201306H165

higher education & training

Department:
Higher Education and Training
REPUBLIC OF SOUTH AFRICA

N920(E)(M24)H
JUNE EXAMINATION

NATIONAL CERTIFICATE

LEGAL PRACTICE N5

(13030115)

24 May 2013 (Y-Paper)
13:00–16:00

This question paper consists of 9 pages.

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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 the candidates.

2. Answer any THREE of the four questions in SECTION B.

3. Mark allocation:

   SECTION A: 50 marks
   SECTION B: 150 marks
   GRAND TOTAL: 200 marks

4. Read ALL the questions carefully.

5. Number the answers according to the numbering system used in this question paper.

6. Start each question on a NEW page.

7. Tipp-ex must NOT be used on the question paper.

8. 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 Money in letters is recorded in a remittance register.

1.1.2 Customary law, which has its origin in the habits of a community, does not consist of written rules.

1.1.3 There are TWO types of lawsuits, civil and criminal cases.

1.1.4 All attorneys must become members of the Law Society as soon as they are entitled to practise as attorneys.

1.1.5 A function of the Law Society is that it evaluates the costs of some accounts.

1.1.6 According to the centralised filing system each attorney stores his/her own files.

1.1.7 Temporary removal of a file is always done in ink.

1.1.8 Trust money means money held on account and can be withdrawn by the attorney whenever he/she needs it.

1.1.9 Registered mail is usually not opened, but handed to the addressee.

1.1.10 When opening mail, all cheques which had not been crossed, have to be left as they are.

(10 × 1) (10)

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1.2 Choose a/an word/item from COLUMN B that matches a description in COLUMN A. Write only the letter (A–O) next to the question number (1.2.1–1.2.10) in the ANSWER BOOK.

	COLUMN A		COLUMN B
1.2.1	The plaintiff's answer to the defendant's written defence	A	section 65
1.2.2	Only ONE document is prepared for a criminal case	B	remittance register
1.2.3	An order of sequestration against yourself	C	without prejudice
1.2.4	Money in letters is recorded in this document	D	supreme court
1.2.5	A letter marked in this way may not be used as evidence in court	E	magistrate
1.2.6	The most important source of our law today	F	counterplea
1.2.7	The presiding officer in this court is a judge	G	subpoena
1.2.8	When there are no movable assets to seize	H	charge sheet
1.2.9	When requesting certain persons to testify in court	I	summary judgement
1.2.10	The first step taken in a lawsuit	J	nulla bona
		K	summons
		L	statute law
		M	domicillium citandi
		N	viva voce
		O	surrendering of estate

(10 × 2) (20)

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1.3 Choose the correct word(s) from those given in brackets. Write the name of the court where the following hearings will take place. Write only the word(s) next to the question number (1.3.1–1.3.5) in the ANSWER BOOK.

1.3.1 Sandra is a first time offender, arrested for being in possession of dagga. (magistrate's/supreme court)

1.3.2 Belinda was found guilty in the (small claims court/consumer court) for not delivering the service she is contracted and paid for. The sum of R5 000 went to the plaintiff.

1.3.3 Christelle was found guilty of housebreaking, but is going to appeal against the sentence in the (supreme court/appeal court).

1.3.4 Breaking a traffic rule is a criminal offence. Non-payment of such a fine means you will have to appear in the (magistrate's/small claims) court.

1.3.5 Living with his tribe in the Eastern Cape, Sipho was found guilty during a civil dispute. The hearing took place in the (courts of chiefs and headmen/short process courts).

(5 × 2) (10)

1.4 Give ONE word/term for each of the following descriptions by choosing the word/term from the list below. Write only the word/term next to the question number (1.4.1–1.4.10) in the ANSWER BOOK.

short summons; trust account; dies induciae; illegitimate; criminal case; side bar; residu; edictal citation; viva voce; notice of intention to defend

1.4.1 The … is the account where the attorney may not withdraw money without his client's permission.

1.4.2 … is only used for liquidated claims.

1.4.3 The … can only be calculated according to the court days, that is the days in which the court is in session.

1.4.4 A … is when the state has a case against a person, and the person is now known as the accused.

1.4.5 The … is the document which indicates how the defendant is going to state his/her case during the court procedures.

