higher education & training

Department:
Higher Education and Training
REPUBLIC OF SOUTH AFRICA

MARKING GUIDELINE

NATIONAL CERTIFICATE

LEGAL PRACTICE N6

9 June 2021

This marking guideline consists of 8 pages.

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SECTION A (COMPULSORY)

QUESTION 1

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

(10 × 1) **[10]**

QUESTION 2

2.1 C
2.2 B
2.3 D
2.4 A
2.5 C

(5 × 2) **[10]**

QUESTION 3

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

(10 × 2) **[20]**

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QUESTION 4

4.1 It serves as proof of ownership and is used to transfer land.

4.2 The bondholder is the mortgagee/creditor. It is the institution who accepts the bond as security in exchange for money borrowed to the debtor.

4.3 Where both parties are equally at guilt, the position of the possessor is the strongest.

4.4 Added terms to a contract.

4.5 A reasonable cause.

(5 × 2) **[10]**

TOTAL SECTION A: 50

SECTION B

Mark any FIVE questions from this section.

QUESTION 5

5.1
- It is a document whereby property rights of land are transferred.
- It serves as proof of new property ownership (proof of title). (2 × 2) (4)

5.2
- The deed of transport must consist of different clauses.
- Good quality, durable paper must be used.
- White A4 size paper.
- Handwritten deeds will not be accepted in practice.
- The Registrar of Deeds accepts only black ink.
- All pages of a deed must have a margin of at least four centimetres for binding (not applicable now that deeds are microfilmed).
- All deeds and documents must be typed or printed only on one side of the paper.
- The upper half of the first page of a deed of transfer must be left blank for stamps or endorsements.
- Any blank space not used in the deed must be cancelled to avoid fraud.
- All pages must be numbered consecutively. (Any 5 × 2) (10)

5.3 5.3.1 The preamble
(any applicable example indicating the seller/transferor), for example
Alma Janse van Rensburg
ID 5908948376
Married

5.3.2 The property clause
(any applicable example giving detailed description of the property), for example
Plot 234, Welgelegen, Parow
Size 1 000 (one thousand) square metres

5.3.3 The heading
Deed of Transfer

5.3.4 The consideration clause
(any applicable example referring to the purchase price of the property), for example
R1,2 million (one million, two hundred thousand rand)

5.3.5 The extending clause
(any applicable example referring to the current title deed under which the land is held), for example
First transferred by deed of transfer no. T23456/2000…

(5 × 2) (10)

5.4 R2,7 = R80 500✓ + (11%✓ of R450 000✓ = R49 500✓)
Total = R130 000✓✓ (6)

[30]

QUESTION 6

6.1 Credit transaction/Instalment sale transaction (1)

6.2 Annemie, the seller (1)

6.3
- This is also referred to as section 13 of the outdated Credit Agreement Act.
- It means that the buyer has five working day to cancel the contract if the contract was signed on other premises than that of the business.
- When calculating the five days, the day on which the contract was concluded, a public holiday, a Saturday and Sunday are excluded.
- Goods must be returned and monies must be paid back.
- The whole process should be concluded within 10 days. (5 × 2) (10)

6.4 It must be in writing. (1)

6.5
- There must be an agreement to purchase and sell.✓

The contract comes into existence the moment an agreement is reached to purchase and sell.✓

- There must be an article.✓

This is also called a merx. The merx needs to be certain or ascertainable.✓

- There must be a price.✓

This is also called a pretium. It must be payable in money.✓ (3 × 2) (6)

6.6 A suspensive condition means that the operation of a contract is suspended until an uncertain, future event happens. (1)

6.7 6.7.1 The purchaser bears the risk for accidental loss from the moment the contract is perfecta. (2)

6.7.2
- Circumstances under which the risk does not pass
- Where goods have to be weighed, measured or counted
- Where the contract is conditional
- Where the seller fails to deliver the product on time
- Through special agreement (4 × 2) (8)

[30]

