higher education & training

Department:
Higher Education and Training
REPUBLIC OF SOUTH AFRICA

**NATIONAL CERTIFICATE**

# LEGAL PRACTICE N6

(13030126)

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**09:00–12:00**

**This question paper consists of 11 pages.**

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# DEPARTMENT OF HIGHER EDUCATION AND TRAINING
# REPUBLIC OF SOUTH AFRICA

NATIONAL CERTIFICATE
LEGAL PRACTICE N6
TIME: 3 HOURS
MARKS: 200

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NOTE: If you answer more than the required number of questions, only the required number will be marked. Clearly cross out all work you do not want to be marked.

**INSTRUCTIONS AND INFORMATION**

1. SECTION A is COMPULSORY and must be answered by all candidates in the ANSWER BOOK.

2. Answer any FIVE questions from SECTION B.

3. Read all the questions carefully.

4. Number the answers according to the numbering system used in this question paper.

5. Neatness, style and a systematic exposition of facts are required. Where possible, answer questions by point, but always in full sentences.

6. Write neatly and legibly.

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## SECTION A (COMPULSORY)

### QUESTION 1

Indicate whether the following statements are TRUE or FALSE by writing only 'True' or 'False' next to the question number (1.1–1.10) in the ANSWER BOOK.

1.1 An example of a personal servitude is a usufruct.

1.2 A counteroffer terminates an original offer.

1.3 A marriage out of community of property is regulated by the common law.

1.4 A real right is enforceable against the whole world, for example, ownership.

1.5 A minor can enter into a contract unassisted and let it be ratified.

1.6 The remedy for a faulty air-conditioning system is the actio quanti minoris.

1.7 The right of occupation and the right of ownership are the same thing.

1.8 A transfer deed is proof of ownership transferred to the new buyer.

1.9 Credit agreements must comply with certain formalities.

1.10 The credit grantor is the seller, but can also be a financial institution.

(10 × 1) **[10]**

### QUESTION 2

Various options are given as possible answer 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 Domicilium citande et executandi indicates …

A that a contract has been signed.
B the address where the contract has been signed.
C the address where a party is prepared to accept legal documents.
D specific rights of the seller.

2.2 An example of a personal servitude:

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

2.3 This person has no contractual capacity:

A A minor older than seven years
B A prodigal
C A pupillus
D A drunk person

2.4 Delegation means the transfer of …

A duties to a third party.
B rights to a third party.
C rights and duties to a third party.
D property to a buyer.

2.5 Examples of voidable contracts.

Choose the incorrect one.

A A contract signed under duress
B Where there has been undue influence
C A contract where the parties misunderstood each other
D A contract where false statements were made

(5 × 2) **[10]**

## QUESTION 3

Choose a description from COLUMN B to match the term 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 | Caveat subscriptor | A | providing false facts unknowingly |
| 3.2 | Credit grantor | B | can be a financial institution |
| 3.3 | Credit receiver | C | an attorney with special skills |
| 3.4 | Personal servitude | D | both parties must be put in the same position they were before entering into the contract |
| 3.5 | Voidable contract | | |
| 3.6 | Void contract | E | let he who signs beware |
| 3.7 | Restitution | F | no rights or obligations flow from this type of contract |
| 3.8 | Notary | G | a valid contract |
| 3.9 | Mistake | H | the right to stay on a piece of land even after the owner died |
| 3.10 | Misrepresentation | I | the buyer or lessee |
| | | J | this renders a contract void |

(10 × 2) **[20]**

## QUESTION 4

Briefly define the following concepts:

4.1 Deed of transfer

4.2 The bondholder

4.3 Par delictum rule

4.4 Incidentalia of a contract

4.5 Iusta causa

(5 × 2) **[10]**

**TOTAL SECTION A: 50**

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## SECTION B

Answer FIVE questions in SECTION B.

## QUESTION 5

Read the following information and answer the questions.

