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higher education & training

Department:
Higher Education and Training
REPUBLIC OF SOUTH AFRICA

N930(E)(J3)H
JUNE EXAMINATION

NATIONAL CERTIFICATE

LEGAL PRACTICE N6

(13030126)

3 June 2013 (X-Paper)
09:00–12:00

This question paper consists of 9 pages and a 5-page annexure.

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DEPARTMENT OF HIGHER EDUCATION AND TRAINING
REPUBLIC OF SOUTH AFRICA

NATIONAL CERTIFICATE
LEGAL PRACTICE N6
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. Answer ALL the questions in SECTION A.
2. Answer any FIVE questions in SECTION B.
3. Read ALL the questions carefully.
4. Number the answers according to the numbering system used in this question paper.
5. Write neatly and legibly.

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SECTION A (COMPULSORY)

QUESTION 1

1.1 Choose a word(s) from COLUMN B that matches a description in COLUMN A. Write only the letter (A–H) next to the question number (1.1.1–1.1.5) in the ANSWER BOOK

COLUMN A		COLUMN B	
1.1.1	The head of the deeds office	A	transferee
1.1.2	He/She draws up documents for registration of fixed property	B	registrar of deeds
1.1.3	He/She is the buyer of fixed property	C	conveyancer
1.1.4	The document by which right of property is transferred	D	deed of transfer
1.1.5	The tax levied on sold property	E	transfer duty
		F	mortgage bond
		G	transferor
		H	rates and taxes

(5 × 2) (10)

1.2 Indicate whether the following statements are TRUE or FALSE. Choose the answer and write only 'true' or 'false' next to the question number (1.2.1–1.2.5) in the ANSWER BOOK.

1.2.1 Joseph bought a kettle for R150 and found a latent defect after delivery. He may claim a reduction in the purchase price.

1.2.2 Goods have to be delivered physically for delivery to take place.

1.2.3 If there is a reserve price on goods it means that these goods will not be sold for less that that price.

1.2.4 All credit agreements have a cooling-off period.

1.2.5 A suspensive condition means that the seller remains the owner of goods even though the goods have been delivered to the buyer.

(5 × 2) (10)

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1.3 Various options are given as possible answers to the following questions. Choose the answer and write only the letter (A–D) next to the question number (1.3.1–1.3.5) in the ANSWER BOOK.

1.3.1 Notarial deeds must comply with the following conditions:

A There must be a binding margin of 2 centimetres on the left-hand side.
B Only the notary initials the document when changes are made.
C Every page of a notarial deed must be numbered consecutively.
D The upper half of the last page of a notarial deed must be left blank for endorsements by the registrar.

1.3.2 The protocol of a notary is ...

A the ritual of greeting.
B the qualifications needed to become a notary.
C a collection of original notarial deeds.
D a register wherein all visitors sign.

1.3.3 Spouses are equal partners in ...

A marriages out of community of property.
B marriages out of community of property subjected to the accrual system.
C marriages in community of property.
D marriages in community of property subjected to the accrual system.

1.3.4 Which ONE of the following is NOT an example of land servitude?

A Right to lay on water
B Right of pasture
C Right to lay on electricity
D Right of usufruct

1.3.5 An example of a notarial document:

A Testament
B Insurance contract
C Short-term lease agreement
D Antenuptial contract

(5 × 2) (10)

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1.4 Give ONE word/term for each of the following descriptions by choosing a word/term from the list given below. Write only the word/term next to the question number (1.4.1–1.4.5) in the ANSWER BOOK.

error juris; voidable contract; intentional misrepresentation; void contract; emancipation; justus error

1.4.1 A minor is allowed by the parents to carry on a business in his/her own name

1.4.2 The status if a drunken person enters into a contract

1.4.3 Ignorance of the law is no excuse

1.4.4 The party is guilty of fraud

1.4.5 A contract that is prohibited by law

(5 × 2) (10)

1.5 Choose the correct word(s) from those given in brackets. Write only the word(s) next to the question number (1.5.1–1.5.5) in the ANSWER BOOK.

1.5.1 Stamp duty was abolished on (1 April 2009/1 November 1984).

1.5.2 A tacit agreement may come into existence by means of a person's (behaviour/verbal acceptance).

1.5.3 If a party can prove that the mistake is (reasonable/unreasonable) he/she may withdraw from the contract.

1.5.4 The buyer is responsible for paying all delivery costs in a (C.I.F/F.O.R) contract

1.5.5 The (settlement clause/extension clause) identifies the name of the transferee to whom the property is being transferred.

