higher education & training

Department:
Higher Education and Training
REPUBLIC OF SOUTH AFRICA

MARKING GUIDELINE

NATIONAL CERTIFICATE

LEGAL PRACTICE N6

19 JUNE 2018

This marking guideline consists of 7 pages.

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SECTION A (COMPULSORY)

QUESTION 1

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

(10 × 2) **[20]**

QUESTION 2

2.1 Rejection
2.2 Right of way
2.3 Tacit agreement
2.4 Void
2.5 Proof of title
2.6 Prospecting contracts
2.7 Mora debitoris
2.8 Justus error
2.9 Cession
2.10 Fraudulent misrepresentation
2.11 Conveyancing
2.12 Preamble
2.13 Counter offer
2.14 Patent defect
2.15 Perfecta

(15 × 2) **[30]**

TOTAL SECTION A: 50

SECTION B

Answer any FIVE questions in this section.

QUESTION 3

3.1
- The amount of money that you get from the bank in order to buy an immovable property such as a house. (2 × 1) (2)

3.2
- There must be a debt or an obligation.
- There must be an immovable property that serves as security.
- There must be a deed that creates a bond. (3 × 2) (6)

3.3
- Heading – discloses the nature of every bond.
- Preparation clause – identifies the conveyancer who assumes responsibility of the correctness of all the facts in the bond.
- Preamble –name and marital status of the conveyancer is identified.
- Bondholder clause – identifies the institution that lends the money.
- Amount of bond –identifies the amount of money loaned by the bank.
- Mortgage coverage – indicates that the property serves as security for the payment of debt in the form of installments.
- Acknowledgment clause –mortgager acknowledges the money lent and the payback installments.
- Repayment clause – identifies the amount of money to be paid back.
- Interest clause – identifies the way interest on the loan will be imposed.
- Property clause – identifies the property to be mortgaged.
- Execution clauses – identifies the signatures by all parties.

(Any relevant 7 × 2) (14)

3.4

UNDERHAND	NOTARIAL
• Compiled by parties • No witnesses are needed for signing except in cases where it is required by law as guarantee of validity • It can either be oral or written • Sometimes it is only legal if written, for example hire purchase contract	• Compiled by a notary • Witnesses must be present when signing the contract • May only be written • For example prospecting contracts

(4 × 2) (8)

[30]

QUESTION 4

4.1
- Written
- Signed by both parties
- Names of credit grantor and credit receiver
- Business or residential addresses
- Initial amount to be paid
- Description of the goods or services
- Conditions attached, for example suspensive and resolutive conditions
- Right of credit grantor to return the goods
- Reference to cooling off period (section 13)
- Language which the credit receiver understands. (Any relevant 6 × 2) (12)

4.2
- Person cannot act as credit grantor and credit receiver
- Credit grantor cannot be exempted from liability for any presentation made by his representative
- Credit grantor's liability for latent defects cannot be excluded
- Credit grantor or agent cannot be authorised to enter premises of credit receiver to take possession of goods
- Credit receiver cannot choose another domicilium than stated in the agreement
- Credit receiver cannot agree to forfeit any moneys paid by him before he receives the goods
- Credit receiver cannot be prohibited to reside from the credit agreement and to claim repayment of moneys (cooling off period)
- Period of credit agreement cannot be left undetermined
- Credit receiver cannot guarantee that the agreement was signed on the place of the business of the credit grantor if not the case
- Credit receiver cannot acknowledge that he inspected the goods
- Credit receiver cannot acknowledge receipt of goods that were not delivered to him
- No credit agreement may exceed the prescribed period
- Creditor grantor cannot make money available to enable credit receiver to enter into a contract (Any 6 × 2) (12)

4.3
- Effective land registration system
- Offers owners with indisputable real rights
- Offers information upon demand to the public regarding registered deeds (3 × 2) (6)

[30]

QUESTION 5

5.1
- Transfer of property rights
- Serves as proof of a title (2 × 2) (4)

5.2
- Deed must consist of different clauses.
- Good quality and durable paper must be used.
- White A4 size paper must be used.
- Handwritten deeds will not be accepted.
- Document must have a margin of at least four centimeters for binding.
- Printing must take place only on one side of the page.
- Upper half of the first page of a deed of transfer must be left blank – this is used for endorsements.
- Any blank space not used in the deed must be cancelled to avoid fraud.
- All pages must be numbered consecutively.
- Paragraphs must preferably also be numbered. (9 × 2) (18)

5.3
- Manage the communal property with respect to maintenance and repairs
- Payment of tariffs
- Payment of insurance for the communal property
- Implement a fund for the administrative expenses
- Determine the owners' levies
- Open bank account in the name of development
- Manage communal property of the advantage of the inhabitants
- Compile management rules applicable to the owners (4 × 2) (8)

[30]

QUESTION 6

6.1
- Clear and unambiguous
- Complete
- Communicated to the offered
- Made with the intention that it shall serve as an offer
- Legally binding (4 × 1) (4)

6.2
- Must be printed on standard paper of good quality
- Printed in black ink
- 4 centimeters left-hand margin for binding
- Printed only on one side of the paper
- Signed and initialled in black ink only – binding space left clear
- All people who signed the deed must initial at all changes
- Upper half of first page must be left blank for endorsements
- Every page of a notarial deed must be numbered consecutively
- The place and date of execution must appear on a notarial deed (8 × 2) (16)

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6.3
- Special remedy for latent defects
- Latent defect is an invisible defect
- Buyer can cancel the contract
- General rule that no damages can be claimed
- Buyer must return the article
- Seller must refund the money (5 × 2) (10)

[30]

QUESTION 7

7.1
- Right of way
- Grazing rights/pasture
- Right to deter waste or rain water
- Irrigation/right to lay on water
- Building heights (5 × 2) (10)

7.2
- Clear and unambiguous
- Complete
- Must be communicated to the offered
- Made with the intention that it shall serve as an offer
- Legally binding (5 × 2) (10)

7.3
- Revocation
- Effluxion of time
- Option
- Rejection
- Death of one of the parties
- Insanity of one of the parties
- Counter offer (5 × 2) (10)

[30]

QUESTION 8

8.1
- Buyer – Mr Ketelo
- Seller – Fana (2 × 1) (2)

8.2
- To deliver the article sold
- The care for the article until delivery takes place
- To warrant that there will be no latent defects
- To warrant that he will not be lawfully evicted (4 × 2) (8)

8.3
- The supplying of wrong or false information, or the withholding of information (2)

8.4
- Yes
- He intentionally lied about the mileage of the car.
- He did not disclose that the car had a problem of overheating. (3 × 1) (3)

8.5
- Fraudulent (Intentional) misrepresentation
- Innocent misrepresentation
- Negligent misrepresentation (3 × 1) (3)

8.6
- False representation of facts
- Material misrepresentation
- Made with the intention to induce the other party to enter into the contract
- Made by the contracting party or someone that represents him
- Made in such a way that the other party concludes the contract on the faith of it (party must thus be unaware of the misrepresentation). (5 × 2) (10)

8.7 True (2)
[30]

TOTAL SECTION B: 150
GRAND TOTAL: 200

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