higher education & training

Department:
Higher Education and Training
REPUBLIC OF SOUTH AFRICA

MARKING GUIDELINE

NATIONAL CERTIFICATE

MERCANTILE LAW N4

29 NOVEMBER 2019

This marking guideline consists of 8 pages.

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SECTION A (COMPULSORY)

QUESTION 1

1.1	1.1.1	C		
	1.1.2	C		
	1.1.3	C		
	1.1.4	C		
	1.1.5	C		
	1.1.6	C		
	1.1.7	C		
	1.1.8	C		
	1.1.9	C		
	1.1.10	C		
			(10 × 1)	(10)
1.2	1.2.1	Ratio decidendi		
	1.2.2	Mistake		
	1.2.3	warranty		
	1.2.4	resolutive		
	1.2.5	providers		
	1.2.6	Placaat		
	1.2.7	Organisation		
	1.2.8	personal		
	1.2.9	Prodigals		
	1.2.10	Caveat emptor		
	1.2.11	Unlawful		
	1.2.12	notice		
	1.2.13	employer		
	1.2.14	defendant		
	1.2.15	High Court		
			(15 × 2)	(30)
1.3	1.3.1	B		
	1.3.2	E		
	1.3.3	D		
	1.3.4	A		
	1.3.5	C		
			(5 × 2)	(10)
				[50]

TOTAL SECTION A: 50

SECTION B

QUESTION 2

2.1
- The acceptance must be consistent with the essentials of the contract.
- The acceptance must be clear and unambiguous.
- The acceptance must be unconditional.
- The acceptance must take place within the prescribed period.
- The acceptance must be made in the manner prescribed by the offeror. (5)

2.2 2.2.1 The principle of huur gaat voor koop is applicable.✓✓ Betty's lease agreement is a short-term lease of less than ten years.✓ Archie was aware of the lease agreement at the time of purchasing the property,✓ therefore he would be bound for the entire duration of the lease✓ and Betty would have the right to stay on.✓ (6)

2.2.2 If it is a registered long-term lease, the rule is applicable for the full duration of the lease and Betty would be able to stay on. (2)

2.2.3 In the case of inheritance the principle of huur gaat voor koop is applicable. Betty can stay in the case where the heir does not pay for the property by operation of law (expropriation of land). (2)

2.3
- Coming of age –18 years old
- Getting married with the consent of a guardian
- Declared a major by a High Court (3 × 2) (6)

2.4
- The seller has a duty to care for the item sold until delivery takes place.
- Where accidental loss occurs, the loss or benefit is borne by the buyer.
- Circumstances where the risk will not pass to the buyer:
  - Where the parties excluded the passing of the risk rule
  - Where the goods must be weighed, measured or counted
  - Where the contract of sale is conditional
  - Where the seller does not deliver on time (5 × 2) (10)

2.5
- There must be an agreement to purchase and to sell.
- There must be a merx.
- There must be a price.
- Delivery must take place. (4 × 2) (8)

2.6
- Promotes a fair and nondiscriminatory marketplace for access to credit
- Prohibits unfair practice
- Promotes responsible credit-granting practices by credit providers
- Prohibits reckless credit granting
- Educates consumers about credit and consumer rights
- Assists consumers to make informed decisions based on adequate information provided to them
- Provides mechanisms for resolving over-indebtedness
- Makes provisions for dispute procedures with regard to providing credit
- Establishes a national credit regulatory (Any 5 × 2) (10)

2.7 Large agreement (1)

[50]

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QUESTION 3

3.1 **Mistake**

- The parties misunderstood one another.
- There is no consensus.
- There is a valid binding contract.
- The contract is void, with no rights and obligations flowing from it.
- Example: Debbie buys a bicycle from Fiona. She thinks her bicycle was stolen. Debbie and Fiona have achieved consensus and their contract is valid. There is no mistake regarding the facts of the contract, but Debbie is mistaken in thinking that her bicycle has been stolen.

(Any relevant example)

Misrepresentation

- Either incorrect information was supplied or information was withheld.
- There is no consensus.
- There is a valid binding contract until it is declared void by a court.
- The contract is voidable, with rights and obligations flowing from it, until declared void.
- Example: Frank sells his Samsung cellphone to Kyle. They reach consensus however Frank misleads Kyle into thinking his buying a Samsung Galaxy S9 but his buying a Samsung Galaxy S8.

(Any relevant examples)
(5 + 5) (10)

3.2
- Sick leave
- Family responsibility leave
- Annual leave
- Maternity leave (4)

3.3
- The general rule is that a person is not liable for the unlawful actions of others.✓
- However, there is an important exception to the rule regarding the employer/employee relationship. ✓
- In terms of the principle of vicarious liability the employer may be held liable for a delict committed by his employee.✓
- In order to hold the employee liable for the delicts of his employee, the following requirements must be met:
  - There must be an employment relationship.✓
  - The employee acted in the course or scope of his employment.✓
  - The existence of a contract of service must be proved✓ before the employer may be held liable for the delicts of his employee.✓
- Therefore Exotic Fruit Market will be held liable✓ because the trip undertaken was to deliver fruit✓ which is Dawson's job.✓ (10)

3.4
3.4.1 Regulates protection against unfair discrimination
3.4.2 Deals with aspects like trade unions, collective bargaining, dismissal and CCMA
3.4.3 Makes provisions for training and skills development in the work place

(3 × 2) (6)

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3.5
3.5.1 True
3.5.2 True
3.5.3 False
3.5.4 True
3.5.5 False
3.5.6 True
3.5.7 False
3.5.8 False
3.5.9 False
3.5.10 True

(10 × 1) (10)

3.6 **Locatio conductio operarum (contract of service)**

- The employee puts his/her service at the employer's disposal.
- The employee, in the course of performing tasks, operates under the control, authority and supervision of the employer.
- The employee is employed to carry out the employer's orders and to do the work precisely as directed.
- The employer will be liable for the employee's wrongful acts where the employee committed these acts in the course of work.
- The employer provides the employee with means such as tools to perform work.
- The employee is considered to be part of the organisation.
- The services of the employee is rendered on a permanent basis.
- The employee is entitled to minimum notice and protected against unfair dismissal.
- The employee is entitled to paid leave – dates must be arranged with the employer.