(5 × 2) (10)
[50]

TOTAL SECTION A: 50

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SECTION B

Answer any FIVE of the following six questions.

QUESTION 2

Correct the 'POWER OF ATTORNEY TO TRANSFER', ANNEXURE B (attached), by using the relevant information in ANNEXURE A (attached). Write only the word/term/description next to the question number (2.1–2.15) in the ANSWER BOOK. (15 × 2) **[30]**

QUESTION 3

3.1 The law states that where unimproved and improved property is sold for more than R600 000,00 transfer duty must be paid. Use the table below to calculate the transfer duty payable if property is sold for R1 500 000,00.

Property value	**Rates of Transfer duty**
R0–R600 000	0%
R600 001–R1 000 000	3% on the value from R600 001–R1 000 000
R1 000 001–R1 500 000	5% on the value from R1 000 001–R1 500 000
R1 500 001 and above	8% on the value above R1 500 000

(10)

3.2 Ryno Stacey bought 80 sheep from a farmer. He carefully selected the sheep he wanted to buy and asked the farmer to put them into a separate enclosure until delivery could take place at the end of the week.

3.2.1 The farmer gets up early the next morning and finds 10 lambs have been born the previous night. To whom do these lambs belong? (2)

3.2.2 Who would bear the loss if a jackal breaks into the enclosure and kills three sheep? (2)

3.2.3 Is the farmer under an obligation to feed the sheep? Give ONE reason for your answer. (4)

3.3 A notarial document and an underhand document are two documents that are drawn up by a notary.

Explain TWO differences in the execution of the documents. (2 × 4) (8)

3.4 Explain the legal principles of the par delictum rule. (2 × 2) (4)

[30]

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QUESTION 4

4.1 When a person sells a property, the property cannot be transferred to the buyer before the bond against the property has been cancelled.

Answer the following questions concerning bond cancellation:

4.1.1 What is the purpose of a bond?

4.1.2 Do all buyers have to obtain bonds when buying property? Motivate your answer.

4.1.3 What document must be obtained before a bond may be cancelled?

(3 × 2) (6)

4.2 Explain the difference between a *credit grantor* and a *credit receiver*. (4 × 2) (8)

4.3 The new matrimonial property act tries to eliminate the shortcomings of the previous act. Answer the following questions on the contractual capacity of persons married with an antenuptial contract.

4.3.1 Name the dispensation that gives the wife a fair share of the joint effort in the accumulation of the marriage assets in the case of divorce.

4.3.2 Is this dispensation automatically included or excluded in the antenuptial contract?

4.3.3 When did this new dispensation come into force?

4.3.4 What are marriages called when no antenuptial contract was signed?

(4 × 2) (8)

4.4 Briefly explain, by giving examples of TWO cases, where performance was possible at the conclusion of a contract, but became impossible because of facts beyond the control of the parties. (2 × 4) (8)

[30]

QUESTION 5

5.1 The Law on Sectional Titles provides for a building to be divided into sections and makes it possible for each sectional owner to obtain separate right of property.

Explain the powers in terms of the Law on Sectional Titles. (4 × 2) (8)

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5.2 In section 2 of the Law on the Admission of Attorneys, Notaries and Conveyancers, a notary is defined as a person who is properly permitted to practice as notary in any party of the Republic.

5.2.1 Which body grants permission for the attorney to practice as a notary? (2)

5.2.2 Which information is contained in the application form? (3 × 2) (6)

5.3 If a credit agreement is concluded at a place other than the credit grantor's usual place of business, the credit receiver may terminate the agreement.

5.3.1 After how many days may the agreement be terminated? (2)

5.3.2 How is this period of time calculated? (2 × 2) (4)

5.3.3 Name the obligations of the seller. (3 × 2) (6)

5.3.4 Give the common name for Section 13. (2)
[30]

QUESTION 6

6.1 The process of the transfer of fixed property is arranged by the laws and regulations of the Deeds Law 47 of 1937.

Explain the stipulations of section 15 and 16 regarding the following:

6.1.1 Transferring of property (3 × 2) (6)

6.1.2 Duties of the registrar (3 × 2) (6)

6.2 Name FOUR limitations that are enforced on the insolvent's freedom to contract. (4 × 2) (8)

6.3 Without an acceptance there can be no contract. Acceptance is the act which takes place when the person to whom the offer was made accepts it.

At what moment does acceptance take place in the following cases?

6.3.1 Acceptance through the post (2 × 2) (4)

6.3.2 Contracts by telephone (2)

6.3.3 Tacit agreements (2)

6.3.4 Contracts that are sent by e-mail (2)
[30]

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QUESTION 7

7.1 The law states that any agreement entered into by a minor, without the consent of the guardian, is void.

Give an explanation of the following TWO cases where a minor may enter into contracts without assistance.

