higher education & training

Department:
Higher Education and Training
REPUBLIC OF SOUTH AFRICA

MARKING GUIDELINE

NATIONAL CERTIFICATE

JUNE EXAMINATION

MERCANTILE LAW N4

15 JUNE 2016

This marking guideline consists of 9 pages.

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SECTION A

QUESTION 1

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

(10 × 2) (20)

1.2
1.2.1 False.√ It forms part of private law.√

1.2.2 True√

1.2.3 False.√ It is a naturalia.√

1.2.4 True√

1.2.5 False.√ It comes into existence where the letter of acceptance is posted.√

1.2.6 True√

1.2.7 False.√ It is an agreement below R15 000.√

1.2.8 False.√ It is unpaid leave.√

1.2.9 False.√ A debt counsellor has to be registered.√

(15)

1.3
1.3.1 Suspensive condition

1.3.2 Limited contractual capacity

1.3.3 Traditio longa manu/Delivery with the long hand/Constructive delivery

1.3.4 Instalment sale transaction

1.3.5 Caveat subscriptor

1.3.6 Merger

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1.3.7 Cession

1.3.8 Actio redhibitoria

1.3.9 Merx

1.3.10 Ratio decidendi

(10 × 1) (10)

1.4 1.4.1 F
1.4.2 D
1.4.3 E
1.4.4 C
1.4.5 B

(5 × 1) (5)
[50]

TOTAL SECTION A: 50

SECTION B

QUESTION 2

2.1
- Contract must be legal.
- The parties must have contractual capacity.
- The parties must have the serious intention to be contractually bound.
- The parties must communicate their intentions.
- Performance must be possible.
- Formalities.
- They must have reached consensus. (Any 4 × 1) (4)

2.2
- Total value of the credit facility (interest, fees and insurance)
- The instalment amount
- The number of instalments
- The final amount payable
- Interest rate
- All other credit costs (Any 5 × 1) (5)

2.3 2.3.1 A latent defect is an invisible defect (something that cannot be seen). (1)

2.3.2
- A welded crankshaft
- A hidden defect in the gearbox (2 × 1) (2)

2.3.3
- This is a special remedy for latent defects at the disposal of the buyer.
- The seller guarantees tacitly that there will be no latent defects.
- A latent defect is an invisible defect.
- The seller is in breach of contract if there is a latent defect.
- The buyer can claim the return of the purchase price.
- Also for the repayment of all expenses.
- General rule is that no damages can be claimed.
- The buyer must return the article. (Any 5 × 2) (10)

2.3.4
- Where the parties expressly excluded this warranty in the contract of sale (indicated as a voetstoots sale).
- Where the defect did not exist at the time of the conclusion of the contract.
- Where the buyer was aware of the defect and accepted it.
- Where the aedilitian actions became prescribed. (4 × 1) (4)

2.4 -Jane will carry the loss.
-The passing of the risk rule is applicable.
-It states that the buyer bears the risk for accidental loss from the moment the contract is perfecta.
-The contract is perfecta as the condition has been fulfilled. (4 × 2) (8)

2.5 2.5.1 Patent defect (1)

2.5.2 Normal remedies for breach of contract. She can claim specific performance, in other words that the car be repaired. (2)

2.6 It means that Jane can only become owner of the car upon full payment. (2)

2.7 Resolutive condition (1)

2.8 2.8.1 False statement√ or the withholding of information where it had to be disclosed√ (2)

2.8.2 Voidable contract (2)

2.8.3 Fraudulent misrepresentation:√ False statement made knowingly that it is not the truth, for example telling it is something new and then it is not.√

Innocent misrepresentation:√ Providing information honestly believing it is the truth, for example selling a painting after you had it evaluated by an expert, but it later appeared not to be genuine.√

Negligent misrepresentation:√ Providing false information but neglecting to make sure whether it was the truth, for example an estate agent saying that an open piece of land was zoned for a park, but it was not.√ (3 × 2) (6)

[50]

QUESTION 3

3.1 3.1.1 Ratification

3.1.2 Emancipation

3.1.3 Mora debitoris

3.1.4 Symbolic delivery/constructive delivery

3.1.5 A precedent/stare decisis

3.1.6 Parol evidence rule

3.1.7 Void contract

3.1.8 Mistake/Error in substantia

3.1.9 Prodigal

3.1.10 Supervening impossibility/Casus fortuitus

3.1.11 Vacua possessio

3.1.12 Independent contractor/Locatio conductio operis

3.1.13 Actio quanti minoris

3.1.14 Huur gaat voor koop

3.1.15 Pre-agreement statement

(15 × 2) (30)

3.2
- It is the duty of the landlord to also maintain the property after it was delivered in a proper condition.
- This remains a duty for the whole duration of the lease.
- The landlord is not responsible for damage caused by the fault of the tenant.
- Tenant can cancel the lease if breach is very serious.
- Can claim damages as well as consequential damages.
- Tenant can demand a reduction in the lease.
- Tenant can fix property and claim the cost from the landlord but only with his consent.

