



higher education & training

Department:
Higher Education and Training
REPUBLIC OF SOUTH AFRICA

MARKING GUIDELINE

NATIONAL CERTIFICATE

JUNE EXAMINATION

PUBLIC LAW

12 JUNE 2013

This marking guideline consists of 10 pages.

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	True		
	1.1.6	False		
	1.1.7	False		
	1.1.8	True		
	1.1.9	True		
	1.1.10			
			(10 × 2)	(20)
1.2	1.2.1	restrain order/interdict		
	1.2.2	constitutional law		
	1.2.3	land court		
	1.2.4	Public law, state		
	1.2.5	plaintiff, defendant		
	1.2.6	mandate, decentralisation, deconcentration		
			(10 × 2)	(20)
1.3	1.3.1	Roman Dutch law		
	1.3.2	Administrative law		
	1.3.3	Juvenile court/Children court		
	1.3.4	Principle of legality		
	1.3.5	Review		
			(5 × 2)	(10)
				[50]
			TOTAL SECTION A:	50

SECTION B**QUESTION 2**

- 2.1
- By the end of the fifteenth century the assimilation of Roman law in the Netherlands was complete.
 - There was a merger between Roman Law and the Dutch indigenous common law.
 - Thus the Roman Dutch law was born and contained both the systems. Roman law was a systematic legal system but the Dutch law was unwritten.
 - A group of Dutch jurists systemised and broadened the Dutch law from the seventeenth to the nineteenth century.
 - This work is still applicable as explanations of our common law e.g. Inleidinge tot de Hollandsche Rechtsgeleerheyt by Hugo De Groot also known as Grotius of 1631.

(5 × 2) (10)

2.2 Formal test

The first test is to determine if the body or organ was instituted by government. Here it must be seen whether the authority and duties of the body was established by legislation. Originally there was a volunteer association for the conversation of predators in the Free State later people had to be paid because the association was incorporated by statute, fines could be levied for negligence.

The second test is to determine if the organ was slotted in the hierarchy of power. The question is whether there is a higher authority which influences the orders, procedures and behaviour of the lower organ e.g the traffic department is a government organ but subordinate to the City Council.

Material test

The first test is to determine the nature of the activities of the organ. If the work of the organ has nothing to do with the supply of public services it can be assumed that the body is not a government organ.

The second test is to determine if the government is the bearer of government authority. Even if the organ passes all the tests but fails one it is still not regarded as a government organ.

(10 × 1) (10)

- 2.3
- The administration of estates of deceased and insolvent persons
 - The protection of the interests of minors and beneficiaries
 - The protection and administration of the funds of minors, contractually incapacitated and absent heirs
 - The supervision of the administration of companies and close corporations in relevant to the statutory prescriptions
 - The determination and assessment of estate duties in terms of the Estate duty Act (45 of 1955)
 - The supervision of trust in terms of the Trust Property Act, 1988
 - Safeguarding of all documents in respect of solvency and liquidations
 - Master of the High Court is appointed by the Minister of Justice in every Provincial Division of the High Court.
 - The processing of enquiries by executors, attorneys, beneficiaries and other interested parties
 - The appointment of impartial and capable persons as executors, trustees, curators and liquidators
- (10 × 1) (10)
[30]

QUESTION 3

- 3.1
- Legislative administrative proceeding
 - Judicial administrative proceeding
 - Purely administrative proceeding
 - Multilateral administrative proceeding
 - Collective labour agreements
 - Agreement for the supply of services
 - Unilateral administrative proceeding
 - Limited discretion
 - Mechanical administrative proceeding
 - Contract with officials
- (10 × 1) (10)

3.2 Private law relationship

The private law relationship is where legal persons are involved in a legal relationship e.g. a contract to buy a house or a car between two people or between a company and a person.

Administrative law relationship

It demands that one subject should be a government body and must be invested in government authority and must have used it.

The government body can become involved in a private law relationship e.g. when the State buys land from private individuals or when the State expropriates the land of a private person under law which allows for such an action, it becomes an administrative law relationship.

(6 × 1) (6)

- 4.2 4.2.1 These must be considered because it sheds light on the meaning of a stipulation of the law itself. If the wording of the law is not clear, the meaning of the law is unclear one will have to refer to the circumstances to which the law referrers keep in mind the meaning or intention.
- 4.2.1 Any law based on Roman Dutch Law i.e. our Common law must be interpreted in this light not against it. When our laws use the same words as a corresponding article in an English law, the court is obliged to follow the interpretation of the English court. This is so even through our laws are influenced by the English Law. (4 × 2) (8)
- 4.3 Internal relationship
- This develops when two organs within the same power base oppose each other for e.g. if within the same department the Director-General and the minister come into conflict. (3 × 2) (6)
- Independent control relationship
- In this case the organ has authority to approve the actions of the other authority. The two organs function independently for e.g. the provincial prime minister cannot order the city council to act or not to act but has authority to approve the actions. (3 × 2) (6)
- [30]

QUESTION 55.1 Legislation

This is the most important source and appears in statutes, ordinances, regulations and other measures where the authority and functions of a government body are set out according to the administrative law. Rules which regulate the administration of the State are another source. The principle of legality must be applied to see whether a measure has a legislative status.

