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NATIONAL CERTIFICATE

MERCANTILE LAW N4

(13030094)

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09:00–12:00

This question paper consists of 9 pages.

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DEPARTMENT OF HIGHER EDUCATION AND TRAINING
REPUBLIC OF SOUTH AFRICA

NATIONAL CERTIFICATE
MERCANTILE LAW N4
TIME: 3 HOURS
MARKS: 100

NOTE: If you answer more than the required number of questions, only the required number of questions will be marked. All work you do not want to be marked, must be clearly crossed out.

INSTRUCTIONS AND INFORMATION

1. SECTION A is COMPULSORY.
2. Answer any THREE questions from SECTION B. Please note that if you answer more than three questions that only the FIRST THREE will be marked. Please cross out any work that you do not want to be marked.
3. Read ALL the questions carefully.
4. Number the answers according to the numbering system used on the question paper.
5. Start each question on a NEW page.
6. Draw a line across the page at the end of EACH question.
7. All questions must be answered in full sentences unless indicated otherwise.
8. Write neatly and legibly.

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SECTION A

QUESTION 1

1.1 Indicate whether the following statements are TRUE or FALSE. Choose the answer and write only 'true' or 'false' next to the question number (1.1.1–1.1.10) in the ANSWER BOOK. Correct the statement if it is FALSE.

1.1.1 The tacit hypothec is applicable to all moveable goods.

1.1.2 Error in substantial means that the parties are mistaken with regard to the identity of the subject matter.

1.1.3 Vis major is an example of supervening impossibility.

1.1.4 A tacit term refers to a non-essential term that does not affect the contract directly.

1.1.5 Extinctive prescription deals with the cancellation of a debt after a certain period has expired.

1.1.6 Novation means that an old contract is replaced by a new contract.

1.1.7 A suspensive condition means that the operations of a contract take immediate effect, but can be cancelled.

1.1.8 A voetstoots sale means that a buyer has to take the article 'as it is'.

1.1.9 Cession means the transfer of duties from an existing contract to a third party.

1.1.10 Summary dismissal terminates a contract immediately.

(15 x 1) (15)

1.2 Identify the legal concept in each of the following situations. Write only the answer next to the question number (1.2.1–1.2.10) in the ANSWER BOOK.

1.2.1 Cecilia made an offer to Bernhard to sell her caravan to him for R40 000. Bernard was interested, but informed Cecilia that he was only willing to pay R36 000.

1.2.2 Bonnie sold uncut diamonds to Johanna for R30 000. When Johanna refused to pay, Bonnie found out that he was not allowed to claim back the uncut diamonds.

1.2.3 Alma rent a flat from Abrie. Alma transferred her obligation to pay the rent to Carel, while she continued to stay in the flat.

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1.2.4 Theresa ordered red flowers for her birthday, but yellow ones were delivered.

1.2.5 Lohandi leased her house to Edward. Edward bought the house which he occupied as the tenant.

1.2.6 Songezo, 16 years old, bought a CD player without his parent's permission and the player was delivered to him. When payment was demanded from him, he refused on the grounds that the contract was void.

1.2.7 Joubert sold his old TV set to Jonell. He told her that it was a brand new television.

1.2.8 Bixa threatened to kidnap his employer's daughter should the employer not give him an increase of R10 000 per month.

1.2.9 Where a written contract is interpreted, no oral evidence will be heard unless technical words need to be explained.

1.2.10 When a cheque is marked like this, it means that the cheque must be paid into a bank account.

(10 x 2) (20)

1.3 Read the following scenario of a contract of sale and answer the questions that follow.

Bert and Jeanet entered into a contract of sale in terms of which Bert sold his motor car to Jeanet for R55 000. The car was sold 'voetstoots'. They agreed that Bert would deliver the car to Jeanet at a specified address in Cape Town.

1.3.1 What type of term is the agreement on the price and the article? (1)

1.3.2 Name ONE *incidentalia* from the case study. (1)

1.3.3 Name TWO *naturalia* (implied terms) of this contract. (2 x 1) (2)

1.3.4 Name the THREE requirements that must be fulfilled for this contract to be perfect. (3 x 1) (3)

1.3.5 Suppose Jeanet bought the car on credit. She put down a deposit of R10 000 and undertook to pay a certain amount every month. What kind of transaction is this? (1)

1.3.6 What is Jeanet and Bert called in terms of the Credit Agreement Act, 75 of 1980? (2 x 1) (2)

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1.4 State in each case which branch of private law is applicable.

1.4.1 This law deals with the status of a minor.

1.4.2 This law deals with the manner in which a person's estate is distributed upon his death.

1.4.3 This law deals with family relationships such as engagements and marriages.

1.4.4 Patents, trademarks and copyright fall under this branch of the law.

1.4.5 This law deals with a claim which one legal subject may have against another, for example, rights and duties flowing from a lease.

(5 x 1) (5)

TOTAL SECTION A: 50

SECTION B

Answer any THREE of the following FOUR questions.

