higher education & training

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JUNE EXAMINATION

NATIONAL CERTIFICATE

MERCANTILE LAW N4

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09:00–12:00

This question paper consists of 12 pages

GENERAL STUDIES

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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. SECTION A is COMPULSORY.
2. Answer only 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. Rule off across the page on completion of each question.
7. Answer ALL the questions in full sentences unless indicated otherwise.
8. Write neatly and legibly.

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SECTION A (COMPULSORY)

QUESTION 1

1.1 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 (1.1.1–1.1.10) in the ANSWER BOOK.

1.1.1 A ratio decidendi creates a/an ...

A custom.
B precedent.
C tradition.
D obiter dicta.

1.1.2 The strongest source of the law is …

A case law.
B legislation.
C the common law.
D foreign law.

1.1.3 Where the bill of lading is handed over as form of delivery, it is known as …

A traditio longa manu.
B symbolic delivery.
C traditio brevi manu.
D constititum possessorium.

1.1.4 The law of things deals with …

A real rights.
B personal rights.
C a claim which one legal subject may have against another.
D the domestic and public status of persons.

1.1.5 Where a written contract does not correspond with an antecedent verbal agreement it can be …

A cancelled.
B ratified.
C rectified.
D declared void.

1.1.6 Where a debtor does not perform on time it is known as …

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

GENERAL STUDIES

1.1.7 A credit facility, as a type of credit agreement under the NCA, includes a …

A mortgage.
B credit guarantee.
C credit card.
D pawn transaction.

1.1.8 A patent defect is one that ...

A is visible with the naked eye.
B is invisible.
C results in a contract always being declared void.
D entitles the buyer to make use of the aedilitian actions.

1.1.9 The BCEA deals with aspects such as …

A unfair dismissal.
B strikes.
C collective bargaining.
D kinds of leave granted to employees.

1.1.10 Private law deals with …

A criminal, mercantile and administrative law.
B administrative law, formal law and the law of things.
C the law of persons, administrative and constitutional law.
D the law of persons, the law of things and mercantile law.

(10 × 2) (20)

1.2 Indicate whether the following statements are TRUE or FALSE. Choose the answer and write only 'true' or 'false' next to the question number (1.2.1–1.2.9) in the ANSWER BOOK. Correct the statement if it is FALSE.

1.2.1 Mercantile law forms part of public law.

1.2.2 Every individual in South Africa is the bearer of rights and duties.

1.2.3 The warrant against latent defects is an incidentalia of a contract of sale.

1.2.4 Misrepresentation renders a contract voidable.

1.2.5 The expedition theory determines that a contract via post is concluded at the time and the place where the offerree receives the offer.

1.2.6 Immovable property is transferred to the new owner by means of registration in the Deeds Office.

GENERAL STUDIES

1.2.7 A small agreement refers to debts below R20 000.

1.2.8 Maternity leave is always paid leave.

1.2.9 A debt counsellor does not have to be registered with the National Credit Regulator.

(15)

1.3 Give ONE word/term for each of the following descriptions. Write only the word/term next to the question number (1.3.1–1.3.10) in the ANSWER BOOK.

1.3.1 The whole operation of a contract is postponed until the happening of an uncertain future event.

1.3.2 A person has this kind of contractual capacity if he/she can obtain rights from a contract, but cannot incur obligations.

1.3.3 Delivery takes place by pointing out an article, for example the pointing out of cattle.

1.3.4 With this kind of agreement, the consumer only becomes the owner once all payments have been made.

1.3.5 The Latin term for 'do not sign unless you fully understand the content of a contract'.

1.3.6 Where a debtor and a creditor become one and the contract is therefore terminated.

1.3.7 The transfer of rights from an existing contract to a new creditor.

1.3.8 This remedy is used in the case of a latent defect and where the article cannot be used at all.

1.3.9 The Latin term for ‘an article’.

1.3.10 The Latin term for ‘the reason for the decision’.

(10 × 1) (10)

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1.4 Choose a description from COLUMN B that matches an item in COLUMN A. Write only the letter (A–F) next to the question number (1.4.1–1.4.5) in the ANSWER BOOK.

COLUMN A		COLUMN B	
1.4.1	Contra bones mores	A	transer of rights from an existing contract
1.4.2	A mistake	B	transer of obligations from an existing contract
1.4.3	Misrepresentation	C	contract comes to an end due to effluxion of time
1.4.4	Prescription	D	a misunderstanding
1.4.5	Delegation	E	a false statement
		F	against good morals

(5 × 1) (5)
[50]

TOTAL SECTION A: 50

SECTION B

Answer only THREE questions from this section.

