higher education & training

Department:
Higher Education and Training
REPUBLIC OF SOUTH AFRICA

N960**(E)**(J15)H
JUNE EXAMINATION

NATIONAL CERTIFICATE

LEGAL PRACTICE N6

(13030126)

15 June 2016 (X-Paper)
9:00–12:00

This question paper consists of 12 pages and 1 addendum.

GENERAL STUDIES

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DEPARTMENT OF HIGHER EDUCATION AND TRAINING
REPUBLIC OF SOUTH AFRICA

NATIONAL CERTIFICATE
LEGAL PRACTICE N6
TIME: 3 HOURS
MARKS: 100

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. SECTION A is COMPULSORY and must be answered by ALL candidates.
2. Answer any FIVE questions in SECTION B.
3. Read ALL the questions carefully.
4. Number answers according to the numbering system used in this question paper.
5. Neatness, style and a systematic exposition of facts are required.
6. Where possible, answer questions by point, but always in full sentences.
7. Write neatly and legibly.

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SECTION A

QUESTION 1

Indicate whether the following statements are TRUE or FALSE. Choose the answer and write only 'true' or 'false' next to the question number (1.1–1.10) in the ANSWER BOOK.

1.1 Misrepresentation renders a contract void.

1.2 An insolvent person may sell property of his/her insolvent estate without his/her curator's concert.

1.3 A personal servitude may be transferred to someone else.

1.4 A marriage is presumed to be in community of property if there is no antenuptial contract.

1.5 Emancipation may take place without the consent of the guardian.

1.6 A buyer of an article becomes the owner upon delivery.

1.7 An example of land servitude is a right of way.

1.8 Duress/Force renders a contract voidable.

1.9 A reserve price means that goods will not be sold for less than that price.

1.10 A credit grantor may accept a postdated cheque for payment.

(10 × 1) **[10]**

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QUESTION 2

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 (2.1–2.5) in the ANSWER BOOK.

2.1 Delivery with the long hand means …

A actual delivery.
B that the seller acts as an agent for the buyer.
C that the seller points out the thing to the buyer.
D that the seller keeps it in possession on behalf of the buyer.

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

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

2.3 An example of a not areal document:

A Short term lease contract
B A will
C Contract of insurance
D Prospecting contracts

2.4 Which ONE is NOT a requirement for a valid contract?

A Consensus
B Contractual capacity
C Possibility of performance
D Vis major

2.5 The transfer duty receipt is obtained from …

A a conveyancer.
B the deeds office.
C the Receiver of Revenue.
D a notary.

(5 × 2) **[10]**

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QUESTION 3

Choose a description from COLUMN B that matches a word/item in COLUMN A. Write only the letter (A–J) next to the question number (3.1–3.10) in the ANSWER BOOK.

COLUMN A		COLUMN B	
3.1	Latent defects	A	operations of a contract takes immediate effect, but can be cancelled
3.2	Causa	B	a hidden defect
3.3	Conveyancer	C	compile documents for registration of fixed property
3.4	Symbolic delivery	D	indicates the purchase price
3.5	Resolutive condition	E	a document is proof of ownership
3.6	Delegation	F	a document that can be drafted by someone other than a notary
3.7	Actio redhibitoria	G	transfer of duties
3.8	Cancellation	H	remedy for a patent defect
3.9	Underhanded document	I	remedy for a latent defect
3.10	The compensation clause	J	reason for transfer

(10 × 2) **[20]**

QUESTION 4

Give ONE word/term for each of the following descriptions. Write only the word/term next to the question number (4.1–4.5) in the ANSWER BOOK

4.1 The type of delivery where the article itself is not delivered to the buyer

4.2 To take the article with defects or without defects, in other words, 'as is'.

4.3 The essentially that requires that certain contracts have to be in writing.

4.4 Type of tax paid by the buyer when purchasing property.

4.5 A credit agreement must contain this clause. (5 × 2) **[10]**

TOTAL SECTION A: 50

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SECTION B

Answer any FIVE questions from this section.

QUESTION 5

5.1 Study the following document and answer the questions.

…….. CONTRACT

with the

APPLICATION OF THE ACCRUAL SYSTEM

in terms of the

MATRIMONIAL PROPERTY ACT, 1984

BE IT HEREBY MADE KNOWN THAT on this _____day of _____ 2011 before me

(INSERT NAME OF NOTARY PUBLIC) Notary Public, practising at Pretoria in the Province of _____

appeared

FULL NAME: _____ IDENTITY NUMBER: _____ UNMARRIED

-and-

FULL NAME: _____ IDENTITY NUMBER: _____ UNMARRIED

And the appears declared that whereas a marriage has been agreed upon, and is intended to be solemnised between them, they have agreed and now contract with each other as follows :

1. That there shall be no community of property between them.

2. That there shall be no community of profit or loss between them.

3. That the marriage shall be subject to the accrual system in terms of the provisions of Chapter 1 of the Matrimonial Act, 1984 (Act No. 88 of 1984).

