higher education & training

Department:
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REPUBLIC OF SOUTH AFRICA

NATIONAL CERTIFICATE

MERCANTILE LAW N4

(13030094)

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This question paper consists of 9 pages.

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DEPARTMENT OF HIGHER EDUCATION AND TRAINING
REPUBLIC OF SOUTH AFRICA

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

NOTE: If you answer more than the required number of questions only the required number will be marked. Clearly cross out ALL work you do NOT want to be marked.

INSTRUCTIONS AND INFORMATION

1. Answer ALL the questions in SECTION A.
2. Answer any THREE questions in SECTION B.
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. Answer ALL questions in full sentences unless indicated otherwise.
7. Write neatly and legibly.

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SECTION A (COMPULSORY)

QUESTION 1

1.1 Various options are given 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 Obiter dicta refers to …

A being against the good morals of society.
B the reason for a decision.
C remarks in passing.
D standing by a previous decision.

1.1.2 Small agreements include …

A the principal debt.
B taxes.
C the final amount payable.
D licenses or registration fees.

1.1.3 A drunk person has …

A contractual capacity and can conclude a contract.
B a valid contract.
C no contractual capacity and cannot conclude any contracts.
D limited contractual capacity.

1.1.4 Symbolic delivery means …

A delivery with the long hand.
B actual delivery from one hand to another.
C the merx itself is not delivered, but something which places the buyer in control of the merx.
D delivery by means of agreement.

1.1.5 Which ONE of the following is NOT a requirement for acceptance?

A The acceptance must be consistent with the essentials of the contract.
B The acceptance must be clear and unambiguous.
C The acceptance must be conditional.
D The acceptance must take place within the prescribed time.

1.1.6 Cession means …

A supervening impossibility of performance.
B the expiration of a specified period of lease.
C a third party now gets the right of occupation.
D insolvency of the tenant.

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1.1.7 John's child, Cathy, is undergoing surgery to remove her tonsils.

John is entitled to take … leave.

A annual
B sick
C family responsibility
D maternity

1.1.8 Wade wants to rent his house to Corrin, while Corrin thinks she is purchasing the house from Wade.

This is an example of error in …

A corpore.
B substantia.
C negotio.
D persona.

1.1.9 Scott buys a watch from jeweller Pearl and leaves the watch with Pearl so that the strap may be adjusted.

This is an example of …

A traditio longa manu.
B traditio brevi manu.
C constitutum possessorium.
D symbolic delivery.

1.1.10 Which ONE of the following is NOT a remedy in cases of breach of contract?

A Interdict
B Damages
C Undue influence
D Penalty clause

(10 × 1) (10)

1.2 Choose the correct word or words from those given in brackets. Write only the word or words next to the question number (1.2.1–1.2.15) in the ANSWER BOOK.

1.2.1 (Obiter dicta/Ratio decidendi) means reason for decision.

1.2.2 (Mistake/Misrepresentation) means there is no valid binding contract.

1.2.3 An added term to a contract is a (warranty/representation).

1.2.4 When the risk passes to the buyer at the time of the agreement this is regarded as a (resolutive/suspensive) condition.

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1.2.5 Credit (providers/bureaus) include banks and microlenders.

1.2.6 The principle of (huur gaat voor koop/Placaat) is applicable where a tenant made improvements to the leased property.

1.2.7 (Organisation/Control test) means the employee forms part of the employers.

1.2.8 The law of obligations deals with (personal/real) rights.

1.2.9 (Prodigals/Drunk persons) has limited contractual capacity.

1.2.10 (Caveat emptor/Ex lege) means let the buyer be aware.

1.2.11 (Lawful/Unlawful) means that a consumer gives an identity document.

1.2.12 A contract for an indefinite period is terminated by (notice/ cancellation).

1.2.13 The (employee/employer) must provide a safe and healthy working environment.

1.2.14 The person against whom an action is instituted is known as the (plaintiff/defendant).

1.2.15 The (high court/supreme court of appeal) has jurisdiction within its area.

(15 × 2) (30)

1.3 Choose a description from COLUMN B that matches a term in COLUMN A. Write only the letter (A–E) next to the question number (1.3.1–1.3.5) in the ANSWER BOOK.

COLUMN A		COLUMN B	
1.3.1	Stipulatio alteri	A	public law
1.3.2	Locatio conductio operis	B	contracts for the benefit of a third party
1.3.3	Res vendita	C	no rights and obligations can flow from such agreement
1.3.4	Constitutional law	D	sold article
1.3.5	Void	E	hiring for a piece of work

(5 × 2) (10)

[50]

TOTAL SECTION A: 50

SECTION B

Answer any THREE questions in this section.

QUESTION 2

2.1 List FIVE requirements for acceptance to be valid. (5)

2.2 Read the scenario below and answer the questions.

> Betty is a lessee of a flat belonging to Veronica. The lease is for a period of five years. After two years Veronica sells the flat to Archie who is aware of the lease agreement however he still demands that Betty vacate the premises within three months.

