higher education & training

Department:
Higher Education and Training
REPUBLIC OF SOUTH AFRICA

MARKING GUIDELINE

NATIONAL CERTIFICATE

NOVEMBER EXAMINATION

MERCANTILE LAW N4

30 NOVEMBER 2016

This marking guideline consists of 7 pages.

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QUESTION 1

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

(10 × 1) (10)

1.2	1.2.1	Real right
	1.2.2	Counter offer
	1.2.3	Delict
	1.2.4	Par delictum rule
	1.2.5	Cession
	1.2.6	Restitution
	1.2.7	Fraudulent misrepresentation
1	1.2.8	Pre-agreement
	1.2.9	Credit bureaux
	1.2.10	Summary dismissal

(10 × 1) (10)

1.3	1.3.1	G
	1.3.2	A
	1.3.3	F
	1.3.4	E
	1.3.5	B
	1.3.6	H
	1.3.7	J
	1.3.8	D
	1.3.9	I
	1.3.10	C

(10 × 1) (10)

1.4	1.4.1	True✓
	1.4.2	False✓ Renders a contract void.✓
	1.4.3	True✓
	1.4.4	True✓
	1.4.5	False✓ Must be registered as well.✓
	1.4.6	False✓ Voetstoots mean take it as it is.✓
	1.4.7	False✓ Gross negligence can lead to dismissal.✓
	1.4.8	False✓ Does not have to provide the person with work, but must still pay him or her.✓
	1.4.9	True✓
	1.4.10	True✓

(15)

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1.5 1.5.1 (a) 45
(b) 12 (2)

1.5.2 (a) 60
(b) 5 (2)

1.5.3 Double (1)
[50]

TOTAL SECTION A: 50

SECTION B

PLEASE NOTE: STUDENT HAS TO ANSWER ANY THREE QUESTIONS IN THIS SECTION. IF MORE THAN THREE HAS BEEN ANSWERED, MARK THE FIRST THREE.

QUESTION 2

2.1 2.1.1 Concerned with real rights/right of ownership, possession, mortgages/pledges/ liens (Any applicable example) (1)

2.1.2 Deals with personal rights/claim for money lent/obligations arising from a contrac' a delict (1)

2.1.3 Deals with an estate/will (1)

2.2
- Law can be enforced
- Other rules or norms cannot be enforced

(Any applicable answer/examples) (2 × 2) (4)

2.3 2.3.1 Not an offer✓ – only an invitation to do business✓

2.3.2 Not valid✓ This is not a legal offer/does not comply with essentialia✓

2.3.3 Valid✓ A reward attached to an advertisement is a valid offer.✓
(3 × 2) (6)

2.4 2.4.1
- Contract must be legal or lawful.
- Parties must have contractual capacity.
- The parties must have reached consensus.
- The parties must communicate their intentions.
- The parties must seriously intend to contract.
- The agreement must not be vague.
- Performance must be possible.
- Formalities (Any 7 × 1) (7)

2.4.2 Latent defect (1)

2.4.3
- She will have the actio quanti minoris at her disposal.
- With this remedy she can claim a reduction in the selling price.
- General rule is that damages cannot be claimed,✓✓ but in this case damages can be claimed.✓✓
- Suzanne can still use the article (5 × 2) (10)

2.4.4 NO✓✓
- The seller must have been the owner or had the consent of the owner to sell the article.✓✓
- The buyer must have the intention of receiving ownership.✓✓
- The seller must have the intention of transferring ownership. (6)

2.4.5 (a) Tacit warrant against eviction
(b) She can institute vindication
(c) Yes (3)

2.5 2.5.1 This is delivery by agreement.
The article is left with the seller for alterations to be done. (2 × 2) (4)

2.5.2
- Delivery with the long hand
- Takes place where goods are too heavy to hand over from hand to hand
- Goods are pointed out. (2 × 2) (4)

2.6 2.6.1 Price
2.6.2 Let he who signs beware (2 × 1) (2)
[50]

QUESTION 3

3.1
- This is a special remedy at the disposal of the landlord where a tenant is in arrears with his or her rent.
- With this remedy the landlord can possess the moveable property of the tenant on the premises.
- Goods in transit can also be taken.
- Goods belonging to a third party can also be taken, but then the landlord must have no knowledge that it belongs to a third party.
- Goods of sub lessee can also be taken, but only up to the amount that the sub lessee may be owing to the tenant. (5 × 2) (10)

3.2

Mistakes identified	How it should read or be corrected
Starting at 8am till 6pm	Starting at 8 a.m. and ending at 5 p.m.
Daily meal interval between 1 p.m. and 1.15 p.m.	Daily meal interval between 1 p.m. and 2 p.m.
Should you have to work overtime, payment will be calculated at the normal tariff.	Should……payment will be calculated at 1,5 times the normal tariff.
Deductions: Pension: R1 500 per month	Deductions: Pension R1 200
You will be entitled to 18 working days leave per year.	You will be entitled to 21 working days leave per year.
You will be entitled to 24 days' sick leave	You will be entitled to 36 days sick leave
You will be entitled to two days family responsibility leave	You will be entitled to five days responsibility leave

(7 × 2) (14)

3.3
- Where the minor is married
- Unjustified enrichment
- Where he/she is emancipated
- Fraudulent misrepresentation of age
- Declared a major by a higher court (Any (4 × 1) (4)

3.4 3.4.1 This is where consent to a contract is given afterwards.

