higher education & training

Department:
Higher Education and Training
REPUBLIC OF SOUTH AFRICA

MARKING GUIDELINE

NATIONAL CERTIFICATE

MERCANTILE LAW N4

29 September 2020

This marking guideline consists of 8 pages.

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SECTION A

QUESTION 1

1.1	1.1.1	C		
	1.1.2	D		
	1.1.3	C		
	1.1.4	B		
	1.1.5	D		
	1.1.6	C		
	1.1.7	D		
	1.1.8	C		
	1.1.9	C		
	1.1.10	C		
			(10 × 1)	(10)
1.2	1.2.1	Murder		
	1.2.2	Serious intention		
	1.2.3	Out of community of property		
	1.2.4	Natural persons		
	1.2.5	Credit provider		
	1.2.6	Tenant		
	1.2.7	Criminal		
	1.2.8	Artificial persons		
	1.2.9	Prodigals		
	1.2.10	May not		
	1.2.11	Prohibitive		
	1.2.12	Mercantile law		
	1.2.13	*Ius in personam*		
	1.2.14	*Stare decisis*		
	1.2.15	High Court		
			(15 × 2)	(30)
1.3	1.3.1	B		
	1.3.2	E		
	1.3.3	D		
	1.3.4	A		
	1.3.5	C		
			(5 × 2)	(10)
				[50]

TOTAL SECTION A: 50

SECTION B

QUESTION 2

2.1
- Cancellation of the lease if the breach is very serious
- Tenant may claim damages under certain circumstances.
- Tenant may demand a reduction in the rent (proportionate to the lesser use of the leased property).
- Tenant may have the necessary repairs done and then claim the cost from the landlord, but only with the consent of the landlord. (Any 3 × 2) (6)

2.2 2.2.1 Hire goes before sale or, in connection with leases, it means the lease agreement was entered into with the landlord before the landlord decided to sell the leased property. (2)

2.2.2 Under this principle, the tenant is protected against eviction where the property is sold before the lease expires. (2)

2.2.3
- A short-term lease (shorter than ten years) tenant may stay on leased premises (need not vacate).
- An unregistered long-term lease tenant will have to leave after 10 years as this is treated as a short-term lease.
- Registered long-term lease: the tenant can stay for the duration of the lease. Exception: Expropriation of land (3 × 2) (6)

2.3
- Interest
- Initiation fee
- Service fee
- Credit insurance
- Default administration charges
- Collection costs (6)

2.4 2.4.1 The seller has a duty to care for the item sold, until delivery. (2)

2.4.2 Where accidental loss takes place, the loss or benefit is borne by the buyer. (2)

2.4.3
- Where the parties excluded the passing of the risk rule
- Where the goods must be weighed, measured or counted
- Where the contract of sale is conditional
- Where the seller does not deliver on time (Any 3 × 2) (6)

2.5
- The return of the purchase price
- Interest
- Repayment of all expenses
- The general rule is that a buyer cannot claim damages (4 × 2) (8)

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2.6
- To promote a fair and non-discriminatory marketplace for access to credit.
- To prohibit unfair practice.
- To promote responsible credit-granting practices by credit providers.
- To prohibit reckless credit granting.
- To educate consumers about credit and consumer rights.
- To assist consumers in making informed decisions based on adequate information provided to them
- To provide mechanisms for resolving over-indebtedness
- To make provisions for dispute procedure with regard to providing credit.
- To establish a National Credit Regulatory. (Any 5 × 2) (10)

[50]

QUESTION 3

3.1 3.1.1 The agreement between Jimmy and Edgar is voidable. (2)

3.1.2 There was an agreement, but the agreement was established based on fear and intimidation and is not enforceable (unlawful), not legal and can be terminated, if Jimmy so chooses.
(Any similar description is acceptable.) (2)

3.1.3 Yes (2)

Jimmy was forced or pressurised to conclude this agreement with Edgar.

OR

In this situation, a person feared violence or intimidation (duress), and as a direct result of that, entered into a contact.
(2)

3.1.4 Jimmy can keep (enforce) the contract or set it aside (have it cancelled).

OR

Jimmy can claim damages. (2)

3.2
- Sick leave
- Family responsibility leave
- Annual leave
- Maternity leave (4)

3.3
- Your friend will be independent.
- He will work at his own pace and not under supervision of the employer.
- He will use his own discretion as to how and when he will be doing his job as he is not subject to the direct orders of his employer.
- The insurance company he will be doing work for, is not liable for any of his delicts (wrongdoings).
- He can do the work as he sees fit, as long as he adheres to the contract.
- He does a particular piece of work and must supply his own means (tools, e.g. computer, printer, internet) to perform the work.
- Renders a service for the performance of a specific piece of work (temporary).
- He can give notice (resign) as per mutual agreement and is not protected against unfair dismissal or termination of employment
- He is not entitled to paid leave and chooses his own dates for any vacation. (Any 5 × 2) (10)

3.4
3.4.1 Regulates protection against unfair discrimination.
3.4.2 Deals with aspects such as trade unions, collective bargaining, dismissal and CCMA.
3.4.3 Makes provision for training and skills development in the workplace.
(3 × 2) (6)

3.5
3.5.1 True
3.5.2 True
3.5.3 False
3.5.4 True
3.5.5 False
3.5.6 True
3.5.7 False
3.5.8 False
3.5.9 False
3.5.10 True
(10 × 1) (10)