QUESTION 2

Read the following case study and answer the questions.

John sold his car to Jane for R40 000. Jane put down a deposit of R25 000 and they agreed that she would pay the remaining R15 000 back over a period of three years.

2.1 List FOUR essentialia of a contract in general. (4 × 1) (4)

2.2 The credit agreement for R15 000 is known as a small agreement, according to the National Credit Act 34 of 2005.

Name FIVE types of information that need to be disclosed in such an agreement. (5 × 1) (5)

2.3 Discuss the warrant against latent defects, an implied warrant given by John to Jane, by answering the following questions:

2.3.1 The meaning of a *latent defect* (1)

2.3.2 TWO examples of possible latent defects in a car (2 × 1) (2)

GENERAL STUDIES

2.3.3 A detailed discussion of the actio redhibitoria (5 × 2) (10)

2.3.4 FOUR circumstances under which the seller will not be liable for latent defects (4 × 1) (4)

2.4 Suppose this car is damaged by hail before delivery takes place.

Who will have to bear the loss? Motivate your answer. (4 × 2) (8)

2.5 Suppose John delivered the car as agreed, but Jane noticed a dent in the front door.

2.5.1 What kind of defect is this? (1)

2.5.2 Which remedy will Jane have at her disposal? (2)

2.6 Briefly discuss what is meant by: 'This contract of sale is subject to a suspensive condition.' (2)

2.7 What other kind of condition is also applicable to this contract? (1)

2.8 Discuss *misrepresentation* under the following headings:

2.8.1 Definition (2)

2.8.2 Consequences (2)

2.8.3 The THREE kinds and an example of each (3 × 2) (6)

[50]

QUESTION 3

3.1 Give ONE word/term for each of the following scenarios. Write only the word/term next to the question number (3.1.1–3.1.15) in the ANSWER BOOK.

3.1.1 A minor enters into a contract unassisted and his father gives his consent afterwards.

3.1.2 Jenny is 17 years old and works at a fashion store. She earns R7 000 per month. She enters into a contract of lease for R3 000, makes payments for two months, but then says that she cannot pay the rent any more as she is still a minor.

3.1.3 Annie bought a TV set from a furniture shop. They said that they would deliver it on Friday, 2 May 2015 at two o'clock. She waited the whole afternoon, but no delivery was made.

3.1.4 Andrew imported furniture. A bill of lading is handed to him as proof of ownership.

GENERAL STUDIES

3.1.5 A new decision is taken in a high court that when employing people, nobody may discriminate against a disabled person.

3.1.6 Where a written contract is being interpreted, no oral evidence may be received by the courts that tend to contradict or vary the written terms of such a contract.

3.1.7 No rights or obligations can flow from such a contract.

3.1.8 B buys a chain from C, thinking that it is a 22-carat gold chain, while C is in fact selling a gold-plated chain to B.

3.1.9 A person who squanders his assets.

3.1.10 A happening beyond the control of the parties, for example a flood.

3.1.11 When a buyer buys moveable property, he is given a free and undisturbed possession.

3.1.12 This type of employee is an independent third party.

3.1.13 With this remedy the buyer can claim a reduction in the selling price in the case of a latent defect.

3.1.14 Where immovable property is sold, the tenant will have the right to stay on as a result of this legal principle.

3.1.15 This document provides details regarding the terms and conditions of the credit agreement that the credit provider intends entering into with the consumer.

(15 × 2) (30)

3.2 Discuss the duty of the landlord to maintain the property. (5 × 2) (10)

3.3 State FIVE duties of the employer. (5 × 1) (5)

3.4 Define the *parol evidence rule*. (5 × 1) (5)

[50]

GENERAL STUDIES

QUESTION 4

4.1 Read the following labour-related scenarios and answer the questions.

4.1.1 Elizabeth is working as a cleaner at Supa Fish Catering. Her working hours are as follows:

- Monday to Friday: 8 am – 5 pm
- Saturday: 9 am – 1 pm

She earns R24 per hour. Overtime is calculated at 1,5 times the rate of her normal pay.

(a) How many hours does she work per week? (1)

(b) What are the maximum ordinary hours that she may work per week? (1)

(c) Calculate her wage for overtime. (2)

4.1.2 Landile started his employment with YEF Printers on 1 April 2014. He works from Monday to Friday every week.

(a) Briefly discuss his entitlement to sick leave. (4 × 2) (8)

(b) On 23 May 14, he fell ill and was booked off by the doctor for 10 working days.

