higher education & training

Department:
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REPUBLIC OF SOUTH AFRICA

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NATIONAL CERTIFICATE

LEGAL PRACTICE N6

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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 in the ANSWER BOOK.
2. Answer only 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 in bullet form, 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 A minor of 17 years has no contractual capacity.

1.3 An example of land servitude is a right of way.

1.4 An antenuptial contract is not necessary where parties get married out of community of property.

1.5 Unjustified enrichment is a basis of liability where a minor enters into a contract unassisted.

1.6 Delivery is an essentialia of a contract of sale.

1.7 A personal servitude is a limited criminal right of a holder to do something on another's property.

1.8 A counteroffer terminates the original offer.

1.9 The 'cooling-off period', as applicable to a credit agreement under the outdated Credit Agreement Act, meanwhile replaced by the National Credit Act, can be excluded from a contract.

1.10 A cession of mineral rights must be registered at the deeds office.

(10 × 1) **[10]**

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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 Delivery with the short hand means …

A actual delivery.
B that the buyer is already in possession of the article sold.
C that the seller points out the thing to the buyer.
D that the seller keeps it in possession on behalf of the buyer.

2.2 An example of a personal servitude:

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

2.3 An example of a notarial document:

A Short-term lease contract
B A will
C Contract of insurance
D Prospecting contracts

2.4 Domicillium 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 consensus.

2.5 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 title to a new buyer of immovable property.

(5 × 2) **[10]**

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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	Patent defect	A	terms automatically included in a contract
3.2	Latent defect	B	dent in a door
3.3	Ratification	C	faulty gearbox
3.4	Rectification	D	buyer of property
3.5	Transferee	E	consent is given afterwards
3.6	Preamble	F	late delivery by the seller
3.7	Naturalia	G	where written version does not reflect oral agreement, this takes place
3.8	Mora debitoris	H	both parties must be placed in the same position they were in before entering into the contract
3.9	Restitution	I	owner of property
3.10	Transferor	J	identifies the transferor

(10 × 2) **[20]**

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 This person compiles documents for registration of fixed property.

4.2 An attorney with specialised skills.

4.3 Equal sharing of assets acquired during marriage.

4.4 The bondholder in the case of a mortgage bond.

4.5 An 'Act of God', resulting in supervening impossibility.

(5 × 2) **[10]**

TOTAL SECTION A: 50

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SECTION B

Answer any FIVE questions from this section.

QUESTION 5

5.1 Study this extract from the following document and answer the questions.

> I, Johann Janse van Rensburg (ID 8709040037088), hereby offer to sell ERF 48379 (registered in the Western Cape Province) to Lucinda Koen (ID 5903030038086). The size of the property is 1 200 square metres.
>
> The purchase price amounts to R1,859 million (…….), which is payable by the purchaser to the seller as follows: …… a deposit at undersigning hereof;……The approval of a loan to the value of ……..
>
> The purchaser shall pay all the costs of registration of transfer of the property……
>
> The onus is on the purchaser to inspect the property to ensure that there are no patent defects.
>
> The property is sold as described and the seller cannot be exempted from liability by adding a 'voetstoots' clause.
>
> Possession and suspensive occupation of the property shall be granted to the purchaser on …… The purchaser should take note that the risk for all accidental losses pass to him should occupation be taken before transfer.
>
> The seller guarantees that there are no latent defects in the structures on ERF 48379.
>
> The parties agree to choose domicilium citandi et executandi at their respective addresses as set out …….
>
> Signed by the purchaser at Welgelegen, Cape Town on this tenth day of May 2018

5.1.1 What kind of document is this? (1)

5.1.2 List the THREE essentialia of this contract. (3)

5.1.3 According to the above document who is Lucinda? (1)

5.1.4 According to the above document who is Johann? (1)

5.1.5 Name TWO tacit warranties that Johann gave to Lucinda. (2)

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5.1.6 What is meant by the following terms as used in this contract?

(a) Latent defect

(b) Patent defect

(c) Voetstoots sale

(3 × 1) (3)

5.2 'Reference is made to carrying the loss for any accidental losses.'

With regard to this clause, discuss the passing of the risk rule as applicable to this kind of contract. (4 × 2) (8)

5.3 Which document needs to be compiled for Lucinda to become the owner of this property? (1)

5.4 'The document stated in QUESTION 5.3 is divided into clear clauses.'

Briefly define what each of the following clauses refers to:

5.4.1 The preamble

5.4.2 The property clause

5.4.3 The heading

5.4.4 The compensation clause

5.4.5 The extension clause

(5 × 2) (10)
[30]

QUESTION 6

6.1 Use the information in QUESTION 5 as well as the following additional information to complete the POWER OF ATTORNEY. (Use ADDENDUM A.)