4. That for the purposes of proof of the nett value of their respective estates to be as follows: that of (INSERT FULL NAME) to be R 000,00 consisting of :_____ (INSERT DETAILS) that of (INSERT FULL NAME) to be ZERO

5. That the assets of the parties or either of them, which are listed hereunder, having the values shown, and all liabilities presently therewith, or any other asset acquired by such party by virtue of his possession of former possession of such asset, shall not be taken into account as part of such party's estate at either the commencement or the dissolution of the marriage.

The assets of (INSERT FULL NAME) so to be excluded are R000,00 consisting of : (INSERT DETAILS)

The assets of (INSERT FULL NAME) so to be excluded are NONE

THUS DONE AND EXECUTED at _____aforesaid on the day, month and year first aforewritten in the presence of the undersigned witnesses.

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AS WITNESSES .....

THUS DONE AND EXECUTED at _____ aforesaid on the day, month and year first aforewritten in the presence of the undersigned witnesses.

AS WITNESSES: .....

QUOD ATTESTOR NOTARY

5.1.1 What type of document is this? (1)

5.1.2 This document was signed by a notary. Describe who can be a notary. (2 × 2) (4)

5.1.3 List any other THREE types of notarial documents. (3 × 1) (3)

5.1.4 When will the above kind of document be used? (2)

5.1.5 List the TWO formalities with which this contract must comply. (2 × 1) (2)

5.1.6 'Couples can get married with the accrual system.' With regard to this statement, answer the following questions:

(a) Explain what is meant by the above statement. (2 × 2) (4)

(b) State any THREE advantages of getting married with the accrual system. (3 × 1) (3)

5.2 'A servitude grants specified and defined authority to the rightful owner regarding the use and enjoyment over the concern of another.' With regard to this statement, answer the following questions.

5.2.1 Briefly define *land servitude*. (2)

5.2.2 What is a prerequisite for the existence of land servitude? (2)

5.2.3 Give any TWO examples of land servitudes. (2 × 1) (2)

5.2.4 Define the term *personal servitude*. (2)

5.2.5 Give ONE example of a personal servitude. (1)

5.2.6 'A personal servitude is not everlasting.'

Briefly explain what is meant by this. (2)

[30]

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QUESTION 6

6.1 Use the following information to complete the DEED OF TRANSFER in ADDENDUM A (attached).

Joe Sompeta (ID 8909040037084) and unmarried sold his property, Erf 326, Klipheuwel, Stellenbosch, to Athenkosi Hoho (ID 6505070038083), who is married in community of property to Nomsa Hoho, (ID 6903256535080). The registration division is the province of Cape Town. The size of the property is 1 000 square meters. It was sold for R1,3 million on 3 May 2015. The Registrar of Deeds is Joe Simons. Registration was done in Cape Town on 6 June 2015. The conveyancer is M Basson. (18 × 1) (18)

6.2 Joe Sompeta obtained a mortgage bond to enable him to buy the property at Klipheuwel, Stellenbosch. This townhouse is situated in a townhouse complex, subject to a sectional title. Among the additional costs that Sompeta had to pay, were transfer costs. Currently, a property worth R750 000 is exempted from transfer costs. Between R750 000 and R1 250 000 transfer costs are calculated at 3%.

6.2.1 You completed the Deed of Transfer in QUESTION 6.1.

What is the dual purpose of this document? (2 × 1) (2)

6.2.2 Calculate the transfer duty. Show ALL calculations. (3 × 1) (3)

6.2.3 State FOUR requirements for a valid bond. (4 × 1) (4)

6.2.4 What is meant by a sectional title? (2)

6.2.5 What is the main function of the body corporate? (1)

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QUESTION 7

Read the case study below and answer the questions.

7.1 Michael decided to buy a car from AB Dealers. They agreed on a price of R120 000. As Michael did not have the necessary funds, he approached CAPISOME BANK for the financing of this transaction. He put down a deposit of R12 000 and undertook to pay a certain amount per month over a period of 5 years.

7.1.1 What is this type of transaction called? (1)

7.1.2 Name the TWO kinds of conditions that are normally included in this type of transaction and briefly explain, with reference to the above case study, the meaning of each. (2 × 3) (6)

7.1.3 Who is the credit grantor? (1)

7.1.4 Who is the credit receiver? (1)

7.1.5 This type of transaction is regulated by the Credit Agreement Act, meanwhile replaced by the National Credit Act. Certain requirements must be fulfilled when entering into this type of transaction.

Briefly state any FIVE of these requirements. (5 × 2) (10)

7.2 Define the following terms used in contracts of sale:

7.2.1 Warrant against eviction

7.2.2 Merx

7.2.3 Actio quanti minoris

7.2.4 Latent defect

(4 × 2) (8)

7.3 Briefly explain what is meant by the passing of the risk rule. (3 × 1) (3)

[30]

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QUESTION 8

Read the following separate case studies and answer the questions.

