higher education & training

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NOVEMBER EXAMINATION

NATIONAL CERTIFICATE

MERCANTILE LAW N4

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This question paper consists of 12 pages.

GENERAL STUDIES

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DEPARTMENT OF HIGHER EDUCATION AND TRAINING
REPUBLIC OF SOUTH AFRICA

NATIONAL CERTIFICATE
MERCANTILE LAW N4
TIME: 3 HOURS
MARKS: 200

INSTRUCTIONS AND INFORMATION

1. SECTION A is COMPULSORY and must be answered by ALL the candidates.
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 delete 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 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. All questions must be answered in full sentences unless indicated otherwise.
8. Write neatly and legibly.

GENERAL STUDIES

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SECTION A (COMPULSORY)

QUESTION 1

1.1 Various options are provided 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 Choose the INCORRECT one. The sources of the law of South Africa consist of …

A judicial precedent.
B the English Law.
C the Roman-Dutch Law.
D legislation.

1.1.2 When a court decision has to be followed in a subsequent case, the following must be complied with and must be applied:

A The ratio decidendi
B The obiter dictum
C Ius dicere non facere
D English Law

1.1.3 C and B concluded a contract whereby A would sell a motor car to B for R50 000. The terms regarding the *purchasing price* and the *article* are known as …

A naturalia.
B essentialia.
C incidentalia.
D implied terms.

1.1.4 Choose the INCORRECT one. Duties can arise mainly from four sources:

A a contract.
B a delict.
C an advertisement.
D by operation of law.

1.1.5 Lucille borrows money from Annie to start a drug smuggling concern. Such an agreement is …

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

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1.1.6 Where a latent defect is discovered in the article bought and the article can still be used, the buyer can institute the …

A actio redhibitoria.
B actio quanti minoris.
C actio ex empto.
D actio empty.

1.1.7 Where a buyer buys immovable property, ownership will pass by means of …

A traditio longa manu
B symbolic delivery.
C registration at the Deeds Office.
D traditio brevi manu.

1.1.8 The principle of *Huur gaat voor Koop* (the lease was before the sale) is not applicable in the case of …

A short term leases.
B expropriation of land.
C registered long term leases.
D inheritance of property.

1.1.9 The consequences of an unlawful agreement under the NCA are that …

A such an agreement is valid.
B the credit provider must refund the consumer any monies paid by the consumer, excluding interest.
C unjustifiable enrichment will not be allowed.
D such an agreement is voidable.

1.1.10 Determinations of the cooling-off period include that ...

A the Act allows for a six-business day cooling off period.
B the transaction could have been concluded at or away from the business premises.
C it is applicable to door-to-door selling as well.
D a credit provider generally may not enter into a credit agreement at a private dwelling, unless invited by the consumer.

(10 × 1) (10)

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1.2 Give ONE word/term for each of the following descriptions. Write only the word/term next to the question number (1.2.1–1.2.2) in the ANSWER BOOK.

1.2.2 This right can be enforced against the whole world.

1.2.3 Asanda offers to sell his house to Beatrix for R500 000 and Beatrix informs Asanda that she is willing to pay only R450 000.

1.2.3 Another term for a wrongful act.

1.2.4 Where both parties are equally at guilt, the position of the possessor will be the strongest.

1.2.5 Belinda transfers her right of occupation in a contract of lease to Cecil.

1.2.6 As far as possible all parties must be placed in the same position in which they were before entering into the contract.

1.2.7 Andrew informs Elizabeth that he is selling a new TV to her, but it is not the truth.

1.2.8 A document that provides details about the terms and conditions of the credit agreement that the credit provider intends entering into with the consumer.

1.2.9 This institution keeps an up-to-date profile of all consumers and has to adhere to rules with regard to blacklisting of consumers.