Constitution

The most important legal rule regarding the political system of the country are included in the constitution and also prescribes the government institutions at national level. The constitution defines and limits the authority of the institution and determines the relationship between the departments and the citizens of the country. The constitution is the most important part of the legal system of any country and as such contributes to administrative law.

Parliament

Laws originate in Parliament and hence the Parliament is an important source in administrative law. Many laws are passed during every session of Parliament and through many of these laws, the composition and functions of an administration body are described. According to the law, the minister or State President has to promulgate subsidiary legislation to enhance the Parliamentary legislation.

Provinces

The Provinces are authorised by Parliamentary legislation to issue laws and these determine the powers and functioning of the Provincial institutions and its officials. Amongst others, Provinces can issue ordinances regulating entertainment, traffic, gambling etc.

Proclamations

According to Parliamentary legislation of Common Law prerogative, the State President can issue Proclamations. These are subsidiary legislations and are at all times to be issued in terms of existing legislation. The Premier of the Province may also issue proclamations in keeping with existing ordinances.

Regulations

These rules include by-laws passed by the local authorities, regulations and rules of the city councils etc. (18 × 1) (18)

- 5.2 5.2.1 Administrative law is the branch of law that regulates the legal relations of public authorities among themselves and private individuals. Administrative law regulates the functions and execution of powers of the government organs in such a way that it protects the powers and actions of the administration of the State. (3 × 1) (3)
- 5.2.2 Mercantile law regulates the business transactions and activities in commerce and industry. It regulates the relations among private individuals and private organs or among companies when entering into agreements. (3 × 1) (3)
- 5.3
- This includes all legal rules which order society – Statutory and Common law.
 - In this aspect one thinks of laws, ordinances and regulations which order our daily lives amongst others, rules regarding transfer of immovable property, marriage, speed limits and the functioning of the courts.
 - This means all the rules regarding everyday life, commerce and industry.
 - This is the law in the objective society. (6 × 1) (6)

[30]

QUESTION 66.1 Long established

There is no fixed definition given but it will have to be long enough to be generally known.

Reasonable

A custom that is contrary to the law and public interest will be regarded as unreasonable. If a custom is oppressive, damaging or unfair it is also unreasonable.

Definite

If a custom is appealed against it must be definite. The onus of proof rests with the person making an appeal. She/he must call enough witnesses to prove that such a custom exists.

Constant observance

This means that the custom appealed to must be observed by the entire community or part of the community to whom the custom belongs. Such a community must acknowledge and observe the custom

(10 × 1) (10)

6.2 Cases

These are material, physical things and the subjective rights regarding this matter includes material laws for e.g. property laws and pledge laws.

Personal Property

An example is a person's character e.g. honour, dignity and good name. The right to these is known as character law.

Immaterial Property

These means the spiritual or psychological products of people e.g. inventions, art works, trademarks etc. I.e. idea and creations of the psyche.

Performance

This means human conduct ; the law of performance is called the law of demand e.g. If persons A and B enter into a contract, A will perform certain acts upon payment by B, then B had to demand, after concluding the contract, payment of monies, that A performs the said duties.

(11 × 1) (11)

- 6.3
- Administrative actions should comply with the rules of natural lawfulness.
 - Legislation must be in the interest of the public.
 - The government body must pursue a lawful aim.
 - Any facet of authority must be granted according to the principle of legality.
 - Administrative actions must comply with both the law in general and also common law.
 - Nobody may be wronged.
 - Powers of the government body may not be executed in an arbitrary or ridiculous manner.
 - Authority may not cause hardships.
 - No discrimination against classes is allowed.
- (9 × 1) (9)
[30]

QUESTION 7

7.1 Review from the lower court to the higher court:

This is the review by a lower court to the higher court by means of a notice of motion. If the applicant is dissatisfied with the manner in which his/her case was handled at the lower court, he/she may apply for a review at the high court within a prescribed period.

Common law review

This is the review conducted by the administrative authorities and where the law creates a revision or appeal, unless the law explicitly excludes revision.

Review of Statutory bodies

All administrative proceedings are subject to Common law revision. The revision capacity of the court is also applicable to the proceeding of voluntary association bodies. However, the court can only intrude if authority was exceeded or in the case of some other irregularity and damage was caused.

(8 × 2) (16)

7.2 Montesquieu developed the doctrine of division of powers by propagating the trilateral division of authority. According to this doctrine, the three authorities control each other and restrain any abuse of authority:

Legislative authority – passes the laws via the National Assembly and the National Council of Provinces.

Executive authority – carry out the laws

Judiciary authority – decides on cases between the state and subjects.

(10 × 1) (10)

- 7.3
- Internal control
 - Control by parliament
 - Investigation by the ombudsman or parliamentary official
 - Control by the civil courts
- (4 × 1) (4)
[30]

TOTAL SECTION B: 150
GRAND TOTAL: 200