higher education & training

Department:
Higher Education and Training
REPUBLIC OF SOUTH AFRICA

NATIONAL CERTIFICATE

LEGAL PRACTICE N6

(13030126)

29 November 2019 (X-Paper)
09:00–12:00

This question paper consists of 12 pages and two addenda of 3 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. Cross out clearly ALL work you do not want to be marked.

INSTRUCTIONS AND INFORMATION

1. SECTION A is COMPULSORY, and it 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 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 Misrepresentation renders a contract void.

1.2 All immovable properties must be registered in the deeds office.

1.3 A suspensive condition means that the consequences of a contract take immediate effect.

1.4 A marriage is presumed to be out of community of property if there is no antenuptial contract.

1.5 The creditor is the bondholder when immovable property is sold.

1.6 An offer is terminated when a counteroffer is made.

1.7 Duress renders a contract voidable.

1.8 Reference is also made to the article as the merx in a contract of sale.

1.9 An insane person has no contractual capacity.

1.10 Cession of mineral rights occurs by means of a notarial deed of cession which is registered in 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 An example of a mistake is …

A one party providing false information but doing it unknowingly.
B a misunderstanding.
C a party entering into a contract of lease, thinking it was a contract of sale.
D undue influence.

2.2 An example of a personal servitude:

A Right of way
B Right to lay on water
C Usage
D Right to lay on electricity

2.3 Which ONE of the following is NOT a requirement for all contracts?

A Serious intention to be contractually bound
B Lawfulness
C Consensus
D Formalities

2.4 A reasonable mistake is called a/an …

A iustus error.
B iusta causa.
C error juris.
D error in negotia.

2.5 Choose the INCORRECT answer:

The requirements for a contract of sale include …

A an agreement between the buyer and the seller.
B delivery.
C agreement on the price.
D agreement on the article.

(5 × 2) **[10]**

QUESTION 3

Choose a description from COLUMN B that matches a word or 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	Ratification	A	an example of which is an insane person
3.2	Rectification	B	consent is given afterwards
3.3	A void contract	C	the buyer in the case of immovable property
3.4	A voidable contract	D	to correct something in a contract that was not right
3.5	Mortgagor		
3.6	Mortgagee	E	no rights or obligations can flow from this
3.7	Limited contractual capacity	F	legal rights and obligations flow from this
3.8	Cession	G	an example of which is the prodigal
3.9	Delegation	H	the transfer of rights
3.10	No contractual capacity	I	the transfer of obligations
		J	the financial institution that lends money to the buyer

(10 × 2) **[20]**

QUESTION 4

Give ONE word or term for each of the following descriptions. Write only the word or term next to the question number (4.1–4.5) in the ANSWER BOOK.

4.1 An attorney with special skills who deals with the transfer of property

4.2 A limited real right that one person has over another person's property

4.3 The final document that transfers ownership of immovable property from the seller to the buyer

4.4 Tax payable on the profit a seller makes when a property is disposed of

4.5 A form of taxation claimed by the State in terms of certain notarial deeds

(5 × 2) **[10]**

TOTAL SECTION A: 50

SECTION B

Answer any FIVE questions in this section.

QUESTION 5

Read ADDENDUM A, steps 1 to 4, and answer the following questions:

5.1 Define a *contract of sale*, as mentioned in step 1. (4 × 2) (8)

5.2 Name the TWO parties to a mortgage bond and briefly define each. (2 × 2) (4)

5.3 Mortgage bonds also involve additional costs.

List THREE additional costs that a buyer will incur when buying property. (3)

5.4 Give an example of a suspensive condition, as mentioned in step 4 that may be included in a contract of sale and explain its meaning. (2 × 2) (4)

5.5 Name the TWO formalities with which a contract of sale for immoveable property must comply. (2)

5.6 List FOUR transfer documents which need to be prepared by a conveyancer. (4)

5.7 The buyer first needs to sign a purchase agreement before a valuator will be sent out to determine the value of the property for a mortgage bond.

List the FIVE requirements for such a purchase agreement. (5)

[30]

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QUESTION 6

Read ADDENDUM A, steps 5 to 8, and answer the questions.

