higher education & training

Department:
Higher Education and Training
REPUBLIC OF SOUTH AFRICA

MARKING GUIDELINE

NATIONAL CERTIFICATE

NOVEMBER EXAMINATION

MERCANTILE LAW N4

13 NOVEMBER 2014

This marking guideline consists of 9 pages.

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SECTION A

QUESTION 1

1.1	1.1.1	A
	1.1.2	C
	1.1.3	B
	1.1.4	B
	1.1.5	B
	1.1.6	C
	1.1.7	C
	1.1.8	B
	1.1.9	A
	1.1.10	C

(10 × 2) (20)

1.2	1.2.1	no contractual capacity
	1.2.2	parol evidence rule
	1.2.3	Cession
	1.2.4	Delegation
	1.2.5	iustus error
	1.2.6	credit grantor
	1.2.7	iusta causa
	1.2.8	credit receiver
	1.2.9	par delictum rule
	1.2.10	Voidable
	1.2.11	Void
	1.2.12	assignment
	1.2.13	rendering performance impossible
	1.2.14	supervening impossibility
	1.2.15	not negotiable

(15 × 1) (15)

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1.3 1.3.1 False. This is a pupillus OR An infant is younger than seven years.

1.3.2 False. It is enforceable against a specific person OR A real right is enforceable against the whole world.

1.3.3 True

1.3.4 False. The contract is valid OR A material mistake renders a contract void.

1.3.5 False. The owner only transfers vacua possesio (a free and undisturbed possession).

1.3.6 False. A contract is perfecta where it is unconditional.

1.3.7 True

1.3.8 False. It only needs to be registered to be protected against third parties.

1.3.9 True

(15 × 1) (15)
[50]

TOTAL SECTION A: 50

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SECTION B

QUESTION 2

2.1
- The contract must be legal/lawful.
- The parties must have contractual capacity.
- The parties must have the serious intention to be contractually bound.
- The parties must communicate their intentions.
- The parties must reach consensus (must be of the same mind/must agree).
- Performance must be possible.
- The agreement must not be vague.
- Formalities (not always an essentialia) (8 × 1) (8)

2.2 No (1)
- He is a minor and only has limited contractual capacity.
- He can obtain rights, but cannot incur any obligations.
- He must be assisted by a guardian. (3 × 1) (3)

2.3 Mora debitoris (2)

2.4 Rendering performance impossible (2)

2.5
- This can be done by means of assignment.
- Songezo transfers both his rights and obligations to Gary.
- Songezo thus transfers both his debtor and creditor half to Gary.
- Consent must be given by all three parties. (Any 3 × 2) (6)

2.6 No.
He is still not a minor, but acted fraudulently and will not receive any payments back. (2)

2.7 He will be liable on the basis of unjustified enrichment. (2)

2.8 No (compulsory fact) (2)
- An advertisement is only an invitation to do business.
- Motivation: Crawley versus Rex
- An advertisement can be a valid offer if a reward is attached to it, but this is not. (Any 2 × 2) (4)

2.9 2.9.1 No (1)

2.9.2
- Caveat subscriptor
- Let he who signs beware (2 × 1) (2)

2.10 2.10.1 No (1)

2.10.2 Prescription
Debts come to an end due to effluxion of time. (2 × 2) (4)

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2.11
- Effluxion of time
  The contract date expires.
- By agreement
  Where both parties give their consent that the contract is terminated.
- Death
  Where Songezo dies, performance can no longer take place.
- Supervening impossibility
  If something beyond control of the parties happen, the contract comes to an end.
- Insolvency of Gym Trim
  The business is insolvent and this will terminate the contract. If Songezo is declared insolvent, it does not terminate the contract.
- Proper performance
  Both parties fulfilled their obligations. (Any 5 × 2) (10)

[50]

QUESTION 3

3.1 3.1.1
- Use and enjoyment of a specified property
- Specified rent
- Temporary use or enjoyment (3 × 1) (3)

3.1.2
- To deliver use and occupation or enjoyment of the property let
- To maintain the property
- To ensure the tenant undisturbed use
- To compensate the lessee for additions and improvements.

(Any 3 × 1) (3)

3.1.3
- To pay the rent
- To ensure that the property is not misused.
- To return the property undamaged (3 × 1) (3)

3.1.4 (a) No (1)

(b)
- The applicable principle is 'huur gaat voor koop'.
- This principle is applicable to short term leases as well as registered long term leases.
- It means that the tenant can stay for the whole duration of the lease.
- The lease was before the sale.
- This principle is also applicable where the property is inherited.
- It is, however, not applicable where expropriation of land takes place. (Any 5 × 2) (10)

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3.1.5
- The tacit hypothec is a special remedy where the tenant is in arrear with his rent.
- This means that the landlord can take possession of the moveable property of the tenant on the premises.
- The landlord can sell this property to cover for the outstanding rent not received.
- Goods in transit can also be taken.
- Goods subject to an instalment sale transaction (and of which the landlord is aware) cannot be taken. (Any 2 × 2) (4)

3.1.6 A tenant is allowed to sublet unless prohibited by the contract of lease.
The tenant will be in breach of contract where subletting is prohibited by his/her contract and he/she does sublet.
If property is sublet, the only contractual relationship will be between the tenant and the sublessee.
There is no contractual relationship between the landlord and the sublessee. (4 × 2) (8)

