higher education & training

Department:
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REPUBLIC OF SOUTH AFRICA

NATIONAL CERTIFICATE

MERCANTILE LAW N4

(13030094)

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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. All the answers must be in full sentences unless indicated otherwise.
7. 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 Which of the following is not regarded as a source of law?

A Legislation
B Common law
C Civil law
D The Constitution

1.1.2 Under a contract of sale, one of the duties of a purchaser is to pay the …

A principal debt.
B taxes.
C final amount payable.
D price agreed upon.

1.1.3 An insane person has contractual capacity …

A and can conclude a valid contract.
B to conclude contracts only for someone other than him/herself.
C only when assisted by a legally appointed person.
D that limits him or her to the type of contracts he or she may conclude.

1.1.4 A credit agreement is a large agreement if it is a …

A pawn transaction.
B mortgage agreement.
C policy agreement.
D loan of less than R15 000.

1.1.5 Which of the statements below is not a requirement for a lease agreement?

A Rent must be paid in money.
B The time of payment is usually determined in the contract.
C Where the tenant does not pay rent, it is a breach of contract.
D The tenant can refuse to pay rent at any time.

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1.1.6 With reference to a lease agreement, cession means:

A Supervening impossibility of performance
B Expiration of the specified period of a lease
C A third party now gets the right of occupation
D Insolvency of the tenant

1.1.7 An employee, Cathy, has given birth. She is entitled to take … leave.

A annual
B sick
C family responsibility
D maternity

1.1.8 Zikona wants to rent her house to Xolani, while Zikona thinks she is purchasing the house from Xolani. This misunderstanding is an example of an *error in* …

A *corpore*.
B *substantia*.
C *negotio*.
D *persona*.

1.1.9 Which statement below is a formality with reference to a valid agreement?

A An illusion is created that an agreement is taking place.
B *Traditio brevi manu* is a term present in all agreements.
C A contract must be in writing or can be concluded orally.
D Waiver of rights can be included or excluded in an agreement.

1.1.10 A credit provider may only charge …

A for NCA limits.
B an initiation fee which increases annually.
C fixed interest calculated on the outstanding amount.
D a service fee of R100,00.

(10 × 1) (10)

1.2 Choose the correct word or words from those given in brackets. Write only the answer next to the question number (1.2.1–1.2.15) in the ANSWER BOOK.

1.2.1 (Murder/Drunken driving) is a common law crime.

1.2.2 (Serious intention/Consensus) helps to classify contracts.

1.2.3 To be married (in/out of) community of property means the estate is subject to the accrual system.

1.2.4 (Natural/Juristic) persons include all human beings.

1.2.5 A (credit provider/credit bureau) includes banks and micro lenders.

1.2.6 A duty of the (tenant/landlord) is to pay rent.

1.2.7 In a (criminal/civil) case, the state appears versus an accused.

1.2.8 (Alien enemies/Artificial persons) have full contractual capacity, but do not have the capacity to act.

1.2.9 (Prodigals/Drunk persons) have limited contractual capacity.

1.2.10 Credit agreements (may/may not) contain 'voetstoots' clauses.

1.2.11 A (prohibitive/mandatory) interdict is obtained by an employee to prevent the employer from forcing him/her to work long hours.

1.2.12 (Mercantile/Indigenous) law is referred to as commercial law.

1.2.13 A (*ius in personam/ius in rem*) is known as a personal right.

1.2.14 (*Ratio decidendi/Stare decisis*) means for the courts to stand by a previous decision.

1.2.15 The (High Court/Supreme Court of Appeal) has jurisdiction within their geographical area.

(15 × 2) (30)

1.3 Choose a description from COLUMN B that matches a term or concept in COLUMN A. Write only the letter (A–G) next to the question number (1.3.1–1.3.5) in the ANSWER BOOK.

COLUMN A		COLUMN B	
1.3.1	*Contra bones mores*	A	Public law
1.3.2	Incidental credit agreement	B	against the good morals that society prescribes
1.3.3	*Caveat emptor*	C	National Credit Act
1.3.4	Criminal law	D	let the buyer beware
1.3.5	NCA	E	an initiation fee may not be charged
		F	New Credit Agreement
		G	Constitutional law

(5 × 2) (10)

[50]

TOTAL SECTION A: 50

SECTION B

Answer any THREE questions in this section.

QUESTION 2

2.1 A friend of yours, Thembi, approaches you for legal advice. She is renting a flat of which the roof is leaking badly during the rainy season. Despite bringing the problem to the attention of her landlord, the latter refuses to attend to this problem. Thembi feels that her rights as a tenant have been violated in this regard. As this is a clear case of breach of contract, advise Thembi as to what she can do under the present circumstances.

Identify and briefly explain THREE remedies that Thembi can rely on. (3 × 2) (6)

2.2 Discuss the principle 'huur gaat voor koop' under the following headings:

2.2.1 Meaning of this term, in general (2)

2.2.2 Meaning of this principle for the tenant (2)

2.2.3 Effect of this principle on short-term and long-term leases

HINT: A clear distinction must be drawn and shown (separately) between short- and various long-term leases. (3 × 2) (6)

2.3 Since you don't qualify for the transport allowance under the student bursary scheme provisions and live quite a distance from campus, your parents considered buying you a small car. However, before doing so, your mother wants you to investigate and inform her of the various financial charges as applicable under the NCA. You have now gathered all the relevant information.

List SIX items that a credit provider may charge. (6)

2.4 With contracts of sale, it is important for both buyer and seller to manage the risk/s that goes/go with such agreement.