6.1 Study the following title document and identify clauses 6.1.1 to 6.1.5:

BE IT HEREBY MADE KNOWN –

THAT SONGEZO MTWYE

Appeared before me, REGISTRAR OF DEEDS at CAPE TOWN, the said Appearer being authorised thereto by a Power of Attorney signed at SUTHERLAND on the 7th day of September 2018 and granted to him by:-

JESSICA JASSON

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

NAOMI SAMPSON

Identity number 570717 0037084

Married

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

ERF 2188

ELSIES RIVER

Of the Western Cape Municipality

PAROW DIVISION, WESTERN CAPE PROVINCE

IN EXTENT 500 (FIVE HUNDRED) 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 2019.

6.1.1 The extension clause

6.1.2 The property clause

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6.1.3 The preamble

6.1.4 The consideration clause

6.1.5 The causa

(5 × 1) (5)

6.2 Study the title deed in QUESTION 6.1 and answer the questions.

6.2.1 Who is the buyer of the property? (1)

6.2.2 Who is the seller of the property? (1)

6.2.3 When did the buyer become the registered owner of this property? (1)

6.2.4 Who appeared in front of the registrar on behalf of the seller? (1)

6.2.5 Use the following table to calculate the transfer cost of this property. Show ALL calculations.

VALUE OF PROPERTY (Rand)	RATE
0–750 000	0%
750 001–1 250 000	3% on the value above 750 000
1 250 001–1 750 000	15 000 + 6% of the value above 1 250 000
1 750 001–2 250 000	45 000 + 8% of the amount above 1 750 000
2 250 001 and above	85 000 + 11% of the amount above 2 250 000

(5 × 1) (5)

6.3 The above property has been sold. Complete the attached 'Power of Attorney to Transfer' (ADDENDUM B) by using the information in the HOLDING DEED (see QUESTION 6.1) (16)
[30]

QUESTION 7

7.1 Read the following scenario and answer the questions:

Jonell sells her car to Zandile. Zandile pays a deposit of R30 000 and undertakes to pay five more instalments of R3 000 each.

7.1.1 What kind of transaction is this? (1)

7.1.2 A resolutive condition is included in this contract.

Briefly explain what a *resolutive condition* is. (2)

7.1.3 The contract of sale was signed at Jonell's home. Zandile therefore has the cooling-off period at her disposal.

Discuss what is meant by a *cooling-off period*. (5 × 2) (10)

7.1.4 Suppose Zandile discovers the following defects: A wiper is broken, and the air conditioner is not working properly.

Complete the following table:

Defect	**Kind of defect** (2 marks)	**Remedy for this kind of defect** (2 marks	**What the buyer can claim** (2 marks)

(6)

7.1.5 What does a *voetstoots sale* mean? (1)

7.2 All sold goods cannot be handed over 'de manu in manum' (from hand to hand).

Identify the form of constructive delivery in each of the following cases:

7.2.1 Jonell hands over the keys of the car to Zandile.

7.2.2 Helen bought a matric farewell dress from B & B Designers but left it with the company for small alterations to be done.

7.2.3 Princess got married to Landiwe. Princess's father pointed out the cattle to be paid as lobola.

(3 × 2) (6)

7.3 Read the following scenario and answer the questions.

Suzanne buys a car from AB Dealers in Cape Town on 18 May. Three days later, Constable Zoutman knocks on her door and informs her that the car she has bought actually belongs to a Mr Kotzi, which means that she has bought a stolen car.

7.3.1 Must Suzanne hand over the car to Constable Zoutman immediately? Supstantiate your answer. (2)

7.3.2 Which warranty given by the seller would have protected Suzanne in this case? (1)

7.3.3 What is meant by *vacuo possessio*? (1)

[30]

QUESTION 8

Identify the legal principle in each of the following scenarios and write it next to the question number:

8.1 Zhandre is seventeen years old. He has a full-time job, earns R12 000 per month and occupies a flat. He rents an office in a shopping complex, from where he runs his business. Although still a minor, he will be bound by this legal principle if he cannot pay his rent.

