higher education & training

Department:
Higher Education and Training
REPUBLIC OF SOUTH AFRICA

N950**(E)**(N30)H
NOVEMBER EXAMINATION

NATIONAL CERTIFICATE

LEGAL PRACTICE N6

(13030126)

30 November 2016 (X-Paper)
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

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 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 point 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. Choose the answer and write only 'true' or 'false' next to the question number (1.1–1.10) in the ANSWER BOOK.

1.1 A mistake renders a contract void.

1.2 An offer cannot be recalled.

1.3 A personal servitude must be registered in the deeds office.

1.4 A marriage in community of property is controlled by the common law.

1.5 A minor can be held liable on the basis of unjustified enrichment.

1.6 An example of a latent defect is a dent in the door.

1.7 Occupation of the property does not necessarily have to coincide with the registration of transfer.

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

1.9 Credit agreements do not have to be in writing.

1.10 The credit grantor and lessee is the same person.

(10 × 1) **[10]**

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 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 Choose the INCORRECT one. An example of land servitude includes …

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

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2.3 Choose the INCORRECT one. An example of a notarial document:

A Personal and other servitudes
B A contract of sale
C Antenuptial contracts
D Prospecting contracts

2.4 Cession 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 The applicable theory in the case of a contract per telephone is the …

A declaration theory.
B communication theory.
C reception theory.
D expedition theory.

(5 × 2) **[10]**

QUESTION 3

Choose a description from COLUMN B that matches a/an 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	Merx	A	contract of sale comes into existence after fulfilment of certain conditions
3.2	Suspensive condition	B	the bondholder
3.3	Conveyancer	C	compiles documents for registration of fixed property
3.4	Preamble	D	identifies the transferor
3.5	Mortgagee	E	an attorney with specialised skills
3.6	Notary	F	equal sharing of assets acquired during marriage
3.7	*Actio quanti minoris*	G	false statements
3.8	Accrual system	H	remedy for a latent defect
3.9	Mistake	I	an article
3.10	Misrepresentation	J	this renders a contract void

(10 × 2) **[20]**

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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 tax payable to the government when fixed property is bought.

4.2 The debtor who buys immovable property subject to a loan.

4.3 A right which grants specific and defined authority to the rightful owner regarding use and enjoyment over the concern of another.

4.4 An example of this is where the minor enters into a contract unassisted and the parents give consent afterwards.

4.5 Supervening impossibility as a result of an 'Act of God', for example a flood.

(5 × 2) **[10]**

TOTAL SECTION A: 50

SECTION B

Answer any FIVE questions from this section.

QUESTION 5

5.1 Study the following document and answer the questions.

……..

BE IT HEREBY MADE KNOWN –

THAT ABRAHAM GERICKE

Appeared before me, REGISTRAR OF DEEDS at CAPE TOWN, he the said Appearer being authorised thereto by a Power of Attorney signed at SUTHERLAND on the 7th day of September 2015 and granted to him by:-

SHIRLEY DU PLESSIS

Identity number 3107140035084

Married

AND the said Appearer declared that his said Principal/s had truly and legally sold, and that he in his capacity aforesaid, did by these presents, cede and transfer to and on behalf of

MARETHA MOOLMAN

Identity number 570717 0037084

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Married

Her heirs, executors, administrators, or assigns in full and free property:

ERF 3290

SUTHERLAND

Of the Northern Cape Municipality

SUTHERLAND DIVISION, NORTHERN CAPE PROVINCE

IN EXTENT 2 000 (TWO THOUSAND) square metres First transferred and still held by ……No T829/345

……

And finally acknowledging the purchase price to be the sum of R790 000 (SEVEN HUNDRED AND NINETY THOUSAND RAND) and the date of sale 19 August 2015.

5.1.1 What kind of document is this? (1)

5.1.2 Discuss the dual purpose of this document. (2 × 2) (4)

5.1.3 Identify the following clauses by writing its description next to the question number 5.1.3 (A–E) in the ANSWER BOOK.

A The preamble
B The property clause
C The heading
D The compensation clause
E The extension clause (5 × 2) (10)

5.1.4 Calculate the transfer duty of the above property by making use of the following table:

0 – R750 000 = 0 %
R750 000 – R1 250 000 = 3 % (3 × 1) (3)

5.1.5 Suppose the buyer obtained a mortgage bond to buy this property.

Discuss THREE requirements this bond must comply with. (3 × 2) (6)

5.1.6 Suppose this property was bought under a sectional title.

List any SIX functions of the body corporate in this regard.
(6 × 1) (6)
[30]

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QUESTION 6

Read the following scenario and answer the questions.

John and Songezo entered into a contract according to which Songezo would buy 100 sheep from John at R650 each. They entered into the contract on 1 May 2016 and agreed that Songezo would pay the money on 3 May and delivery would take place on 10 May 2016.

6.1 What kind of contract is this? (1)

6.2 Name any THREE *essentialia* of this contract. (3 × 1) (3)

6.3 State any THREE duties of John. (3 × 1) (3)

6.4 Which form of constructive (fictitious) delivery will take place? (1)

6.5 Included in such a contract is the passing of the risk rule. Discuss this rule. (4 × 2) (8)

6.6 Suppose John was aware that some of the sheep were ill, but did not disclose this fact. The disease is not life-threatening and therefore the sheep would still be able to be delivered. The sheep will, however, not be the standard weight.