7.1.1 Emancipation (3 × 2) (6)

7.1.2 Fraudulent misrepresentation (3 × 2) (6)

7.2 Identify the appropriate form of delivery that may be adopted in the following instances and give the Latin term of each:

7.2.1 James buys five buffalo from Cedric. Cedric brands them and keeps them on his farm until James can fetch them and export them to China. (2 × 2) (4)

7.2.2 Joe gives Garry a Harley Davidson motorbike and asks him to keep it in his garage until he comes back from a tour in Europe. Garry takes a weekly drive on the motorbike and takes a liking to it. He contacts Joe and negotiates a sale. (2 × 2) (4)

7.2.3 Leonie buys a painting from Nicolene who is a local artist. Leonie leaves the painting with Nicolene who is going to frame the painting. (2 × 2) (4)

7.3 The seller of a property has to make sure that the existing bond is cancelled before the property is transferred to the buyer.

7.3.1 At what stage does the bondholder receive the outstanding balance that is owed to him/her?

7.3.2 State the obligation that the buyer has towards the bondholder of the seller.

7.3.3 For how long are cancellation figures valid?

(3 × 2) (6)
[30]

TOTAL SECTION B: 150
GRAND TOTAL 200

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ANNEXURE A

Prepared by me

CONVEYANCER

VAN ROOYEN M

DEED OF TRANSFER No: _____

BE IT HEREBY MADE KNOWN:

THAT MARY VAN ROOYEN

appeared before, **REGISTRAR OF DEEDS** at **JOHANNESBURG** the said appearer being authorised thereto by a Power of Attorney signed at **KRUGERSDORP** on the 30th day of April 2013 and granted to her by :

ANTHONY PATRICK LAMBIE

Identity number 780902 5432 09 2

AND the said Appearer declared that her said Principal/s had truly and legally sold, and that she in her capacity aforesaid, did by these present, cede and transfer to and on behalf of:

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MARK ELTON JANTJIES

Identity Number 900920 5056 084

His heirs, executors, administrators, or assigns in full and free property:

ERF 121 SILVERFIELDS TOWNSHIP

REGISTRATION DIVISION I.Q. THE PROVINCE OF GAUTENG;

IN EXTENT 1156 (ONE THOUSAND ONE HUNDRED AND FIFTY SIX) square metres

FIRST transferred by Deed of Transfer No. T18200/1982 and General Plan S.G. No A2860/1974 relating thereto and held by Deed of Transfer No. T1821/1999

SUBJECT TO THE FOLLOWING CONDITIONS:

1. All rights to mineral in and upon the land are reserved to WILLIAM FLETCHER or his assigns as will more fully appear from Certificate of Rights to Minerals No K 702/74 RM registered on the 16 January 1903.

2. The erf is subject to a servitude, 2 metres wide in favour of the local authority for sewerage and other municipal purposes along any two boundaries other than street boundary, as determined by the local authority. In case of panhandle erf, it will be subject to an additional servitude for municipal purposes, 2 metres wide across the accessible part of the erf, if and when required by the local authority, provided that local authority may relinquish such servitude.

   2.1 No building or other structure shall be erected within the aforesaid servitude area and no large rooted trees shall be planted within the area of such servitude or within 2 metres thereof.

   2.2 The local authority shall be entitled to deposit temporarily on the land adjoining the aforesaid servitude such material as may be excavated by it during the course of the construction, maintenance or removal of such sewerage mains and other works as it in its discretion may deem necessary and shall further be entitled to reasonable access to the said land for the aforesaid purpose; subject to any damage done during the process of the construction, maintenance or removal of such sewerage mains and other works being made good by the local authority.

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AND FURTHER SUBJECT to such conditions as are mentioned in the aforesaid Deeds.

WHEREFORE the Appearer renouncing all previous rights and the title which the said Transferor had on the property, that the Transferor is released from further rights on the property and according to the Deed of Sale, the said Transferee, her Heirs, Executors, Administrators or Assigns, now are and henceforth shall be entitled thereto conformably to local custom, the State, however, reserving its rights, and finally acknowledging the purchase price to be the sum of R1 500 000,00 (ONE MILLION FIVE HUNDRED THOUSAND RAND) and the date of sale the 10th day of April 2013.

IN WITNESS WHEREOF I, the said REGISTRAR, together with the Appearer, have signed the Deed of Sale, and have caused the Seal of Office to be affixed thereto.

