higher education & training

Department:
Higher Education and Training
REPUBLIC OF SOUTH AFRICA

MARKING GUIDELINE

NATIONAL CERTIFICATE

NOVEMBER EXAMINATION

LEGAL PRACTICE N6

30 NOVEMBER 2016

This marking guideline consists of 8 pages.

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SECTION A: COMPULSORY

QUESTION 1

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

(10 × 1) **[10]**

QUESTION 2

2.1 C
2.2 B
2.3 B
2.4 B
2.5 B

(5 × 2) **[10]**

QUESTION 3

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

(10 × 2) **[20]**

QUESTION 4

4.1 Transfer duty
4.2 Mortgagor
4.3 Servitude
4.4 Ratification
4.5 Vis major

(5 × 2) **[10]**

TOTAL SECTION A: 50

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SECTION B

PLEASE NOTE: ONLY FIVE QUESTIONS MUST BE ANSWERED IN THIS SECTION. IF A CANDIDATE ANSWERS MORE THAN FIVE QUESTIONS, THE FIRST FIVE MUST BE MARKED.

QUESTION 5

5.1 5.1.1 Deed of transfer √ (1)

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

5.1.3 A The preamble: …That Abraham Gericke appeared before me….signed at Sutherland

B The property clause: …Erf 3290 Sutherland…in extent 2 000 square metres

C The heading: ….(not indicated, but student should know that there should be a heading) …TITLE DEED OR DEED OF TRANSFER

D The compensation clause: ……purchase price of R790 000…..

E The extension clause: ….First transferred and still held by ……. No T829/345

(5 × 2) (10)

5.1.4 0 – R750 000 no tax √
R790 000 – R750 000 = R40 000 √
TOTAL TRANSFER DUTY @ 3% = R1 200 √ (3)

5.1.5
- There must be a debt or an obligation.
- There must be immovable property that serves as security for the debt.
- There must be a deed that creates the bond. (3 × 2) (6)

5.1.6
- Manage the communal property with respect to, e.g. maintenance and repairs.
- Payment of tariffs, e.g. water and electricity of the complex.
- Payment of insurance for the communal property.
- Implement a fund for the administrative expenses.
- Determine the owners' levies.
- Open a bank account in the name of the development.
- Compile management rules and rules of conduct applicable to owners and occupants.
- Manage the communal property to the advantage of all the inhabitants. (Any 6 × 1) (6)

[30]

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QUESTION 6

6.1. Contract of sale √ (1)

6.2
- There must be an article.
- There must be a price.
- There must be an agreement to purchase and sell.
- Delivery must take place. (Any 3 × 1) (3)

6.3
- To deliver the articles sold.
- To care for the articles sold until delivery takes place.
- To guarantee Songezo that there is no latent defect.
- To protect Songezo against eviction (to give Songezo *vacua* possession).

(Any 3 × 1) (3)

6.4 *Traditio longa manu* (delivery with the long hand) √ (1)

6.5 Passing of the risk rule as a natural consequence of a contract of sale.
Purchaser bears the risk from the moment the contract is *perfecta*.
Purchaser bears the risk only for accidental damage (something beyond the control of the parties).
Seller still remains liable to care for the article sold until delivery takes place.
Risk will not pass

- where goods still have to be weighted, measured or counted
- where the contract is conditional
- where the seller fails to deliver the article on time
- where the risk has been excluded. (Any 4 × 2) (8)

6.6 6.6.1 Latent defect.√ Cannot be seen with the eye (hidden).√ (2)

6.6.2 Actio quanti minoris √ (1)

6.6.3 He can claim a reduction in the selling price. √√ (2)

6.6.4 YES.√ The seller was aware of the illness√ and did not disclose it (misrepresentation).√ (3)

6.7 6.7.1 Constructive (fictitious) delivery. This happens where the buyer bought an article and leaves it with the seller, for example, for changes to be made.

6.7.2 Free and undisturbed possession.

6.7.3 This is where the goods must still be weighed before the price can be determined.

(3 × 2) (6)
[30]

QUESTION 7

7.1 7.1.1 This is where the buyer puts down a deposit√ and pays the rest of the purchase sum in instalments over a certain period of time.√ (2)

7.1.2 Upon final payment √√ (2)

7.1.3 No √ (1)

7.1.4 Suspensive condition: This means that the buyer will only become the owner when final payment is made.

Resolutive condition: This means that the contract takes immediate effect but that it can be cancelled should the buyer not adhere to the contract, for example, in the case of non-payment.
(2 × 2) (4)

7.1.5
- The contract must be concluded on other grounds than the business premises.
- The initiative for the transaction must come from the credit grantor. (2 × 2) (4)