Will he be entitled to fully paid sick leave for 10 days? Give reasons for your answer. (3 × 2) (6)

4.2 Choose the correct word(s) from those given in brackets. Write only the word(s) next to the question number (4.2.1–4.2.6) in the ANSWER BOOK.

4.2.1 The maximum weekly ordinary hours of work are (45/48) hours, but the employee may not work more than (10/12) hours per day.

4.2.2 An employee must have a meal break of at least (60/30) minutes after (5/6) hours.

4.2.3 An employee who occasionally works on a Sunday must receive (1,5 times/double) pay, and the employee who normally works on a Sunday must receive (1,5 times/double) pay.

4.2.4 Night work is performed between (6 pm/8 pm) and (6 am/8 am).

4.2.5 An employee is entitled to (6/12) weeks' paid sick leave for every (36/48) months of continuous service.

GENERAL STUDIES

4.2.6 An employee is entitled to (5/6) days' paid family responsibility leave in a (1-year/2-year) cycle.

(6 × 2) (12)

4.3 Complete the following sentences by filling in the missing word(s). Write only the word(s) next to the question number (4.2.1–4.2.6) in the ANSWER BOOK.

4.3.1 Overtime may only be worked by ...

4.3.2 The employee must be paid ... if he/she works on a public holiday.

4.3.3 On termination of employment, an employee is entitled to a ...

4.3.4 Where an employee has been appointed for one year ... notice must be given.

(4 × 1) (4)

4.4 Tabulate any FOUR differences between a *mistake* and *misrepresentation*.

(4 × 4) (16)

[50]

QUESTION 5

5.1 Read the following article and answer the questions.

DO YOU KNOW YOUR CONSUMER RIGHTS?

Under the NCA, it is your right as a consumer to apply for credit and be treated fairly throughout the process.

'During the application process, the credit provider has to ensure that you can afford the loan and you have to give them the correct and truthful information to ensure that they make a proper assessment of your ability to afford the loan,' Mphahlele says.

You have to be given a pre-agreement statement and quotation when seeking credit.

If you are refused credit, you have the right to be provided with reasons and if the reasons relate to an adverse credit bureau report, you have the right to be provided with the details of the bureau and its contact details.

Consumers also have the right to receive copies of required documents in plain language. Mphahlele added that consumers also have the right to choose how they receive these documents: through e-mail, post, fax or any other agreed or prescribed method.

GENERAL STUDIES

However, consumers should be aware that they are responsible for ensuring that they understand what they sign and update their contact details so that any correspondence from the credit provider reaches them on time.

Consumers are entitled to compare interest rates and deals across different credit providers. They should also not feel under pressure to sign agreements they don't understand.

Ask for a quotation which outlines the credit provider's terms and rates, and use this to shop around for the best rate between different credit providers.

Since January 1 2011, the NDMA has dealt with more than 9 000 complaints and enquiries and has handled more than 35 316 incoming calls through its helpline.

Other entities such as the National Credit Regulator, National Consumer Tribunal, provincial consumer affairs offices and ombudsman offices can assist with resolving disputes.

Adapted from: *Do you know your Consumer rights?*, http://www.fin24.com/Money/Home/Do-you-know-your-consumer-rights-20130314, downloaded on 10 January 2015

5.1.1 What does the abbreviation NCA stand for? (1)

5.1.2 'A distinction can be made between three types of credit agreements, namely small, intermediate and large.'

Discuss what is meant by a *small agreement*. (4 × 2) (8)

5.1.3 'A prospective client must be given a pre-agreement.'

List any FIVE items that have to be included in such a pre-agreement. (5 × 1) (5)

5.1.4 'One of the rights of the consumer is to be informed why credit is refused. The consumer over and above this right also has other rights.'

List any FIVE other rights of the consumer. (5 × 1) (5)

5.2 Discuss the following forms of constructive delivery by explaining the concept and giving an example of each:

5.2.1 Constititum possessorium

5.2.2 Traditio brevi manu

(2 × 4) (8)

5.3 Discuss the principle of 'huur gaat voor koop'. (5 × 2) (10)

GENERAL STUDIES

5.4 'Although specific performance (in forma specifica) is one of the rights (remedies) at the disposal of an aggrieved party in the case of breach of contract, a court will not always order this.'

Give any FIVE reasons where this will not be ordered. (5 × 1) (5)

5.5 Discuss any FOUR forms of breach and give an example of each. (4 × 2) (8)

[50]

TOTAL SECTION B: 150
GRAND TOTAL: 200

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