THUS DONE AND EXECUTED at the Office of the **REGISTRAR OF DEEDS** at **JOHANNESBURG** on

In my presence,

q.q.

REGISTRAR OF DEEDS

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ANNEXURE B

Prepared by me

CONVEYANCER

POWER OF ATTORNEY TO PASS TRANSFER

I/We, the undersigned

(2.1) ANTHONY WILLIAM LEE (2)

(2.2) Identity number 480903 5432 09 2 (2)

UNMARRIED

do hereby appoint (2.3) DILETTE VAN ZYL (2)

with power of substitution to be my true and lawful Attorney and Agent to appear before the

REGISTRAR OF DEEDS AT (2.4) LIMPOPO (2)

and there to declare that I did on the (2.5) 10TH Day of March 2013 sell to (2)

(2.6) CLIFFORD WEINMANN (2)

(2.7) Identity number 700919 5056 084 (2)

UNMARRIED

(2.8) for the sum of R950 000 (NINE HUNDRED AND FIFTY THOUSAND RAND), (2)

the following property, namely:

(2.9) ERF 122 SILVERFIELDS TOWNSHIP (2)

(2.10) REGISTRATION DIVISION I.Q. THE PROVINCE OF LIMPOPO; (2)

(2.11) IN EXTENT 1150 (ONE THOUSAND ONE HUNDRED AND FIFTY SIX) square

metres (2)

(2.12) HELD by Deed of Transfer No T 1821/1999 (2)

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And to transfer the said property to the said PURCHASER/S and to renounce all the rights, title and interest which I heretofore had in and to the said property, to do whatsoever shall be necessary as effectively as I would do if personally present and hereby promising to ratify and confirm all that my Attorney shall lawfully do by virtue hereof.

SIGNED AT (2.13) VREDENDAL ON THIS (2.14) 31ST DAY OF MARCH 2013 (4)

AS WITNESSES:

1. _____

(2.15) AW LEE SIGNS HERE (2)

2. _____

[30]

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higher education & training

Department:
Higher Education and Training
REPUBLIC OF SOUTH AFRICA

MARKING GUIDELINE

NATIONAL CERTIFICATE

JUNE EXAMINATION

LEGAL PRACTICE N6

3 JUNE 2013

This marking guideline consists of 7 pages.

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SECTION A

QUESTION 1

1.1	1.1.1	B	
	1.1.2	C	
	1.1.3	A	
	1.1.4	D	
	1.1.5	E	
			(5 × 2) (10)
1.2	1.2.1	True	
	1.2.2	False	
	1.2.3	True	
	1.2.4	False	
	1.2.5	True	
			(5 × 2) (10)
1.3	1.3.1	C	
	1.3.2	C	
	1.3.3	D	
	1.3.4	D	
	1.3.5	D	
			(5 × 2) (10)
1.4	1.4.1	Emancipation	
	1.4.2	Voidable contract	
	1.4.3	Justus error	
	1.4.4	Intentional misrepresentation	
	1.4.5	Void contract	
			(5 × 2) (10)

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1.5	1.5.1	1 April 2009		
	1.5.2	behaviour		
	1.5.3	unreasonable		
	1.5.4	F.O.R		
	1.5.5	settlement clause		
			(5 × 2)	(10)
				[50]

SECTION B

QUESTION 2

2.1	Anthony Patrick Lambie	(2)
2.2	Identity Number 780902 5432 09 2	(2)
2.3	Mary van Rooyen	(2)
2.4	Johannesburg	(2)
2.5	10 April 2012	(2)
2.6	MARK ELTON JANTJIES	(2)
2.7	Identity Number 900920 5056 08	(2)
2.8	R1 500 000,00 (ONE MILLION FIVE HUNDRED THOUSAND RAND)	(2)
2.9	ERF 121 SILVERFIELDS TOWNSHIP	(2)
2.10	REGISTRATION DIVISION I.Q. THE PROVINCE OF GAUTENG;	(2)
2.11	IN EXTENT 1156 (ONE THOUSAND ONE HUNDRED AND FIFTY SIX) square metres	(2)
2.12	Deed of Transfer No. T1821/1999	(2)
2.13	Krugersdorp	(2)
2.14	30 April 2013	(2)
2.15	Anthony Patrick Lambie	(2)
	(15 × 2)	**[30]**

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QUESTION 3

3.1	R0–R600 000✓	R0,00✓	(2)
	3% up to R1 000 000✓	R12 000 ✓✓	(3)
	5% up to R1 500 000✓	R25 000✓✓	(3)
	TOTAL transfer duty	R37 000✓✓	(2)