7.2 7.2.1 This must be compiled where a husband and a wife gets married out of community of property.√ This is to determine the value of each person' s assets BEFORE marriage.√ (2)

7.2.2
- Marriage out of community of property means that each spouse will keep his or her assets when a divorce takes place.
- A marriage subject to the accrual system means that the husband and wife will share all assets accrued during the marriage. Any good explanation (2 × 2) (4)

7.2.3
- A land servitude is a servitude due to someone in his capacity as a landowner.
- A prerequisite is that there must be a dominant erf and a servient erf.
- A land servitude is everlasting and applies to every successive owner of the dominant erf. (3 × 2) (6)

7.2.4
- Right of way
- Grazing rights/pasture
- Right to deter waste or rain water
- Irrigation/right to lay on water
- Building heights (Any 3 × 1) (3)

7.2.5
- Usufruct (ususfructus)
- Usage (uses)
- Occupation (habitation) (Any 2 × 1) (2)

[30]

QUESTION 8

8.1
- The parties must have contractual capacity.
- The parties must have reached consensus.
- The agreement must not be vague.
- The parties must have a serious intention to be contractually bound.
- The offer must be communicated to the person it is offered.
- Performance must be possible.

ALSO TAKE INTO ACCOUNT:

- There must be free consent.
- There must be a reasonable cause.
- Formalities must be complied with. (Any 6 × 1) (6)

8.2
- Cancellation
- Specific performance (2 × 1) (2)

8.3 Fraudulent misrepresentation (contractual basis)√√ (2)

8.4
- Cancellation
- Effluxion of time
- Death
- Insanity
- Agreement
- Supervening impossibility (Any 5 × 1) (5)

8.5
- This can be done through assignment.
- This means that Lucinda transfers both her rights and obligations from this contract to Maseti. (2 × 2) (4)

8.6
8.6.1 *Mora debitoris*
8.6.2 Positive malperformance/Defective performance
8.6.3 Repudiation
(3 × 1) (3)

8.7
- No agreement exists.
- No rights and obligations can flow from this contract.
- Both parties can ignore this contract as if it never existed.
- It can be as a result of the fact that no consensus has been reached.
- It can also be due to a misunderstanding (a mistake). (4 × 2) (8)

[30]

QUESTION 9

9.1 9.1.1 A conveyancer is an attorney who has passed an additional entrance examination in conveyancing√ and who is a specialist in the field of transfer of property.√ (2)

9.1.2 Occupational rent is paid where the new owner takes occupation√ before registration of the property at the deeds office.√ (2)

9.1.3
- The title deed
- The power of attorney
- The solvency declaration and marital status of the seller
- The transfer duty receipt form INK 684
- The transfer duty declaration by the seller
- The transfer duty declaration by the buyer. (Any 5 × 1) (5)

9.2
- The contract must be in writing.
- It must state the names of the credit grantor and the credit receiver.
- It must state the addresses (domicilium citanti et executandi) of both parties.
- It must make reference to the cooling-off period.
- It must be in the language as preferred by the credit receiver.
- It must make reference to the initial payment.
- It must contain a description of the goods.
- Any conditions, for example, reservation to ownership must be stated.
- Conditions regarding the right of the credit grantor to the return of the goods must be stated (Any 5 × 2) (10)

9.3
- There must be a price.
- There must be an article.
- The contract must be unconditional. (3 × 1) (3)

9.4
- When a person sells his property, the property cannot be transferred to the buyer before the bond against the property has been cancelled.
- It is the duty of the attorney who takes care of the cancellation of the bond to see to it that the rights of the mortgagee are protected and that when the bond is cancelled, the money is paid to the mortgagee as requested.
- After the guarantee that the mortgages would be paid have been obtained, the conveyancer delivers it to the mortgagee together with the consent to the cancellation of the bond.
- The mortgagee signs it and hands it back to the conveyancer.
- When the conveyancer receives the consent to the cancellation, simultaneous presentation with the bond attorney and conveyancer is organised. (Any 4 × 2) (8)

[30]

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QUESTION 10

10.1 Mortgagor
10.2 Conveyancer
10.3 Consideration clause
10.4 Marriage in community of property
10.5 Expedition theory
10.6 Misrepresentation
10.7 Capital gains tax
10.8 *Traditio brevi manu*
10.9 Rectification
10.10 Excecution clause
10.11 Underhand document
10.12 No contractual capacity
10.13 Voetstoots
10.14 Antenuptial contract
10.15 Limited contractual capacity

(15 × 2) **[30]**

TOTAL SECTION B: 150
GRAND TOTAL: 200

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