ADDITIONAL INFORMATION:

Conveyancer: K. Joubert
Deed of Transfer T1089/2000
Attorney: Coenraad van Graan (20)

6.2 Suppose Lucinda took out a mortgage bond to finance the property. With regard to this scenario, answer the following questions:

6.2.1 Define a *mortgage bond.* (2)

6.2.2 List the THREE transactions that take place simultaneously at registration of a mortgage bond. (3)

6.2.3 List the THREE minimum and basic requirements for a bond. (3)

6.2.4 List TWO accompanying documents for the registration of a mortgage bond. (2)

[30]

QUESTION 7

7.1 Read the case study below and answer the questions.

Lohandi and Richard are engaged and plan to get married on 17 November this year. They want to get married out of community of property.

7.1.1 What kind of contract needs to be drafted? (2)

7.1.2 Would you advise them to get married under the accrual system? Motivate your answer. (3 × 2) (6)

7.1.3 How will Lohandi be affected if Richard is declared insolvent? (2)

7.1.4 Calculate the accrual and the final amount that Lohandi and Richard receive in the following case:

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

(4)

7.1.5 List ONE disadvantage of getting married in community of property. (1)

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7.2 'The outdated Credit Agreement Act has been replaced by the National Credit Act.' Although a number of changes took place, certain aspects remained the same. With reference to this statement, answer the following questions.

7.2.1 'A suspensive and resolutive condition is normally included in a credit agreement.'

Define what is meant by these TWO conditions. (2 × 2) (4)

7.2.2 State the formality with which contracts must comply under these acts. (1)

7.2.3 'The credit receiver is protected by the so-called 'cooling-off' period.' Discuss this in full. (5 × 2) (10)
[30]

QUESTION 8

8.1 Read the case study below and answer the questions.

Nicholas enters into a contract with Zaino to sell his car to him for R40 000. They agree that Zaino would pay the full amount and that delivery would take place a week later. Upon delivery, Zaino discovers that the air-conditioning system is not working properly.

8.1.1 What form of delivery will take place? (2)

8.1.2 List FOUR duties that Nicholas has. (4)

8.1.3 Identify the kind of defect that Zaino discovered and discuss the remedy at his disposal. (4 × 2) (8)

8.1.4 What is Zaino's most important duty? (1)

8.2 A deed of transfer is the most important means of transferring property rights from one person to another.

With regard to this statement, answer the following questions:

8.2.1 List any FIVE requirements for the drafting of a concept title deed.

8.2.2 List the FIVE documents that must be submitted for the registering of fixed property

8.2.3 'A property can also be registered under a sectional title.' In such a case a body corporate needs to be appointed.

List FIVE functions of such a body corporate. (3 × 5) (15)
[30]

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QUESTION 9

9.1 'A contract consists of two parts, namely an offer and acceptance.'

With regard to this statement, answer the following questions:

9.1.1 List FIVE requirements of an offer to constitute a valid offer. (5)

9.1.2 List FOUR requirements for acceptance. (4)

9.1.3 Is an advertisement a valid offer? Briefly discuss. (5)

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

9.2 'Contracts can be declared void for various reasons. One such reason is misrepresentation.'

9.2.1 Define the concept *misrepresentation*. (2)

9.2.2 Discuss the THREE kinds of misrepresentation. Present your answer as follows:

Kind of misrepresentation	Definition	Remedies

(9)
[30]

QUESTION 10

In each of the following cases, identify the applicable legal principle. Please note that a term may only be used once and that all terms will not be used.

against good morals; stamp duty; real right; patent defect; latent defect; usufruct; personal right; undue influence; constitutum possessorium; actio quanti minoris; actio redhibitoria; cession; delegation; registration; actual delivery; incidentalia; cooling-off period; deed of transfer; underhand document; mistake

10.1 This document serves as proof of new property ownership

10.2 Hand in hand delivery

10.3 Only available to buyer where contract has been signed on other premise than the business premise

10.4 Remedy for latent defect where the article cannot be used at all

10.5 A fault in the gearbox

10.6 An example of this is dealing in drugs

10.7 Duties in an existing contract are transferred to a third party

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10.8 Ownership is an example of this and can be enforced against the whole world

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

10.10 A type of tax payable to the government on certain notarial deeds

10.11 Delivery by means of an agreement

10.12 This renders a contract void

10.13 This renders a contract voidable

10.14 An express, added term to a contract

10.15 An example of this is where a farm is sold, but someone has the right to stay in the house until he/she dies

(15 × 2) **[30]**

TOTAL SECTION B: 150
GRAND TOTAL: 200

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