1.4.6 An attorney belongs to the … .

1.4.7 … is the oral evidence given under oath in open court.

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1.4.8 An ... is known as a serving of a summons in an extra-ordinary manner.

1.4.9 ... children inherit intestate from their mother, but not from their father.

1.4.10 ... is the word used for remains or surplus in a will.

(10 × 1) (10)
[50]

TOTAL SECTION A: 50

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SECTION B

Answer any THREE of the following four questions.

QUESTION 2

2.1 Customary law, which has its origin in the habits of a community, does not consist of written rules. Explain the requirements for a custom to be recognised as a rule of law. (4 × 2) (8)

2.2 There are TWO types of lawsuits. Use the table below to answer the questions. Redraw the table in the ANSWER BOOK.

2.2.1 Name these TWO lawsuits.

2.2.2 What is the difference between these TWO lawsuits?

2.2.3 Give an example of each.

LAWSUITS	DIFFERENCE	EXAMPLE OF EACH
(2)	(4)	(2)
(2)	(4)	(2)

(16)

2.3 As the secretary to a law firm you are responsible to prepare the court case for each day of the month. How would you go about to make these files available on the day concerned? (5 × 2) (10)

2.4 The opening of the incoming mail is an important task in any office. Explain in detail how this must be executed. (14)

2.5 The Constitutional Court is the highest court in the country. Indicate whether the statement is TRUE or FALSE. (2)

[50]

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QUESTION 3

3.1 There are certain procedures to be followed during a civil defence action and specific documents must be completed. It is important that it should be in the correct sequence. Name these documents. (8 × 2) (16)

3.2 The Registrar of the Supreme Court and the clerk of the Magistrate's Court may refuse any court document that does not comply with the requirements of the court. Explain the requirements. (15)

3.3 As the secretary for the law firm Van der Spuy & Partners, you have to explain the meaning of certain Latin words to a new client. DIES INDUCIAE is one of the items, please explain. (10)

3.4 Claims are divided into THREE groups. Use the table below to answer the following questions. Redraw the table in the ANSWER BOOK.

3.4.1 Name the different claims.

3.4.2 State their differences.

3.4.3 Write down an example of each.

NAME	DIFFERENCES	EXAMPLE OF EACH
1 (1)	(1)	(1)
2 (1)	(1)	(1)
3 (1)	(1)	(1)

(9)
[50]

QUESTION 4

4.1 The defendant has options of what he can do when a summons is served. State these SIX options in full descriptive sentences. (6 × 2) (12)

4.2 There are SIX reasons for objecting against a summons, or a pleading objections may be raised. Provide a heading for your objections, and explain the reasons. (7 × 2) (14)

4.3 After the Order of Execution has been issued against the debtor, the messenger of the court may seize enough assets in order to pay the debts. Not all assets may be seized, name them. (5 × 2) (10)

4.4 The law acknowledges three cases of creditors against an insolvent estate. Discuss each ONE in the correct sequence. (14)
[50]

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QUESTION 5

5.1 When a person wants to draw up a legal last will and testament, he/she must keep in mind that it must be done according to strict requirements. Explain these requirements. (7 × 2) (14)

5.2 Name the people who may not sign as witnesses to a will. (7)

5.3 Explain ONE example of an inheritance which was made and it seemed to be valid, but is totally invalid. (4 × 1) (4)

5.4 When *usufruct* has been used in a bequethment, it has a certain meaning with special consequences to the heirs. Explain fully and give examples. (5 × 2) (10)

5.5 An executor to a will can be appointed in TWO ways. Name them and explain the differences. (10)

5.6 To ensure the payments of one's debt, one can use one's assets as security. Explain this statement. (5)
[50]

TOTAL SECTION B: 150
GRAND TOTAL: 200

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MARKING GUIDELINE

NATIONAL CERTIFICATE

JUNE EXAMINATION

LEGAL PRACTICE N5

27 MAY 2013

This marking guideline consists of 8 pages.