8.1 Melinda bought a second hand TV set from a second hand dealer. He assured her that the set was in perfect working condition and almost brand new. She paid R1 200 for it.

8.1.1 State THREE requirements of this contract of sale. (3 × 1) (3)

8.1.2 Suppose Melinda is seventeen years old, has a part-time job and supports herself. Can she enter into this contract? Motivate your answer. (2 × 2) (4)

8.1.3 Suppose Melinda discovered afterwards that the dealer had lied to her about the fact that it was almost a brand new TV set.

(a) What kind of misrepresentation is this? (1)

(b) Will it render the contract void or voidable? (1)

(c) What remedies (rights) will Melinda have at her disposal? (2 × 1) (2)

8.2 Luyanda is at an auction. She decided to bid on a piano. As her offer was the highest bid, the auctioneer reserved it in her name. He then continued with the auction, took the piano stool and asked for bids. Luyanda objected and said that she would then withdraw her bid as she had thought that the two items belonged together.

8.2.1 Can Luyanda withdraw her offer? Motivate your answer. (2 × 2) (4)

8.2.2 Suppose Luyanda had bought this piano, had taken it home and was then informed that it was actually a stolen piano.

(a) Briefly explain the duty of the seller by which Luyanda would be protected. (2 × 2) (4)

(b) What is the legal position of the auctioneer? (1)

8.3 Discuss the par delictum rule (in pari delicto potio est condition defendintis). (5 × 2) (10)

[30]

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QUESTION 9

9.1 State the FIVE requirements for a valid offer to enter into a contract. (5 × 1) (5)

9.2 One of the activities of the body corporate is to establish a fund for administrative expenses.

State the expenses it should be covering. (4 × 2) (8)

9.3 State the valid requirements for a contract of sale of immovable property. (5 × 1) (5)

9.4 State THREE duties of the purchaser in a contract of sale. (3 × 1) (3)

9.5 Name FOUR ways in which an offer can be terminated. (4 × 1) (4)

9.6 State the information that must be contained in the notarial cession of mineral rights. (5 × 1) (5)

[30]

QUESTION 10

Identify the legal principle in each of the following cases by choosing the correct term/word(s) from the list below. Write only the term/word(s) next to the question number (10.1–10.15) in the ANSWER BOOK.

against good morals; unjustified enrichment; preamble; real right; patent defect; latent defect; personal right; constititum possessorium; actio quanti minoris; action redhibitoria; restraint of trade; cession; delegation; jurisdiction; registration; actual delivery; restitution; ratification; cooling off period; protocol register; accrual

10.1 This kind of right grants the owner the right to control a concern.

10.2 The clause identifies the transferor in a deed of transfer.

10.3 Both parties must be placed in the same position in which they were before entering into the contract.

10.4 A minor can be held liable on this basis if he/she receives a benefit from a contract and where he/she is not bound to the contract as a result of being a minor. An example is entering into a contract to gym, going to the gym and then claiming that he/she cannot be held liable for the fees.

10.5 Running a brothel is an example of this kind of legal impossibility.

10.6 An agreement that states that an employee may not work for a similar business for a certain period of time and within a certain radius.

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10.7 The way in which ownership of immovable property is passed.

10.8 The kind of delivery where the seller keeps the goods on behalf of the buyer, for example, to do alterations.

10.9 A visible defect, for example, a dent in the door.

10.10 The remedy that a buyer can use when there is a latent defect, but where the article can still be used.

10.11 This allows a buyer to cancel a contract within five working days where the contract has been concluded on other grounds than the grounds of the business.

10.12 The calculation of the difference between the estate of the husband and the wife when married out of community of property is known as this.

10.13 The notary keeps a record of all notarial deeds which are executed in his presence in this kind of register.

10.14 The transfer of rights to minerals above or below the ground surface.

10.15 Each court has a specific geographical area in which disputes can be settled.

(15 × 2) **[30]**

TOTAL SECTION B: 150
GRAND TOTAL: 200

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ADDENDUM A **EXAMINATION NUMBER:**

QUESTION 6

DEED OF TRANSFER

6.1.1 ……..
40 Shortman Street
CAPE TOWN

BE IT HEREBY MADE KNOWN

THAT 6.1.2 **……..** 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 …….

6.1.4 ……

6.1.5 ……..
Which said Power of Attorney is dated and signed at 6.1.6 **……**

AND the said Appearer declared that his principle the said 6.1.7 **……**

had on 6.1.8 **……..** 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 ……

6.1.10 ……

6.1.11 …… 6.1.12 ……
His heirs, executors, administrators or assigns the following property, namely

6.1.13 **…….** in the Area of

the Transitional Metropolitan Substructure of 6.1.14 **……..,** Cape Division, Western Cape Province

IN EXTENT: 6.1.15 **……..**

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

Joe Simon
REGISTRAR OF DEEDS

6.1.16 **……..**

(18 × 1) **[18]**

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