higher education & training

Department:
Higher Education and Training
REPUBLIC OF SOUTH AFRICA

NATIONAL CERTIFICATE

LEGAL PRACTICE N6

(13030126)

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This question paper consists of 15 pages and 2 addenda.

046Q1B2014

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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 will be marked. Clearly cross out all work you do not want to be marked.

INSTRUCTIONS AND INFORMATION

1. SECTION A is COMPULSORY and must be answered by all candidates in the ANSWER BOOK.

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. Start each section on a new page.

6. Use only a black or blue pen.

7. Write neatly and legibly.

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SECTION A

QUESTION 1

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 (1.1–1.10) in the ANSWER BOOK.

1.1 A/An … is a practising attorney who has passed an additional exam to deal with the preparation of documents and the process of transferring land to a new owner.

A magistrate
B notary
C advocate
D judge

1.2 The … serves as proof of new ownership.

A contract of sale
B deed of transfer
C offer to purchase
D power of attorney

1.3 Choose the incorrect option. Characteristics of a sectional title:

A Owner obtains a joint right of property
B Buyer obtains a joint right of property
C Each owner obtains a sectional title
D Registration of each title takes place separately at the deeds office

1.4 A consequence of getting married in community of property:

A Each party will be liable for his/her own debts
B Assets will be shared pro rata when parties get divorced
C Assets will be shared equally when parties get divorced
D Premarital assets are not shared

1.5 Cession means …

A the transfer of rights.
B the transfer of obligations.
C the transfer of rights and obligations.
D the replacement of a debtor by a creditor.

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1.6 An example of a voidable contract:

A Bea thought she was buying a vintage car, but it was an ordinary car
B Celine intentionally gave the wrong information as she wanted to sell her house
C Amikele entered into a contract while drunk
D Zumele, 16 years old, entered into a contract to buy a second-hand bicycle

1.7 A wager agreement is an example of a/an … contract.

A voidable
B void
C valid
D unenforceable

1.8 The applicable theory for entering into a contract by post:

A Declaration theory
B Reception theory
C Expedition theory
D Information or communication theory

1.9 An example of a person with limited contractual capacity:

A An infant
B A drunk person
C A mentally ill person
D A prodigal

1.10 Choose the incorrect option. Contracts that need to be notarially executed:

A Contracts of sale
B Antenuptial contracts
C Leases of mineral rights
D Cessions

(10 × 1) **[10]**

QUESTION 2

Indicate whether the following statements are TRUE or FALSE by writing only 'True' or 'False' next to the question number (2.1–2.5) in the ANSWER BOOK.

2.1 No formalities are required when immovable property is sold.

2.2 A contract of sale is not terminated where the risk forms part of the contract.

2.3 The delivery of an article sold is a consequence of the contract of sale and not a prerequisite.

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2.4 Mora creditoris means late delivery of the product.

2.5 A latent defect is visible.

(5 × 2) **[10]**

QUESTION 3

Choose a term from COLUMN B that matches a description in COLUMN A. Write only the letter (A–K) next to the question number (3.1–3.10) in the ANSWER BOOK.

COLUMN A		COLUMN B	
3.1	This identifies the transferor	A	voetstoots sale
3.2	Can only be drafted by a notary and can only be signed by the parties referred to in the document	B	actio quanti minoris
3.3	Applicable to marriages out of community of property	C	naturalia
3.4	There must be an agreement to purchase and sell	D	preamble
3.5	This person is the buyer in a transaction where immovable property is bought	E	mortgagee
3.6	To buy an item as it is	F	joint property
3.7	The creditor	G	underhand document
3.8	Remedy for a less serious latent defect	H	accrual
3.9	Seller gives the buyer a warrant that he/she will not be lawfully evicted	I	essentialia
3.10	Example of this would be passages in a block of flats	J	incidentalia
		K	mortgagor

(10 × 2) **[20]**

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QUESTION 4

Give ONE term for each of the following descriptions by writing it next to the question number (4.1–4.10) in the ANSWER BOOK.