(Any 5 × 2) (10)

3.3
- To pay the employee
- To take the employee into service
- Not to let the employee do work junior to his/her status
- To provide a safe working environment
- To give the employee a certificate when he/she leaves the business

(5 × 1) (5)

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3.4
- Where a written contract is interpreted
- no oral evidence will be received
- that tries to alter the existing contract
- unless there are technical aspects that need to be explained
- but not with the intention to change the existing contract.
- Existing contract is the only valid contract. (Any 5 × 1) (5)

[50]

QUESTION 4

4.1 4.1.1
(a) 49 hours√ (1)
(b) 45 hours per week√ (1)
(c) 4 x R36 = R144√√ (2)

4.1.2 (a)
- The employee is entitled to 6 weeks' paid sick leave for every 36 months of continuous employment.
- This refers to a 3-year cycle.
- During the first 6 months of employment, an employee is entitled to only 1 day of paid sick leave for every 26 days worked.
- Where the employee is ill for 2 days or less, no medical certificate is required.
- Where an employee is ill for more than 2 consecutive days (or more than twice in a period of 8 weeks), the employee must provide the employer with a medical certificate.
- Daily pay for sick leave may be reduced by agreement, provided that the number of days' sick leave is increased.
- Pay may not be reduced below 75% of the ordinary pay.

(Any 4 × 2) (8)

(b) No√√
- An employee is only entitled to 1 day sick leave for every 26 days worked during the first six months of employment.√√
- He has not even worked two months and therefore will only be entitled to 2 days' paid sick leave.√√ (3 × 2) (6)

4.2 4.2.1
45 hours
12 hours

4.2.2
60 minutes
5 hours

4.2.3
double
1,5 times

4.2.4
6 pm
6 am

4.2.5
6 weeks
36 months

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4.2.6 5 days
1-year cycle
(6 × 2 (12)

4.3 4.3.1 Agreement

4.3.2 Double

4.3.3 Certificate of service

4.3.4 Four-weeks/One-month
(4 × 1) (4)

4.4

MISTAKE	**MISREPRESENTATION**
Misunderstanding	Supplying of false information or the withholding of information
Renders contract void	Renders contract voidable
No rights and obligations flow from such a contract	Rights and obligations flow from this contract until declared void
There is no consensus	There is consensus, but with a defect in consensus

(Any 4 × 4) (16)
[50]

QUESTION 5

5.1 5.1.1 National Credit Act (1)

5.1.2
- A pawn transaction√√
- A credit facility if the credit limit under that facility falls at or below R15 000√√
- Any other credit transaction (except a mortgage agreement)√√ or a credit guarantee, and the principal debt under that transaction or guarantee falls at or below R15 000√√ (4 × 2) (8)

5.1.3 Credit advanced
Instalment, including interest
Total of all instalments
Deposit paid
Number of instalments
Instalments payable — *specify: monthly/weekly/other*
Initiation fee
Annual interest rate %
Monthly service fee
Fees and credit life insurance (Any 5 × 1) (5)

5.1.4
- To apply for credit√
- To be protected against discrimination in the granting of credit√
- To receive a free copy of your credit agreement√
- To receive a credit agreement in plain and simple language√
- To have your personal and financial information treated confidentially√
- To understand all fees, costs, interest rates, the total instalment and any other details
- To say no to increases on your credit limit
- To decide whether or not you want to be informed about products or services via telephone, SMS, mail or e-mail campaigns
- To apply for debt counseling should you be overwhelmed by debt
- The right to the cooling-off period (Any 5 × 1) (5)

5.2 5.2.1
- Form of delivery where the buyer already bought the article, but leaves it with the seller
- Example: Bought a watch, but left it with jeweller for alterations to the strap

5.2.2
- Form of delivery where goods bought by the buyer are already in his possession
- Example: An article that the buyer first borrowed and then bought (2 × 4) (8)

5.3
- This concept is applicable to leases and means the 'lease was before the sale'.
- Where property is sold while there is still a contract of lease in place, the tenant cannot be evicted.
- The tenant will have to right to stay for the full duration of the lease.
- If it is, however, a long-term lease and unregistered, it will be treated like a short-term lease and the tenant will have to leave after ten years.
- If it is a short-term lease (shorter than 10 years) then the tenant can stay for the full duration where the buyer is aware of this.
- If it is a registered long-term lease, the tenant will be protected for the whole duration of the lease.
- Where the property is inherited the tenant also has the right to stay on.
- The buyer of the property becomes the new landlord. (Any 5 × 2) (10)

5.4
- Where performance is impossible
- Where damages would adequately compensate the injured person
- Where it would be difficult for the court to enforce specific performance
- Where it is the rendering of personal services
- Where specific performance will be to the detriment of the public
- Where the guilty party is insolvent (Any 5 × 1) (5)

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5.4
- Mora debitoris√ and any applicable example√
- Mora creditoris√ and any applicable example√
- Rendering performance impossible√ and any applicable example√
- Repudiation√ and any applicable example√
- Positive malperformance and any applicable example (Any 4 × 2) (8)

[50]

TOTAL SECTION B: 150
GRAND TOTAL: 200

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