higher education & training

Department:
Higher Education and Training
REPUBLIC OF SOUTH AFRICA

MARKING GUIDELINE

NATIONAL CERTIFICATE

LEGAL PRACTICE N6

14 September 2020

This marking guideline consists of 9 pages.

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SECTION A

QUESTION 1

1.1 B
1.2 B
1.3 A
1.4 C
1.5 A
1.6 B
1.7 D
1.8 C
1.9 D
1.10 A

(10 × 1) **[10]**

QUESTION 2

2.1 False
2.2 True
2.3 True
2.4 False
2.5 False

(5 × 2) **[10]**

QUESTION 3

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

(10 × 2) **[20]**

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QUESTION 4

4.1 Prodigal
4.2 Pretium
4.3 Antenuptial contract
4.4 Servitude
4.5 Consensus
4.6 Par delictum rule
4.7 Cooling-off period
4.8 Misrepresentation
4.9 Vis maior
4.10 Restitution

(10 × 1) **[10]**

TOTAL SECTION A: 50

SECTION B

Candidates should answer any FIVE of the following SIX questions.

QUESTION 5

5.1 A person is competent when he or she has contractual capacity to enter into a contract.

OR

A person is competent when he or she is able to obtain rights and obligations from a contract. (2 marks for ONE of the above descriptions) (2)

5.2 5.2.1 Not competent.✓ Juandre is a minor with limited contractual capacity.

5.2.2 Competent.✓ A prodigal only has limited capacity when it comes to his or assets being affected. ✓

5.2.3 Not competent.✓ A drunk person has no contractual capacity. ✓

5.2.4 Not competent to do so.✓ The insolvent has limited contractual capacity and cannot alienate his or her assets without consent.✓

(4 × 2) (8)

5.3 5.3.1 Not a valid offer. ✓ The offer must be complete. ✓

5.3.2 Not a valid acceptance/contract.✓ Acceptance must be unconditional.✓

5.3.3 Not a valid offer.✓ The offer must be a complete offer.✓

5.3.4 Not a valid acceptance.✓ The offer came to an end✓ (effluxion of time).

5.3.5 Not a valid offer.✓ The offer must comply with the essentialia of a contract.

OR

It is an illegal offer.✓

(5 × 2) (10)

5.4 5.4.1 Defective consensus.✓ This is misrepresentation.✓

5.4.2 No consensus.✓ It is a mistake.✓

5.4.3 Defective consensus.✓ This is duress.✓

5.4.4 Defective consensus.✓ Negligent misrepresentation.✓
(Also accept just misrepresentation.)

5.4.5 Not a valid contract or offer.✓ An advertisement is only an invitation and not an offer.✓

(5 × 2) (10)
[30]

QUESTION 6

6.1 Conveyancing means the preparation of documents and the process to transfer land to a new owner. (2)

6.2 The seller (1)

6.3
- An offer to purchase must be completed.

OR

- A contract of sale must be drafted.✓✓
- The contract must be in writing.✓
- The contract must be registered.✓ (4)

6.4
- Transfer costs
- Taxes
- Outstanding municipal costs on the day of possession (3)

6.5
- Occupation is taken before transfer takes place.
- Possession takes place after transfer takes place at the deeds office.

(2 × 2) (4)

6.6 Take the article as is, with or without defects. (1)

6.7 The seller (1)

6.8 Suspensive condition (1)

6.9
- Power of attorney
- Proof of payment of transfer duty
- Proof of payment of land tax (tax clearance certificate)
- Solvency statement
- Status declaration
- The existing title deed
- The draft deed of transfer (Any 4 × 1) (4)

6.10

2 250 001 – 10 000 000	R80 500✓ + 11% of (R2 400 000 – R2 250 000✓
	= R80 500✓ + R16 500✓
	= R97 000✓✓
	Full marks if only the correct answer is given.

(6)

6.11 Steven Makola ✓
ID 5808070038081 (any fictitious ID) ✓
(Married out of community of property) ✓
(If student also provides the wife's details, subtract 1 mark) (3)
[30]

QUESTION 7

7.1 7.1.1 One collective (joint) estate exists. (2)

7.1.2 Each spouse has his or her own estate. Each spouse keeps his or her own property. (2)

7.1.3 Each spouse has his or her own estate,✓ but when they get divorced the accrual is calculated, the difference found and divided between the two parties. ✓ (2)

7.1.4
- Each spouse is entitled to half of the estate upon divorce.
- The creditors of one spouse also becomes the creditors of the other spouse.
- If the business goes bankrupt and it is registered in the name of the one spouse, the entire estate is lost.
- Both spouses are responsible for the other's liabilities. (Any ONE) (1)

7.1.5

	Husband	Wife
Net estate before marriage	R250 000	R500 000
Net estate after divorce	R1 250 000	R900 000
Accrual	R1 000 000 ✓	R400 000✓
Difference between accruals		R600 000✓
To be split in half	R300 000	R300 000✓

Husband's final amount = R1 000 000 – R300 000 = R700 000✓
Wife will get R400 000 + R300 000 = R700 000✓ (6)

