higher education & training

Department:
Higher Education and Training
REPUBLIC OF SOUTH AFRICA

MARKING GUIDELINE

NATIONAL CERTIFICATE

JUNE EXAMINATION

MERCANTILE LAW N4

11 JUNE 2013

This marking guideline consists of 9 pages.

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GENERAL REMARKS

1. Answers are used as guidelines and must not be seen as the only correct answer. If an answer has a similar meaning/idea, consult with the examiner/chief marker where uncertainties occur.

2. Answers must be in full sentences at all times, except where it has been indicated that the answer should consist of only a few words. Should an answer not be fully described, full marks cannot be given to that student's answer/s. For specific details check each question carefully. No half marks are allocated.

3. If a candidate answer more than the required number of questions, ONLY THE FIRST FOUR QUESTIONS, WHICH INCLUDE THE COMPULSORY QUESTION, must be marked. In such cases, draw a red line across the answer of the fifth question. Should any uncertainty arise, consult the examiner/chief marker.

4. ALL borderline cases (76–79 marks out of 200) must be thoroughly checked. A practical or semester mark must still be added to these raw marks.

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SECTION A (COMPULSORY)

QUESTION 1

1.1	1.1.1	C
	1.1.2	C
	1.1.3	A
	1.1.4	C
	1.1.5	C
	1.1.6	C
	1.1.7	C
	1.1.8	D
	1.1.9	C
	1.1.10	B

(10 × 2) (20)

1.2	1.2.1	E
	1.2.2	J
	1.2.3	F
	1.2.4	H
	1.2.5	A
	1.2.6	C
	1.2.7	I
	1.2.8	D
	1.2.9	G
	1.2.10	B

(10 × 2) (20)

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1.3 1.3.1 Six (6) months✓✓

1.3.2 Movable✓✓

1.3.3 Act of insolvency✓✓

1.3.4 Thirty (30)✓✓

1.3.5 Deeds office✓✓

(5 × 2) (10)
[50]

TOTAL SECTION A: 50

SECTION B

Answer any THREE of the four questions in this section.

QUESTION 2: PARTNERSHIPS

2.1
- During existence of partnership, partners are jointly liable for partnership debts ✓✓
- Creditor/s cannot hold one of the partners severally liable for the total amount owed ✓✓
- At dissolution the partners are jointly and severally liable for partnership debts ✓✓
- Meaning: creditors have a choice to hold all partners liable together or only one of the partners for the whole debt ✓✓
- Merger of estates occurs at dissolution of partnership ✓✓
- If partnership summon some partners or are summoned themselves, the rules of the court provide that the firm name can be used and not the name of a single partner. ✓✓

(Any 4 × 2) (8)

2.2
- Mutual agreement✓✓
- Lapse of period for which partnership has been formed✓✓
- Completion of partnership business ✓✓
- Death of one of the partners✓✓
- Change in the membership✓✓
- Insolvency of the partnership✓✓
- Notice of dissolution✓✓
- An order of court✓✓
- Disappearance /continued absence of a partner✓✓
- Incapacity owing to long illness✓✓
- Partner declared mentally disordered✓✓
- Impossible cooperation as result of continued disputes✓✓
- No likelihood of future profits✓✓

(Any 5 × 2) (10)

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2.3 2.3.1 Net loss✓✓

2.3.2 Profits✓✓

2.3.3 Formality✓✓

2.3.4 Silent✓✓

(Any 4 × 2) (8)

2.4
- Partners are not entitled to any compensation for their services✓✓
- Unless arranged beforehand✓✓
- If partnership has benefited by special services of partner✓✓
- Then he/she is entitled to (reasonable) compensation✓✓
- Is entitled to be reimbursed for expenses incurred ✓✓
- Is entitled to be reimbursed for damages or injuries sustained✓✓

(Any 4 × 2) (8)

2.5
- A situation of the utmost good faith must exist✓✓
- The highest degree of trust and confidence is expected✓✓
- Must not acquire or attempt to acquire any advantages✓✓
- Must account for all secret profits✓✓
- Will never place him/herself in a position where his/her personal interests clash with those of the partnership✓✓ (4 × 2) (8)

2.6 2.6.1
- Where third party concluded transaction with a partner✓✓
- That the partner had the authority to concluded such transaction✓✓
- That the transaction was concluded in the name of the partnership✓✓ (2 × 2) (4)

2.6.2
- Partner purchased a racing horse, where the partners carry on business as dentists✓✓
- The purchase of supplies of groceries by a partner while the partnership is carrying on business as a hardware store✓✓

(Any similar example is acceptable – use discretion) (2 × 2) (4)

[50]

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QUESTION 3: COMPANIES ACT

3.1
- By means of a special resolution✓✓
- Applies to all normal clauses✓✓
- Registrar may order that amended memorandum of association be handed to him in writing✓✓ (Any 2 × 2) (4)

3.2

3.2.1 Selling shares to the public✓✓ (2)

3.2.2 Proprietary limited (Pty) Ltd✓✓ (2)

3.2.3 Certificate of incorporation✓✓ (2)

3.2.4 Company limited by guarantee ✓✓ (2)

3.2.5 May be voluntary by means of a special resolution✓✓ by order of the registrar if name is undesirable ✓✓ (2 × 2) (4)