6.6.1 What kind of defect is this? Motivate your answer. (2)

6.6.2 Which remedy will Songezo have at his disposal? (1)

6.6.3 What can Songezo claim with this remedy? (2)

6.6.4 Will Songezo be able to claim damages as well? Motivate your answer. (3)

6.7 Define the following concepts:

6.7.1 *Constitutum possessorium*

6.7.2 *Vacua possessio*

6.7.3 *Sale ad mensuram*

(3 × 2) (6)

[30]

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QUESTION 7

7.1 All possible buyers cannot buy a vehicle for cash. To enable them to buy a vehicle they can enter into an instalment sale transaction. When doing so they were previously protected by the Credit Agreement Act, meanwhile replaced by the National Credit Act.

7.1.1 Define an instalment sale transaction. (2)

7.1.2 At what stage does the buyer become the owner when an article is bought like this? (2)

7.1.3 May the buyer pay the deposit with a postdated cheque? (1)

7.1.4 This type of transaction normally contains two types of conditions.

Discuss these conditions. (2 × 2) (4)

7.1.5 The cooling-off period is applicable to transactions under the Credit Agreement Act, meanwhile replaced by the National Credit Act. TWO requirements are however a prerequisite to entitle the buyer to this right.

Discuss these TWO requirements. (2 × 2) (4)

7.2 Where important documents like antenuptial contracts must be drawn up, the services of a notary are used. Notaries also assist in compiling personal and land servitudes.

7.2.1 Explain the meaning of an antenuptial contract. (2)

7.2.2 Explain the difference between a marriage out of community of property versus a marriage out of community of property subject to the accrual system. (2 × 2) (4)

7.2.3 Discuss what is meant by a *land servitude*. (3 × 2) (6)

7.2.4 Name any THREE examples of land servitudes. (3 × 1) (3)

7.2.5 Name any TWO examples of personal servitudes. (2 × 1) (2)

[30]

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QUESTION 8

Read the following case study and answer the questions.

Lucinda entered into a contract with Gym Trim. She pays monthly and is allowed to visit the gym daily between eight and three o' clock. She mostly exercises on the tread mill. There are, however, only two treadmills and both are out of order most of the time.

8.1 List any SIX *essentialia* with which this contract must comply. (6 × 1) (6)

8.2 Lucinda is very upset about the fact that the treadmills are out of order most of the time.

State any TWO possible remedies that Lucinda has at her disposal. (2 × 1) (2)

8.3 Suppose Lucinda is only seventeen years old and misrepresented her age when signing the contract. She could not uphold her payments.

On which grounds can Gym Trim hold her liable to pay any outstanding debt? (2)

8.4 List any FIVE ways in which this contract can come to an end. (5 × 1) (5)

8.5 Suppose Lucinda is transferred to Johannesburg. She wants to transfer her contract to Maseti.

Briefly discuss how this can be done. (2 × 2) (4)

8.6 Identify the form of breach in each of the following cases:

8.6.1 Lucinda does not pay her gym fees on time.

8.6.2 Gym Trim obtained a contractor to build stairs to the first floor, but they were built in the wrong place.

8.6.3 Lucinda informs Gym Trim that she is not going to make any further payments as she has lost her work.

(3 × 1) (3)

8.7 Suppose this contract is a *void contract*. What does this mean and what will the consequences of such a contract be? (4 × 2) (8)

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QUESTION 9

9.1 With regard to conveyancing, answer the following questions:

9.1.1 Define a *conveyancer*. (2)

9.1.2 What is meant by *occupational rent*? (2)

9.1.3 A conveyancer has to prepare all transfer documents.

List FIVE such documents. (5)

9.2 Discuss any FIVE minimum statutory requirements that need to be included in a credit agreement, as determined by the Credit Agreement Act, meanwhile replaced by the National Credit Act. (5 × 2) (10)

9.3 State the THREE requirements for a contract of sale to be *perfecta*. (3 × 1) (3)

9.4 Discuss the cancellation of a bond when a person sells his property. (4 × 2) (8)

[30]

QUESTION 10

Identify the legal principle in each of the following cases by choosing the correct term from the list below. Write only the term next to the question number (10.1—10.15) in the ANSWER BOOK. PLEASE NOTE: ALL THE TERMS WILL NOT BE USED.

underhand document; antenuptial contract; criminal rights; capital gains tax; preamble; limited contractual capacity; no contractual capacity; conveyancer; mortgagor; mortgagee; voidable contract; void contract; expedition theory; declaration theory; misrepresentation; rectification; ratification; consideration clause; tacit warrant; voetstoots; *traditio brevi manu*; *traditio longa manu*; marriage in community of property; execution clause

10.1 An individual, company, close corporation, partnership or trust who has borrowed money to finance the purchase of an immovable property and mortgages his/her property as security for repayment of the loan.

10.2 Person responsible for the drafting of a bond where property is sold.

10.3 Mineral rights and servitudes.

10.4 A matrimonial property system where spouses are equal partners.

10.5 Applicable theory in the case of a contract per post

10.6 The withholding of information when entering into a contract and where there is a duty to disclose it.

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

10.8 This kind of delivery takes place where the article is already in possession of the buyer.

10.9 Where a contract has been entered into orally and was put in writing later and mistakes have to be corrected as the oral version does not correspond with the written version.

10.10 This clause indicates the date as well as the place of execution.

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 insane have this kind of contractual capacity.

10.13 The buyer takes the article 'as is', with or without defects.

10.14 Applicable to marriages out of community of property.

10.15 A person with this kind of capacity can obtain rights from a contract, but cannot incur obligations.

(15 × 2) **[30]**

TOTAL SECTION B: 150
GRAND TOTAL: 200

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