4.1 A person who squanders his/her assets.

4.2 The Latin term for the price in a contract of sale.

4.3 An agreement between a husband and a wife who are legally competent to get married.

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

4.5 The parties must be of the same mind. They must have reached ….

4.6 Where both parties are equally at guilt, the possessor is in the strongest position.

4.7 The right of the buyer to return goods bought within a period of ten days where these goods have been bought under the outdated Credit Agreement Act, meanwhile replaced by the National Credit Act.

4.8 The withholding of facts where a contracting party has the duty to disclose.

4.9 An example of supervening impossibility where an act of God prevents performance.

4.10 Both parties must be placed in the same position in which they were before entering into a contract.

(10 × 1) **[10]**

TOTAL SECTION A: 50

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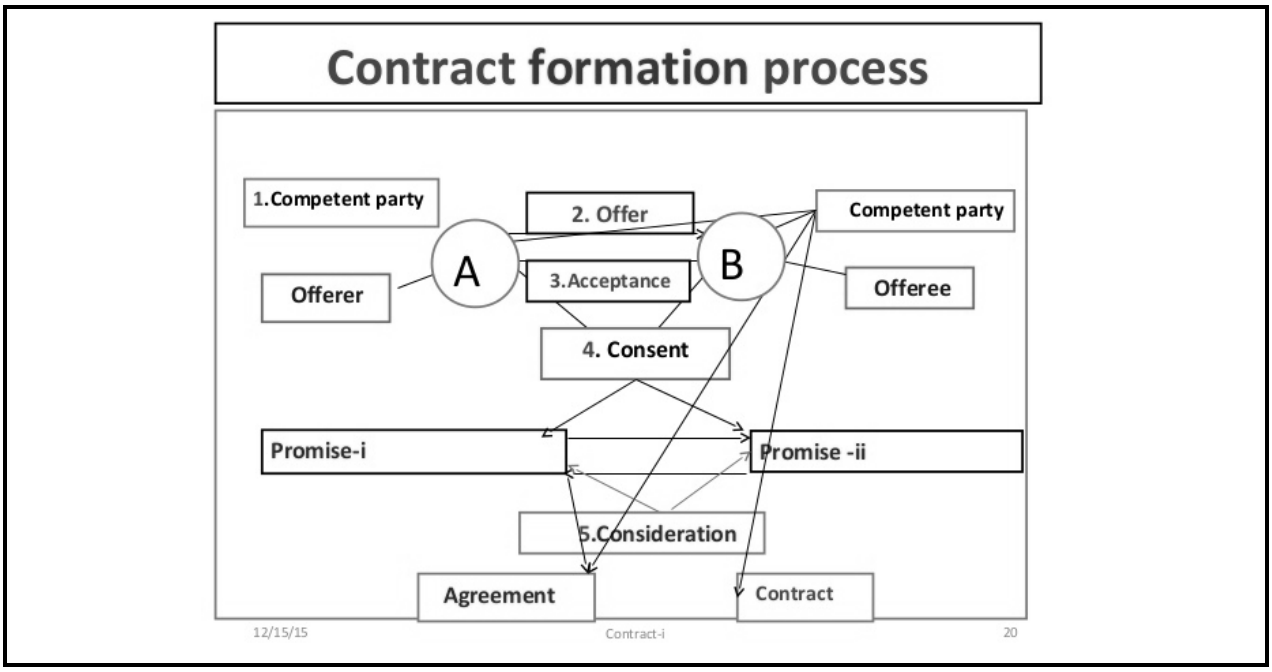
SECTION B

Answer any FIVE questions from this section.

QUESTION 5

You are an N6 Legal Practice student and have been approached by the Entrepreneurship lecturer to do a presentation on certain aspects of entering into a contract.



