higher education & training

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NATIONAL CERTIFICATE

MERCANTILE LAW N4

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13:00–16:00

This question paper consists of 12 pages.

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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 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. Read ALL the questions carefully.
2. SECTION A is COMPULSORY.
3. Answer any THREE questions form SECTION B.
4. Number the answers according to the numbering system used in this question paper.
5. Start each question on a NEW page.
6. Draw a line across the page at the end of EACH question.
7. Answer ALL questions in full sentences unless indicated otherwise.
8. Write neatly and legibly.

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SECTION A

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 Johanna signed a contract of lease with Alma, but afterwards bought the house from Alma. This is known as a …

A merger.
B set-off.
C prescription.
D novation.

1.1.2 If a credit agreement is not in writing, the contract is …

A void.
B voidable.
C valid.
D unenforceable.

1.1.3 Where immovable property is sold, the form of delivery adopted to transfer ownership to the buyer is …

A traditio longa manu.
B registration.
C traditio brevi manu.
D constititum possessorium.

1.1.4 Where a seller delivers the article sold to the buyer, he/she undertakes to give the buyer …

A ownership.
B vacua possessio.
C freedom.
D a free possession from illegal eviction.

1.1.5 The risk for accidental losses passes from the seller to the buyer from the moment that the contract is …

A signed.
B perfect.
C concluded.
D unconditional.

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1.1.6 Summary dismissal of an employee takes place when the employee …

A acted negligently.
B refused to carry out all orders.
C discloses confidential information to competitors.
D is incompetent.

1.1.7 The process whereby a tenant transfers his/her rights from a lease is known as …

A assignment.
B delegation.
C cession.
D cession and delegation.

1.1.8 A latent defect is one that …

A is visible with the naked eye.
B is invisible.
C renders a contract void.
D renders a contract voidable.

1.1.9 The strongest source of the law is …

A legislation.
B the common law.
C case law.
D custom.

1.1.10 Public law consists of …

A criminal, mercantile and administrative law.
B administrative, formal and constitutional law.
C criminal, administrative and constitutional law.
D criminal, administrative and informal law.

(10 × 2) (20)

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1.2 Complete the following sentences by making use of words from the list below. Write only the word(s) next to the question number (1.2.1–1.2.15) in the ANSWER BOOK.

parol evidence rule; par delictum rule; assignment; delegation; cession; void; voidable; not negotiable; not transferable; supervening impossibility; rendering performance impossible; iusta causa; iustus error; credit grantor; credit receiver; limited contractual capacity; no contractual capacity

1.2.1 The insane has …

1.2.2 The … states that the court will only take the written contract into account and that no oral evidence will be allowed to alter the contract.

1.2.3 The transfer of rights from an existing contract to another party is known as …

1.2.4 … means that one debtor is substituted by another debtor.

1.2.5 A reasonable mistake is known as an …

1.2.6 The seller, service provider or lessor is known as the …

1.2.7 A reasonable cause is known as an …

1.2.8 The buyer or lessee is known as the …

1.2.9 The … states that where both parties are equally at guilt, the position of the possessor will be the strongest.

1.2.10 Where a person has been induced to enter into a contract, such contract will be …

1.2.11 A mistake of fact renders a contract …

1.2.12 … means that both the debtor and the creditor in a contract have been substituted by a third party.

1.2.13 … is an example of breach of contract.

1.2.14 … refers to a happening beyond the control of the parties.

1.2.15 There can only be one payee if a cheque is marked …

(15 × 1) (15)

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1.3 Indicate whether the following statements are TRUE or FALSE. Choose the answer and write only 'true' or 'false' next to the question number (1.3.1–3.1.9) in the ANSWER BOOK. Correct the statement if it is FALSE.

1.3.1 An infant is a minor older than seven years.

1.3.2 A personal right is enforceable against the whole world.

1.3.3 The employer is vicariously liable for the deeds of the employee.

1.3.4 A mistake of motive renders a contract void.

1.3.5 A seller transfers ownership to a buyer when delivery takes place.

1.3.6 A contract is perfecta where the contract is subject to a condition.

1.3.7 Undue influence is an example of a voidable contract.

1.3.8 A long term lease needs to be registered at all times.

1.3.9 An example of an aedillition action is the actio redhibitoria.

(15 × 1) (15)
[50]

TOTAL SECTION A: 50

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SECTION B

QUESTION 2

Read the case study below and answer the questions.

Songezo enters into a contract with Gym-Trim for a period of one year. The monthly fees are R350,00 to be paid on or before the fifteenth of each month. The gym hours are from 8 o' clock in the morning to 8 o' clock in the evening, from Monday to a Saturday.

2.1 Name the essentialia with which this contract must comply. (8 × 1) (8)

2.2 Suppose Songezo is seventeen years old.

Can he enter into this contract without assistance? Motivate your answer. (4)

2.3 What form of breach will it be if Songezo does not pay on time? (2)

2.4 Suppose the manager of Gym-Trim sets the gym on fire to claim from the insurance and as a result of this Songezo cannot go to the gym for the next three months.

What form of breach is this? (2)

2.5 Songezo is transferred to Gauteng before the expiry date of his contract.

Briefly explain how Songezo can transfer this contract to Gary. (3 × 2) (6)

2.6 Songezo presented himself as a major to enable him to enter into this contract.

Can he be contractually bound? Motivate your answer. (2 × 1) (2)

2.7 On which basis can Gym-Trim hold him liable? (2)

2.8 The gymnasium advertised sport bags at a special price. Songezo wanted to buy one, only to be informed that there were no more bags available.