3.2

HIGHER COURTS	LOWER COURTS	SPECIAL COURTS
Constitutional court	Magistrate courts	Special higher courts
Appellate division of	Regional courts	Special lower courts
The Supreme Court	District courts	Other special courts
Provincial high courts	e.g. Small Claim court	Local High courts

(Any 10 × 1) (10)

3.3
3.3.1 The Law of Persons
3.3.2 The Law of Things
3.3.3 The Law of Obligations
3.3.4 The Law of Succession
(4 × 2) (8)
[50]

QUESTION 4

4.1 Credit receiver (1)

4.2 Credit grantor (1)

4.3 Instalment sale transaction (1)

4.4 Suspensive condition – This means that Michael will only become the owner upon final payment.
Resolutive condition – This means that the vehicle can be taken back by the bank should Michael fail to fulfil his obligations. (4 × 2) (8)

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4.5
- There must be a price.
- There must be a premium.
- There must be an agreement to purchase and sell.
- Delivery must take place (can also be marked, although not regarded by all authors as an essentialia) (3 × 1) (3)

4.6 A latent defect/hidden defect (1)

4.7 The actio redhibitoria (2)

4.8 The tacit warrant against eviction – This means that nobody with a stronger right will come and claim the article from Michael.

The tacit warrant against latent defects. – The seller guarantees that he is not aware of any defects that cannot be Seen with the eye/invisible defects/hidden defects. (4 × 2) (8)

4.9
- To pay the purchase price as agreed
- To compensate the seller for expenses incurred while caring for the article sold until delivery takes place
- To accept delivery of the article sold (3 × 1) (3)

4.10 4.10.1
- This means that AA Dealers guarantees that they are the real owner or has the consent of the owner to sell the car.
- The seller guarantees that he will protect the buyer should he be threatened by somebody with a stronger right, for example, the real owner. (Any 1 × 2) (2)

4.10.2
- If Michael is threatened with eviction he must inform the seller that he is threatened.
- He must not hand over the article voluntarily.
- He can rely on the tacit warrant given to him by the seller. (Any 2 × 2) (4)

4.10.3
- AA Dealers will be in breach of contract.
- They will have to refund Michael his money. (2 × 2) (4)

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4.11 4.11.1 rei vindicatio: A special action with which a true owner can reclaim what belongs to him.

4.11.2 Caveat emptor: Let he who buys beware.

4.11.3 Vacua possessio: A free and undisturbed possession

4.11.4 Traditio brevi manu: Delivery with the short hand

4.11.5 Symbolic delivery: The real article is not delivered, but something that puts the buyer in control of the article bought.
A form of constructive delivery.

4.11.6 A sale ad mensuram: This means that the goods must first be weighted, measured or counted before the price can be determined.

(6 × 2) (12)
[50]

QUESTION 5

5.1 An employee (2)
- She is only employed by Peter.
- She is a full-time employed employee.
- She is under the supervision and control of Peter. (Any 2 × 2) (4)

5.2 To put her services at the disposal of the employer
- This is the primary function of the employee.

To obey all reasonable orders
- As the employee is under the supervision and control of the employer, she has to obey all reasonable orders.
- She does not have to obey unlawful orders.
- It will be breach of contract if she refuses to obey reasonable orders.

To perform her work faithfully and diligently.
- It is accepted that she will be able to do the work that she has been appointed for.
- An employee must also exercise due care and diligence.
- Gross negligence or incompetency can lead to dismissal.

To act in good faith
- This is an implied duty.
- It can also be expressly stated in a contract of employment.
- This means not to misuse information he or she acquires during course of his/her employment.
- This means not to compete directly with the employer.
- It also refers not to be dishonest in any way.

To refrain from misconduct
- An employee normally signs a code of conduct and must refrain from misconduct.
- Examples of misconduct include rude behaviour or drunkenness.
- It may lead to dismissal. (Any 3 × 3) (9)

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5.3
- Gross negligence
- Serious misconduct
- Incompetence to do the particular work
- Dishonesty
- Rude behaviour
- Disobedience
- Commercial infidelity to the employer (Any 5 × 1) (5)

5.4 Yes (2)
- This is known as vicarious liability.
- An employer is liable for the wrongful acts of the employee while the employee is busy with the execution of his/her task.
- There must be an employer-employee relationship (a contract of service), which is the case. (Any 2 × 2) (4)

5.5
- An order
- unconditional
- in writing
- addressed from drawer to drawee/bank
- signed by the drawer
- to pay a certain sum of money
- on demand or at a fixed future date
- to a specified person (payee) or his order (Any 6 × 1) (6)

5.6 No
If a cheque is marked not negotiable, it means that there can only be one payee. (2 × 2) (4)

5.7 No, the cheque is stale. (2)

5.8 This stands for Unemployment Insurance Fund. (4)
- The employer as well as the employee contributes to this fund.
- When the employee gets unemployed, he/she will receive a certain percentage of his/her salary for a certain period of time. (Any 2 × 1) (2)

5.9
- Cheque is an order /promissory note is a promise
- Cheque has three parties/promissory note only has two parties (4 × 2) (8)

[50]

TOTAL SECTION B: 150
GRAND TOTAL: 200

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