If you are planning to buy a new property, you will need to get the title deed transferred into your name. You will need the assistance of a lawyer specialising in property transfers to help you transfer the title deed into your name.

You will only become the owner of the property when the Registrar of Deeds signs the transfer. After it has been signed, a copy of the title deed is kept at the Deeds Office closest to you.
The Deeds Registry is open to any member of the public to also access information on it.



5.1 Briefly discuss the dual purpose of the title deed. (2 × 2) (4)

5.2 The Deeds Act determines that the drafting of a concept title deed must comply with certain prescribed conditions.

Briefly discuss any FIVE such prescriptions. (5 × 2) (10)

5.3 There are definite clauses in the title deed.

Briefly define each of the following by giving a practical example of each.

5.3.1 The preamble

5.3.2 The property clause

5.3.3 The heading

5.3.4 The consideration clause

5.3.5 The extending clause

(5 × 2) (10)

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5.4 Transfer duty needs to be paid. Suppose the property is sold for R2,7 million.

Make use of the following table to calculate the transfer costs. Show all your calculations.

| VALUE OF PROPERTY (Rand) | RATE |
|---|---|
| **0–900 000** | 0% |
| **900 001–1 250 000** | 3% of the value above R900 000 |
| **1 250 001–1 750 000** | R10 500 + 6% of the value above R 1 250 000 |
| **1 750 001–2 250 000** | R40 500 + 8% of the value above R 1 750 000 |
| **2 250 001 10 000 000** | R80 500 +11% of the value above R2 250 000 |
| **10 000 001 and above** | R933 000 + 13% of the value above R10 000 000 |

(6)
**[30]**

## QUESTION 6

Read the following scenario and answer the questions.

Annemie sells Tupperware. She hosts parties at her house where she invites people to view the products and place orders. When a customer places an order for more than R1 500, she allows the person to put down a deposit and to pay off over a period of three months.

6.1 What kind of transaction is this? (1)

6.2 Who is the credit grantor? (1)

6.3 According to the outdated Credit Agreement Act, meanwhile replaced by the National Credit Act, the consumer has the cooling off period at his or her disposal.

Briefly discuss this. (5 × 2) (10)

6.4 With which formality must this type of transaction comply? (1)

6.5 Briefly discuss the THREE essentialia of a contract of sale, which would also be applicable to this contract. (3 × 2) (6)

6.6 Define a *suspensive condition.* (1)

6.7 The passing of the risk rule is a naturalia of a contract of sale.

6.7.1 What is meant by the passing of the risk rule? (2)

6.7.2 List FOUR circumstances under which the risk will not pass. (4 × 2) (8)

**[30]**

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**QUESTION 7**

Study the following incomplete Deed of Sale and answer the questions.

7.1

**DEED OF SALE**

**We, (full names)**

**(a) …….**

**Of**

**(b)…….. (**domicilium**)**

Hereby make an offer to buy from

**(c) …….**

The purchaser purchases and the Seller sells the …….. according to the following terms and conditions**:**

**1. PROPERTY**

**2. PURCHASE PRICE**

**3. DEPOSIT and BALANCE**

**4. TRANSFER**

**5. TRANSFER FEES**
Transfer fees may include (d)……. (e)……

**6. POSSESSION**
(f)……

**7. OCCUPATIONAL RENT**
(g)……

**8. FINANCING**

**9. ELECTRICAL CERTIFICATE**
(h)……

**10. GUARANTEES**
The property is sold voetstoots. (i)……

**11. AGENT'S COMMISSION**
(j)……

**12. SPECIAL CONDITIONS**

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7.1.1 (a) Whose name must be entered here? (1)

(b) Give an example of an address which will be the domicilium. (1)

(c) Whose name will be entered here? (1)

(d) List any TWO types of costs that can be listed here.
and
(e) (2)

(f) Define the concept *possession.* (2)

(g) When must occupational rent be paid? (2)