8.2 Zonique sold dagga to Jeneve and handed it over to her. Jeneve now refuses to pay for it.

8.3 Hani is at an auction. He bids on an antique display cupboard with cups and saucers on display. He thinks that he is bidding on both, only to realise later that he has bought the display cupboard only and that the cups and saucers will be sold separately.

8.4 An estate agent sells a house next to an open piece of land. The buyer asks her more than once what the land has been zoned for and she ensures the buyer that it will become a park. The buyer has now been informed by the municipality that a road will be made there.

8.5 Richard was held at gunpoint to force him to sign a contract of sale.

8.6 Melanie was retrenched at a liquor company and informed that she would not be allowed to work for a similar kind of company within a radius of 40 kilometres.

8.7 Because a hailstorm has destroyed the vineyard, the employer does not need seasonal employees any longer.

8.8 Let him who signs beware.

8.9 The identities of the contracting parties are mistaken, as they are identical twins.

8.10 By this remedy, money can be claimed for financial losses suffered.

8.11 This term is used to indicate which court will have the right to make a decision in case of a dispute.

8.12 This clause indicates the amount the mortgagor must pay back.

8.13 This document can be drafted by a notary and can only be signed by the parties referred to in the document.

8.14 This declaration is made by a person of his or her intention to conclude a contract.

8.15 The theory applicable to contracts per post.

(15 × 2) **[30]**

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QUESTION 9

9.1 Read the following statement and answer the questions:

'Couples can decide on how they want to be married. This is indeed a very important decision, as it may have vast consequences should they decide to get divorced.' One such a method is out of community of property with the accrual system.



MARRIAGE THE LEGAL ASPECTS

9.1.1 Briefly discuss what it means to get married out of community of property with the accrual system. (2 × 2) (4)

9.1.2 Name the other TWO ways in which couples can get married. (2)

9.1.3 List THREE advantages of getting married out of community of property with the accrual system. (3)

9.1.4 Use the following information to calculate the accrual:

	HUSBAND	WIFE
Assets upon marriage	R350 000	R210 000
Assets upon divorce	R1 500 000	R750 000

(5)

9.2 Refer to ADDENDUM A and answer the questions.

9.2.1 In step 8, the conveyancer appears at the deeds office to register the deed.

List FOUR important things that the conveyancer or the deeds secretary must now do to conclude the transaction. (4)

9.2.2 Reference is made in step 5 to certain compliance certificates to be provided by the seller.

List FOUR such certificates. (4)

9.2.3 Suppose this property was sold under sectional title.

List EIGHT duties of the body corporate. (8)

[30]

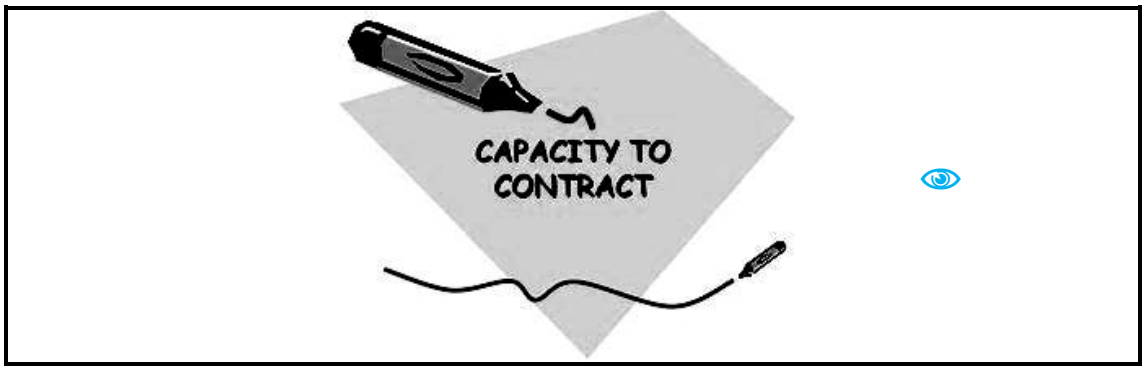
QUESTION 10

10.1 The outdated Credit Agreement Act has been replaced by the National Credit Act. There are some similarities, but also vast differences. In both, a credit agreement must comply with certain minimum statutory requirements to be valid.