Discuss the various rules on the passing of risk under the following headings:

2.4.1 Where delivery must take place. (2)

2.4.2 Where accidental loss has occurred. (2)

2.4.3 THREE circumstances where the risk will not pass to the buyer. (3 × 2) (6)

2.5 Where a valid contract of sale is concluded, what can/cannot the purchaser claim under the remedy *actio redhibitoria*? (4 × 2) (8)

2.6 Explain the purpose of the National Credit Act (34 of 2005). (5 × 2) (10)

[50]

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QUESTION 3

3.1 Read the following scenario and answer the questions.

Edgar threatens to kidnap Jimmy's daughter and claim a ransom if Jimmy refuses to grant Edgar a loan. Jimmy agrees.

3.1.1 State whether the agreement between Jimmy and Edgar is void or voidable. (2)

3.1.2 Provide a suitable motivation for your answer to QUESTION 3.1.1 above. (2)

3.1.3 Since there was consensus in the above scenario, could the situation be described as one of duress?

State 'Yes' nor 'No' and write down a suitable reason for your answer. (2 × 2) (4)

3.1.4 Advise Jimmy about ONE remedy at his disposal on the above agreement. (2)

3.2 A basic contract of employment should make provision for the granting of leave to its employees.

List the type or categories of leave available to an employee. (4)

3.3 One of your friends, an N6 Financial Management student, has just heard that he was successful in a recent job interview. The business, a well-known insurance company, has offered him a position as an independent contractor. He asks you to explain to him briefly what being employed as an independent contractor means because he thought they would offer him a permanent position.

Advise your friend accordingly by mentioning FIVE characteristics of the type of work and/or person that makes you an independent contractor. (5 × 2) (10)

3.4 Briefly explain the purpose of the following legislation as it stands in connection with employment:

3.4.1 Employment Equity Act 55 of 1998

3.4.2 Labour Relations Act 66 of 1995

3.4.3 Skills Development Act 30 of 1966

(3 × 2) (6)

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3.5 Indicate whether the following statements are TRUE or FALSE by writing only 'True' or 'False' next to the question number (3.5.1–3.5.10) in the ANSWER BOOK.

3.5.1 A tenant may not misuse the (leased) property.

3.5.2 Legislation protects tenants in the sense that they cannot be illegally evicted.

3.5.3 Where a tenant suffered loss, damages cannot be claimed.

3.5.4 A lessee must evacuate the premises at the end of a lease.

3.5.5 A lease for an indefinite period cannot be terminated.

3.5.6 In a lease agreement, cession has the same effect as subletting.

3.5.7 There is no difference between an unregistered long-term lease and registered long-time lease.

3.5.8 A lease can only be cancelled by the landlord.

3.5.9 The tacit hypothec for rent is a principle that protects the landlord.

3.5.10 Where rent payable is specified, it is always payable in money.

(10 × 1) (10)

3.6 Zac works for XYZ Construction. He is concerned about his health and safety conditions at work.

Explain what is meant by safe and healthy working conditions under the common law. (6)

3.7 Give FOUR examples of what the law looks at when determining the dominant characteristics of a contract of employment. (4)

[50]

QUESTION 4

4.1 Briefly explain the situation (during contracting) where a counteroffer is being made. (4 × 2) (8)

4.2 Define the *ex turpi causa rule.* (4)

4.3 Discuss the *par delictum* rule. (4)

4.4 List the circumstances under which a minor can enter into a contract. (4 × 2) (8)

4.5 Nelly and Danny plan to get married. Not sure of what to do, they approach you for advice. They tell you that they have heard there is a choice as to how one can get married in order to protect all the assets each party brings into the marriage. They want to know what their options are.

Explain to Nelly and Danny the three ways in or provisions under which a person can marry. (3 × 2) (6)

4.6 There is no meaningful difference between the formation of an ordinary contract and a contract of service.

How is a service contract then formed? Name FOUR aspects. (4)

4.7 Briefly discuss the rights of the consumer in terms of the National Credit Act 34 of 2005. (5 × 2) (10)

4.8 List THREE special (types of) contracts of sale. (3 × 2) (6)

[50]

QUESTION 5

5.1 Briefly explain the broader meaning of the term 'night work' as it is set out and discussed in the Basic Conditions of Employment Act 75 of 1997.

HINT: Issues such as hours of work and remuneration must be mentioned.
(4 × 2) (8)

5.2 Indicate whether the following statements are TRUE or FALSE by writing only 'True' or 'False' next to the question number (5.2.1–5.2.10) in the ANSWER BOOK.

5.2.1 The term *bona fide* means to act in good faith.

5.2.2 Credit providers may only charge collective costs.

5.2.3 *Traditio longa manu* means delivery with the long hand.

5.2.4 Debts from negotiable instruments prescribe after 6 years.

5.2.5 *Condictio indebiti* is a remedy where payment made in error can be reclaimed.

5.2.6 A contract of sale, subject to a suspensive condition, means the seller bears the risk if the condition is never fulfilled.

5.2.7 The provisions of the law of succession deals with a living person's estate.

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5.2.8 Serious misconduct at the workplace may lead to the summary dismissal of an employee.

5.2.9 Credit providers include retail stores.

5.2.10 An acceptance of an original offer must be unconditional.

(10 × 1) (10)

5.3 Briefly discuss tacit emancipation of a minor. (5)

5.4 Explain how a buyer becomes the owner of an article bought. (4 × 2) (8)

5.5 Discuss whether an advertisement is a valid offer and name an applicable case. (9)

5.6 Give THREE examples of latent defects as applicable to contracts of sale. (3)

5.7 Answer the following questions dealing with breach of contract:

5.7.1 List SIX remedies available to the aggrieved party. (6)

5.7.2 Give any example of where a breach of contract has been committed. (1)

[50]

TOTAL SECTION B: 150
GRAND TOTAL: 200

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