higher education & training

Department:
Higher Education and Training
REPUBLIC OF SOUTH AFRICA

MARKING GUIDELINE

NATIONAL CERTIFICATE

MERCANTILE LAW N4

9 June 2021

This marking guideline consists of 8 pages.

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SECTION A (COMPULSORY)

QUESTION 1

1.1	1.1.1	C		
	1.1.2	C		
	1.1.3	C		
	1.1.4	C		
	1.1.5	C		
	1.1.6	C		
	1.1.7	C		
	1.1.8	C		
	1.1.9	C		
	1.1.10	C		
			(10 × 1)	(10)
1.2	1.2.1	juristic		
	1.2.2	Misrepresentation		
	1.2.3	debitoris		
	1.2.4	in execution		
	1.2.5	Voluntary		
	1.2.6	invecta et illata		
	1.2.7	operis		
	1.2.8	Administrative		
	1.2.9	Private		
	1.2.10	Mentally ill persons		
	1.2.11	Merx		
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	1.2.13	tenant		
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	1.1.15	plaintiff		
			(15 × 2)	(30)
1.3	1.3.1	D		
	1.3.2	E		
	1.3.3	B		
	1.3.4	C		
	1.3.5	A		
			(5 × 2)	(10)
				[50]

TOTAL SECTION A: 50

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SECTION B

QUESTION 2

2.1
- It must be consistent with all the essentials of a contract.
- It must be a complete offer.
- It must be clear and unambiguous.
- It must be communicated to the offeree.
- It must be made with the intention that it will serve as an offer, that it may be accepted and that a valid contract will result from it. (5)

2.2
- Tony has a tacit hypothec over the movables on a leased premises.
- The hypothec can only be used for as long as the rent is in arrears.
- A court order must be obtained which would direct officials of the court to attach the property on the leased premises.
- An interdict can also be obtained preventing the tenant who is in arrears with rent from removing property from the leased premises.
- Therefore, Tony can apply to the courts for an order against Pepper.

(5 × 2) (10)

2.3 2.3.1 Invalid contract: Selling cocaine is illegal therefore no cause of action can arise.

2.3.2 Invalid: If a minor concludes a contract without the assistance of a parent or guardian then the contract is void.

2.3.3 A mentally ill person has no contractual capacity and cannot conclude contracts, however, in this case the mentally ill person has a curator who executes her duties under the supervision of the Master of the High Court and therefore the contract is valid.

(3 × 2) (6)

2.4
- 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.
- Should there be a latent defect, the seller would be in breach of contract.
- The buyer can use this action if he/she cannot use the article at all.
- With this remedy the purchaser can claim the return of the purchase price, interest, repayment of all expenses. (5 × 2) (10)

2.5 2.5.1 With symbolical delivery it is not the delivery of the article itself that is handed over to the buyer but rather the necessary means to enable him/her to obtain and to exercise control over it, e.g. the acceptance of the key to a warehouse in which purchased goods are stored.

2.5.2 It takes place where it is difficult to deliver the article, because of its size, weight or other features. The movable article concerned is pointed out and placed at the buyer's disposal. It is up to the buyer to exercise the control over it as he/she pleases.

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2.5.3
- The article to be delivered is already in possession of the person who will later become the owner.
- The people holding 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. (Any TWO)

2.5.4
- The seller keeps the goods after the sale occurred.
- Delivery takes place once the work on the article has been done.

(4 × 2) (8)

2.6 **Small agreements**
- Total value of the credit facility
- Instalment amount
- Number of instalments
- Final amount payable
- Interest rate
- All other credit costs

Intermediate and large agreements
- Principal debt
- Costs such as delivery
- Connection fees
- Licences or registration fees (10 × 1) (10)

2.7 R15 000 (1)

[50]

QUESTION 3

3.1 **Void contract**
- No contract exists.
- No consensus has been reached.
- No contractual rights and duties flow from the contract.
- Both parties can ignore the contract as it was never concluded.
- The parties do not have to go to court to have the contract declared void.

Voidable contract
- A contract exists.
- There is consensus. but there is a defect in the consensus.
- Rights and duties arise from contract until the aggrieved party has the contract set aside.
- The aggrieved party can choose to enforce the contract or set it aside.
- The aggrieved party must get a court order to have the contract set aside.

(5 + 5) (10)

3.2 3.2.1 According to the Basic Conditions of Employment Act:

- If the employee normally works on Sundays, he/she gets 1,5 times normal pay.
- If agreed, he/she can receive compensation by paid time off.
- The employee must be paid for any public holiday that falls on a normal working day.
- The employee must receive double pay for work done on a public holiday.
- An employee must give his/her consent to work on a public holiday.
- Therefore, ABC retailers are contravening the act. (Any 5 × 2) (10)

3.2.2

- Employees must have a meal interval at least 60 minutes after five hours which may be reduced to 30 minutes by agreement.
- Where an employee works less than 6 hours per day, the meal interval may be left out. (2 × 2) (4)

3.2.3

- Night work 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.
- Employees who continually work after 23:00 must be informed about possible health and safety risks.
- Free medical assistance must be given to these employees.