3.2 3.2.1 Ryno Stacey (2)

3.2.2 Ryno Stacey (2)

3.2.3 Yes
It is the duty of the seller to take care of the goods as if it were his own until delivery takes place (2 x 2) (4)

3.3
- Notarial document is executed in the presence of notary and parties and signed by the notary

BUT

- Underhand document is drawn up by a notary
- Signed by the parties but NOT by the notary (2 x 4) (8)

3.4
- The par delictum rule applies only where the parties are equally guilty of entering into an illegal agreement
- There is NO right of recovery (2 x 2) (4)

QUESTION 4

4.1 4.1.1 It protects the mortgagee because no property can be sold without the mortgagee receiving the money that is owed to him by the seller

4.1.2 No✓ If they do have the purchase price available there is no reason to borrow money✓

4.1.3 Guarantee from the buyer

(3 x 2) (6)

4.2 The credit grantor is the seller/or renders a service in credit transaction.
Payment goes to him
Credit receiver is the buyer in credit transaction.
He is responsible for the payment.

(2 x 4) (8)

4.3 4.3.1 Marriage out of community of property subjected to the accrual system

4.3.2 Included

4.3.3 1 November 1984

4.3.4 Marriages in community of property

(4 x 2) (8)

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4.4
- Vis major is an 'act of God'
- Example – natural disaster – earthquake or a flood
- Casus fortuitus
- Action of the state for example declaration of war

(4 × 2) (8)
[30]

QUESTION 5

5.1
- Makes it possible to divide buildings in sections and joint property
- Provides for the acquiring of separate rights of property and joint property
- It controls the rights of sectional property and joint property
- Provides for the transfer of right of property as well as the registration of sectional property
- Sees to the disposal, granting and registration of rights over joint property
- Creates a body corporate to manage the joint property and to apply rules

(Any 4 × 2) (8)

5.2 5.2.1 Higher court/Supreme court (2)

5.2.2
- The applicant has already been permitted to practice as an attorney.
- There are no procedures pending to strike the applicant's name from the attorneys' roll.
- Applicant has passed an examination of the practice, functions and duties of a notary.

(3 × 2) (6)

5.3 5.3.1 Within FIVE days (2)

5.3.2
- Excluding the day of signing the contract
- Excluding Saturday, Sunday and any public holiday (2 x 2) (4)

5.3.3 The seller must repay the money✓✓ within 10 days✓✓ of the date on which notice of termination was given to him.✓✓ (3 × 2) (6)

5.3.4 Cooling-off period (2)
[30]

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QUESTION 6

6.1 6.1.1 Property can only be transferred from one person to another✓✓ by means of a title deed,✓✓ signed by the registrar.✓✓

(3 × 2) (6)

6.1.2 Registrar may not sign a title deed, bond deed, or any certificate✓✓. It must be drawn up by a conveyancer✓✓ who practices in the province where his registration office is situated.✓✓

(3 × 2) (6)

6.2
- May not sell property of his insolvent estate
- May not enter into an agreement without the written consent of the trustee
- She/He may not obtain any interest in a business without the written consent of the trustee
- She/He may not obtain a liquor license
- May not act as a director of a company (Any 4 × 2) (8)

6.3.1 The moment the letter is posted
The moment the telegram of acceptance is handed in (2 × 2) (4)

6.3.2 The moment the offeree has uttered his words of acceptance

6.3.3 The moment the person shows he has accepted (gesture)

6.3.4 As soon as the offerer reads the e-mail

(3 × 2) (6)
[30]

QUESTION 7

7.1 7.1.1
- The minor is being allowed by the guardian/parent to carry on a business in his/her own name.
- He may enter into any contract in connection with the business.
- All other contracts OUTSIDE the business, the consent of the guardian is still required. (3 × 2) (6)

7.1.2
- The minor will be fully bound if he misrepresents himself as a major.
- The minor will have to compensate the other party for any loss as a result of fraud.
- He should have looked like a major so that any normal and reasonable person could have been mislead. (3 × 2) (6)

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7.2 7.2.1 Delivery with the long hand
longa manu

7.2.2 Delivery with the short hand
Brevi manu

7.2.3 Seller keeps the goods on behalf of the buyer (opposite of brevi manu)
Constitutem possessorium

(3 × 4) (12)

7.3 7.3.1 The moment the registrar signs the deeds/day of registration

7.3.2 He must obtain a guarantee to the satisfaction of the bondholder/mortgagee.

7.3.3 3 months

(3 × 2) (6)
[30]

TOTAL SECTION B: 150
GRAND TOTAL 200

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