and horizontal method we currently use are not working for the firm. The centralisation of files and using the horizontal method of storing files are not practical anymore and must change.

Part of the decluttering of files will also involve the separation of closed files and security files. These will be stored and managed in an archive and fireproof safe respectively.

With the help of the office intern, I will (according to legal protocols) get rid of files which have been closed and which exceed the legal time they were kept/stored.
In my new system, I will introduce a decentralised alphabetical and/or numerical system and change over to a vertical method of storing our client and other files, with the difference that each department (litigation, debt collection, conveyancing, commercial and wills) will handle and store their own files. Thus, each department will be responsible for their own files.
The office manager will audit our new system at regular intervals, whereupon we will make adjustments, where necessary.

ANY SIMILAR EXPLANANTION/MOTIVATION IS ACCEPTABLE
(USE DISCRETION IN ALLOCATING MARKS.) (2 × 2) (4)

7.1.2 The horizontal filing method of storing the clients' files is not practical.

The centralised filing system currently used, means that all the files of the law firm are brought to and stored in one area/office or room. This is not practical in a law firm that has different departments.
(2 × 2) (4)

7.1.3 In my new system, I will introduce a decentralised alphabetical and/or numerical system ✓✓and change over to a vertical method of storing our client and other files.✓✓
Reason: Using the vertical filing method is practical in the sense that all files are stored in an upright position wherever they are filed. File names will be clearly visible and using the vertical method will facilitate easy retrieval and file recovery. ✓✓

OR

Using a decentralised alphabetical and/or numerical system will mean each department of the law firm (litigation, debt collection, conveyancing, commercial and wills) will handle, store and be responsible for their own files. It will assist the office intern not to misplace or lose files. (3 × 2) (6)

7.2

	Qualifications of these practitioners	Nature of the work done	Court/s in which practitioners appear/may appear	Types of cases heard by these practitioners
Attorneys	LLB degree Extra qualifications needed to act as notary and/or conveyancer ✓	Work with clients directly; Do legal & admin work. Can specialise in areas if qualified as notary or conveyancer. ✓	Lower courts; High courts in exceptional cases✓	Civil cases and criminal cases✓
Commissioners	They are either attorneys or advocates; thus LLB degree✓	Hear case of plaintiff and defendant and deliver judgment✓	Small Claims Court✓	Civil claims✓ (max R120 000)
Magistrates	Only a minimum qualification is required e.g. B. Proc.; B. Iuris degree✓	Hear civil and criminal cases; and deliver suitable verdicts;✓ do preliminary investiga-tions into more serious cases; undertake administra-tive cases and handle the admin of district courts	Lower courts✓ Circuit courts (where needed)	Civil cases and criminal cases✓
Paralegals	Informal training only. Can do diploma or higher certificate course to qualify as paralegal✓	Act in advisory capacity in certain legal matters✓	Do not appear in any courts✓	Do not hear any cases✓

(16)
[30]

TOTAL SECTION B: 150
GRAND TOTAL: 200

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