Locatio conductio operis (independent contractor)

- The independent contractor undertakes to perform a certain job, but does not operate under the control and supervision of the employer.
- The independent contractor is not subject to orders of the employer.
- The employer is not liable for an independent contractor's delict.
- The contractor is an independent third party.
- The independent contractor usually renders services merely for the performance of a specific piece of work.
- The independent contractor is entitled to notice as per contract and not protected against unfair termination.
- The independent contractor is not entitled to paid leave and chooses the dates for any vocation. (Any 3 + any 3) (6)

3.7 Acquisitive prescription deals with the acquisition of certain rights after a certain time has lapsed,✓ while extinctive prescription deals with the extinction of a debt after a certain period has expired.✓ (2 + 2) (4)

[50]

QUESTION 4

4.1 4.1.1
- According to the ex turpi causa rule✓ no action can arise from an illegal contract.✓
- The parties cannot be contractually bond.✓
- Therefore the contract between the parties is void.✓ (4)

4.1.2
- This rule is applicable where both contracting parties are equally at fault.✓
- Both Jack and Jill willingly entered into a contract against public policy or the good morals of society.✓
- The court enforces the void contract,✓ nor will it grant the common law remedy of unjust enrichment.✓ (4)

4.2
- There must be actual violence.
- There must be a threat of immediate danger from which a person cannot escape.
- The duress must be unlawful.
- The duress must cause the victim to conclude the contract. (4 × 2) (8)

4.3 4.3.1
- Mora creditoris✓✓ refers to the failure of the debtor to perform on time.✓

4.3.2
- Mora debitoris✓✓ which is the failure of the creditor to accept proper performance when tendered by the debtor.✓

(2 × 3) (6)

4.4
- Where the minor is married
- Unjust enrichment
- Where the minor is emancipated
- Fraudulent misrepresentation of majority
- Declared a major by a higher court (Any 4 × 2) (8)

4.5
- Delivering the item sold
- Caring for the item sold until delivery takes place
- Guaranteeing the purchaser undisturbed possession against eviction
- Giving the purchaser a warranty against latent defects (Any 3 × 1) (3)

4.6
- Making personal service available
- Performing work faithfully and diligently
- Obeying reasonable orders given in the normal course of employment
- Acting in good faith (4)

4.7
- The right to receive a credit agreement in an understandable language.
- The right to receive a copy of the credit agreement.
- The right to be informed about all fees and costs and the total instalment.
- The right to apply for debt restructuring.
- The right to be protected from unfair discrimination in granting credit.
- The right to be informed of any reason for credit application refusal.
- The right to a cooling-off period.
- The right that some information must be treated as confidential.

(Any 5 × 2) (10)

4.8
- Sale at auction
- Cost, insurance and freight
- Free on-board and free on-rail contracts
- Sale in execution (Any 3 × 1) (3)

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QUESTION 5

5.1
- Gross negligence when performing duties
- Serious misconduct, for example assault
- Incompetence to do particular work
- Dishonesty
- Rude behaviour
- Disobedience
- Commercial infidelity to employer (4 × 2) (8)

5.2
5.2.1 True
5.2.2 True
5.2.3 True
5.2.4 True
5.2.5 True
5.2.6 True
5.2.7 False
5.2.8 True
5.2.9 True
5.2.10 True

(10 × 1) (10)

5.3 Consensus is one of the essentialia of a contract which means that parties must be of the same mind✓ (ad idem). There are mainly four reasons why parties do not reach consensus, namely mistake,✓ misrepresentation,✓ duress✓ and undue influence.✓ (5 × 1) (5)

5.4
- The seller must have been the owner or must have given consent to a third party to act on his/her behalf.
- The seller must have the intention of transferring ownership.
- The purchaser must have the intention of receiving ownership.
- Delivery must take place.
- Where the item is movable and the sale is for cash, the price must be paid.
- When immovable property is bought, ownership passes upon registration of the property.
- In the case of credit sales, ownership usually passes on delivery.
- Constructive delivery can also take place. (Any 4 × 2) (8)

5.5
- Rendered in writing: Contracts in writing are your alienation of immovable property (suretyship agreements). Contracting parties may agree verbally that their contract should be in writing.
- Notarial execution: This refers to the conclusion of the written document in the presence of a notary, e.g. anti-nuptial contracts.
- Registration: This refers to making an entry in the registers of the state. The purpose of the registration of a contract is to publicise the contents of a particular contract. (Any 3 × 3) (9)

5.6
- Welded crankshaft in a second-hand car
- Fault in a gear box
- Furniture infected by borer beetles (3)

5.7
- Effluxion of time
- Revocation
- Rejection
- Death
- Insanity
- Counter offer
- Noncompliance with the requirements of the contract (7)

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TOTAL SECTION B: 150
GRAND TOTAL: 200

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