higher education & training

Department:
Higher Education and Training
REPUBLIC OF SOUTH AFRICA

MARKING GUIDELINE

NATIONAL CERTIFICATE

JUNE EXAMINATION

LEGAL PRACTICE N6

15 JUNE 2016

This marking guideline consists of 9 pages.

Copyright reserved

SECTION A

QUESTION 1

1.1 False
1.2 False
1.3 False
1.4 True
1.5 True
1.6 False
1.7 True
1.8 True
1.9 True
1.10 False

(10 × 1) **[10]**

QUESTION 2

2.1 C
2.2 A
2.3 D
2.4 D
2.5 C

(5 × 2) **[10]**

QUESTION 3

3.1 B
3.2 J
3.3 C
3.4 E
3.5 A
3.6 G
3.7 I
3.8 H
3.9 F
3.10 D

(10 × 2) **[20]**

Copyright reserved

QUESTION 4

4.1 Constructive delivery/Fictitious delivery

4.2 A 'voetstoots sale'

4.3 Formalities

4.4 Transfer duty

4.5 Cooling off period (5 × 2) **[10]**

TOTAL SECTION A: 50

SECTION B

QUESTION 5

5.1.1 Antenuptial contract (1)

5.1.2 An attorney who passed an additional admission examination in notarial practice

Permission has been granted by the Supreme (High) Court to practice as a notary (2 × 2) (4)

5.1.3
- Long term leases✓
- The creation of personal servitudes and site servitudes✓
- Prospecting contracts✓
- Cession of mineral rights
- Notarial mortgages (Any 3 × 1) (3)

5.1.4 Where parties get married out of community of property (2)

5.1.5
- Writing✓
- Registration✓
- Notarial execution (Any 2 × 1) (2)

5.1.6 (a) This means that parties married out of community of property✓✓ will share the assets accrued during the marriage✓✓ through their combined effort, should they decide to get divorced. (2 × 2) (4)

(b)
- Estates of spouses are completely separated during the term of marriage.✓
- Administration of each spouses estate is easy during the term of marriage.✓
- Each spouses' estate is protected against creditors of other spouse.✓
- Estates accumulated BEFORE marriage is not shared.
- Accrual DURING marriage is shared. (Any 3 × 1) (3)

Copyright reserved

5.2 5.2.1 This is a servitude due to someone in his capacity as landowner.√√ (2)

5.2.2 A dominant tenement and a servient tenement are prerequisites for the existence of a land servitude.✓✓ (2)

5.2.3
- Right of way✓
- Right of pasture✓
- Right to lead away refuse, sewage and rain water
- Right to lay on water
- Right to lay on electricity (Any 2 × 1) (2)

5.2.4 A personal servitude is to the advantage of a specific person and is a limited right granted to the holder thereof.✓✓ (2)

5.2.5
- Usufruct
- Usage
- Habitation (Any 1 × 1) (1)

5.2.6 It is only valid during the lifespan of the holder thereof and cannot be transferred to someone else.✓✓ (2)

[30]

QUESTION 6

ADDENDUM A: DEED OF TRANSFER

6.1 DEED OF TRANSFER

6.1.1 Joe Simons✓
40 Shortman Street
CAPE TOWN

BE IT HEREBY MADE KNOWN

THAT **6.1.2 M BASSON**✓ appeared before me, REGISTRAR OF DEEDS at CAPE TOWN, the said Appearer, being duly authorized thereto by virtue of a Power of Attorney granted to him by

6.1.3 JOESOMPHETA✓
6.1.4 ID 8909040037084✓
6.1.5 Unmarried✓

Which said Power of Attorney is dated and signed at **6.1.6 CAPE TOWN**√

AND the said Appearer declared that his principle the said **6.1.7 JOE SOMPHETA**✓ had on **6.1.8 3 May 2015**✓ truly and legally sold and that he, the said Appearer in his capacity aforesaid, did by these presents, cede and transfer, in full and free property, to and on behalf of

6.1.9 ATHENKOSI HOHO✓
6.1.10 ID 6505070038083✓
6.1.11 Married in community of property to✓
6.1.12 NOMSA HOHO
ID 6903256535080✓

His heirs, executors, administrators or assigns the following property, namely

6.1.13 ERF 326,✓ **KLIPHEUWEL, STELLENBOSCH**✓ in the Area of the Transitional Metropolitan Substructure of **6.1.4 CAPE TOWN**✓, Cape Division, Western Cape Province

IN EXTENT: **6.1.15 1 000**✓ **(ONE THOUSAND)**✓ **square metres:**

FIRST TRANSFERRED BY DEED……and held by DEED OF TRANSFER no….

Joe Simon√
REGISTRAR OF DEEDS
6.1.16 6 June 2015✓

(18 × 1) (18)

6.2 6.2.1
- It is a document by which the right of property (ownership) is transferred.✓
- It serves as proof of ownership.✓ (2 × 1) (2)

6.2.2 R750 000 x 3 % = R22 500
TOTAL: R22 500✓✓✓ (3 × 1) (3)

6.2.3
- Bond must be drafted by a conveyancer who practices in the province in which the deeds office involved is situated.✓
- Must be signed by conveyancer.✓
- Must contain full names and identity numbers of the natural persons and their marital status.✓
- The quality of the paper, the lettering, margins, initialing must be the same as in a title deed.✓
- It must contain a clear description of the fixed property.

