higher education & training

Department:
Higher Education and Training
REPUBLIC OF SOUTH AFRICA

MARKING GUIDELINE

NATIONAL CERTIFICATE

LEGAL PRACTICE N6

28 NOVEMBER 2018

This marking guideline consists of 9 pages.

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SECTION A

QUESTION 1

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

(10 × 1) **[10]**

QUESTION 2

2.1 B
2.2 D
2.3 D
2.4 C
2.5 B

(5 × 2) **[10]**

QUESTION 3

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

(10 × 2) **[20]**

QUESTION 4

4.1 Conveyancer
4.2 Notary
4.3 Accrual
4.4 Mortgagee/creditor
4.5 Vis maior

(5 × 2) **[10]**

TOTAL SECTION A: 50

SECTION B

QUESTION 5

5.1 5.1.1 Contract of sale (1)

5.1.2
- An agreement to purchase and sell
- There must be a price
- There must be an article (3)

5.1.3 Buyer (1)

5.1.4 Seller (1)

5.1.5
- Tacit warrant against eviction
- Tacit warrant against latent defects (2)

5.1.6 (a) An invisible defect – a defect that cannot be seen with the eye.

(b) A visible defect – a defect that can be seen with the eye.

(c) Take the article as is – with or without defects

(3 × 1) (3)

5.2
- The passing of the risk rule automatically forms part of a contract of sale.
- This means that the buyer carries the loss for all accidental losses from the moment the contract is perfecta.
- A contract is perfecta once the price and the article have been determined and where the contract is unconditional.
- Accidental losses refer to losses beyond the control of the parties.

Examples of accidental losses are fire caused by lightning and a hail storm. (any applicable example)
- The risk rule can be excluded by the parties. (Any 4 × 2) (8)

5.3 A deed of transfer (1)

5.4 5.4.1 Identifies the transferor/seller

5.4.2 Description of the land/property

5.4.3 Deed of transfer

5.4.4 Purchasing price

5.4.5 Refers to the current title deed under which the land is held.

(5 × 2) (10)
[30]

QUESTION 6

6.1 **POWER OF ATTORNEY TO PASS TRANSFER (ADDENDUM A)**

I/We, the undersigned

Johann Janse van Rensburg ✓✓

ID 8709040037088 ✓

unmarried

do hereby appoint **K Joubert** ✓✓ and/or

With power of substitution to be my true and lawful Attorney and Agent to appear before the

REGISTRAR OF DEEDS AT CAPE TOWN✓✓

and there to declare that I/We did on the **tenth**✓ day of **May 2018**✓

Sell to:

Lucinda Koen✓✓

ID 5903030038086✓

unmarried

For the sum of **R1,859 million**✓ **(one million eight hundred and fifty nine thousand rand)** ✓

The following property, namely

ERF 48379✓✓

Registration Division, Western Cape, The Province of WESTERN CAPE;

IN EXTENT **1 200**✓ **(one thousand two hundred) square metres**✓

HELD BY DEED OF TRANSFER NO. **T1089/2000**✓✓ (20)

6.2 6.2.1 A mortgage bond refers to an amount of money that a debtor/mortgager borrows from a bank in order to buy immovable property. (2)

6.2.2
- Bond cancelling of the existing bond
- Transfer of the property
- Registration of the new bond (3)

6.2.3
- There must be a debt or an obligation
- There must be immovable property that serves as security for debt.
- There must be a deed that creates the bond. (3)

6.2.4
- Power of attorney from the mortgager to the conveyancer
- A draft of the relevant mortgage bond documents.
- Deed of transport (2)

[30]

QUESTION 7

7.1 7.1.1 Antenuptial contract (2)

7.1.2 Yes.✓✓
- This means that they get married out of community of property.
- Each spouse keeps his or her own assets as at the beginning of the marriage.
- Creditors of the one spouse do not become creditors of the other spouse.
- Whatever is accrued during their marriage will be shared should they get divorced. (Any 2 × 2)

(2 + 4) (6)

7.1.3 She would in general not be affected as the two estates are separated. (2)

7.1.4

	Richard	Lohandi
Assets at the beginning of marriage	100 000	200 000
Increase in each spouse's estate	350 000	500 000