QUESTION 7

7.1 7.1.1
(a) Name of the buyer (1)
(b) (any example, but must be a street address), for example, 3 Gouws Street, Parow (1)
(c) Name of the seller (1)
(d) Transfer costs or VAT payable (1)
(e) Registration costs (1)
(f) Possession means that the buyer is not yet the owner, but may take possession. Transfer has not yet taken place. (2)
(g) This needs to be paid when the buyer takes occupation before transfer takes place. (2)
(h) The seller (1)
(i) Buy the property as it is, with or without defects (1)
(j) The seller (1)

7.1.2 This document needs to be completed to affect the transfer. (2)

7.1.3
- Bond cancelling of the existing bond
- Transfer of the property
- Registration of the new bond (3)

7.1.4
- There must be a debt or an obligation.
- There must be immovable property that serves as security for the debt or obligation.
- There must be a deed that creates the bond. (3)

7.2 7.2.1 Cession means the transfer of rights from one person to another person. (2)

7.2.2 This happens where a landowner transfers his rights to, for example, underground minerals to a prospector. The landowner is still the owner of the ground surface. (2)

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7.2.3
- Description of the cedent and the cessionary
- Description of the type of mineral right ceded
- The compensation payable for the right
- The reason for the cession
- All the relevant conditions (5)

7.2.4
- Usufruct
- Usage
- Occupation (Any ONE) (1)

[30]

QUESTION 8

8.1
- It must be a legal agreement.
- The parties must have contractual capacity.
- The parties must communicate their intentions to one another.
- Performance must be possible.
- The parties must have reached consensus (must be of the same mind).
- The parties must have the serious intention to be contractually bound.
- Formalities (not always an essentialia) (Any 5 × 1) (5)

8.2 8.2.1 Fraudulent misrepresentation (2)

8.2.2
- The misrepresentation must be the false representation of a fact or facts.
- The misrepresentation must be material (something that would persuade a reasonable man).
- The misrepresentation must be made with the intention to induce the other party to contract.
- The misrepresentation must be made by the contracting party or a person who assumes responsibility.
- The misrepresentation must be made in such a way that the other party concludes the contract on the faith thereof. (5 × 2) (10)

8.3
- Revocation
- Effluxion of time
- Option
- Rejection
- Death of one of the parties
- Insanity of one of the parties
- Counteroffer (Any 5 × 1) (5)

8.4 8.4.1 Latent defect (2)

8.4.2
- Actio quanti minoris
- Contract cannot be cancelled.
- Tyron can claim a reduction in the selling price. (3 × 2) (6)

[30]

QUESTION 9

9.1 9.1.1 A mistake means that the parties misunderstood one another. (2)

9.1.2 No. ✓ They did not think alike/they were not of the same mind. ✓ (2)

9.1.3
- Mistake in motive
- Mistake of law (2)

9.1.4 (a) The parties did not think alike on the kind of contract, for example, one thought it was a contract of sale, whilst the other thought it was a contract of lease.

(b) There is a mistake with regard to the identity of a thing, for example, A offers one of his goats for sale, whilst B thinks he is buying a sheep.

(2 × 2) (4)

9.2
- Supervening impossibility means performance was possible at the conclusion of the contract, but subsequently became impossible.✓✓
- The impossibility is something that happened beyond the control of the parties.✓✓
- One example is vis major (by an Act of God),✓✓ for example, a natural disaster.✓
- Another example is casus fortuitus (an Act of the State),✓✓ for example, the implementation of new legislation.✓ (10)

9.3
- A clear heading – Power of Attorney
- The name of the grantor (the owner of the land or a person that has been duly authorised to act on his behalf)
- The name of the appearer (the conveyancer)
- The name of the buyer (the transferee)
- Description of the property
- Any conditions
- The causa or reason
- The execution clause (date and place of execution) (Any 5 × 2) (10)

[30]

QUESTION 10

10.1 Mortgagor
10.2 Delegation
10.3 Mining rights
10.4 Antenuptial contract
10.5 Naturalia
10.6 Essentialia
10.7 Capital gains tax
10.8 Constitutum possessorium
10.9 Voidable contract
10.10 Rectification
10.11 Underhand document
10.12 Assignment
10.13 Ratification
10.14 A mistake
10.15 Void contract

(15 × 2) **[30]**

TOTAL SECTION B: 150
GRAND TOTAL: 200

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