201306H193

higher education & training

Department:
Higher Education and Training
REPUBLIC OF SOUTH AFRICA

N1070(E)(J11)H
JUNE EXAMINATION

NATIONAL CERTIFICATE

MERCANTILE LAW N4

(13030094)

11 June 2013 (X-Paper)
09:00–12:00

This question paper consists of 11 pages.

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DEPARTMENT OF HIGHER EDUCATION AND TRAINING
REPUBLIC OF SOUTH AFRICA

NATIONAL CERTIFICATE
MERCANTILE LAW N4
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. Answer ALL the questions in SECTION A.
2. Answer any THREE 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. Start each question on a NEW page.
6. Draw a line across the page at the end of EACH question.
7. ALL questions must be answered in full sentences unless indicated otherwise.
8. Write neatly and legibly.

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SECTION A

QUESTION 1

1.1 Choose a description from COLUMN B that matches a term in COLUMN A. Write only the letter (A–T) next to the question number (1.1.1–1.1.20) in the ANSWER BOOK.

COLUMN A		COLUMN B	
1.1.1	Full contractual capacity	A	a contract comes into existence at the time and place where the offerer becomes aware of acceptance
1.1.2	A void contract	B	a reasonable cause
1.1.3	A delict	C	to stand by a previous decision
1.1.4	Contra bones mores	D	an example is the insane
1.1.5	Not transferable	E	this rule is applicable where both parties are equally guilty
1.1.6	Iusta causa	F	let he who buys beware
1.1.7	Essentialia	G	when a document serves before the court, only the written document will be taken into account
1.1.8	Tacit hypothec	H	the pointing out of cattle
1.1.9	Naturalia	I	the contract comes into existence at the time and the place where the letter of acceptance is posted
1.1.10	Par delictum rule	J	this terminates the original offer
1.1.11	Traditio longa manu	K	with this marking there can only be one payee
1.1.12	Incidentalia	L	an express, added term
1.1.13	No contractual capacity	M	a wrongful act
1.1.14	Counter offer	N	against good morals
1.1.15	Rei vindicatio	O	a special remedy at the disposal of the landlord
1.1.16	Expedition theory		
1.1.17	Communication/information theory		
1.1.18	Stare decisis		

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1.1.19	Caveat emptor	P	this helps to classify contracts
1.1.20	Parol evidence rule	Q	a special remedy at the disposal of the true owner in contracts of sale
		R	an example would be the tacit warrant against latent defects
		S	an example of such a contract is an illegal contract
		T	the possibility of obtaining rights and incurring obligations from a contract

(20 x 1) (20)

1.2 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 (1.2.1–1.2.10) in the ANSWER BOOK.

1.2.1 When a latent defect is discovered in the article sold and the defect reduces the quality of the article, the buyer has the following remedy available to him:

A The actio redhibitoria
B The actio quanti minoris
C The actio ex empto
D The rei vindicatio

1.2.2 Subletting results in …

A cession of the rights of the tenant.
B assignment of the lease.
C a separate contract of lease between the tenant and the sub-tenant.
D delegation of a part of the contract to the subtenant.

1.2.3 Johannes and Calaza concluded a contract of sale in terms of which Johannes sold his car to Calaza for R40 000, the purchase price to be paid before or on 1 July 2013. Calaza failed to pay. The form of breach of contract in this case is …

A mora creditoris.
B mora debitoris.
C repudiation.
D positive malperformance.

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1.2.4 The sale of a house must comply with the following formality or formalities in order to be valid:

A Writing and registration
B Writing
C Notarial execution
D Writing and notarial execution

1.2.5 The law of persons forms part of …

A formal law.
B public law.
C private law.
D Both A and C

1.2.6 Where contracts are concluded by post, the following theory is applicable:

A The declaration theory
B The expedition theory
C The reception theory
D The information theory

1.2.7 Andrew offered to rent Erika's car for R500 per month. Erika thought that Andrew intended to buy her car and that the R500 per month was an installment. This results in …

A an error in corpore.
B an error in negotio.
C an error in substantia.
D innocent misrepresentation.