5.1 Briefly explain to the EBM group what is meant by a competent party. (2)

5.2 In each of the following cases indicate to the group whether the person is competent or not to enter into a valid contract. Substantiate your answers.

5.2.1 Juandre, 15 years old, enters into a contract with a gym for R350 per month.

5.2.2 Landile has been declared a prodigal. He wants to get married.

5.2.3 Peter was drunk when he entered into a contract of sale.

5.2.4 Songezo has been declared insolvent. He wants to sell two of his cars.

(4 × 2) (8)

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5.3 The diagram indicates that a contract comes into existence via the processes of an offer and acceptance.

Indicate in each of the following cases whether a valid offer was made or whether acceptance will lead to a valid contract.

Substantiate your answer in each case by referring to the specific requirement for an offer, or acceptance fulfilled, or not fulfilled.

5.3.1 Anwar offers her car to Bert, stating that they can discuss the price at a later stage.

5.3.2 Anwar offers her car to Bert for R34 000 and Bert accepts the offer, but indicates that he is willing to pay only R30 000.

5.3.3 Anwar offers one of her cars to Bert for R34 000.

5.3.4 Anwar offers her Honda Ballade, 1994 model, to Bert for R34 000 and states that her offer will expire on 31 March. Bert accepts the offer on 1 April.

5.3.5 Anwar offers a car that she stole from a dealer to Bert for R34 000.

(5 × 2) (10)

5.4 For a valid contract to come into existence, consent (consensus) needs to be reached between the offeror and the offeree.

With regard to this statement, indicate in each of the following cases whether consensus has been reached.

Substantiate your answer in each case by referring to the specific legal principle applicable.

5.4.1 Dyonase sells her TV to Landile as brand new. Landile discovers that this is not the truth.

5.4.2 Andile attends an auction and makes an offer to buy a table and chairs. She is under the impression that the two items are sold together, but after the table has been sold, the auctioneer starts with the selling of the chairs.

5.4.3 Zenobia enters into a contract after she has been threatened that if she refuses do so, her child will be kidnapped.

5.4.4 An estate agent sells a piece of vacant land without determining what part of it will be used. The buyer later discovers that part of it will be zoned for a road with right of way through the premises.

5.4.5 Shop B advertises a lawnmower for R1 870,00. When the buyer visits the shop, he is informed that the price is actually R2 870,00.

(5 × 2) (10)

[30]

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QUESTION 6

Read the following article on conveyancing. Some sections of the article are incomplete. You need to complete these sections by answering the questions that follow.



WHAT IS CONVEYANCING?

6.1 ……

WHAT IS A CONVEYANCER?

A conveyancer is an attorney with special skills. This is necessary to ensure the protection of the various interests the parties have in the transaction and to maintain the high standard of land registration.

WHO APPOINTS A CONVEYANCER?

6.2 ……

WHAT IS THE FIRST STEP IN THE SALE OF FIXED PROPERTY?

6.3 ……

WHAT ARE THE TERMS OF SALE TO BE CONSIDERED BY THE SELLER AND THE PURCHASER?

- The name, address, identity numbers and marital status of both buyer and seller, (e.g. married in or out of community of property, or by way of foreign marriage); if a legal entity is buying, the capacity of its signatory;
- A clear description of the property;
- The selling price and manner of payment. If a deposit is payable, that it be held in trust by the named conveyancer or estate agent;
- The buyer is liable for the following costs:
  6.4 ……..
- The date on which the buyer is to take possession and occupation; the date on which it is to take place;
  6.5 ……..
- That the property is sold voetstoots
  6.6 ……
- The name of the conveyancer who will attend to the transfer;
- That commission is due to a named estate agent, and the amount thereof; that the specific agent introduced the buyer to the property; or was the cause of sale;

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- That if occupation is taken before the date of transfer, the buyer will pay occupational interest or rental from that date. The amount and manner of payment must be stated;
- If a beetle-free certificate has to be obtained, who must pay for the inspection and any work required;
- Usually the **6.7 ……** will pay for an electrical certificate and any work required;
- That no amendment to the agreement of sale will be valid unless it is in writing and signed by both parties;
- Where the sale is subject to the purchaser's obtaining a loan, the amount of such loan, the institution to whom he/she may apply and the date by which the loan must be approved;
  6.8 ……
- Where the sale is subject to the sale of the purchaser's property, a description of the property, the amount for which it is to be sold and the date by which it must be sold.