DIFFERENCE OF 150 000 WILL BE SPLIT BETWEEN RICHARD AND LOHANDI
FINAL AMOUNT LOHANDI: R200 000 + 350 000 + 75 000 = R625 000
FINAL AMOUNT RICHARD: R100 000 + R350 000 +R75 000 = R525 000
Please note: 2 marks each for final amounts. No individual marks given – thus either right or wrong. (4)

7.1.5
- One joint estate from which creditors can claim.
- When the one spouse is declared insolvent, it will have an effect on the joint estate.
- When they get divorced, the estate will be divided in half.
- Both spouses are responsible for the other's liabilities.
- Premarital assets are also shared. (Any ONE) (1)

7.2 7.2.1
- A suspensive condition means that the consequences of the contract are postponed until that uncertain future occurrence happens. In this case, it means that the buyer will only become the owner once all instalments have been paid.
- A resolutive condition means that the contract takes immediate effect, but could be cancelled when there is breach of contract. Therefore ownership is not transferred until final payment is made. It therefore means that a buyer can, for example, immediately take the vehicle, but if he does not pay, the vehicle will be repossessed as he is not yet the owner.

(Any good explanation that is correct)(2 × 2) (4)

7.2.2 Contract must be in writing. (1)

7.2.3
- This is also known as section 13 of the outdated Credit Agreement Act. This is still applicable to the National Credit Act.
- It means that the buyer has FIVE working days to cancel the contract.

Two prerequisites for cancelling:
- Contract should have been concluded on other premises than the business premises.
- The initiative should go out from the credit grantor.

- When calculating the five days, the following days will be excluded: the day on which the parties entered into the contract, a public holiday, a Saturday and a Sunday.
- The credit receiver must return the goods.
- The credit grantor will refund him or her the purchase price.

(5 × 2) (10)
[30]

QUESTION 8

8.1 8.1.1 Constructive delivery/fictitious delivery/symbolic delivery (2)

8.1.2
- To deliver the article sold.
- To 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)

8.1.3 Latent defect ✓✓
Actio redhibitoria ✓✓
With this remedy the buyer can claim a reduction in the selling price.
He cannot claim damages.
He cannot cancel the contract as he can still use the car.
Plus any (2 × 2) for discussion (8)

8.1.4 To pay the price as agreed. (1)

8.2 8.2.1
- 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. (Any 5 × 1) (5)

8.2.2
- The existing title deed
- The draft deed of transfer
- Power of attorney to pass transfer
- Tax clearance certificate
- Proof of payment of transfer duty (5)

8.2.3
- Manage the communal property with respect to maintenance
- 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 5 × 1) (5)

[30]

QUESTION 9

9.1 9.1.1
- The offer must be clear and unambiguous.
- The offer must be complete.
- The offer must be communicated to the offeree.
- The offer must be made with the intention that it shall serve as an offer.
- An offer must be legally binding. (5)

9.1.2
- Acceptance must be clear and unambiguous.
- The acceptance must be unconditional.
- The acceptance must occur within the prescribed time period.
- The acceptance must be communicated by the offeree to the offeror in the prescribed manner. (4)

9.1.3 No✓
It is only an invitation to do business✓✓
It can become a valid offer if a reward is attached to it, for example, lost dog, reward offered✓✓ (5)

9.1.4
- Revocation
- Effluxion of time
- Option
- Rejection
- Death of one of the parties
- Insanity of one of the parties
- Counteroffer (Any 5 × 1) (5)

9.2 9.2.1 Supplying false information or the withholding of information where there is a duty to disclose. (2)

9.2.2

KIND OF MISREPRESENTATION	DEFINITION	REMEDIES
Fraudulent (Intentional)	False statement made willingly to induce the other party to enter into a contract.	Enforcing specific performance or cancellation plus damages
Innocent	False facts, but the person honestly believed that the facts were the truth.	Specific performance or cancellation, but NO damages
Negligent	False facts, but the person could have verified the facts before presenting it as the truth.	Specific performance or cancellation, plus damages.

(3 × 3) (9)
[30]

QUESTION 10

10.1 Deed of transfer
10.2 Actual delivery
10.3 Cooling-off period
10.4 Actio redhibitoria
10.5 Latent defect
10.6 Against good morals
10.7 Delegation
10.8 Real right
10.9 Underhand document
10.10 Stamp duty
10.11 Constitutum possessorium
10.12 Mistake
10.13 Undue influence
10.14 Incidentalia
10.15 Usufruct/personal right

(15 × 2) **[30]**

TOTAL SECTION B: 150
GRAND TOTAL: 200

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