



**higher education
& training**

Department:
Higher Education and Training
REPUBLIC OF SOUTH AFRICA

MARKING GUIDELINE

NATIONAL CERTIFICATE

JUNE EXAMINATION

PUBLIC LAW N6

3 JUNE 2016

This marking guideline consists of 9 pages.

SECTION A**QUESTION 1**

1.1	1.1.1	Private		
	1.1.2	Principle of legality		
	1.1.3	Mandate		
	1.1.4	Plaintiff		
	1.1.5	Parliamentary system	(5 × 2)	(10)
1.2	1.2.1	Master of the supreme court		
	1.2.2	Local and provincial division		
	1.2.3	Addendums		
	1.2.4	Interdict		
	1.2.5	Courts		
	1.2.6	Chief Justice		
	1.2.7	Indigenous law		
	1.2.8	Labour		
	1.2.9	Family law	(10 × 2)	(20)
1.3	1.3.1	Small claims court		
	1.3.2	Common law		
	1.3.3	Mercantile law		
	1.3.4	Appeal/Review		
	1.3.5	Judicial control	(5 × 2)	(10)
				[40]
			TOTAL SECTION A:	40

SECTION B**QUESTION 2**

- 2.1 2.1.1 Decides whether a case is going to be prosecuted or not by ensuring that perpetrators of crime are charged and held responsible for their criminal actions.
- 2.1.2 Is responsible for the registration and management of the property registry of South Africa.
- 2.1.3 Is responsible to serve or execute all documents issued by courts including summonses, notices, warrants, verdicts, sentences and court orders.
- 2.1.4 Is responsible for the registration of private and public companies and the administration of the register of registered companies. (4 × 2) (8)
- 2.2 Private law is the law which determines the relationship between legal subjects,√√ e.g. personal law, family law, personality law, property law and law of contract√ while public law is the law which rules the relationship in public or between state and its subjects and between the state and other states√√ e.g. administrative law, international law, procedure law, criminal law and constitutional law.√ (2 × 2 + 2) (6)
- 2.3 - This law has a number of stipulations which are important in the interpretation of laws.
- The stipulations of the law of the interpretation are valid for the explanation of law which was in force at or after the passing of the law of interpretation.
 - Definitions of words
 - Definitions of words in the law of interpretation are valid for any law in which these words are used.
 - The word 'person'
 - Includes town council, municipal council, division council et cetera.
 - Person excludes the state.
 - The word 'month'
 - It means a calendar month, i.e. from the first day of the month to the last day of the month.
 - Calculation of the number of days
 - To calculate days, the first day is excluded and last included. Sundays and public holidays are excluded. (5 × 2) (10)

- 2.4
- It orders the organisation and establishment of the state and the authority of organs of state, for example parliament, courts et cetera.
 - It deals with the composition, authority and functions of organs of state.
 - It determines the power and functions of president, deputy presidents, ministers, and departments as well as the power of the legislative, judicial and administrative authorities.
 - It also addresses the relationship between central, provincial and local government. ✓ (4 × 1) (4)
- 2.5
- Legislative administrative proceedings are the decisions taken by legislative bodies to carry out administrative action.
 - It is a legislative function performed by an elected legislative body.
 - It deals with rules and regulations, proclamation and decrees.
 - In order to provide certain services, legislative proceedings are the first decisions to be taken.
 - Legislative administration can only be repealed or amended if certain legislative administrative prescriptions were followed.
 - It is not acceptable for the administrative organ to delegate legislative power. (6 × 2) (12)
- [40]**

QUESTION 3

- 3.1
- Cases
 - These are physical, material things and the subjective right regarding matter is included in material laws, for example property law and pledge laws.
 - Personal property
 - An example is a person's character, for example his/her honour, dignity, good name, privacy, et cetera. The right to this is known as character law.
 - Immaterial property
 - This means the spiritual or psychological products of people, for example inventions, artworks, trademarks, et cetera, i.e. idea-creation of the psyche.
 - Performance
 - This means human conduct — the law on performance is called the law of demand. For example, A and B contract that A will perform certain acts upon payment by B. B then has to demand, after concluding the contract and payment of the monies, that A performs the said duties. (4 × 2) (8)