WHAT HAPPENS NEXT?

The deed of sale is handed to the appointed conveyancer, who will draft the necessary documents. Both the seller and the purchaser will be required to call at the offices of the conveyancer to sign the necessary documents.

6.9 ……..

WHAT ARE THE COSTS INVOLVED?
The costs relating to the transfer of the fixed property fall into three categories:
Transfer duty or VAT

6.10 ……..

Bond cancellation costs

If the seller has a bond registered over his/her property, this must be cancelled on transfer and the seller is responsible for payment of the conveyancer's fee for cancellation together with VAT thereon.
Once the documents have been signed by the purchaser and the seller, and the transfer costs, transfer duty and rates and levies have been paid, the conveyancer may proceed with the registration of transfer of the property in the deeds office if in possession of transfer duty receipts and rate clearance certificate.

WHAT HAPPENS AT THE DEEDS OFFICE?

The conveyancer will lodge the prepared documents with the deeds office for registration. If a mortgage bond is to be registered or cancelled the conveyancer attending to the registration thereof will lodge the documents in the deeds office for registration or cancellation simultaneously with the transfer documents.

HOW LONG DOES THE PROCESS TAKE?

The above constitutes an outline of the normal conveyancing process. It can take up to anything between 6 to 8 weeks.
Courtesy: **STBB** Smith Tabata Buchanan Boyes
Adapted from https://www.portfolio-property.com/article/view/id/106, downloaded on 25 February 2019

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6.1 Briefly explain the meaning of conveyancing. (2)

6.2 Who appoints a conveyancer? (1)

6.3 Briefly discuss the first step in buying immovable property. In your answer, also refer to the TWO formalities that must be adhered to. (2 × 2) (4)

6.4 Name THREE costs for which the buyer is liable. (3)

6.5 Reference is made to occupation and possession.

Briefly define each concept. (2 × 2) (4)

6.6 What does voetstoots mean? (1)

6.7 Who, as a rule, pays for the inspection and issuing of an electrical certificate? (1)

6.8 What kind of condition is applicable if the purchase is subject to the granting of a loan? (1)

6.9 Reference is made to certain documents that need to be submitted by the conveyancer.

List any FOUR such documents. (4)

6.10 Mention is made of transfer costs that need to be paid. Calculate the transfer costs based on the following information:

Value of property sold: R2 400 000

Use the following table to calculate the transfer costs. Show all calculations.

1 250 001–1 750 000	R10 500 + 6% of the value above R1 250 000
1 750 001–2 250 000	R40 500 + 8% of the value above R1 750 000
2 250 001–10 000 000	R80 500 +11% of the value above R2 250 000
10 000 001 and above	R933 000 + 13% of the value above R10 000 000

(6)

6.11 Suppose that the buyers are a married couple, married out of community of property. Indicate what the preamble will look like on the deed of transfer. Where all information is not given, use fictitious (made-up) information.

Detail of buyers:

Steven Makola
Tsephiso Ramoretsi (3)

[30]

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QUESTION 7



TO GET MARRIED IN OR OUT OF COMMMUNITY OF PROPERTY – THAT IS THE QUESTION

7.1 Couples can get married in or out of community of property.

With reference to this statement, answer the following questions:

7.1.1 What does it mean to get married in community of property? (2)

7.1.2 What does it mean to get married out of community of property without the accrual system? (2)

7.1.3 What does it mean to get married out of community of property with the accrual system? (2)

7.1.4 Give ONE disadvantage of getting married in community of property. (1)

7.1.5 Calculate the accrual by using of the following information:

Also indicate the final amount that each spouse will receive.