QUESTION 2

2.1 Copy this table in your ANSWER BOOK.

Discuss the forms of breach of contract by completing the table:

FORM OF BREACH	DEFINITION	EXAMPLE
2.1.1		
2.2.2		
2.2.3		
2.2.4		
2.2.5		

(5 x 4) (20)

2.2 Name any THREE duties of the tenant in a contract of lease. (3 x 1) (3)

2.3 Indicate whether the following concepts render a contract void or voidable.

2.3.1 Undue influence

2.3.2 A mistake

2.3.3 Duress

2.3.4 Misrepresentation

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2.3.5 An illegal transaction

(5 x 1) (5)

2.4 Discuss the FOUR forms of constructive (fictitious) delivery by defining each and giving an example of each. (4 x 3) (12)

2.5 List any FIVE reasons for the dishonouring of a cheque. (5 x 1) (5)

2.6 With regard to the Credit Agreement Act, 75 of 1980, meanwhile replaced by the National Credit Act of 2005, indicate whether the following statements are TRUE or FALSE write 'true' or 'false' next to the question number (2.6.1–2.6.3) in the ANSWER BOOK. CORRECT the statement if it is FALSE.

2.6.1 The Act is applicable to moveable and immoveable property.

2.6.2 The cooling off period is always applicable.

2.6.3 The contract must be in the official language which the credit receiver may request in writing.

(5 x 1) (5)
[50]

QUESTION 3

3.1 Briefly discuss any FOUR reasons for the termination of a lease. (4 x 2) (8)

3.2 Read the following case study and answer the questions.

> Robin bought 35 cases of wine from Distell at R380,00 per case. The parties arranged that the wine would be taken to Robin's house the following day. The night after the conclusion of the contract the cellar was struck by lightning and some of the wine was destroyed. Upon investigation it was discovered that only 25 of the cases of wine had been separated from the rest of the stock and that all 25 cases were destroyed.

3.2.1 What kind of loss is this? Motivate your answer. (2 x 2) (4)

3.2.2 Briefly explain who bears the risk for the loss of the wine. (4 x 2) (8)

3.2.3 Suppose the manager of the cellar set the cellar alight as he wanted to submit a fraudulent insurance claim.

Who's loss would this be? Motivate your answer. (2 x 2) (4)

3.3 Table any FIVE differences between an employee and an independent contractor. (5 x 2) (10)

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3.4 Discuss fraudulent misrepresentation by:

3.4.1	defining the concept	(2 x 1)	(2)
3.4.2	discussing the consequences of such a contract	(2 x 2)	(4)
3.4.3	giving an example		(2)
3.4.4	listing the remedies at the disposal of the aggrieved party.	(3 x 1)	(3)

3.5 Name any FIVE sources of the law. (5 x 1) (5)
[50]

QUESTION 4

4.1 Discuss the *actio quanti minoris* as remedy for latent defects. (5 x 2) (10)

4.2 Read the following case study and answer the questions.

> Jeremy is seventeen years old, has a part time work, but is still fully supported by his parents. He enters into the following contracts.
>
> In each case state whether it will be a valid contract and motivate your answer by giving a legal reason/term

4.2.1 He drew up a will.

4.2.2 He bought a MP3-player on credit. He told the shop that he was eighteen years old.

4.2.3 He entered into a contract with Planet Fitness and his parents gave their consent afterwards.

4.2.4 He wanted to run his parent's business and they obtained permission for him to do so. He entered into a contract to buy stock for the shop. (4 x 2) (8)

4.3 Name any TWO differences between a cheque and a promissory note. (2 x 2) (4)

4.4 Discuss the liability of the employer for the delicts of the independent contractor. (4 x 2) (8)

4.5 Name TWO kinds of formalities that some contracts have to comply with.(2 x 1) (2)

4.6	4.6.1 Define damages	(1 x 2)	(2)
	4.6.2 Name the FOUR rules that can assist the court to determine the amount of damages to be paid.	(4 x 2)	(8)

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4.7 Briefly discuss FOUR circumstances under which the risk for accidental loss will not pass to the buyer. (4 x 2) (8)

[50]

QUESTION 5

5.1 Indicate in each of the following cases whether it will be regarded as a mistake, causing the contract to be void. Motivate your answer.

5.1.1 Peter bought a bicycle from a shop because he thought that his bicycle had been stolen.

5.1.2 A person signed a document without reading it and afterwards claimed that he did not understand the legal terms.

5.1.3 A partner left the partnership, but the partnership did not give notice to outsiders about this and the partner continued to enter into contracts in the name of the partnership. (3 x 2) (6)

5.2 Name THREE essentialia of a contract of sale. (3 x 1) (3)

5.3 Who can be a credit grantor in terms of the Credit Agreement Act, 80 of 1975? (3 x 1) (3)

5.4 Name the FOUR duties of the landlord in a contract of lease. (4 x 1) (4)

5.5 Distinguish between the following concepts:

5.5.1 A general crossing and a special crossing

5.5.2 A blank endorsement and a special endorsement

5.5.3 A drawer and a drawee

5.5.4 A not negotiable marking and a not transferable marking (4 x 2) (8)

5.6 Discuss the principle of 'Huur gaat voor koop' (the lease was before the sale) (5 x 2) (10)

5.7 Give the meaning of each of the following Latin terms:

5.7.1 Stare decisis

5.7.2 The pretium

5.7.3 Contra bones mores

5.7.4 The merx

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5.7.5 The ratio decidendi

5.7.6 An iusta causa

5.7.7 An iusta error

5.7.8 Caveat subscriptor

(8 x 1) (8)

5.8 Briefly discuss FOUR circumstances under which the buyer can claim damages in the case of a latent defect. (4 x 2) (8)

[50]

TOTAL SECTION B: 150
GRAND TOTAL: 200

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