Briefly discuss FIVE such minimum statutory requirements. (5 × 2) (10)

10.2 Do you understand who is a minor, whether you can enter into a contract with a minor and what the legal consequences will be?

Answer the following questions to make sure that you do understand the situation when entering into a contract with a minor:



10.2.1 Define the term *minor.* (3)

10.2.2 What is the general rule that will be applied when a minor concludes a contract without assistance? (2)

10.2.3 In some cases, a minor can enter into a contract unassisted. Two such cases are where ratification takes place or where the minor is emancipated.

Briefly discuss what is meant by these TWO cases. (2 × 2) (4)

10.2.4 On which grounds will a minor be held liable when he or she lied about his or her age? (1)

10.3 List FIVE examples of notarial documents. (5)

10.4 List FIVE pieces of information that will be found in a prospecting contract. (5)
[30]

TOTAL SECTION B: 150
GRAND TOTAL: 200

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ADDENDUM A



THE CONVEYANCING PROCESS

STEP 1: THE EXCITING PART!

- The buyer and the seller sign the contract of sale.
- The buyer's bond is approved by the bank.

STEP 2: FACTS AND FIGURES

- The relevant conveyancing attorneys are instructed to carry out the transfer and bond registration.
- The attorneys collect:
  - ✓ The title deeds and cancellation figures
  - ✓ Rates clearance figures and valuation certificates
  - ✓ Levy figures
  - ✓ Guarantee figures

STEP 3: SALES CONDITIONS

- The deal only proceeds when the suspensive conditions are met.

STEP 4: SIGNATURES AND PAYMENTS

- Once all conditions have been met, the transfer and bond documents are drafted by the relevant attorneys.
- The buyer and the seller sign the respective transfer documents.
- The buyer signs the bond documents.
- All relevant transfer costs are paid by the buyer.
- The seller pays their rates, including advance rates, if required.
- The transfer attorney applies for a transfer duty receipt from SARS, a rates clearance certificate and a levy certificate and makes the necessary payments.

STEP 5: COMPLIANCE CERTIFICATES

- The seller is now required to provide certain compliance certificates

STEP 6: GUARANTEES

- The attorneys provide guarantees from the buyer's bank for the purchase price, or the balance of the purchase price if a deposit has been paid up front.
- The seller's existing bond on the property is prepared to be cancelled.
- The attorneys ensure FICA compliance as a protective measure against fraud.

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STEP 7: LODGMENT

- When all documents have been signed, costs have been paid and certificates have been obtained, the documents are prepared for lodgement in the deeds office.
- The documents are examined in the deeds office (±10 working days).
- After 7 to 10 working days, the attorneys will be advised that the matter is 'up for registration' and they will have five working days to finalise anything outstanding.

STEP 8: REGISTRATION AND PROCEEDS

- The conveyancers appear at the deeds office to register the deeds.

STEP 9: THE FINALE

- The buyer and the seller have long since forgotten the process and have settled into their new lifestyles.
- After approximately three months, the original title deed and bond documents are delivered back to the attorneys by the deeds office.
- The original title deed is delivered to the bank (if the property is bonded) or to the owner (if unbonded). A copy of these documents is normally sent to the buyer and the seller by the attorneys.

[Source: *file:///E:/Snymans-Conveyencing-Process.pdf,* accessed 30 July 2018]

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ADDENDUM B

QUESTION 6.3 EXAMINATION NUMBER: | | | | | | | | | | | | | |

POWER OF ATTORNEY TO PASS TRANSFER

I/We, the undersigned

……..

……

……

do hereby appoint …… and/or ……..……

with power of substitution to be my true and lawful attorney and agent to appear before

the **……**

and there, to declare that I/we did on the **……** day of ……...

sell to:

……

……

……

for the sum of ……

the following property, namely

……. …….

Registration Division, Western Cape, the Province of CAPE TOWN;

IN EXTENT **……**

HELD BY DEED OF TRANSFER NO. **……..**

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