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SECTION A

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	False ✓
	1.1.9	False ✓
	1.1.10	False ✓

(10 × 1) (10)

1.2	1.2.1	F ✓✓
	1.2.2	H ✓✓
	1.2.3	O ✓✓
	1.2.4	B ✓✓
	1.2.5	C ✓✓
	1.2.6	L ✓✓
	1.2.7	D ✓✓
	1.2.8	J ✓✓
	1.2.9	G ✓✓
	1.2.10	K ✓✓

(10 × 2) (20)

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1.3	1.3.1	Magistrate's ✓✓		
	1.3.2	Small claims Court ✓✓		
	1.3.3	Supreme Court ✓✓		
	1.3.4	Magistrate's ✓✓		
	1.3.5	Courts of Chiefs and Headmen ✓✓		
			(5 × 2)	(10)
1.4	1.4.1	Trust account ✓		
	1.4.2	Short summons ✓		
	1.4.3	Dies induciae ✓		
	1.4.4	Criminal case✓		
	1.4.5	Notice of intention to defend ✓		
	1.4.6	Side bar ✓		
	1.4.7	Viva voce ✓		
	1.4.8	Edictal citation ✓		
	1.4.9	Illegitimate ✓		
	1.4.10	Residu ✓		
			(10 × 1)	(10)
				[50]

TOTAL SECTION A: 50

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SECTION B

QUESTION 2

2.1
- Custom must be reasonable ✓✓
- Custom must have existed for a long time ✓✓
- Custom must be generally recognised and served by the community ✓✓
- Content of the customary rule must not contradict any existing rule of law ✓✓

(4 × 2) (8)

2.2

2.2.1 **LAWSUITS**	2.2.2 **DIFFERENCE**	2.2.3 **EXAMPLE OF EACH**
Civil cases ✓✓	Conducted between persons, ✓ Groups of persons, ✓ instances. ✓ Court settles dispute judicially ✓	Payment of debt ✓ Payment of damage suffered ✓
Criminal cases ✓✓	State against person ✓ Transgression ✓ of law ✓ penalty of punishment ✓	Theft ✓ Murder or treason ✓

(16)

2.3
- Make use of 31 shelves or covers ✓✓
- Number consecutively ✓✓
- Each presents a date of the month ✓✓
- As days pass, first file removed, ✓✓
- followed up and replaced at back ✓✓

(5 × 2) (10)

2.4
- Open all envelopes with care ✓✓
- Remove everything from the envelope ✓✓
- Any loose annexures must be attached to the letter ✓✓
- Determine whether annexures mentioned in the letter have been included. ✓✓
- If not, make a note on the letter ✓✓
- Date-stamp all letters in such a way that the stamp does not cover any writing ✓✓
- Cross all cheques if they have not been crossed ✓✓
- Open all mail in the presence of a senior member of staff

(7 × 2) (14)

2.5 TRUE

(2)
[50]

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QUESTION 3

3.1
- 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 × 2) (16)

3.2
- All documents must be clear, legible and typed or printed in permanent black or blue-black 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 any of the words or letters ✓✓
- Documents must be typed in double-line spacing. If it is a lengthy document it must be divided into concise paragraphs and each paragraph must be numbered. (This is done by the Attorney). The number of every paragraph is typed in a new line in the middle of the page ✓✓
- The names and addresses of the Attorney concerned must appear on the first page of all sworn statements (affidavits) which are filed with the registrar✓✓
- All combined summons and all other pleas of the Supreme Court must be signed by the attorney and advocate while all Magistrate's Court documents must only be signed by an attorney ✓✓
- The name and address of the attorneys representing both parties must appear on each document. In the magistrate's court it is not important where the names and addresses appear. Sometimes it is directly under the heading or only at the end of the documents. Some supreme court departments insist that the names appear on the first page of the document. The name of the attorney concerned must also appear on the document. ✓✓

(15)

3.3
- Number of days which the defendant ✓✓ can decide whether to defend or not ✓✓
- Court days have to be calculated ✓✓
- Magistrate's court and supreme court ✓✓
- Days from Monday to Friday ✓✓
- Supreme court in recess from 15 December to 15 January

(5 × 2) (10)

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3.4

3.4.1 **NAME**	3.4.2 **DIFFERENCES**	3.4.3 **EXAMPLES**
Liquid claims ✓	Exact amount of debt in writing ✓	Cheque, promissory note, bond ✓
Liquidated claims ✓	Amount of money specified or calculated ✓	Amount owed for goods sold, delivered ✓
Illiquid/unliquidated claims ✓	Cannot be specified or calculated ✓	Third party claims – divorce claim ✓