Husband's net estate before marriage	R250 000
Wife's net estate before marriage	R500 000
Husband's net estate at divorce	R1 250 000
Wife's net estate at divorce	R900 000

(6)

7.2 Discuss personal servitudes under the following headings:

7.2.1 Define what is meant by a personal servitude. (4)

7.2.2 Give THREE examples of personal servitudes. (3)

7.2.3 Briefly explain how a personal servitude is established. (2 × 2) (4)

7.2.4 List any SIX elements that must be captured in a notarial deed of a servitude. (6)

[30]

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QUESTION 8

Read the scenario below and answer the questions.



Jonathan advertised his second-hand car for sale. Irvin bought the car, but then had to deal with some difficulties.

PLEASE ASSIST IRVIN!

8.1 Jonathan assured Irvin that the car had never been in an accident. A week after Irvin had bought the car, he experienced serious problems with the gearbox. A mechanic informed Irvin that the car had been in an accident. This resulted in Irvin not having the use of the car at all.

Which remedy will Irvin have at his disposal? Discuss this remedy in full.

(5 × 2) (10)

8.2 A week after Irvin had bought the car, John knocked at his door informing him that the car belonged to him and that Irvin had bought a stolen car.

By which implied duty of the seller is Irvin protected? Advise Irvin on what to do.

(3 × 2) (6)

8.3 Irvin bought the car on a Friday and delivery was to take place the following Monday. A terrible hail storm broke out on the Saturday and the car was damaged.

Explain to Irvin who will carry the loss for this kind of damage. (4 × 2) (8)

8.4 Irvin bought the car by paying a deposit and signing an agreement that he would pay in instalments. He had been invited to a house party during which a lot of items were sold, including the car. The owner cheered Irvin up and convinced him to buy the car although he felt a bit uncomfortable to do so. He now regrets that he bought the car.

Explain to him that he can use the cooling-off period to get out of the contract and how the cooling-off period works. (3 × 2) (6)

[30]

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QUESTION 9

Study the following information to assist in the compiling of two legal documents.

Jonella Elias (ID 8703060034084) decided to sell her property, Erf 4768, Kuilsriver, (registered in the Western Cape province) to Sibonyani Hani (ID 7804090038081). Both parties are unmarried. The size of the property is 1 300 square metres.

The purchase price is R1 670 million.

The conveyancer is Karel Kotsi.

The number of the deed of transfer is T12087/2000.

The appointed attorney is Steven Samuels.

The registrar of deeds is Songezo Mtwyai.



9.1 Use the given information to complete the deed of transfer on ADDENDUM A. (16)

9.2 Use the given information to complete the power of attorney on ADDENDUM B. (14)

[30]

QUESTION 10

10.1 List, in table format, any THREE differences between a void and a voidable contract. (3 × 2) (6)

10.2 Briefly discuss TWO requirements for a mistake to render a contract void. (4 × 2) (8)

10.3 List THREE circumstances under which the risk for accidental losses does not pass to the buyer. (3)

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10.4 Briefly discuss the FOUR forms of constructive or fictitious delivery by listing them and supplying one example of each. (4 × 3) (12)

10.5 Do all types of mistakes render a contract void? (1)
[30]

TOTAL SECTION B: 150
GRAND TOTAL: 200

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ADDENDUM A **EXAMINATION NUMBER:** | | | | | | | | | | | | | |

QUESTION 9.1

DEED OF TRANSFER

BE IT HEREBY MADE KNOWN

THAT ……..

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

……

……

……

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

……

……

……

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

……..

……

IN EXTENT **……**

…. the purchase price to be **……..**

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ADDENDUM B **EXAMINATION NUMBER:** | | | | | | | | | | | | | |

QUESTION 9.2

POWER OF ATTORNEY TO PASS TRANSFER

I, 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 did on the 7th day of May 2019

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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