1.2.10 The kind of dismissal for wilful disobedience of a lawful order.

(10 × 1) (10)

GENERAL STUDIES

1.3 Choose a description from COLUMN B that matches a/an word/item in COLUMN A. Write only the letter (A–J) next to the question number (1.3.1–1.3.10) in the ANSWER BOOK.

COLUMN A		COLUMN B	
1.3.1	Iusta causa	A	a form of supervening impossibility
1.3.2	Vis maior	B	a tacit warranty given to a buyer in a contract of sale
1.3.3	Stare decisis	C	cooling-off period
1.3.4	Contra bones mores	D	the article in a contract of sale
1.3.5	Vacua possession	E	to sell a human being
1.3.6	Parol evidence rule	F	relates to the precedent system
1.3.7	Constititum possessorium	G	an option will be regarded as this and will therefore be a valid and binding contract
1.3.8	Merx	H	where a written contract is interpreted, the general rule is that no oral evidence will be heard.
1.3.9	Placaat	I	a right at the disposal of the tenant in a contract of lease
1.3.10	Statutory right	J	a form of constructive delivery

(10 × 1) (10)

1.4 Indicate whether the following statements are TRUE or FALSE. Choose the answer and write only 'true' or 'false' next to the question number (1.4.1–1.4.10) in the ANSWER BOOK. Correct the statement if it is FALSE.

1.4.1 Every individual in South Africa is the bearer of rights and obligations.

1.4.2 A mistake renders a contract voidable.

1.4.3 An example of a real right is possession.

1.4.4 A tenant will be protected by the principle of 'Huur gaat voor Koop' for the whole duration of a registered lease of fifty years.

1.4.5 The sale or transfer of immovable property only needs to be in writing.

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1.4.6 The seller is liable for a latent defect under a 'voetstoots' sale.

1.4.7 Negligence can lead to summary dismissal.

1.4.8 An employer must provide an employee with work.

1.4.9 Damages can be claimed in the case of fraudulent misrepresentation.

1.4.10 Undue influence results in a voidable contract.

(15)

1.5 Complete the following sentences/paragraph(s) by filling the missing word(s). Write only the word(s) next to the question number (1.5.1–1.5.3) in the ANSWER BOOK.

1.5.1 The maximum weekly ordinary hours of work are (a) ..., but the employee cannot work more than (b) ... ours per day.

1.5.2 An employee must have a meal break of at least (a) … minutes after (b) … hours.

1.5.3 … pay must be paid if the employee works on a public holiday.

(5 × 1) (5)

[50]

TOTAL SECTION A: 50

SECTION B

Answer any THREE of the following FOUR questions.

QUESTION 2

2.1 'Private law is subdivided into various subdivisions.'

Give ONE example of an aspect that will be dealt with in each of the following subdivisions:

2.1.1 The law of things

2.1.2 The law of obligations

2.1.3 The law of succession

(3 × 1) (3)

2.2 Briefly distinguish between the law and other norms. (2 × 2) (4)

GENERAL STUDIES

2.3 Indicate in each of the following cases whether it is a valid offer and motivate your answer.

2.3.1 John advertises a second-hand TV in a newspaper.

2.3.2 Sune offers uncut diamonds for sale to her friends.

2.3.3 Cornè offers a reward to the person who can find her lost cat.

(3 × 2) (6)

2.4 Read the case study below and answer the questions.

Suzanne entered into a verbal contract with Alvin Traders to buy second-hand furniture. Alvin Traders ensured her that the furniture had no beetles as all furniture had been fumigated. Suzanne discovered that one of the cupboards was affected.

2.4.1 List any SEVEN essentialia with which a contract in general must comply. (7 × 1) (7)

2.4.2 What kind of defect is beetles in furniture? (1)

2.4.3 Discuss the aedilition action at the disposal of Suzanne. (5 × 2) (10)

2.4.4 Does Suzanne automatically become the owner upon delivery? Motivate your answer by referring to any TWO requirements for ownership to pass. (3 × 2) (6)

2.4.5 Suppose Jennifer, the real owner of some of the furniture, becomes aware that Suzanne bought the furniture from Alvin Traders.

