higher education & training

Department:
Higher Education and Training
REPUBLIC OF SOUTH AFRICA

MARKING GUIDELINE

NATIONAL CERTIFICATE

MERCANTILE LAW N4

28 NOVEMBER 2018

This marking guideline consists of 9 pages.

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SECTION A

ALL the questions in SECTION A are COMPULSORY.

QUESTION 1

1.1 1.1.1 When a contract is concluded by a minor, he/she ratifies/confirms it when he/she is 21 years old.

1.1.2 It is a defect which cannot readily be seen with the naked (the ordinary) eye.

1.1.3 A court has the ability to hear only cases of a certain nature/type because of the specific power given to that court.

1.1.4 This is a person who is a seller of goods or a dealer or a person who renders a service as a result of a credit transaction or a lessor in terms of a leasing transaction.

1.1.5 The buyer accepts the goods sold with all the faults and defects just as they are without any guarantee.

1.1.6 It regulates the relationship by the government of a country which includes the various state departments.

1.1.7 A person is able to bind himself/herself by means of a contract.

1.1.8 It takes place by delivery (handing it over from one person to another person) if the instrument is a bearer instrument or by endorsement and delivery if the instrument is an order instrument.

1.1.9 This is a transaction whereby a lessor will lease goods to a lessee against payment of a stated or determinable sum of money at a stated or determinable future date.

1.1.10 It is a mutual agreement by which one person, the seller, undertakes to deliver something to another person, the buyer, and to guarantee free possession thereof in return for a stipulated sum of money.

(10 × 2) (20)

1.2	1.2.1	True		
	1.2.2	True		
	1.2.3	True		
	1.2.4	True		
	1.2.5	False		
	1.2.6	True		
	1.2.7	True		
	1.2.8	False		
	1.2.9	True		
	1.2.10	True		
			(10 × 2)	(20)
1.3	1.3.1	C		
	1.3.2	D		
	1.3.3	F		
	1.3.4	A		
	1.3.5	B		
			(5 × 2)	(10)
				[50]

TOTAL SECTION A: 50

SECTION B

Answer any THREE of the four questions in SECTION B.

QUESTION 2

2.1
- Constitutional law
- Administration law
- International law
- Criminal and civil law (Any 1 × 1) (1)

2.2
- When it is highly unlikely that the latent defect existed at the time of the sale
- If it was expressly agreed that the thing was sold with all its faults, just as it is (voetstoots). The seller must have been unaware of any latent defect
- Where the buyer was aware of the latent defect at the time of the agreement and accepted it by using the article as if nothing was wrong with it
- If the available legal remedy for latent defects has terminated as prescribed e.g. 12 months/1 year after the sale
- Where the buyer waives (knows about but refuses to use) his/her right to claim for latent defects (5 × 2) (10)

2.3
- The maximum period within which the full purchase price shall be paid (e.g. 6, 12, 18 or 72 months)
- The portion of the cash price to be paid as deposit or the initial down payment
- The manner in which the price of any goods/services shall be displayed or advertised
- Stop any advertisement in conflict with the act (misleading or offensive adverts)
- Prescribe any terms he/she thinks fit with regard to any credit agreement (5)

2.4
- SERIOUS

The offer must be made seriously and with the intention that somebody will accept it and that the result would be a binding contract.

- TERMS

The offer must include all the terms on which an agreement is sought so that when the offer is accepted an agreement is entered into.

- COMMUNICATION

The offer must be communicated to the addressee or to the person with whom an agreement is entered into.

- CLEAR

The offer must be made in clear unambiguous and definite terms.

- LEGAL BOND

The offer must aim at a legal bond between the parties.

- POSSIBILITY TO CARRY OUT

The offer must be possible to carry out. (6 × 2) (12)

2.5
- Give the leased property to the tenant
- Receive the rent from tenant
- Give the tenant the free use/enjoyment of the leased property
- Make all the necessary repairs
- Compensate the tenant for things that are wrong with the property
- Pay the municipal rates and taxes on the leased property
- Recognise subletting in certain cases
- Compensate the tenant for fixtures/improvements to property on termination of lease (Any 6 × 1) (6)

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2.6
- By the expiry of time
- Due to notice given by either of the parties concerned
- By mutual agreement (if the parties agree to terminate the lease)
- The capacities of tenant and landlord are embodied in one person e.g. the tenant buys the property and is the new owner (merger)
- By the insolvency of the tenant (and not the landlord) unless the trustee indicated that he/she is willing to continue the lease on behalf of the insolvent tenant
- By cancellation by either of the parties concerned if the parties are legally entitled thereto
- By destruction of the leased property without it being the fault or negligence of the tenant or the landlord
- By the death of either of the parties concerned but only if such a condition has been written into the lease (8 × 2) (16)

[50]

QUESTION 3

3.1
- Magistrate
- Plaintiff
- Defendant (3 × 2) (6)

3.2
- Maker
- Payee (2)

3.3
- Where any amount payable in terms of a service contract or similar agreement exceeds 25% of a periodical amount (instalment) or if there are more than one credit agreement, it is invalid.
- Where any person has given another person the authority to collect or receive any money under the section above, such authority may be withdrawn at any time.
- No post-dated negotiable instrument (bill of exchange/cheque/promissory note) may be accepted by the credit grantor as initial payment or rental.
- The credit grantor may not claim the return of the goods under a credit agreement unless the credit grantor has received such notice by registered letter from the credit receiver. (4 × 2) (8)

3.4
- If someone fails to pay the rent, a forfeiture clause (eviction) may be applied.
- When property is being misused
- Failure to return property when lease expires (3 × 2) (6)

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3.5

- PERFORMANCE

A contract is discharged when both parties have performed their obligations in full.