1.2.8 Prodigal persons have …

A full contractual capacity.
B no contractual capacity.
C limited contractual capacity.
D limited contractual capacity, with exceptions.

1.2.9 A contract is void in the case of …

A duress.
B misrepresentation.
C undue influence.
D a mistake.

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1.2.10 If a minor concluded a contract without parental assistance, but the parent gave consent afterwards, this is known as ...

A ratification.
B rectification.
C emancipation.
D unjustified enrichment.

(10 × 1) (10)

1.3 Indicate whether the following statements are TRUE or FALSE. Choose the answer and write 'true' or 'false' next to the question number (1.3.1–1.3.6) in the ANSWER BOOK. Correct the statement if it is FALSE.

1.3.1 A minor (pupillis) has no contractual capacity.

1.3.2 Ownership is an example of a personal right.

1.3.3 Where the buyer is already in possession of the article bought, delivery takes place only through actual delivery.

1.3.4 The cooling-off period protects the credit grantor.

1.3.5 Public law regulates matters between the state and its legal subjects.

1.3.6 South Africa has an uncodified legal system.

(10)

1.4 Briefly define the following concepts:

1.4.1 A real right

1.4.2 An independent contractor

1.4.3 The law of obligations

1.4.4 Pro rata liability

1.4.5 Merger of debts

(5 × 2) (10)

TOTAL SECTION A: 50

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SECTION B

Answer any THREE of the following four questions.

QUESTION 2

2.1 Indicate in each of the following cases which source of the law will be applicable:

2.1.1 A custom amongst fishermen that the one person may not throw his net in front of another

2.1.2 Dealing in drugs

2.1.3 Discrimination against a person on grounds of culture and beliefs

2.1.4 The minimum wage to be paid

(4 × 1) (4)

2.2 State which branch of the law is applicable to the following situations and also refer to the specific subdivision, for example: Private law – the law of obligations

2.2.1 A stipulation in a will that a specific person has to inherit the money

2.2.2 A tenant has the right of possession over the property that is let to him

2.2.3 This branch of the law regulates an offence against the state

(3 × 2) (6)

2.3 Discuss the *unjustified enrichment* of the minor. (5 × 2) (10)

2.4 Indicate in each of the following cases whether the principle of 'hire goes before sale' is applicable and give a motivation for your answer:

2.4.1 X lets his flat to B for a period of six years. The flat is sold during the fifth year.

2.4.2 Suppose X lets his flat to B for fifteen years. The contract is only in writing.

2.4.3 B is a tenant in District Six. The government gave back the land to the original owners.

2.4.4 X lets his flat to B for a period of six years. X died in the fourth year of the lease and the flat is inherited by C.

(4 × 2) (8)

2.5 Give THREE common law duties of both the employer and the employee in a contract of service. (6 × 1) (6)

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2.6 Briefly describe any FIVE minimum statutory requirements that a credit sale must comply with as prescribed by the Credit Agreement Act 75 of 1980 (meanwhile replaced by the National Credit Act of 2005). (5 × 2) (10)

2.7 Discuss *mora debitoris* as form of breach of contract by ...

2.7.1 defining the concept.

2.7.2 giving an example of this form of breach.

2.7.3 giving TWO requirements for this form of breach to be regarded as mora debitoris.

(3 × 2) (6)
[50]

QUESTION 3

3.1 Name FOUR requirements which must be complied with for ownership to be transferred to the buyer. (4 × 1) (4)

3.2 Briefly discuss any SIX reasons for summary dismissal. (6 × 2) (12)

3.3 Linda inherited her mother's engagement ring. She honestly believed the stone to be a genuine diamond and when she sold the ring to her friend, Gladys, informed Gladys accordingly. Gladys took it the next day to a jeweller to have it valued, only to be informed that the stone was a zirconium.