(Any 3 × 2) (6)

3.3 3.3.1 True
3.3.2 True
3.3.3 False
3.3.4 False
3.3.5 True
3.3.6 True
3.3.7 True
3.3.8 False
3.3.9 False
3.3.10 False

(10 × 1) (10)

3.4

- Locatio conductio rei: Law of lease
- Locatio conductio operarum: Letting and hiring of services
- Locatio conductio operis: Hiring of a piece of work (3 × 2) (6)

3.5 An acquisitive representation is a statement made by one party to another but does not become a term of the contract. A warranty is an added term to the contract and noncompliance with a warranty amounts to breach of contract.

(2 + 2) (4)

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QUESTION 4

4.1 4.1.1
- The general rule is that an advertisement is not a valid offer, but only an invitation to do business.
- In the case of Crawley versus Rex, the court's decision was that an advertisement is only an invitation to the public and not a binding offer.
- However, there is an exception to the rule as an advertisement in a newspaper can sometimes be an offer.
- Lindy advertised the missing dog in the newspaper so it can be regarded as an offer. (Any 2 × 2) (4)

4.1.2
- The person who finds the lost pet must, however, have seen and reacted to the advertisement and must present the advert as evidence of such an offer when claiming the reward.
- Therefore, Ben will not be entitled to the award as in the case of Bloom versus American Swiss Watch Company. (2 × 2) (4)

4.2
- One party influences the other.
- The influence weakens the other party's resistance and makes him/her fall prey to the stronger party.
- The stronger party exerts the influence in an unscrupulous manner.
- The influence leads to the conclusion of a contract which is to the detriment of the other weaker party. (4 × 2) (8)

4.3 4.3.1 Innocent misrepresentation: A misrepresentation of facts that are actually false, made by a person honestly believing that they are true

4.3.2 Fraudulent misrepresentation: A false representation of facts made fraudulently by an express statement or by withholding information where there is a duty to disclose

4.3.3 Negligent misrepresentation: False representation on facts, while the person making the representation thinks that he/she is being honest

(3 × 2) (6)

4.4
- Married
- Unjustified enrichment
- Emancipated
- Guilty of fraudulent misrepresentation
- Declared a major by the high court (Any 4 × 2) (8)

4.5
- There must be an agreement to purchase and to sell.
- There must be merx.
- There must be a price.
- Delivery must take place. (Any 3 × 1) (3)

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4.6
- To pay the remuneration agreed upon
- To provide the employee with work
- To provide safe and healthy working conditions
- Not to make the employee carry out work junior to the status for which he/she was employed
- Not to contract an employee's services to another employer without the employee's consent (Any 4 × 1) (4)

4.7
- With a consumer that is a minor and who is not assisted by a guardian
- With a person under an administration order without the administrator's consent
- With it resulting from negative-option marketing
- With an unregistered credit provider who was supposed to be registered
- With a credit provider who was subject to notice by the NCR to stop extending credit (5 × 2) (10)

4.8
- Inheritance from a living person
- Items incapable of taking ownership
- Article prohibited by law
- Public parks (Any 3 × 1) (3)

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QUESTION 5

5.1
- Courts not always prepared to issue an order for specific performance due to the personal nature of the contract
- Where the employee does not want to be employed again
- Where it is not practical for the employer to reemploy the employee
- Where dismissal is unfair only because it was effected by an unfair procedure (Any 4 × 2) (8)

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

(10 × 1) (10)

5.3
- It is a valid contract.
- There is an iusta causa (reasonable cause).
- The option must be in writing.
- It does indicate a serious intention to be contractually bound.

Example: Apple will have the first option to buy a house if Dream should sell it. (5)

5.4
- Where the parties expressly exclude it when they entered into an agreement.
- Seller must act in good faith.
- Where the buyer was aware of the fact that he bought a stolen article, he she cannot expect to be protected.
- Where the purchaser loses possession through vis major, casus fortuitous or the unlawful act of a third party, the seller will not be liable, because the purchaser bears the risk. (4 × 2) (8)

5.5
- Full or complete contractual capacity: Persons in this category may conclude contracts freely. Rights and obligations flow from these contracts when concluded.
- Limited contractual capacity: Persons with limited capacity can only conclude a contract when assisted by certain persons, e.g. a minor.
- No contractual capacity: Such a person may not conclude such a contract whatsoever, not even with assistance of another person, e.g. persons who are mentally ill. (3 × 3) (9)

5.6
- Alienation of land
- Express agreements
- Contracts in terms of the National Credit Act 34 of 2005 (3)

5.7
- Proper performance
- Prescription
- Set-off
- Insolvency
- Merger
- Death
- Agreement
- Supervening impossibility of performance (Any 7 × 1) (7)

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TOTAL SECTION B: 150
GRAND TOTAL: 200

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