(a) By which tacit warrant is Suzanne protected?
(b) Which remedy will Jennifer have at her disposal?
(c) Will Alvin Traders have to refund Suzanne her money? (3)

2.5 'It is not always possible to deliver sold articles from hand to hand (de manu in manum). Therefore the law makes provision for what is known as 'constructive delivery'.

With regard to this statement discuss the following types of delivery:

2.5.1 Constititum possessorium (2 × 2) (4)

2.5.2 Traditio longa manu (2 × 2) (4)

2.6 Give the meaning of the following two terms:

2.6.1 Pretium

2.6.2 Caveat subscriptor

(2 × 1) (2)

[50]

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QUESTION 3

3.1 Discuss the tacit hypothec, a remedy at the disposal of the landlord where a tenant is in arrears with his or her rent. (5 × 2) (10)

3.2 Read the following contract of employment and identify the mistakes. Present your answer as follows:

Mistakes identified	How it should read or be corrected

CONTRACT OF EMPLOYMENT
BETWEEN
ABC Company (Pty) Ltd (hereafter referred to as 'the employer')
AND
Alicia Mtywa (hereafter referred to as 'the employee')

1. **POSITION**

You have been appointed as administrative clerk. Your commencement date is 1 April 2015.

2. **HOURS OF WORK**

You will work a five-day week, from Monday to Friday, starting at 8 a.m. and ending at 6 p.m. daily.

3. **MEAL INTERVALS**

There will be a daily meal interval between 1 p.m. and 1.15 p.m.

4. **REMUNERATION**
Your salary will total R12 000 per month. Should you have to work overtime, payment will be calculated at the normal tariff.

5. **FRINGE BENEFITS**
You will receive pension, medical and housing benefits as follows:
Pension: R1 200 per month
Medical: R500 per month

6. **DEDUCTIONS**
The following deductions will be made from your gross salary:
PAYE: R3 400 per month
Pension: R1 500 per month
Medical: R500 per month
UIF: R130 per month
Trade union membership fees (where applicable): R70

7. **LEAVE**

7.1 **ANNUAL LEAVE**
You will be entitled to eighteen (18) working days' leave per year.

7.2 **SICK LEAVE**
You will be entitled to 24 days' paid sick leave in a cycle of three years. Should you be absent for more than two consecutive days, a medical certificate needs to be furnished.

7.3 **FAMILY RESPONSIBILITY LEAVE**
You will be entitled to two days' family responsibility leave per year.

8. **TERMINATION OF CONTRACT OF EMPLOYMENT**
One calendar month's notice need to be given.

SIGNED AT ..... **ON** ..... **20**.....

(14)

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3.3 Name FOUR circumstances under which the minor will bound by his/her actions when he/she entered into a contract unassisted. (4 × 1) (4)

3.4 Define the following concepts:

3.4.1 *Ratification*

3.4.2 *Supervening impossibility*

(2 × 2) (4)

3.5 With regard to the National Credit Act 34 of 2005, as amended, indicate whether the following statements are TRUE or FALSE. Choose the answer and write only 'true' or 'false' next to the question number (1.5.1–1.1.11) in the ANSWER BOOK. Correct the statement if it is FALSE.

3.5.1 The Act is only applicable to registered credit providers.

3.5.2 All credit providers must be registered with the NCR.

3.5.3 In a pawn transaction the creditor may not keep all the proceeds where the resale value of the item is greater than the loan. The difference must be refunded to the customer.

3.5.4 An intermediate agreement includes a pawn transaction.

3.5.5 A mortgage bond is an example of a large agreement.

3.5.6 A suspensive condition determines that the consumer only becomes the owner when final payment is made.

3.5.7 Any fraudulent deed contrary to the Act will be seen as an unlawful provision and will render the contract voidable.