3.6
- The employer must provide a safe and healthy working environment.
- It is the duty of employees to obey all rules and to eliminate all possible dangers at the workplace where he/she can.
- Under common law, the employer was under no obligation to provide sick leave to employees, but this has been changed/regulated over the years.
- Detailed statutory duties in this regard are imposed on the employer in terms of the Occupational Health and Safety Act 85 of 1993. (Any 3 × 2) (6)

3.7
- Hours of work
- Whether the person is economically dependent on the employer
- Whether the person is provided with tools to do the work
- Whether the person works only for the (one) employer or not (4)

[50]

QUESTION 4

4.1
- A counteroffer terminates an original offer
- This means that the offeree accepts an offer made, but with certain conditions.
- The original offeror then becomes the offeree,
- and the offeree becomes the new offeror. (4 × 2) (8)

4.2
- It is the situation that arises whereby no action can flow, or no claim can arise from an illegal contract or transaction.
- The contract between the parties (under such circumstances) is void and the parties cannot be bound contractually. (2 × 2) (4)

4.3
- This rule is applicable where both contracting parties are equally guilty of misconduct in their agreement with one another.
- The position of the possessor will be the strongest
- Where one party has already performed under an illegal contract, he or she cannot claim back such a performance.
- The defendant will therefore be in a stronger position. (4)

4.4
- When assisted by a guardian
- When the minor has been declared a major by a High Court
- When the minor gets married with the consent of his or her guardian
- Where the minor is emancipated
- Where ratification took place (after the minor had contracted alone)
- Statutory (legal) exceptions (Any 4 × 2) (8)

4.5
- In community of property
- Out of community of property without the accrual
- Out of community of property with the accrual (3 × 2) (6)

4.6
- The parties are legally competent.
- There is an agreement and a serious intention to be contractually bound.
- The parties' obligation to each other can be fulfilled.
- Objectives, implementation and conclusion of the contract are legal or lawful.
- Where contract complies with all necessary formalities (Any 4 × 1) (4)

4.7
- The right to receive a credit agreement in an understandable language
- The right to receive a copy of the credit agreement
- The right to be informed about all fees and costs and the total instalment
- The right to apply for debt restructuring
- The right to be protected against unfair discrimination in granting credit.
- The right to be informed of any reason why an application for credit is refused
- The right to the cooling-off period
- The right that some information must be treated as confidential

(Any 5 × 2) (10)

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4.8
- Sale at auction
- Cost, insurance and freight (cif; fob; cod, etc) or similar sales characterised by various documents indicating symbolic delivery
- Free on board and free on rail contracts
- Sale in execution (Any 3 × 2) (6)

[50]

QUESTION 5

5.1
- This is defined as work performed between 18:00 and 06:00.
- Employees must receive extra payment, an allowance or a reduction of working hours.
- Transport must be available to these employees (not necessarily provided by the employer).
- Employees who regularly work after 23:00, must be informed about possible health and safety risks.
- Free medical assessment of these employees must be undertaken at the cost of the employer.
- Where night work has a negative impact on an employee's health, such employee must be moved to a day shift. (Any 4 × 2) (8)

5.2
5.2.1 True
5.2.2 True
5.2.3 True
5.2.4 True
5.2.5 True
5.2.6 True
5.2.7 False
5.2.8 True
5.2.9 True
5.2.10 True

(10 × 1) (10)

5.3
- Where a minor is tacitly emancipated, he or she can enter into a binding contractual obligation within the field of his or her emancipation.
- Tacit emancipation occurs where a minor is allowed by her guardian to carry on business on his or her own.
- In such circumstances the minor may validly contract with regard to the business/work he or she operates in.
- The minor may not contract outside that business without the guardian's consent.
- The minor must be independent, that is, free of any parental control.
- Where the minor lives away from the parents and carries on business apart from them, there is a strong presumption that the minor is emancipated. (5)

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5.4
- The seller must have been the owner or must have given consent to a third party to act on his behalf and sell it to the buyer.
- The seller must have the intention of transferring ownership to the buyer.
- The buyer must have the intention of receiving/taking ownership of the article bought.
- Delivery must take place.
- Where the item is movable and the sale is for cash, the price must be paid.
- When immovable property is bought, ownership passes upon registration of the property (in the Deeds Office).
- In the case of credit sales, ownership usually passes on delivery.
- Constructive delivery can also take place (in certain cases). (Any 4 × 2) (8)

5.5
- No, an advertisement is not a valid offer.✓
- It is only an invitation to do business.✓✓
- Example of an applicable case is Crawley versus Rex✓
- Exception: an advertisement is a valid offer if a reward is attached to it.✓
- Any person who wants to claim the reward, must be aware of the advertisement offering a reward as acceptance of the offer.✓
- If you are not aware of the existence of an advertisement (that would be taken as an offer), then you cannot claim the offer (afterwards)✓
- Applicable case: Bloom versus American Swiss Watch Company✓ (9)

5.6
- A welded crankshaft in a second-hand car
- A fault in a gearbox
- Furniture infected by borer beetles (3)

5.7 5.7.1
- Specific performance
- Cancellation (of contract)
- Damages (claim)
- Penalty clause (that is included in contract)
- Interdict (via court order)
- *Exceptio non adimpleti contractus*

(Words in brackets above are merely for better understanding) (6)

5.7.2 Example: X enters into contract with Y. However, if X is aggrieved, he/she may terminate the contract. (1)

[50]

TOTAL SECTION B: 150
GRAND TOTAL: 200

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