- NOVATION

The two parties agree to end the existing agreement between them and to have a new one taking the place of the old agreement.

- RELEASE

This takes place when the parties agree that the debtor is released from his/her obligation. The reason can be that the creditor is very kind-hearted and releases the debtor from his/her obligations.

- SET-OFF

If the debtor and creditor owe each other exactly the same amount of money, the agreement is cancelled.

- MERGER

A contract is automatically discharged when the capacity of the debtor and the creditor becomes one e.g. where the lessee of a property becomes the owner thereof.

- INSOLVENCY

If a person's liabilities exceed his/her assets then he/she can be declared insolvent and his/her assets are placed under the control of a trustee.

- IMPOSSIBILITY OF PERFORMANCE

When a contract is impossible of performance whether legally or physically, the contract is discharged.

- PRESCRIPTION – EXTINCTIVE

Prescription has the effect of making a debt legally unenforceable after a certain period of time.

- DEATH

Unless specified it does not terminate the contract. Another person usually takes the deceased's place. If a personal skill or talent is involved the contract is terminated. (9 × 2) (18)

3.6

- General crossing or blank crossing
- 'Not negotiable'
- 'Not negotiable – account payee only'
- And company, not negotiable'
- 'And company' or '& co' (5 × 2) (10)

[50]

QUESTION 4

4.1
- Where the buyer and the seller agree that the seller will not be responsible if the buyer gets evicted
- If the buyer is aware that the third person is the owner of the article
- Where the buyer is evicted or dispossessed of the article after the sale had taken place in which case the risk normally goes on to the buyer

(3 × 2) (6)

4.2
- Public property which may not be alienated by the public bodies.
- The right to an inheritance of persons who are still alive.
- Where things which have been inherited are forbidden by a will to be donated sold or given away. (3 × 2) (6)

4.3
- Contract governed by the credit agreement act 79 of 1985

The formalities to be complied with:
- The contract must be in writing.
- It must be signed by the buyer/purchaser in person as well as by the seller or his/her representatives.
- The prescribed portion of the purchaser price must be indicated.
- Other particulars i.e. the maximum period of payment, monthly instalment and date thereof, cash as well as the instalment sale price must be mentioned to the buyer. (Any 4 × 1) (4)

4.4
- NATURE OF THE AGREEMENT
  B is under the impression that he/she is buying A's house and paying the price in instalments, while A is under the impression that he/she is letting the house.
- NATURE OF THE SUBJECT
  A is under the impression that he/she is buying a VW Beetle and B is under the impression that he/she is selling a VW City Golf.
- QUALITY OF THE SUBJECT
  A person might be under the impression that he/she is buying a diamond but in reality it is a piece of polished glass.
- PERSON
  A mistake occurs concerning the person with whom the contract is concluded. (4 × 2) (8)

4.5 MATERIAL WRONGDOING
- Both are essential and vital.
- Makes a huge difference to the outcome of the agreement (of the essence to the contract)

NONMATERIAL WRONGDOING
- Non-essential term has no effect on a contract.
- A contract can exist without it. (2 × 4) (8)

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4.6
- Incompetence/negligence of a serious nature
- Marked/deliberate absenteeism or failure to work
- Unreasonable absence due to illness
- Wilful disobedience, unjustified absence from or lateness for work despite repeated warnings
- Insubordination and other subversive behaviour
- Dishonesty (properly proved) in course of duties
- Misconduct which make employee unfit for his position
- Commercial infidelity/revealing trade secrets/taking secret profits
- Combination of above factors amounting to repudiation of or breach of a material term in the contract of service (9 × 2) (18)

[50]

QUESTION 5

5.1
- Symbolical delivery
- Delivery with the long hand (*longa manu*)
- Delivery with the short hand (*brevi manu*)
- *Constitutum possessorium* (Any 2 × 1) (2)

5.2
- Misrepresentation
- Force/duress
- Undue influence (3 × 2) (6)

5.3
- Be seriously intended
- Be communicated to the offered
- Be direct, straight forward and in line with the contents of the offer
- Be made in the prescribed manner, expressly or impliedly through mail, telephone or any other information processing technique, e.g. fax or e-mail requested
- Happens within a reasonable time. No offer stays open indefinitely.
- Be accepted without other extras attached to it (otherwise it is a counter offer)
- Be lawful and within contractual capacity of the addressee to accept

(7 × 2) (14)

5.4
- Where an article is sold free from latent defects
- The extent of an implied warranty and liability for damages caused where the seller can be forced to refund the buyer
- The buyer must prove that latent defect existed at the time of sale (the *caveat emptor* rule applies)
- Cases where the seller is not responsible for latent defects (4 × 2) (8)

5.5
- Specified immovable property
- Period of time of use of the property (duration of lease)
- A specified sum of money to be paid as rent (3 × 2) (6)

5.6
- Where a credit agreement has been signed at any place other than the seller's business premises from which he/she usually operates, the credit receiver or the buyer has the right to terminate.
- The credit receiver terminates the agreement by giving written notice to the credit grantor which is either delivered or sent by prepaid registered mail.
- In this notice the credit receiver undertakes to return any goods delivered to him/her in terms of the credit agreement.
- The credit grantor (seller) must again refund all payment made by the buyer.
- Refund and collection of the goods must take place within 10 days of delivery or posting of the notice to cancel the credit agreement. (5 × 2) (10)

5.7
- SICK LEAVE

The right to sick leave with full pay is not an automatic action

- NORMAL LEAVE

Is impliedly accepted (custom) in an employment contract
Must be taken during the time of the contract of service and at a suitable time for the employer (2 × 2) (4)

[50]

TOTAL SECTION B: 150
GRAND TOTAL: 200

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