(9)
[50]

QUESTION 4

4.1

- Dispute the claims against him on factual or legal grounds by at first indicating his intentions to defend the case, which is done on the back of the summons ✓✓
- Admit that he is responsible for the amount claimed by signing the form for permission to judgement on the summons and by filing it with the clerk of the court ✓✓
- Admit responsibility for the acknowledged amount and undertake to pay instalments according to Article 75 of the Magistrate's Court Act ✓✓
- 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 step to the plaintiff, in which case the plaintiff is entitled without further notice, to ask for judgement by default ✓✓
- If the plaintiff can show that the defendant only gave notice of his intention to defend as a delaying tactic, the plaintiff can apply to the court for a summary judgement and settle the case in this way without any further delay or costs✓✓

(6 × 2) (12)

4.2 <u>NOTICE OF EXCEPTION</u> ✓✓

- Summons does not indicate a clear cause of action ✓✓
- Plea does not indicate a definite defence ✓✓
- Phrasing of the document is vague and ambiguous ✓✓
- Summons is not compiled according to the rules of the court ✓✓
- Summons not served in the correct way ✓✓
- Copy differs from the original ✓✓

(7 × 2) (14)

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4.3
- Food and beverage ✓✓
- Third party claim ✓✓
- Pension fund ✓✓
- Household equipment used for making a living✓✓
- Bed and bed linen✓✓

(5 × 2) (10)

4.4
- Insured creditors ✓✓ – includes holders of bond loans and ✓✓
- Credit Agreement Act (hire purchase)✓
- Preferred creditors ✓✓ – auditors and accountants ✓
- Employees✓
- Receiver of Revenue✓
- Concurrent creditors ✓✓ – any others who can prove a claim against the estate✓
- The remainder is divided among the concurrent creditors✓ (14)

[50]

QUESTION 5

5.1 Requirements of testament:

- A testament must be written. ✓✓
- A testament must be signed by the testator. To be able to make a valid will, the testator must be 16 years or older; be of sound mind at the time of signing the will and not act under duress. ✓✓
- When a testament consists of more than one page, the testator must sign on every page.✓✓
- The testator must sign the testament in the presence of two competent witnesses. ✓✓
- The witnesses must sign every page, in the presence of the testator and each other. A witness to a will must be at least 14 years of age and must be capable of testifying in a Court of Law. It is not necessary for the witnesses to know that the document that is signed is a will. They merely acknowledge that the signature is that of the testator and that at the time of the signing he was of sound mind and not acting under duress✓✓
- The testament must be dated. ✓✓
- The testator and both witnesses must sign fully on every change. ✓✓

(7 × 2) (14)

5.2
- Heirs ✓
- Any other beneficiaries in the will✓
- And their spouses ✓
- Executors✓
- Trustees ✓
- Guardians and ✓
- Their spouses✓

(7)

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5.3
- When a father stipulates in his will that should his son's wife die before he does, he may not enter into a second marriage ✓✓ – invalid ✓✓
- His son may not vote for a certain political party ✓✓– invalid ✓✓

(4 × 1) (4)

5.4
- Last will states that block of flats ✓
- bequeathed to the two children, is ✓
- subject to usufruct of wife till her death ✓
- Flat becomes property of the children ✓
- registered in their names, at the Deeds office ✓
- Stated that property is subject to usufruct ✓✓
- Surviving spouse ✓
- enjoys the income (fruit) ✓
- does not become the owner✓
- only has the right of income ✓

(5 × 2) (10)

5.5
- Testamentary ✓✓
- An executor nominated by the testator ✓
- Executor must give consent to executorship✓
- Dative✓✓
- When the deceased did not nominate an executor ✓
- Died intestate ✓
- Will was declared invalid ✓
- Do not want to be executor

(10 × 1) (10)

5.6
- In the event of an asset being fixed✓
- called a bond on asset✓
- if it is movable asset ✓
- right of pledge, or ✓
- lien

(5 × 1) (5)
[50]

TOTAL SECTION B: 150
GRAND TOTAL: 200

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