Discuss briefly if the gymnasium will be bound by this advertisement, or not. (3 × 2) (6)

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2.9 Songezo is injured while practising at the gymnasium. He wants to claim his medical costs from the gymnasium. The gymnasium refers him to his contract which states clearly that the gym will not be liable for any claims for injuries unless it is due to faulty apparatus, which was not the case. Songezo said that he had not read that clause.

2.9.1 Will Songezo be successful with his claim? (1)

2.9.2 What is the applicable legal principle? (2)

2.10 Songezo stopped payment after three months. Suppose that the gymnasium could not contact him or get hold of him for four years.

2.10.1 Can they still claim the money after this period? (1)

2.10.2 Name and briefly explain the applicable legal principle. (2 × 2) (4)

2.11 Discuss briefly FIVE ways in which this contract can come to an end. (5 × 2) (10)
[50]

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QUESTION 3

Read the case study below and answer the questions.

Johan entered into a contract of lease with Suzanne, whereby Suzanne will rent his flat for two years.

3.1	3.1.1	List THREE essentialia of a contract of lease.	(3 × 1)	(3)
	3.1.2	List any THREE duties of Johan.	(3 × 1)	(3)
	3.1.3	List any THREE duties of Suzanne.	(3 × 1)	(3)
	3.1.4	Johan informs Suzanne after one year has expired that she has to leave as he has decided to sell the flat.		
		(a) Will Suzanne have to leave with immediate effect?		(1)
		(b) Discuss the applicable legal principle.	(5 × 2)	(10)
	3.1.5	Suzanne gets in arrear with her payments. Johan decides to make use of the tacit hypothec as a possible remedy.		
		Briefly explain what is meant by this.	(2 × 2)	(4)
	3.1.6	Suzanne wants to sublet the property to Yelani.		
		Discuss the subletting of property.	(4 × 2)	(8)
3.2		Illustrate the hierarchy of courts in South Africa.	(10 × 1)	(10)
3.3		Identify the branch of private law that regulates the following aspects:		
	3.3.1	Domestic status of persons such as a minor and an insane		
	3.3.2	The right of ownership		
	3.3.3	Obligations arising from a contract		
	3.3.4	The manner in which a person's estate is distributed upon death	(4 × 2)	(8)
				[50]

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QUESTION 4

Read the case study below and answer the questions.

> Michael bought a car from AA Dealers. The cash price is R150 000 and the credit price R280 000. As Michael did not have the necessary funds, he asked his bank for financial assistance. He entered into an agreement with AA dealers according to which he will pay for the vehicle over a period of five years.

4.1 Who is Michael in terms of the Credit Agreement Act? (1)

4.2 Who is the bank? (1)

4.3 What is this type of transaction called? (1)

4.4 This type of contract is subject to two conditions.

Briefly discuss these Two conditions. (8)

4.5 List the THREE essentialia of a contract of sale. (3 × 1) (3)

4.6 Suppose Michael discovers a defect in the gear box.

What kind of defect is this? (1)

4.7 What remedy will Michael have at his disposal if this means that he cannot use the car at all? (2)

4.8 Included in this contract are two tacit warranties.

Briefly explain these TWO warranties. (8)

4.9 Name THREE duties of Michael. (3 × 1) (3)

4.10 One of the duties of AA Dealers in this transaction is to protect Michael against lawful eviction.

Discuss this duty by referring to the following aspects:

4.10.1 The meaning of this concept (2)

4.10.2 The position of Michael should he be evicted (2 × 2) (4)

4.10.3 The position of AA Dealers should Michael be evicted (2 × 2) (4)

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4.11 Certain definite legal terms are applicable to a contract of sale.

Briefly define the following:

4.11.1 rei vindicatio

4.11.2 caveat emptor

4.11.3 vacua possessio

4.11.4 traditio brevi manu

4.11.5 symbolic delivery

4.11.6 a sale ad mensuram

(6 × 2) (12)
[50]

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QUESTION 5

Read the case study below and answer the questions.

> Peter appointed Lelani as his secretary. She works five days a week, eight hours per day. She is paid monthly by cheque.

5.1 Is Lelani an employee or an independent contractor?

Briefly motivate your answer by giving TWO reasons for your answer. (6)

5.2 Briefly discuss any THREE duties of Lelani. (3 × 3) (9)

5.3 List any FIVE circumstances under which Lelani may be summarily dismissed. (5 × 1) (5)

5.4 Lelani is involved in an accident while driving the company's car during working hours. It is clear from the evidence that she caused the accident.

Briefly explain if the company can be liable for her deeds. (6)

5.5 Lelani is paid by cheque.

List any SIX essentialia of this document. (6 × 1) (6)

5.6 Suppose Lelani wants to transfer this cheque to Jonell. The cheque is marked 'Not negotiable'.

Briefly explain if she will be able to transfer this cheque to Jonell. (2 × 2) (4)

5.7 Lelani forgot to deposit the cheque and only found the cheque seven months later.

Can she still deposit this cheque? Briefly explain. (2)

5.8 One of the deductions from Lelani's salary is for UIF.

Briefly explain UIF. (2 × 2) (4)

5.9 Explain TWO differences between a cheque and a promissory note. (4 × 2) (8)

[50]

TOTAL SECTION B: 150
GRAND TOTAL: 200

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