



**higher education
& training**

Department:
Higher Education and Training
REPUBLIC OF SOUTH AFRICA

MARKING GUIDELINE

NATIONAL CERTIFICATE

PUBLIC LAW N6

19 NOVEMBER 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	True		
	1.1.4	True		
	1.1.5	False		
	1.1.6	True		
	1.1.7	False		
	1.1.8	False		
	1.1.9	False		
	1.1.10	True		
			(10 × 2)	(20)
1.2	1.2.1	Estate		
	1.2.2	Family		
	1.2.3	Superior		
	1.2.4	Wrongful/Unlawful		
			(4 × 2)	(8)
	1.2.5	(a) Plaintiff/Complainant/Litigant/Indicter (b) Defendant/Respondent		
			(2 × 2)	(4)
	1.2.6	Real rights		(2)
	1.2.7	(a) State (b) Subjects		
			(2 × 2)	(4)
	1.2.8	(a) Foreign law (b) Nations		
			(2 × 2)	(4)
	1.2.9	Children's		(2)
1.3	1.3.1	These are the spiritual or psychological creations of the human mind.		
	1.3.2	Is an order from a superior court to any administrative body(government authority) to do what that body is obliged under the law to do (refrain from doing)		
	1.3.3	Means that in every state there is a higher authority which is not subject to any other authority.		
			(3 × 2)	(6)
				[50]

TOTAL SECTION A: 50

SECTION B**QUESTION 2**

- 2.1
- Interpret law literally.
 - Words must be taken to have their ordinary meaning.
 - Common words must be interpreted in their common usage.
 - The interpreter may not step outside the wording of law/no addition or subtraction
 - Each word must have a meaning/every word is important (5 × 2) (10)
- 2.2
- In the 16th century, Roman and Dutch law merged.
 - Western European countries combined their own customs with Roman law.
 - Roman law was received in the Netherlands by the students from Bologna.
 - A group of jurists wrote down the Roman Dutch law.
 - Roman law was used where Dutch law did not exist.
 - That system was taken by the Voortrekkers into the rest of the country.
 - Roman Dutch law was practiced in South Africa for 150 years until the British occupation in 1803.
 - Although the British ruled the country until 1910, Roman – Dutch law remained the common law. (Any 5 × 2) (10)
- 2.3
- 2.3.1 Busisiwe Mkhwebane (2)
- 2.3.2
- Government at any level, central, provincial and local
 - State-owned enterprises.
 - Any person performing public functions and is an employee of the state for example, policemen, electoral officer or companies such as Eskom, and Telkom.
 - Statutory councils, for example, Human Science Research Council (4 × 2) (8)
- 2.3.3 Any person can complain (2)
- 2.4 Seven years (2)
- 2.5
- Law of persons
 - Family law
 - Law of patrimony
 - Law of personality
 - Indigenous law
 - Mercantile law (6)

[40]

QUESTION 3

- 3.1
- Real rights – these are rights with respect to movable and immovable property, physical material things(house, furniture, car)
 - Aspects of personality – these are aspects of a person’s character and personality such as honour, dignity, good name, privacy
 - Intellectual property – these are the spiritual or psychological creations of the human mind.
 - Performance – means human conduct called the law of demand. (4 × 3) (12)
- 3.2
- Is the right that people have to ask a court to review✓✓ administrative action that they do not agree with✓✓
 - Any person who is unhappy with an administrative decision or action✓✓ can challenge the decision or action in a court, tribunal or forum.✓✓ (8)
- 3.3
- Revision of cases from lower courts by means of notice of motion.
 - Common law revision of proceedings of administrative authorities where law creates a revision or appeal.
 - Revision of proceedings of statutory bodies of which all administrative proceedings are subject to common law revision.
 - Courts can also review the proceedings of voluntary associations and bodies if they exceeded their authority or in case of an irregularity. (4)
- 3.4
- Public law regulates the relationship between the state and its subjects, and between the state and other states
 - Private law regulates the relationship between two legal subjects. (2 × 2) (4)
- 3.5
- The nature of the state.
 - The arrangement and organisation of state organs or bodies.
 - The power and functions of the state bodies, for example, president, ministers.
 - The division and authority of the various state organs.
 - The relationship between the different state authorities, for example between legislative and
 - The relationship between the state and its subjects. (Any 5 × 2) (10)
- 3.6 Joel Masutha (2)
[40]

QUESTION 4

- 4.1
- Formal test✓ When formal test is applied the following questions maybe asked:
 - Was the body instituted by government?✓✓
 - Were the authorities and duties of the body established by legislation?✓✓
 - Is the body slotted into the hierarchy of government? ✓✓
 - Is there a higher government authority that influences orders given to the lower organ?✓✓
 - Material test✓ When material test is applied the following questions maybe 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?✓✓
- (18)
- 4.2
- The verdict passed by the court or tribunal must be final and binding✓✓and must not be subject to the confirmation of a higher organ.✓✓
 - A dispute or disagreement must exist between persons and 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.✓✓
- (10)
- 4.3
- Mandate
 - De-concentration
 - Decentralisation
- (3)
- 4.4
- Mandate – 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 its behalf.✓
 - De-concentration – is the form of delegation where the delegate(lower person or organ), who instructed to perform certain powers or functions, delegates the power or 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 × 3)
- (9)
[40]

QUESTION 5

- 5.1
- Interpret the law literally.
 - Words must be taken to have their ordinary meaning.
 - Common words must be interpreted in their common usage.
 - The interpreter may not step outside the wording of the law/no addition or subtraction.
 - Each word must have a meaning/every word is important. (5 × 2) (10)
- 5.2
- Any claim against the state, if the claim is against an official of the state, and there is a ground for the claim, should be tried in court of law
 - The claim can arise from any contract lawfully entered into on behalf of the state that was broken.
 - Any unlawful act or whereby an official of the state when acting in his/her official capacity.
 - A lawsuit on the basis of the above must be instituted against the executive authority of the state institutions.
 - The claim against the state must be for an amount and cannot be against a defendant or government property
 - The claim will then be settled or not according to the verdict of the court.
 - If the claim is awarded by the court it must be paid within 30 days of the date of the order or in the period agreed upon by the two parties. (Any 5 × 2) (10)
- 5.3
- The danger may not be averted by the application of laws.
 - The emergency measures must be in proportion to the emergency (2 × 2) (4)
- 5.4
- Issue procedural documents.
 - Follow up and collect fines.
 - Receive fines.
 - Display exhibits in the court as evidence. (2 × 1) (2)
- 5.5
- Preamble – states the circumstances and background of and reason for the legislation.
 - Addenda – usually occur at the end of the law and its purpose is to shorten and simplify the content matter of sections in legislation. (2 × 2) (4)
- [30]**

TOTAL SECTION B: 150
GRAND TOTAL: 200