2.2.1 Advise Betty of her legal position in relation to the lease. (6)

2.2.2 Suppose it was a registered long-term lease, what would Betty's position then be? (2)

2.2.3 Could Betty be evicted if Archie inherited the flat? (2)

2.3 Jessica is sixteen years old and would like to obtain full contractual capacity.

Advise her on the circumstances under which she can obtain full contractual capacity. (3 × 2) (6)

2.4 Discuss the passing of the risk rule in contracts of sale and give examples where the risk does not pass. (5 × 2) (10)

2.5 List the essentialia of a contract of sale. (4 × 2) (8)

2.6 Explain the purpose of the National Credit Act 34 of 2005. (5 × 2) (10)

2.7 Give the essentialia of a contract of sale. (1)

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QUESTION 3

3.1 Differentiate between *mistake* and *misrepresentation* and give an example of each. (5 + 5) (10)

3.2 List FOUR types of leave. (4)

3.3 Dawson is employed by Exotic Fruit Market as a driver. On his way to deliver fruit he collides with a motor vehicle due to his own negligence. The motor vehicle he collided with is now damaged.

Discuss whether Exotic Fruit Market will be liable for the delict caused by Dawson. (10)

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3.4 Briefly explain each of the following acts:

3.4.1 Employment Equity Act 55 of 1998

3.4.2 Labour Relations Act 66 of 1995

3.4.3 Skills Development Act 30 of 1966

(3 × 2) (6)

3.5 Indicate whether the following statements are TRUE or FALSE. Choose the answer and write only 'True' or 'False' next to the question number (3.5.1–3.5.10) in the ANSWER BOOK.

3.5.1 Rent can consist of an agreed proportion of produce or harvest.

3.5.2 A tenant may cancel the lease if the breach of contract is very serious.

3.5.3 Cession means that the landlord transfers his/her right of occupation to a third party.

3.5.4 A lease can be terminated by a merger.

3.5.5 The principle of Placaat is applicable where the landlord made improvements to the leased property.

3.5.6 Repudiation of a contract is also a breach of contract.

3.5.7 There is no difference between an unregistered long-term lease and a registered long-term lease.

3.5.8 Insolvency of a tenant terminates the lease.

3.5.9 Impossibility of performance terminates the contract but does not free the parties from their obligations.

3.5.10 A contract for an indefinite period can be terminated by notice.

(10 × 1) (10)

3.6 List THREE differences between *locatio conductio operarum* (contract of service) and *locatio conductio operis* (independent contractor). (3 + 3) (6)

3.7 Briefly distinguish between *acquisitive prescription* and *extinctive prescription*.

(2 + 2) (4)

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QUESTION 4

4.1 Read the scenarios below and answer the questions.

4.1.1 Tony and Johnny enters into a contract with Jeff to poach rhino horns and transport it over the South African boarder.

Is this a valid contract? Substantiate the answer. (4)

4.1.2 Jack and Jill enters into a contract to open a brothel. Jill invested all her savings into the brothel. After two months Jill wants her money back.

Discuss the par delictum rule. (4)

4.2 List FOUR requirements for duress. (4 × 2) (8)

4.3 Name the type of breach of contract in each of the following cases and briefly give a definition of each:

4.3.1 Zandie ordered flowers from Tando's Florist to be delivered on 9 July at 13:00. Zandie waited for an hour for the flowers to be delivered and then left the premises. Tando arrived at 15:00 only to find the premises locked.

4.3.2 Victor ordered a lounge suite from ABC Furnishers. They agree that the lounge suite must be delivered at Victor's premises on Saturday at 12:00. At 12:00 on that particular Saturday ABC Furnishers arrives with the lounge suite only to find the premises locked. ABC Furnishers cannot find anybody to open up the premises or to accept delivery.

(2 × 3) (6)

4.4 List the circumstances under which a minor would be bound by his/her actions when he/she entered into a contract. (4 × 2) (8)

4.5 Give THREE duties of a seller. (3)

4.6 Give FOUR duties of an employee. (4)

4.7 Briefly discuss the rights of the consumer in terms of the National Credit Act 34 of 2005. (5 × 2) (10)

4.8 List THREE special contracts of sale. (3)

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QUESTION 5

5.1 List FOUR grounds for summary dismissal. (4 × 2) (8)

5.2 Indicate whether the following statements are TRUE or FALSE. Choose the answer and write only 'True' or 'False' next to the question number (5.2.1–5.2.10) in the ANSWER BOOK.

5.2.1 An interdict can also be obtained to stop the misuse of property.

5.2.2 Credit providers may only charge collective cost.

5.2.3 Traditio longa manu means delivery with the long hand.

5.2.4 Debts from negotiable instruments prescribe after six years.

5.2.5 Condictio indebiti is a remedy where payment made in error can be reclaimed.

5.2.6 Where a contract of sale is conditional the risk will not pass to the buyer.

5.2.7 No prescribed process is needed for an eviction to be legal.

5.2.8 Serious misconduct may lead to summary dismissal.

5.2.9 Credit providers include retail stores.

5.2.10 A counter offer terminates the original offer.

(10 × 1) (10)

5.3 Briefly discuss *consensus*. (5)

5.4 Explain how a buyer becomes the owner of an article bought. (4 × 2) (8)

5.5 List THREE formalities of a contract and briefly discuss them. (3 × 3) (9)

5.6 Give THREE examples of latent defects. (3)

5.7 List SEVEN ways in which an offer can be terminated. (7)

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TOTAL SECTION B: 150
GRAND TOTAL: 200

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