



**higher education  
& training**

Department:  
Higher Education and Training  
**REPUBLIC OF SOUTH AFRICA**

# **MARKING GUIDELINE**

**NATIONAL CERTIFICATE**

**PUBLIC LAW N6**

**7 JUNE 2018**

**This marking guideline consists of 6 pages.**

**SECTION A****QUESTION 1**

- |     |        |  |          |             |
|-----|--------|--|----------|-------------|
| 1.1 | 1.1.1  | True   |          |             |
|     | 1.1.2  | False  |          |             |
|     | 1.1.3  | False  |          |             |
|     | 1.1.4  | True   |          |             |
|     | 1.1.5  | True   |          |             |
|     | 1.1.6  | True   |          |             |
|     | 1.1.7  | True   |          |             |
|     | 1.1.8  | True   |          |             |
|     | 1.1.9  | False  |          |             |
|     | 1.1.10 | True   |          |             |
|     |        |  | (10 × 2) | (20)        |
| 1.2 | 1.2.1  | (a) Plaintiff<br>(b) Defendant   |          |             |
|     |        |  | (2 × 2)  | (4)         |
|     | 1.2.2  | (a) Supreme Court<br>(b) Bloemfontein  |          |             |
|     |        |  | (2 × 2)  | (4)         |
|     | 1.2.3  | traditional  |          | (2)         |
|     | 1.2.4  | estate   |          | (2)         |
|     | 1.2.5  | court orderly  |          | (2)         |
|     | 1.2.6  | higher authority   |          | (2)         |
| 1.3 |        | <ul style="list-style-type: none"> <li>• The doctrine means that specific functions, duties and responsibilities ✓ are allocated to different institutions ✓ that are competent to perform these functions. ✓</li> <li>• Legislative authority – the power to make, amend and repeal laws. ✓✓</li> <li>• Executive authority – the power to execute and enforce rules of law. ✓✓</li> <li>• Judicial authority – the power, if there is a dispute, to determine what the law is and how it should be applied in the disputes. ✓✓</li> </ul>  |          | (9)         |
| 1.4 |        | <ul style="list-style-type: none"> <li>• The state can only be held liable regarding the action or neglect of an official of state/department.</li> <li>• The official must have been acting as an official of the department.</li> <li>• The official must have committed the unlawful act within the scope of his/her official powers/functions.</li> <li>• The applicant or his/her legal representative must within seven days indicate whether they want to start proceedings against the relevant executive authority, and serve a copy of the summons on the state attorney.</li> </ul> |          | (4 × 2) (8) |

- 1.5
- Administrative action must be lawful or pursue a lawful aim.
  - Administrative action must be fair.
  - Administrative action must comply with the rules of natural lawfulness and the law.
  - Administrative action must be reasonable.
  - Administrative action must be in public interest.
  - Administrative action must comply with both the law and common law.
  - Administrative action may not be executed in an arbitrary way.
  - Authority of government bodies may not cause extreme hardship.
  - Nobody may be intentionally wronged.
  - No discrimination is allowed against individuals or groups.
  - Administrative bodies must act with respect for the principles of equality, proportionality, judicial impartiality and good faith. (Any 5 × 2)
- (10)  
**[63]**
- TOTAL SECTION A: 63**

**SECTION B****QUESTION 2**

- 2.1 It is an order from a superior court, ✓ to any administrative body (government authority) ✓ to do what that body is obliged under law to do ✓ (or to refrain from doing) (3)
- 2.2
- Decide whether the case is going to be prosecuted or not.
  - Ensure that perpetrators of crime are charged and held responsible for their criminal actions.
  - Be seen as the people's lawyer. (3 × 2) (6)
- 2.3
- The golden rule of interpretation means that the interpreter must determine the intention of the legislator (the true meaning of the legislator should be followed).
  - The literal rule of interpretation means that the interpreter must follow the meaning of the legislator as represented by the words of the law. (2 × 2) (4)
- 2.4
- A basic rule of interpretation is that no additions or subtractions, ✓✓ from the words used in legislation are allowed. ✓✓
  - A court should be careful not to extend the meaning ✓ of the legislation beyond the words used. ✓✓
  - A court should focus on what legislation says and not step outside the wording of the law ✓ or deviate from the words of the law. ✓✓ (10)

