higher education & training

Department:
Higher Education and Training
REPUBLIC OF SOUTH AFRICA

MARKING GUIDELINE

NATIONAL CERTIFICATE

MERCANTILE LAW N4

11 JUNE 2019

This marking guideline consists of 8 pages.

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SECTION A

QUESTION 1

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(15 × 2) (30)

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	1.2.10	D

(10 × 2) (20)
[50]

TOTAL SECTION A: 50

SECTION B

QUESTION 2

2.1 If performance of the contract is impossible✓✓
- Example: a contract to move Table Mountain✓✓
- It is impossible to perform this contract and it is therefore void.✓✓

If the contract is legally impossible✓✓
- Example: somebody agrees to kill another person in return for the payment of a sum of money✓✓

If a person who has no contractual capacity enters into a contract✓✓
- Example: a contract concluded by an insane person is void. (12)

2.2
- When it is highly unlikely that the latent defect existed at the time of the sale.
- If it was expressly agreed that the thing was sold with all its faults just as it is.
- Where the buyer was aware of the latent defect when the buyer and the seller concluded the agreement and the buyer accepted it by using the article as if there was nothing wrong with it.
- If the available legal remedy for latent defects has terminated or prescribed.
- Where the buyer waives his/her right to claim for latent defects. (5 × 2) (10)

2.3
- Works at his/her own pace and not under the supervision of an employer
- Can do the work as he/she sees fit as long as he/she keeps to the contract
- Does a particular piece of work and must supply own means to perform the work
- Renders a service for the performance of a specific piece of work (temporary)

(4 × 2) (8)

2.4
- Serious intention
- Offer is made so that once offer is accepted, it will result in an enforceable agreement
- Offer is made to a specific person, namely the addressee
- Offer is made in clear and unambiguous terms
- Offer is made with the intention that a legal bond or binding agreement will result from it
- Offer is practical and it must always be possible to carry out the offer

(6 × 2) (12)

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2.5
- By passage of time
- The tenant and landlord give each other notice.
- By mutual agreement between landlord and tenant
- By merger
- Insolvency of tenant
- Cancellation by either party
- Destruction of property by either the tenant or by vis major
- Death of either of the parties (8)

[50]

QUESTION 3

3.1
- When it is impossible to return the article in the same condition it was in when the seller delivered it to the buyer because of the latter's fault.
- When the article is lost or damaged after delivery to the buyer because of the buyer's negligence.
- When the buyer discovers a latent defect but nevertheless keeps the article and continues to use it.
- When the action has prescribed, that is, one year after conclusion of the contract.
- When the seller uses a safeguard from any liability towards the buyer by means of a stipulation in the contract or by mutual agreement between the parties. (5 × 2) (10)

3.2
- Pay rent punctually✓✓
  - The specific way in which the tenant must pay rent (e.g., by cash/cheque deposit) will usually be stipulated expressly in the contract.✓✓
  - The tenant must therefore pay the agreed rent in the manner in which the parties agreed.✓✓
  - Example: on a fixed and agreed date of each month✓✓

- Take proper care of the property✓✓
  - The tenant may use the property in a proper manner only✓✓ and must use it for the purpose for which he/she rented it or for the usual purpose for which it has been rented.

- Return the property in a good condition when the lease expires✓✓
  - Ordinary wear and tear or depreciation will naturally be taken into account.✓✓
  - The tenant will be relieved of this duty and will not be responsible if the property was damaged✓✓ or destroyed by forces beyond his/her control.
  - Example: vis major✓✓ (10 × 2) (20)

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3.3 Symbolic delivery✓✓

- Symbolical delivery does not mean delivery of the article itself by handing it over to the buyer but rather by the necessary means to enable him/her to obtain and to exercise control over it.
- Acceptance of the key to a warehouse in which the purchased goods are stored✓✓
- A grain elevator receipt is another means by which the buyer of agricultural produce can fetch and claim the goods he/she bought.
- The buyer can obtain physical possession of and control over the goods and the key of the flat, et cetera.✓✓

Traditional longa manu (Delivery with the long hand)✓✓

- This takes place when it is difficult to deliver the article.
- If it is not easy to handle the article because of its size, weight or other features.✓✓
- The buyer points out the movable article concerned and place it at the buyer's disposal, and then it is up to the buyer to exercise control over it as he/she pleases.
- Example: arrange delivery by truck, ship, train, et cetera.