(Any 4 × 1) (4)

6.2.4 It is a building that is divided into sections✓ and where a sectional owner can obtain separate ownership of property.✓ (2)

6.2.5 For control and management of the property and buildings (1)
[30]

QUESTION 7

7.1 7.1.1 Installment sale transaction/credit transaction or agreement (1)

7.1.2 Suspensive condition: ✓ Michael can only be successful with this agreement once CAPISOME BANK has approved the finance for this transaction.✓✓

Resolutive condition:✓ Should Michael not keep up with his payment,
CAPISOME BANK will have the right to repossess the car.✓✓

(2 × 3) (6)

7.1.3 CAPISOME BANK (1)

7.1.4 Michael (1)

7.1.5
- It must be in writing.✓✓
- Must have name of credit grantor and credit receiver.✓✓
- Their addresses must be on the contract.✓✓
- Must contain a description of the good.✓✓
- Must be signed by both parties.✓✓
- Must make reference to the possible conditions included.
- Must state the initial payment to be made.
- Must refer to the cooling off period. (5 × 2) (10)

7.2 7.2.1 This means that the seller gives the buyer a warrant that nobody with a stronger right will come and claim the article from him or her.

7.2.2 The article

7.2.3 A remedy for a latent defect with which the buyer can claim a reduction in the selling price.

7.2.4 A hidden defect/ a defect that cannot be seen with the eye.

(4 × 2) (8)

7.3
- It forms automatically part of a contract of sale.✓
- It means that the buyer bears the risk for any accidental loss✓ from the moment the contract is perfecta.✓
- The contract is perfecta when the parties have determined the article, the price and the contract is unconditional.✓ (3 × 1) (3)

[30]

QUESTION 8

8.1 8.1.1
- There must be an agreement to purchase and sell.√
- There must be an article.✓
- There must be a price.✓
- Delivery must take place. (3 × 1) (3)

8.1.2 Yes.✓✓ She is emancipated.✓✓/She is economically independent. (2 × 2) (4)

8.1.3 (a) Fraudulent/intentional misrepresentation✓ (1)

(b) Voidable✓ (1)

(c) Cancellation✓ PLUS Damages✓ (2 × 1) (2)

8.2 8.2.1 Yes.✓✓ It is a reasonable mistake/parties did not reach consensus✓✓ (2 × 2) (4)

8.2.2 (a) Luyanda is protected by the warrant against eviction.✓✓ This means that the seller ensures her that nobody with a stronger right will come and claim the article from her.✓✓ (2 × 2) (4)

(b) He will have to refund Luyanda 's money.✓ (1)

8.3
- This rule is applicable to illegal contracts.✓✓
- It means that where both parties are equally at guilt✓✓, the position of the possessor will be the strongest.✓✓
- It is a void contract from which no rights or obligations can flow.✓✓
- Illegality refers to against the law, good morals or public policy.✓✓
- Such a contract is unenforceable. (Any 5 × 2) (10)

[30]

QUESTION 9

9.1
- It must be made with the intention to serve as an offer.✓
- It must be a complete offer.✓
- It must be communicated to a person or the public at large.✓
- It must be clear and unambiguous.✓
- It must be of such a nature that a legal contract can flow from it.✓
- It must comply with all the essentialia of a contract (lawfulness, serious intention, possibility of performance, et cetera) (Any 5 × 1) (5)

9.2
- The reparation, maintenance, control and management of the joint property.✓✓
- Payment of tariffs (water and taxes)✓✓
- The provision of electricity, water, drainage and other services✓✓
- The payment of insurance premiums on the joint property.✓✓

(4 × 2) (8)

9.3
- Particulars of the seller.✓
- Particulars of the buyer.✓
- Description of the property✓
- The purchase price.✓
- An indication that parties have the intention to buy and sell respectively.✓

(5 × 1) (5)

9.4
- To pay for the article bought.✓
- To reimburse the seller for any expenses incurred while caring for the property until delivery takes place.✓
- To accept delivery.✓ (3 × 1) (3)

9.5
- Revocation✓
- Rejection✓
- Counter offer✓
- Death of either parties✓
- Insanity of either parties
- Efflux ion of time (Any 4 × 1) (4)

Copyright reserved

9.6
- A description of the parties (the cedent and the cessionary)✓
- A description of the mineral rights that are ceded.✓
- The reason for the cession of the mineral rights.✓
- Where compensation for the cession of mineral rights must take place, it must be mentioned.✓
- All rights, obligations and conditions which have a bearing on the ceded mineral rights must be transferred.✓
- All new conditions must be mentioned. (Any 5 × 1) (5)

[30]

QUESTION 10

10.1 Real right

10.2 The preamble

10.3 Restitution

10.4 Unjustified enrichment

10.5 Against good morals/contra bones mores

10.6 Restraint of trade

10.7 Registration

10.8 Constititum possessorium

10.9 Patent defect

10.10 Actio quanti minoris

10.11 Cooling off period

10.12 The accrual

10.13 Protocol register

10.14 Cession

10.15 Jurisdiction

(15 × 2) **[30]**

TOTAL SECTION B: 150
GRAND TOTAL: 200

Copyright reserved