3.4.2 A happening beyond the control of the parties.

(2 × 2) (4)

3.5 3.5.1 False.✓ The Act is applicable to both registered an unregistered credit providers.✓

3.5.2 True✓

3.5.3 False✓ The difference does not have to be paid back to the customer, but the whole proceed can be kept by the creditor.✓

3.5.4 False✓ A pawn transaction is a small agreement.✓

3.5.5 True✓

3.5.6 True✓

3.5.7 False✓ and will render the contract void✓

3.5.8 True✓

3.5.9 False✓ It is not applicable to door-to-door selling✓

3.5.10 False✓ Unlawful agreement✓

3.5.11 False✓ Five days✓ (18)
[50]

QUESTION 4

4.1 4.1.1 Mora creditoris
4.1.2 Positive malperformance
4.1.3 Mora debitoris
(3 × 2) (6)

4.2
- The debts must exist between the same parties and in the same capacity.
- The reciprocal debts must both be due and capable of settlement.
- The reciprocal debts must be money debts or be identical in nature.
- The debts must be ascertainable in money. (4 × 2) (8)

4.3
- Gross negligence,✓ for example …/not only negligence✓
- Serious misconduct,✓ for example … assault, wilful damage to property, endangering the safety of others✓
- Incompetence,✓ employee tacitly guarantees that he or she can do the work employed for✓
- Dishonesty✓ fraudulent actions, stealing, receiving bribes✓
- Rude behaviour,✓ serious disrespect, insubordination✓
- Disobedience,✓ wilful disobedience of a lawful order✓
- Commercial infidelity to the employer, for example assisting competitors, revealing trade secrets (Any 6 × 2) (12)

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4.4
- The landlord serves a notice to the tenant in writing and signed for by the tenant, who gives him/her the opportunity to remedy his/her breach.
- If the tenant does not remedy the breach, the landlord can terminate the lease agreement.
- If the landlord wants to evict the tenant, it gives written notice to the tenant that it will start with the process of eviction through the Court.
- The landlord applies to the Court for an eviction order.
- The application for eviction is served on both the municipality and the tenant.
- If the tenant lodges an objection, the hearing is held in court and a ruling is made as to whether the eviction is valid or not.
- If the tenant does not respond to the eviction notice, then the court automatically rules in the landlord's favour.
- If the eviction is valid, the court usually gives the tenant 30 days to vacate the premises from the date of the Court Order. The court then issues a warrant of eviction.
- If the tenant does not move out on his/her own, then the Sheriff of the court may carry out a forced eviction within the time period specified by the Court. (9 × 2) (18)

4.5
4.5.1 Basic Conditions of Employment Act
4.5.2 Employment Equity Act
4.5.3 Skills development Act
4.5.4 Labour Relations Act
4.5.5 Labour Relations Act
4.5.6 Occupational Health and Safety Act

(6 × 1) (6)
[50]

QUESTION 5

5.1
- To put his services at the disposal of the employer.
- To perform his or her work faithfully and diligently, and to subordinate him/herself to his or her employer.
- To obey reasonable orders given to him or her in the normal course of his or her employment.
- To act in good faith
- To refrain from misconduct (5 × 1) (5)

5.2
- Total value of the credit facility (interest, fees and insurance)
- The instalment amount
- The number of instalments
- The final amount payable
- Interest rate
- All other credit costs (6 × 1) (6)

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5.3 5.3.1 Innocent misrepresentation
5.3.2 Negligent misrepresentation
(2 × 2) (4)

2.4 5.4.1 Cession – The tenant stays the same person in terms of his obligations to pay the rent (in other words his debtor half).✓✓ The right of occupation, however, is transferred to a third party.✓✓
(2 × 2) (4)

5.4.2
- Subleasing – No contractual relationship between the landlord and the subtenant.
- The contract is between the tenant and the subtenant. (2 × 2) (4)

5.5
- To deliver the article sold
- To protect the buyer from eviction
- To care for the article sold until delivery takes place
- To give the purchaser a warranty against latent defects (4 × 1) (4)

5.6 5.6.1 This means that the buyer bears the loss for any accidental losses✓✓ incurred from the moment that the contract is perfecta.✓✓ (2 × 2) (4)

5.6.2
- Where the parties excluded the passing of the risk rule
- Where the goods have to be weighed, measured or counted.
- Where the contract of sale is conditional.
- Where the seller does not deliver on time (mora debitoris).
(4 × 1) (4)

5.6.3
- The price has been determined.
- The article must have been determined.
- The contract must be unconditional. (3 × 1) (3)

5.6.4
- This means that the price cannot be determined✓✓ until the goods have been weighed.✓✓
- An example is the weighing of coal where it is sold per kg.✓✓
(Any applicable example) 3 × 2) (6)

5.7
- The loss must be measurable in money.
- The loss must result from the breach itself.
- The consequences must be natural and foreseeable.
- The damages must be mitigated by the aggrieved party.
(Any 3 × 2) (6)
[50]

TOTAL SECTION B: 150
GRAND TOTAL: 200

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