(h) Who must provide the electrical certificate? (1)

(i) What is meant by the term *voetstoots*? (1)

(j) Who is responsible for paying the agent's commission? (1)

7.1.2 What is the function of a power of attorney document which needs to be completed where land is sold? (2)

7.1.3 Suppose that a mortgage bond needs to be registered for this property.

List the THREE simultaneous transactions that will take place with this registration. (3)

7.1.4 List the THREE minimum requirements for a bond to be registered. (3)

7.2 The services of a notary are used where important documents like cession of mineral rights contracts must be drawn up. Notaries also assist in compiling personal and land servitudes.

7.2.1 Explain the meaning of *cession* (2)

7.2.2 What is meant by the *cession of mineral rights*? (2)

7.2.3 List the FIVE elements that must appear in a notarial cession of mineral rights. (5)

7.2.4 Give ONE example of a personal servitude. (1)
**[30]**

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## QUESTION 8

Read the following scenario and answer the questions.

Jo-Anne enters into a contract with Ameli to sell second-hand goods on Ameli's behalf. Jo-Anne will be paid a fixed salary of R6 000 per month plus 10% commission on all sales generated.

8.1 List any FIVE essentialia with which a contract must comply in general. (5)

8.2 Suppose Jo-Anne tells Ameli that the car has never been an accident, which is untrue.

8.2.1 Identify the legal principle for which Jo-Anne will be liable. (2)

8.2.2 Briefly discuss the FIVE elements that the other party needs to prove to hold Jo-Anne liable on the legal ground mentioned in QUESTION 8.2.1. (5 × 2) (10)

8.3 List any FIVE ways in which an offer can be terminated. (5)

8.4 Suppose Jo-Anne sold a car to Tyron. Tyron later discovered that the roof of the car was leaking.

8.4.1 What kind of defect is this? (2)

8.4.2 Discuss the remedy at Tyron's disposal. (3 × 2) (6)

**[30]**

## QUESTION 9

9.1 A mistake renders a contract void.

With regard to this statement, answer the following questions.

9.1.1 Briefly define a *mistake.* (2)

9.1.2 Did the parties reach consensus? Motivate your answer. (2)

9.1.3 Give TWO examples of mistakes that will not render a contract void. (2)

9.1.4 Give ONE example of each of the following types of mistakes:

(a) Error in negotio

(b) Error in corpore

(2 × 2) (4)

9.2 Discuss supervening impossibility of performance. (5 × 2) (10)

9.3 Discuss any FIVE particulars that must appear on a power of attorney to pass transfer. (5 × 2) (10)

**[30]**

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## QUESTION 10

Choose ONE term from the list below for each of the following descriptions and write it next to the question number (10.1–10.15) in the ANSWER BOOK

| |
|---|
| delegation; assignment; underhand document; antenuptial contract; mining rights; capital gains tax; mortgagor; mortgagee; voidable contract; void contract; mistake; rectification; ratification; naturalia; incidentalia; essentialia; constitutum possessorium |

10.1 A person who borrows money from a financial institution to finance immovable property.

10.2 Transfer of obligations from one person to another.

10.3 Mineral rights and servitudes.

10.4 A requirement for a contract out of community of property.

10.5 An example of this is the warrant against a latent defect.

10.6 An example of this is that a contract must be legal.

10.7 Payable on the profit a seller makes when a property is disposed of, and not on the entire value of the property.

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

10.9 This is a valid contract until application is made to set it aside.

10.10 This concept is applicable where the written version is not the same as the oral agreement.

10.11 A document drafted by a notary, and that can only be signed by the parties referred to in the document.

10.12 The right of occupation and the duty to pay is transferred to someone else, for example, in a contract of lease.

10.13 Consent is given afterwards.

10.14 A misunderstanding.

10.15 No rights and obligations flow from this.

(15 × 2) **[30]**

**TOTAL SECTION B: 150**
**GRAND TOTAL: 200**

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