higher education & training

Department:
Higher Education and Training
REPUBLIC OF SOUTH AFRICA

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NATIONAL CERTIFICATE

MERCANTILE LAW N4

(13030094)

19 June 2018 (X-Paper)
09:00–12:00

This question paper consists of 6 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 will be marked. Clearly cross out ALL work you do NOT want to be marked.

INSTRUCTIONS AND INFORMATION

1. SECTION A is COMPULSORY and must be answered by ALL candidates.
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. Write neatly and legibly.

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SECTION A: COMPULSORY

QUESTION 1

1.1 Explain the following terms:

1.1.1 Cession

1.1.2 Tacit emancipation

1.1.3 Public law

1.1.4 Legal aid ‘pro Deo'

1.1.5 Mistake

1.1.6 Undue influence

1.1.7 Merger

1.1.8 Contract of sale

1.1.9 Resolutive condition

1.1.10 Void agreement

(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 (1.2.1–1.2.10) in the ANSWER BOOK.

1.2.1 Bearer cheques are cheques entitling the holder to the payment of a sum of money which is transferable by delivery and payable to bearer.

1.2.2 The warrant against latent defects is an incidentalium of a contract of sale.

1.2.3 Cession means that the tenant transfers only his/her rights but not his duties to the third person.

1.2.4 *Lustus error* means refusal of a party to perform.

1.2.5 An independent contractor does a particular piece of work and must supply his/her own means to perform the work.

1.2.6 A drawer is the person who gives his/her banker the instruction to pay a sum of money out of their bank account.

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

1.2.8 An implied warranty could cause problems because it is not specifically mentioned to the buyer, although it is a serious or material part of the agreement.

1.2.9 Maternity leave is always paid leave.

1.2.10 *Stare decisis* means to stand by a previous decision.

(10 × 2) (20)

1.3 Choose a description from COLUMN B that matches an item in COLUMN A. Write only letter (A–E) next to the question (1.3.1–1.3.5) in the ANSWER BOOK.

COLUMN A		COLUMN B	
1.3.1	*Actio redhibitoria*	A	seller sells article with knowledge of latent defects
1.3.2	Endorsements on cheque	B	buyer has right to claim cancellation of contract and claim refund of the purchase price
1.3.3	Assignment		
1.3.4	Leave	C	the employee is entitled to it after completion of the relevant period of services
1.3.5	Latent defect		
		D	the payee or beneficiary signs his/her name on the back of the cheque
		E	the tenant gives up his/her rights and duties to a third person

(5 × 2) (10)

TOTAL SECTION A: 50

SECTION B

Answer any THREE questions from this section.

QUESTION 2

Read the following case study and answer the questions.

HOME DEFECTS AND DODGY SELLERS

06 June 2012

South African home buyers are urged to conduct a home inspection before signing the property sale agreement, according to Eric Bell of Inspect-A-Home.

Bell says historically, sellers will not disclose all defects and therefore it is much better for the buyer to have the inspection done prior to any sales agreement in order to have a fair assessment of the property to avoid any costly oversights. Most houses inspected do have defects and if costly to repair, a reduction in the purchase price is only fair.

Property24 recently published an article on why it is important to hire a property inspector.

In the article, Bell explained how a couple ended up paying R150 000 over and above the purchase price of their new home. What they didn't know when they signed the sales agreement was that they would need to replace the roof sheeting, rotten door frames, and a leaking geyser before they moved in. They signed a disclosure document stating that the house was in good working order, so they couldn't return to the seller or estate agent with their complaints or bills, he said at the time.

[Source. http://www.property24.com/Home defects and dodgy seller published 06 June 2012]

2.1	Name the requirements with which contracts in general must conform.	(5 × 2)	(10)
2.2	Briefly discuss the *actio redhibitoria*.	(7 × 2)	(14)
2.3	State FOUR circumstances under which the seller will not be liable for latent defects.	(4 × 2)	(8)
2.4	List THREE kinds of misrepresentation.	(3 × 2)	(6)
2.5	Explain and give ONE example of each type of misrepresentation.	(4 × 3)	(12)
			[50]

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QUESTION 3

National law is the law of the nation. It consists of a collection of rules intended to regulate the conduct of human beings with the view to maintain peace and order, and which are enforced by the police and a system of courts.

3.1	Name the subdivisions of public law.	(4 × 2)	(8)
3.2	State SIX sources of South African law.	(6 × 2)	(12)
3.3	Discuss the duties of the landlord to maintain the property.	(10 × 2)	(20)
3.4	Name FIVE duties of the employer.	(5 × 2)	(10)
			[50]

QUESTION 4

4.1	State reasons for crossing cheques.	(3 × 2)	(6)
4.2	Mention the legal principle that can protect the lessee from being compelled to leave the premises.	(10 × 2)	(20)
4.3	State FOUR duties of the employee to act in good faith.	(5 × 2)	(10)
4.4	List FOUR aspects to be considered in the formation of a contract of carriage.		(4)
4.5	Explain the parol evidence rule.	(5 × 2)	(10)
			[50]

QUESTION 5

5.1	List TEN ways in which pledges and mortgages can be terminated.		(10)
5.2	Name the subdivisions of private law.	(5 × 2)	(10)
5.3	Explain the subdivisions you have mentioned in QUESTION 5.3, with examples.	(10 × 2)	(20)
5.4	Name FIVE principles of insurance.	(5 × 2)	(10)
			[50]

TOTAL SECTION B: 150
GRAND TOTAL: 200

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