7.2 7.2.1
- It is a limited right
- which grants the holder thereof in his personal capacity
- the right to do something on another's property
- or to prohibit the proprietor from exercising some or other normal right as owner (4)

7.2.2
- Usufruct
- Usage
- Occupation (3)

7.2.3
- Established by means of a deed signed by the owner✓ of the property and certified by a notary.✓
- Registration takes place against the title deed of the serving property.✓✓ (2 × 2) (4)

7.2.4
- A clear heading, for example, Notarial deed of servitude
- Place and date for signing
- Name and address of the notary
- Identification of the parties concerned
- Description of the land concerned
- Definition of the servitude
- Execution (parties sign, two witnesses and the notary certify)

(Any 6 × 1) (6)
[30]

QUESTION 8

8.1
- Actio redhibitoria
- This is a special remedy for a latent defect.
- Buyer (Irvin) can cancel the contract.
- General rule is that Irvin cannot claim damages.
- Irvin must return the car. (5 × 2) (10)

8.2
- Protected by the tacit warrant against eviction.
- Irvin must inform the seller that he is threatened with eviction.
- He must not hand over the car to the person claiming that it is his. (3 × 2) (6)

8.3
- Irvin (the buyer) will carry the loss.
- This is due to the passing of the risk rule that forms automatically part of the contract of sale unless excluded.
- This means that the buyer bears the risk for any accidental loss from the moment the contract is perfecta.
- A hail storm is an example of supervening impossibility (something beyond the control of the parties). (4 × 2) (8)

8.4
- The cooling-off period is available where a contract was entered into at another place than on a business premises.
- The initiative must have gone out from the seller (the credit grantor).
- It means that the buyer has five working days to cancel the contract.
- This excludes the day on which the parties enter into the contract, a Saturday and a Sunday and a public holiday.
- The buyer must return the article and will be refunded.
- The whole process should be completed within 10 days. (Any 3 × 2) (6)

[30]

QUESTION 9

9.1

K Kotsi√

CONVEYANCER√

T12087/2000√

DEED OF TRANSFER

BE IT HEREBY MADE KNOWN

THAT Karel Kotsi√

Appeared before me**, REGISTRAR OF DEEDS** at **CAPE TOWN...**authorised thereto by a power of attorney signed at PAROW on the 2nd day of June 2019 to him by

JONELLA ELIAS√

ID 8703060034084√

Unmarried√

AND the said appearer declared that his said appearer declared ….., did by these presents, cede and transfer to an on behalf of :

Sibonyani Hani√

ID 7804090038081√

Unmarried√

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

ERF 4768√

KUILSRIVER, CAPE TOWN√

IN EXTENT 1 300 √(One thousand three hundred) square metres√

…..the purchase price to be

R1 670,00√ (ONE MILLION SIX HUNDRED AND SEVENTY RAND)√

(16)

9.2

POWER OF ATTORNEY TO PASS TRANSFER

I, the undersigned

Jonella Elias√

ID 8703060034O8√

Unmarried√

Do hereby appoint Karel Kotsi√ and/or

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

REGISTRAR OF DEEDS√

And there to declare that I did on the 7th day of May 2019

Sell to

Sibonyani Hani√

ID 7804090038081√

Unmarried√

For the sum of R1 670,00√ (one million six hundred and seventy rand)√

The following property, namely

Erf 4768, Kuilsriver√

Registration Division, Western Cape, the province of CAPE TOWN

IN EXTENT

1 300√ (one thousand three hundred) square metres√

HELD BY DEED OF TRANSFER NO T12087/2000√

(14)
[30]

QUESTION 10

10.1

VOID CONTRACT	VOIDABLE CONTRACT
No consensus reached.	There is a defect in consensus.
No valid contract.	Contract is valid until declared void by a court.
Example: A mistake	Examples: Misrepresentation, Duress, Undue influence

(3 × 2) (6)

10.2 The mistake must be a misunderstanding regarding material facts concerning the contract.✓✓ Court Case *Maritz* v *Pratley*. The misunderstanding must go to the root of the contract. (Plus any fact for the other✓✓ marks.)

The mistake must be reasonable.✓✓ It must be an iustus error. It must not be due to the negligence of the party who wants to rely on a mistake.
(Plus any fact for the other✓✓ marks.)
(4 × 2) (8)

10.3
- Where the goods have to be weighed, measured or counted.
- Where the contract is conditional.
- Where the seller fails to deliver on time (mora debitoris).
- Through a special agreement (where the risk has been excluded in the contract). (Any 3 × 1) (3)

10.4

Symbolic delivery✓	The key of a car is handed over. A bill of lading is handed over.✓✓
Traditio brevi manu or delivery with the short hand✓	The article is already in possession of the person who now buys the article, for example, a person borrowed something from another and now buys it.✓✓
Traditio longa manu or delivery with the long hand✓	Pointing out where something is that is too heavy to deliver, for example, the pointing out of cattle.✓✓
Constitutum possessorium✓	The seller keeps the article to make alterations.✓✓

(4 × 3) (12)

10.5 No (1)
[30]

TOTAL SECTION B: 150
GRAND TOTAL: 200

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