3.2.6 Notice, advertisement or invitation to public✓✓ to buy shares in the company✓✓ (2 × 2) (4)

3.3
- The assets of the company are its own exclusive property✓✓
- The profits belong to the company and not its members✓✓
- Estates of members are separate from the company estate✓✓
- Debts of the company are its own and cannot be recovered from the members✓✓
- All actions for/on behalf of company done by persons appointed in articles of association✓✓ (Any 3 × 2) (6)

3.4
- Copy of underwriter's contract/affidavit of ability to carry out obligations
- Written affirmation by auditors, lawyers, bankers or brokers of company that their names may appear in the prospectus
- Written approval of expert who's commentary appears is referred to in prospectus
- Copy of every essential contract named in prospectus
- Written consent to act as director (4 × 2) (8)

3.5
- Memorandum of association✓✓
- Articles of association✓✓
- Notice of registered office✓✓
- Written consent to act as director✓✓
- Written consent to act as auditor✓✓
- Proof of payment of registration money✓✓
- Proof of payment of annual subscription✓✓ (5 × 2) (10)

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3.6
- Names and addresses of members✓✓
- Number of shares issued to each member✓✓
- Class or kind/s of shares✓✓
- Amount paid on shares✓✓
- Date on which members' names are entered✓✓
- Date on which members ceased to be members✓✓ (Any 3 × 2) (6)

[50]

QUESTION 4: AGENCIES AND LIENS

4.1
- By express authority✓✓
- By operation of law✓✓
- By conduct✓✓
- By ratification✓✓ (4 × 2) (8)

4.2
- Formed by free agreement (consensus) ✓✓
- All parties must be of one mind as to the service to be performed✓✓
- Must agree on the remuneration (commission) ✓✓
- Rights and obligations conferred to the principal✓✓ (Any 3 × 2) (6)

4.3 4.3.1 False ✓ – Agent is entitled to commission ✓✓

4.3.2 False ✓– Employee ✓✓

(2 × 3) (6)

4.4
- Where principal approves appointment of sub-agents✓✓
- Where acknowledged as trade usage✓✓ (2 × 2) (4)

4.5
- Payment of promised commission✓✓
- Reimbursement of agent's expenses✓✓
- Indemnification of agent against claims of third parties✓✓ (3 × 2) (6)

4.6

DEBTOR/CREDITOR LIEN	SALVAGE LIEN
•Happens with consent✓✓ •Not necessary✓✓	•Without consent✓✓ •Necessary for preservation✓✓

(2 × 2) (4)

4.7 4.7.1 Debtor and creditor lien ✓✓

4.7.2 Salvage lien✓✓

4.7.3 Improvement lien

4.7.4 Debtor and creditor lien✓✓

4.7.5 Salvage lien✓✓

(5 × 2) (10)

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4.8
- A right to retain another's property on which expenses has been incurred until those expenses are compensated✓✓
- No one may sue for payment of expenses✓✓
- Lien may be used as a defence against a claim✓✓
- Court will order return on condition that owner compensates the lien holder for actual expenses✓✓
- A lien may provide a real security✓✓ (3 × 2) (6)

[50]

QUESTION 5: INSOLVENCY

5.1
5.1.1 Rehabilitation✓✓

5.1.2 Solvency (not insolvency)✓✓

5.1.3 Second meeting✓✓

(3 × 2) (6)

5.2
- Creditor must have proof for claim✓✓
- Debtor must have committed act of insolvency or be insolvent✓✓
- Where sequestration will be to the advantage of the creditors✓✓ (3 × 2) (6)

5.3
5.3.1 True✓✓

5.3.2 True✓✓

5.3.3 True✓✓

5.3.4 True✓✓

(4 × 2) (8)

5.4
5.4.1
- If debtor applies for a sequestration order ✓✓
- For the benefit of his/her creditors✓✓ (2 × 2) (4)

5.4.2
- Debtor must publish before date of application a notice of surrender in the government gazette as well as in newspaper in circulation in district where debtor resides or conducts business✓✓
- Debtor must send or hand over within 7 days after publication the notice of surrender, a copy thereof to each creditor whose address he knows or can establish✓✓
- Debtor must draw up statement of affairs and lodge two copies at master's office✓✓
- On receipt of statement of affairs, master may direct applicant to have certain assets valued✓✓
- Statement of affairs must be open for inspection by any creditor for a period of 14 days✓✓

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Applicant/debtor must prove the following matters:

- All formalities have been complied with ✓✓
- Applicant is indeed insolvent ✓✓
- Free residue is sufficient to cover costs of sequestration✓✓
- Sequestration will be to advantage of the creditors✓✓

(Any 5 × 2) (10)

5.5
- The debtor is called upon✓✓
- To appear in court on a special day✓✓
- Debtor has to show why estate should not be finally sequestrated✓✓

(3 × 2) (6)

5.6
- Compensation due to personal injury✓✓
- Pension to which he/she is entitled✓✓
- Compensation in terms of miner's silicosis act✓✓
- Assets obtained after sequestration due to own diligence✓✓
- Salary/wage or other recompensation earned✓✓
- Clothing, bedding and other essential means✓✓
- Life policies taken out on own life not exceeding R10 000✓✓
- Assets obtained by sale of above-mentioned property✓✓

(5 × 2) (10)
[50]

TOTAL SECTION B: 150
GRAND TOTAL: 200

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