higher education & training

Department:
Higher Education and Training
REPUBLIC OF SOUTH AFRICA

MARKING GUIDELINE

NATIONAL CERTIFICATE

MERCANTILE LAW N4

19 JUNE 2018

This marking guideline consists of 6 pages.

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SECTION A

QUESTION 1

1.1 1.1.1 It is a legal process whereby one party transfers all his/her rights under that contract to a third person, but not his/her duties or obligation.

1.1.2 This implies that the minor is allowed by his/her guardian to carry on business or any other occupation on his/her own behalf for his/her own account.

1.1.3 It regulates the relationship between private individuals. One person takes legal action against another and in this way creates a legal relationship.

1.1.4 It is free/gratis legal aid provided for poor people who cannot afford the cost of expensive legal fees in criminal cases heard in the high court.

1.1.5 It refers to the situation that results when one or both of the parties are mistaken about or have acted by mistake on something in the contract that they have signed.

1.1.6 One person influences the other in such a way that the innocent victim cannot form his/her own opinion.

1.1.7 A contract is automatically discharged when the capacity of the debtor and the creditor becomes one.

1.1.8 It is a mutual agreement whereby the seller undertakes to deliver to the buyer a thing/article or *merx*, and guarantees the buyer free possession of the article in return for a stipulated sum of money.

1.1.9 The sale is effective immediately. The risk passes to the buyer as soon as the sale takes place, and the buyer must meet the condition to avoid loss or risk of cancellation by the seller.

1.1.10 It is an invalid contract that is also totally unenforceable.

(10 × 2) (10)

1.2 1.2.1 True
1.2.2 False
1.2.3 True
1.2.4 True
1.2.5 True
1.2.6 True
1.2.7 False
1.2.8 True
1.2.9 False
1.2.10 True

(10 × 2) (20)

1.3 1.3.1 B
1.3.2 D
1.3.3 E
1.3.4 C
1.3.5 A

(5 × 2) (10)

TOTAL SECTION A: 50

SECTION B

QUESTION 2

2.1
- Free/mutual consent – consensus *ad idem*
- Contractual capacity.
- Reasonable cause – *iusta causa*
- Legally/physically possible to perform
- Comply with legal formalities (5 × 2) (10)

2.2
- This is a special remedy at the disposal of the buyer for latent defects.
- 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.
- The buyer can also claim for the repayment of all expenses.
- General rule is that no damages can be claimed.
- The buyer must return the article. (Any 7 × 2) (14)

2.3
- Where the parties expressly exclude this warranty in the contract of 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 *aedillition action* became prescribed (4 × 2) (8)

2.4
- Fraudulent misrepresentation
- Innocent misrepresentation
- Negligent misrepresentation (3 × 2) (6)

2.5
- Fraudulent misrepresentation – False statement made knowingly that it is not the truth. For example, saying that something is new when 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 which later appears not to be genuine
- Negligent misrepresentation – Providing false information, but neglecting to make sure whether it is the truth. For example, an estate agent saying that an open piece of land has been zoned for a park, but it was not (3 × 4) (12)

[50]

QUESTION 3

3.1
- Constitutional law
- Administrative law
- International law
- Criminal law (4 × 2) (8)

3.2
- Legislation
- English law
- Customary law
- Court decisions
- Roman-Dutch law
- Writings of ancient jurists (6 × 2) (12)

3.3
- It is the duty of the landlord to maintain the property after it has been 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.
- The tenant can cancel the lease if the breach is very serious.
- The landlord can claim damages as well as consequential damage
- The tenant can demand a reduction in the rental.
- The tenant can fix the property and claim the cost from the landlord, but only with his/her consent (10 × 2) (20)

3.4
- To pay employees
- To take employees into service
- Not to let employees do work junior to their status
- To provide a safe working environment
- To give the employee a certificate when he or she leaves the business

(5 × 2) (10)

[50]

QUESTION 4

4.1
- It is to protect the drawer when the cheque is lost
- It ensures that the cheque does not fall into wrong hands
- It enables the legal owner to take action for loss suffered against any person who handled the cheque after it was lost or stolen. (3 × 2) (6)

4.2
- The principle is known as 'huur gaat voor koop'.
- 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 the 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), 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. (10 × 2) (20)

4.3
- This requires the employee:
- to further the employer's business interests.
- not to compete with the employer.
- not to disclose confidential information or trade secrets belonging to the employer.
- to refrain from dishonest conduct such as theft and fraud.
- An employee may be summarily dismissed as a result of not acting in good faith.
- The employer must be careful that dismissal due to lack of good faith does not turn into unfair dismissal. (Any 5 × 2) (10)

4.4
- Price
- Distance
- The method of transport
- What is to be transported (4)

4.5
- Where a written contract is interpreted,
- no oral evidence will be received
- that tries to alter the existing contract
- unless technical aspects need to be explained
- but not with the intention to change the existing contract
- The existing contract is the only valid contract.
(Any 5 × 2) (10)
[50]

QUESTION 5

5.1
- Payment of the principal debt
- Renunciation by the pledgee or mortgagee
- Novation
- Extinction of the pledgor or mortgagor's title
- Destruction of the mortgaged property
- Merger
- Alienation of pledged goods
- Prescription
- Order of the court
- Sales in execution or insolvency (10)

5.2
- The law of obligations
- The law of things
- The law of persons and family law
-
- Mercantile law
- The law of succession (Any 5 × 2) (10)

5.3
- The law of obligations deals with personal rights, for example a claim that one person may have against another.
- The law of things deals with real rights, for example the right of ownership and possession.
- The law of persons deals with the status of persons, for example the fact that a minor has limited contractual capacity. Family law deals with aspects such as engagements, marriage and divorce.
- Mercantile law deals with commerce and industry, for example aspects such as copyright, insurance and negotiable instruments.
- The law of succession deals with the way in which a person's estate is distributed upon death. (20)

5.4
- Indemnification
- Good faith
- Reinsurance
- Overinsurance
- Underinsurance
- Insurable interest (5 × 2) (10)

[50]

TOTAL SECTION B: 150
GRAND TOTAL: 200

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