- 2.5
- Collective labour agreements
  - Contracts with officials
  - City and town planning schemes
  - Agreement for the supply of services (4 × 2) (8)
- 2.6
- The verdict passed by the court or tribunal must be final and binding and must not be subject to confirmation.
  - A dispute or disagreement must exist between persons or bodies that are justifiable in court or in a tribunal.
  - The test is based on the working method and means of the legislative organ.
  - The test is based on the nature of the administrative organ's final decision and action. (4 × 3) (12)
- [43]**

**QUESTION 3**

## 3.1 Formal test

When the formal test is applied, the following questions may be asked:

- Was the body instituted by government?
- Were the authority and duties of the body established by legislation?
- Is the body slotted into the hierarchy of authority of government?
- Is there a higher government authority that influences or gives orders to the lower organ?

## Material test

When the material test is applied, the following questions may be asked:

- What is the nature of activities of the organ?
- Does the organ provide a service to the public?
- Is the organ profit oriented?
- Is the organ a bearer of government authority? (8 × 2) (16)

- 3.2
- 3.2.1 Interdict – is a legal proceeding in which you ask a court to order someone to act in a particular way, so that your rights are not interfered with. (3)
- 3.2.2
- Prohibitory interdict
  - Mandatory interdict (2)
- 3.2.3
- Prohibitory interdict – stops a person from committing a specific wrongful act
  - Mandatory interdict – directs a person to do something he or she is by law obliged to do, for example to issue a licence (2 × 2) (4)

- 3.3
- Preamble/preface
  - The long title/elaborate title
  - Headings to chapters and sections
  - Paragraphing, margin headings and punctuation
  - The definition clause/article of definition of words
  - Addenda/schedules
- (6)  
[27]

**QUESTION 4**

- 4.1
- Mandate✓ – this is the type of delegation where the higher person or organ (delegator) makes the decision and instructs✓✓ a lower person or organ (delegate) to act on his/her behalf.✓
  - Deconcentration✓ – in this form of delegation the delegate (lower person or organ), who was instructed to perform certain powers or functions,✓✓ delegates the power of functions further to a person or organ below.✓
  - Decentralisation✓ – is the transfer of powers and functions from a higher person or organ✓✓ to an autonomous person or organ.✓ (3 × 4) (12)
- 4.2
- Administrative law
  - Criminal law
  - Procedural law
  - Constitutional law (4)
- 4.3 Foreign law – known as international law or the law of nations. (2)
- 4.4
- Diplomatic relations
  - Air traffic between states
  - The use of open sea
  - International principles about human rights
  - Laws relating to warfare (5)
- 4.5
- 4.5.1 Real right – these are rights with respect to movable and immovable property; physical, material things (house, car, furniture).
- 4.5.2 Intellectual property – these are the spiritual or psychological creations of the human mind. (2 × 2) (4)  
[27]

**QUESTION 5**

- 5.1
- It must have existed as a legal rule.
  - It must have existed for a long time.
  - It must be observed generally by the community in which it applies.
  - Its content and meaning must be certain and clear. (4 × 2) (8)
- 5.2
- It regulates the organisation and structure of the state on all levels of government.
  - It contains a bill of rights that protects the rights of every citizen.
  - It has a direct influence on legislation, as legislation that conflicts with the Constitution can be declared invalid by a court of law.
  - It restricts the authority of the state institutions.
  - It determines the relationship between the state and its subjects.
  - It is the most important part of the legal system and, as such, contributes to administrative law. (6 × 2) (12)
- 5.3
- It consists of 11 members:
- Chief justice
  - Deputy chief justice
  - Nine other members. (3 × 2) (6)
- 5.4
- Administrative duties to compile case lists, arrange available courts, assist judges in general, and keep records.
  - Semi-judicial duties, such as issuing summonses and warrants
  - Act as taxing master for that particular high court decision. (3 × 2) (6)
- 5.5
- Court decisions by judges and magistrates, including sentences
  - Private acts by individuals and private companies
  - Professionals who are not employed by the state (3 × 2) (6)
- 5.6
- Busisiwe Mkhwebane (2)
- [40]**

**TOTAL SECTION B: 137**  
**GRAND TOTAL: 200**