Delivery with the short hand (brevi manu)✓✓

- The article that is to be delivered is already in possession of the person who will later become owner.
- The person who keeps the property on behalf of the present owner later decides to take over (buy) the property and becomes the new owner.
- Formal delivery is not required because the property is already with the new owner.
- Example: B borrows a car from A but before B returns the car as per their agreement, A decides that B can keep the car if he pays A R 25 000.✓✓

Constitutum possessorium✓✓

- The seller keeps the goods after the sale has taken place.
- The seller keeps the goods for and on behalf of the buyer because the article seller must alter or change the goods to suit the buyer's needs.
- Delivery takes place once the work on the goods is done.
- Example: A buys an engagement ring from B.✓✓ (5 × 4) (20)

[50]

QUESTION 4

4.1
- Pay the purchase price
- Compensate the seller for looking (caring/maintaining) after the thing
- Accept delivery of the article bought (3 × 2) (6)

4.2 Credit grantor✓✓
- A person who is a seller of goods or a dealer or a person who renders a service as a result of a credit transaction or a lessor in terms of a leasing transaction.✓✓

Credit receiver✓✓
- A person who is a buyer of goods or a person to whom a service is rendered as a result of a credit transaction or a lessee in terms of leasing transaction.✓✓ (4 × 2) (8)

4.3
- Mora debitoris
- Repudiation
- Positive non-performance
- Mora creditoris
- Impossibility of performance (5 × 2) (10)

4.4 4.4.1 An agreement entered into between two or more persons that is legally enforceable, that is, the parties mutually undertake or only one of them undertakes to deliver something or to do something or not to do something (2)

4.4.2
- Performance✓✓
  The contract is discharged when both parties perform their obligations in full, for example, the thing sold has been delivered and the purchase price has been paid.✓✓
- Novation✓✓
  This means that the two parties agree to end the existing agreement between them and to conclude a new agreement to take the place of the previous agreement.✓✓
- Release✓✓
  This means that the parties agree that the debtor will be released from his/her obligation.✓✓
- Set-off✓✓
  The debtor and creditor owe each other exactly the same amount of money and therefore the agreement between them will be cancelled.
- If the one party owes the other party more money the smaller debt will be wiped out while the bigger debt will be reduced.✓✓

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- Merger✓✓
  A contract will be automatically discharged when the capacity of the debtor and the creditor become one, that is, when the lessee of a property becomes the owner thereof.

- Insolvency✓✓
  If a person's liability exceeds his/her assets his/her assets will be placed under the control of a trustee or curator.

- Impossibility of performance.✓✓
  When performance of a contract is impossible, whether legally or physically, the contract is discharged.

- Prescription✓✓
  The effect of prescription is that a debt becomes legally unenforceable after a certain period of time has lapsed. (8 × 3) (24)

[50]

QUESTION 5

5.1
- Law of persons
- Family law
- Law of things
- Law of individuality
- Mercantile law (Any 4 × 1) (4)

5.2
- Incompetence/Negligence of serious nature
- Marked/Deliberate absenteeism or failure to work
- Unreasonable absence due to illness
- Wilful disobedience, unjustified absence from or lateness for work despite repeated warnings
- Insubordination and other subversive behaviour
- Dishonesty (properly proved) in performing his/her duties
- Misconduct that makes the employee unfit for his/her position
- Commercial infidelity/revealing trade secrets/taking secret profits
- Combination of above factors amounting to repudiation of or breach of a material term in the contract of service (9 × 2) (18)

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5.3 Mentally ill persons

- Have no contractual capacity.
- All agreements they conclude are void.
- All people are sane unless a competent court has declared a person mentally ill.
- A person who claims that another person is mentally ill must prove it.
- If a person has been declared of unsound mind, it is only logical that such a person will be unable to contract.
- Contract will be void unless the person who entered into the contract was in full possession of his/her mental faculties.
- A mentally ill person cannot be found guilty of committing a delict (wrongdoing).

Insolvent persons

- If insolvent persons are sequestrated, their property will be taken away from them and placed with an appointed curator or trustee.
- The insolvent's ability to contract freely is restricted.
- Cannot dispose of property belonging to the insolvent estate.
- May not have interest in or be employed in a business or a trade that is a general dealer or manufacturer.
- Contract entered into by insolvents will not be void but will remain valid until the contracts are set aside or ratified by the trustee or curator.
- Insolvents cannot hold a liquor licence served under authority of a court or be directors of a company. (14 × 2) (28)

[50]

TOTAL SECTION B: 150
GRAND TOTAL: 200

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