3.3.1 Is this a void or voidable contract? (1)

3.3.2 Motivate your answer in QUESTION 3.3.1. (2)

3.3.3 What remedies will Gladys have at her disposal? (2 × 1) (2)

3.4 Briefly discuss the FOUR requirements that must be met for *set-off* to take place. (4 × 2) (8)

3.5 Briefly distinguish between legal rules and other rules. (2 × 2) (4)

3.6 Give FOUR requirements that must be met for a holder to qualify as a *holder in due course.* (4 × 2) (8)

3.7 Discuss prescription by ...

3.7.1 defining extinctive prescription. (2)

3.7.2 naming the four time periods involved. (4)

3.8 Name any THREE kinds of negotiable instruments. (3 × 1) (3)
[50]

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QUESTION 4

4.1 Briefly distinguish between a criminal and a civil case. (2 × 2) (4)

4.2 Distinguish between the following concepts:

4.2.1 A suspensive versus a resolutive condition

4.2.2 Ratification versus rectification

4.2.3 A general crossing versus a special crossing

4.2.4 A mistake and misrepresentation

4.2.5 Actual delivery versus constructive delivery

(5 × 4) (20)

4.3 Shaun bought a car from his friend, Johan, for R356 000. They agreed that Johan would deliver the car the following week upon payment of the purchase price by Shaun.

4.3.1 Name any THREE duties of Johan. (3 × 1) (3)

4.3.2 Which form of delivery will take place to transfer ownership to Shaun? (1)

4.3.3 Suppose there is something wrong with the gearbox. What kind of defect is this? (2 × 1) (2)

4.3.4 Which remedy will Shaun have at his disposal should he not be able to use the car at all? (2 × 1) (2)

4.3.5 What can Shaun claim with this remedy? (2 × 1) (2)

4.4 Briefly discuss the tacit hypothec as remedy at the disposal of the landlord where the tenant fails to pay his rent. (4 × 2) (8)

4.5 Discuss vacua possessio (a free and undisturbed possession given to the buyer in a contract of sale) (4 × 2) (8)

[50]

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QUESTION 5

5.1 State in each of the following cases whether the situations constitute a valid offer. Give a reason for each answer by referring to the requirements for a valid offer.

5.1.1 An advertisement appears in *The Argus* which promises a reward of R1 000 to the person who returns Suzanne's lost cat.

5.1.2 Charl offers his car for sale to Bernard and informs him that they can discuss the price later.

5.1.3 Zibya offers to sell the moon to Phakama for one million rand.

(3 × 2) (6)

5.2 Alma worked for the Platinum Hairdressing salon. She decided to leave their services to open her own hairdressing salon. They agree that she will not be allowed to open the salon within a radius of 20 km from the Platinum Hairdressing salon.

5.2.1 Is this a valid, void or voidable contract?

5.2.2 Motivate your answer in QUESTION 5.2.1 by stating the applicable legal principle.

(2 × 1) (2)

5.3 Name any SIX essentialia of a contract. (6 × 1) (6)

5.4 Study the negotiable instrument below and answer the questions.

> 3 April 2013
>
> To: Calaza Bonke
>
> Thirty days after date pay me, or my order, the sum of R1 500 (one thousand five hundred rand) for services rendered.
>
> JJMaas

5.4.1 What kind of negotiable instrument is this? (1)

5.4.2 Name the THREE parties involved and identify them. (3 × 2) (6)

5.4.3 Name any FIVE *essentialia* (necessary requirements) of this document. (5 × 1) (5)

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5.5 With reference to the contract of sale, answer the following questions:

5.5.1 Name TWO *naturalia* of a contract of sale. (2 x 1) (2)

5.5.2 Name any THREE circumstances under which the risk for accidental loss does not pass to the buyer. (3 × 1) (3)

5.5.3 Distinguish between a *patent* and a *latent* defect by providing an example of each. (2 × 1) (2)

5.5.4 Briefly explain the difference between *traditio longa manu* and *traditio brevi manu.* (2 × 2) (4)

5.5.5 State the THREE requirements to be met for a contract of sale to be *perfecta.* (3 × 1) (3)

5.6 5.6.1 Briefly discuss the duty of the tenant to return the property undamaged.

5.6.2 What remedies are at the disposal of the landlord should the tenant be unable to return the property undamaged?

(2 × 5) (10)
[50]

TOTAL SECTION B: 150
GRAND TOTAL: 200

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