QUESTION 4

- 4.1
- Any suit against the state, if the suit is against an official of the state, is triabled in court.
 - It does not matter whether the suit originates from a contract closed on behalf of the state or the unlawful act of an official of the state.
 - Any lawsuit on the basis of the previous article must be initiated against the minister of the relevant department.
 - The claim must be for an amount and cannot be against a defendant or respondent or government property. The claim will then be settled or not according to the verdict. (4 × 2) (8)
- 4.2
- This means that all the power of the administration must be authorised by law.
 - If this principle was not applicable, a government body could act arbitrarily and seize the property of an individual without legal authorisation.
 - For example an official could then arbitrarily decide not to issue a licence unless he gets a bribe.
 - The government is subject to the principle of legality. An official may not assault a citizen because the law does not authorise such action, but may issue a fine. (4 × 2) (8)
- 4.3
- The private law relationship[√] where individuals are involved in a legal relationship contract between two people or between a company and a person,[√] e.g. to buy a house.[√]
 - The administrative law relationship demands:[√]
 - That one subject must be a government body.[√]
 - That the government body must be vested with government authority and must have used it or must use it.[√] (6 × 1) (6)
- 4.4
- The doctrine of sovereignty states that in every state there is a body with which the highest authority (power) rests and this sovereign body is not subject to any other body or law.[√] This body in SA is a parliament and parliament is the highest legislative body but it is subject to the constitution.[√]
- The rule of law states that law rules and not a person or body, for example parliament or people do not rule, but law rules.[√] In South Africa, constitutional law rules, not people.[√] (2 × 2) (4)

- 4.5
- Long established✓
 - It will have to be known long enough to be generally known by the citizens.✓
 - Reasonable✓
 - Customary law must cover public interest.✓
 - Definite✓
 - Custom must be clearly defined. If custom is appealed to, the custom must be defined.✓
 - The person who is making the appeal must call enough witnesses to prove the custom definitely.
 - Constant observance✓
 - Custom must be observed by the entire community or part of the community to whom the custom belongs.✓
 - Community must acknowledge and observe the custom. (4 x 2) (8)
- 4.6
- This is the simplest form of delegation.
 - Here higher organ decides and instructs the lower organ to do something on its behalf.
 - The higher organ is still responsible and all instructions are carried out in its name.
 - For example: The minister instructs his/her director-general (DG) to do something. (Any 3 x 2) (6)
- [40]

QUESTION 5

- 5.1 In mechanical administrative proceedings, functions can be delegated without authorisation^{√√} while in limited discretionary proceeding, proceeding is done by the authorised organ and may not be delegated. (2 × 2) (4)
- 5.2
- The declaration of rights will come into play when there are legal disputes or uncertainty with an administrative organ.
 - The court can issue a declaration of rights to solve the disputes.
 - A court will not issue a declaration of rights in the case of a purely academic dispute. (6)
- 5.3
- Another text
 - The preamble (Preface)
 - The elaborated title
 - Chapters and article heading
 - Margin headings, division of paragraphs, punctuations
 - Articles of definitions of words
 - Addendums (Any 4 × 1) (4)
- 5.4
- The golden rule of interpretation: The true meaning of the legislator should be followed.
 - Literal interpretation of law/fundamental rule: Follow the meaning of the legislator as presented by the words of the law.
 - In other words the golden rule does not apply to literal and grammatical interpretation. The basis is the meaning of the legislator. (3 × 2) (6)
- 5.5 Internal control relationship
It develops when two government organs within a power base oppose each other.^{√√}
It must be determined whether the high organ gives orders to the lower organ and whether the former has authority to change actions of the organs within its sphere of power.^{√√}
For example, if within the same department the director-general and the minister come into conflict, or in the case of a conflict between the town manager and city council.[√]
- Independent control relationship
Here one organ has authority to approve the action of the other authority.^{√√}
The two organs function independently.^{√√}
For example, the provincial premier cannot order a city council to act or not to act, but he has the authority to approve or not approve the action of city council.[√] (2 × 5) (10)

- 5.6
- The interpreter must interpret law literally.
 - Words must be taken to have their usual meaning.
 - Common words must be interpreted in their common usage.
 - The interpreter may not step outside the wording of the law.
 - Each word must have a meaning.
- (5 × 2) (10)
[40]
- TOTAL SECTION B: 160**
GRAND TOTAL: 200