3.5.8 A consumer has the right to apply for debt restructuring.

3.5.9 The cooling-off period is also applicable to door-to-door selling.

3.5.10 A consumer may be asked to hand over his ID document and credit card to the credit provider.

3.5.11 A quotation for a credit transaction given to a possible customer is valid for seven days.

(18)
[50]

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QUESTION 4

4.1 Identify the *form of breach* in each of the following scenarios.

4.1.1 Essie's Supermarket ordered 100 kg of vegetables from a farmer. They agreed that the vegetables would be delivered on Friday at 19:00 at Essie's premises. At the due time and place the farmer arrived with the vegetables, but found that the premises were locked. He could not find anyone to receive the vegetables or to unlock the premises.

4.1.2 ACF Shoes has to deliver twenty pairs of shoes to B, but delivers only fifteen pairs.

4.1.3 A bought a lounge suite from Lewis Traders and stipulated that it had to be delivered on Tuesday, 14 January, at 12:00. He waited the whole afternoon, but Lewis Traders only arrived with the suite the following day.

(3 × 2) (6)

4.2 Briefly discuss the FOUR requirements that must be fulfilled for set-off to take place. (4 × 2) (8)

4.3 Briefly discuss any SIX grounds for summary dismissal. (6 × 2) (12)

4.4 Read the following scenario and answer the question.

Lucinda leased her flat to Andrew for a year. Andrew has not paid his rent for the past two months. Lucinda wants to know if she has the right to evict him immediately.

Advise her with reference to the process that needs to be followed for an eviction to be legal. (9 × 2) (18)

4.5 Indicate in each of the following cases which act will regulate the following aspects in labour relations.

4.5.1 The minimum terms and conditions of employment, for example working hours.

4.5.2 This act regulates the protection against unfair discrimination.

4.5.3 This act provides for training in the workplace.

4.5.4 This act deals with freedom of association.

4.5.5 This act deals with aspects such as trade unions, strikes and dismissals.

4.5.6 This act regulates safety in the workplace.

(6 × 1) (6)

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QUESTION 5

5.1 List FIVE common law duties of the employee. (5 × 1) (5)

5.2 List the information that needs to be disclosed to the consumer in the case of a small agreement. (6 × 1) (6)

5.3 Identify the kind of misrepresentation in each of the scenarios below.

5.3.1 Fred asserts that a painting is by Tinus de Jongh and thereby convinces Alma to buy it. Fred is an art expert and genuinely believes the painting to be a Tinus de Jongh. All facts within his knowledge support his conclusion in this regard. Alma later accidentally discovers that the painting is not by Tinus de Jongh.

5.3.2 Jackie, an estate agent, sells a hotel to Johann. Shortly thereafter the provincial authorities expropriate the land and the building with a view to the construction of a new highway. It appears that the estate agent could have made sure about this fact at the municipality.

(2 × 2) (4)

5.4 Discuss the relationship between the landlord and third parties in the case of:

5.4.1 Cession (2 × 2) (4)

5.4.2 Subleasing (2 × 2) (4)

5.5 List the FOUR duties of the seller in a contract of sale. (4 × 1) (4)

5.6 Discuss the passing of the risk rule as applicable to a contract of sale with reference to the:

5.6.1 Meaning (2 × 2) (4)

5.6.2 FOUR circumstances under which the risk will not pass to the buyer. (4 × 1) (4)

5.6.3 The meaning of a contract being perfecta. (3 × 1) (3)

5.6.4 Meaning of a sale ad mensuram by providing an example and discussing the impact of this type of sale on the passing of the risk rule. (3 × 2) (6)

5.7 Briefly discuss any THREE considerations that a court may use in arriving at the appropriate sum of money to be awarded as damages where the one party is in breach of contract. (3 × 2) (6)

[50]

TOTAL SECTION B: 150
GRAND TOTAL: 200

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