higher education & training

Department:
Higher Education and Training
REPUBLIC OF SOUTH AFRICA

MARKING GUIDELINE

NATIONAL CERTIFICATE

JUNE EXAMINATION

MERCANTILE LAW N5

23 JUNE 2014

This marking guideline consists of 8 pages.

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GENERAL REMARKS

1. Answers found in this marking guideline are used as a **guideline** and must not be seen as the only correct answer/s.
Marks must still be allocated to a candidate's answer provided that the answer has a similar meaning/idea. Semantic differences could occur and the examiner should be consulted where uncertainties occur during a marking memorandum discussion.

2. Answers must be in **full sentences at all times**, where expressly required by and stated in the question paper.
Should answers not be fully described, defined or analysed, full marks **cannot** be given to a candidate's answer/s. For specific details, scrutinise each question carefully.
Please note: No half marks are allocated.

3. Should a candidate do more than the required number of questions, **ONLY THE FIRST FOUR QUESTIONS, WHICH INCLUDE THE COMPULSORY QUESTION** must be marked. In cases where FOUR questions in total have been exceeded, delete the fifth (last) question by drawing a red line across that section of the answer script.

   The marker must indicate his/her decision not to mark the particular question by writing the following statement at the bottom of that question. Please sign and date afterwards.

   "THE CANDIDATE HAS ANSWERED MORE THAN THE REQUIRED NUMBER OF QUESTIONS (REFER EXAMINATION INSTRUCTIONS 1 & 2)"

   Should any uncertainty arise, consult the examiner.

4. All borderline cases (raw score of 76 to 79 marks out of 200) must not be tampered with in any way. Do not inflate the marks unilaterally. Make a supporting statement in your marker's report and leave the adjustment of marks to the process of moderation.
A practical - or semester mark must still be added to these raw scores.

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SECTION A (COMPULSORY)

QUESTION 1

1.1	1.1.1	True		
	1.1.2	False		
	1.1.3	False		
	1.1.4	False		
	1.1.5	False		
	1.1.6	True		
	1.1.7	False		
	1.1.8	False		
	1.1.9	False		
	1.1.10	False	(10 × 2)	(20)
1.2	1.2.1	Silent partner		
	1.2.2	Memorandum of association		
	1.2.3	Del credere agent		
	1.2.4	Close corporation		
	1.2.5	Accord or composition (both are acceptable answers)	(5 × 2)	(10)
1.3	1.3.1	B		
	1.3.2	D		
	1.3.3	B		
	1.3.4	B		
	1.3.5	D		
	1.3.6	C		
	1.3.7	A		
	1.3.8	B		
	1.3.9	D		
	1.3.10	A ✓	(10 x 2)	(20)
				[50]

TOTAL SECTION A: **50**

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SECTION B

Answer any THREE questions in this section

QUESTION 2

2.1 There was representation by the principal✓✓
The representation could have misled him/her✓✓
He/she acted in good faith of the representation✓✓
He/she was prejudiced in doing so and acted to his or her detriment✓✓
(4 × 2) (8)

2.2 No secret profits✓✓
No conflict of interest✓✓
No misuse (non disclosure) of information✓✓
No delegation of authority✓✓ (4 × 2) (8)

2.3 Accept the duty to account to agent (if necessary)✓✓
Must reimburse agent for expenses incurred in execution of agent's duties ✓✓
Must indemnify agent for all losses suffered in execution of the mandate ✓✓
Must pay the agent the agreed remuneration✓✓ (4 × 2) (8)

2.4 2.4.1 Undisclosed principal✓✓ (1 × 2) (2)

2.4.2 Bulelwa has a choice: either alfie or michael ✓✓ (1 × 2) (2)

2.4.3 Bulelwa can sue either Alfie or Michael✓✓
or she can sue both for the money ✓✓ (2 × 2) (4)

2.5 Benefit of excussion✓✓
Benefit of division✓✓
Benefit of cession of action✓✓ (3 × 2) (6)

2.6

	PLEDGES	SURETYSHIP
Type of right afforded each by law	Real right ✓✓	Personal right ✓✓
Two requirements to be valid	In writing/oral ✓✓ Delivery must take place ✓✓	In writing ✓✓ Signed ✓✓

(6 × 2) (12)
[50]

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QUESTION 3

3.1 3.1.1 When a person is no longer in a position to pay his/her debts ✓✓
Where a person's liabilities exceed the assets✓✓ (4)

3.1.2 Any action or behaviour of a debtor ✓✓
Resulting in him/her not taking full responsibility for the payment of his/her debts towards creditors ✓✓ (4)

3.1.3 Proceeds are divided into 2 portions viz. specially secured portion✓✓ and free residue ✓✓ (4)

3.1.4 Where debtor on own free will approach court to start sequestration process against his/her estate ✓✓ (2)

3.2 3.2.1 Insolvents may become members of a cc ✓

3.2.2 Minors may become members of a cc✓

3.2.3 Natural persons may become members✓ and/or no limitation on married women ✓

3.2.4 The group as 9 people may not become members as the membership (together with Lungisile, his sister and grandmother) exceed ten people✓

3.2.5 Only if members give their consent then the pastor may become a member✓

3.2.6 Trustee of johanna's estate will offer her members' interest to the cc to buy. if the cc is not interested, it could be sold to the members or outsiders✓
(6 × 1) (6)

3.3 Members shall act honestly and in good faith in relation to the corporation✓✓
Members shall avoid any material conflict of his own interest with those of the corporation✓✓
Members shall not derive any personal economic benefit from the corporation✓✓
Must notify every other member at the earliest opportunity of any material interest he/she may have in any contract of the corporation✓✓
Not compete in any way with the corporation in way of its business activities✓✓ (5 × 2) (10)

3.4 DEREGISTRATION✓✓
Means cancellation of the CC registration with CIPC✓✓ OR
If the Registrar at CIPC believes the CC is not in business✓✓ OR
Apply in writing to CIPC, signed by all the members of the CC

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LIQUIDATION OF THE CLOSE CORPORATION✓✓
Sell all the assets of the CC on auction✓✓ **OR**
Pay the creditors with the proceeds✓✓ (5 × 2) (10)

3.5 Compensation by reason of personal injury or defamation✓✓
A pension to which he is entitled✓✓
Indemnification or compensation✓✓
Assets obtained after sequestration as a result of his own labour/efforts ✓✓
His clothing/bedding/furniture/groceries and other household means essential to his livelihood✓✓
Any life insurance/assurance policies taken out on his own life (limited to a certain amount)✓✓
Assets obtained by the sale or exchange✓✓
Remuneration for work done after sequestration✓✓
Trust monies with a lawyer, notary or conveyancer✓✓
Property obtained by insolvent with money which does not fall within the insolvent estate e.g inheritance✓✓
Benefits under the unemployment insurance act✓✓
Compensation under the compensation for occupational injuries & diseases act✓✓
Provisional interests of a fideicommissory heir ✓✓
(These are the most important answers – please use discretion in awarding marks to answers other than these listed above) (5 × 2) (10)
[50]

QUESTION 4

4.1 4.1.1 Yes, a valid partnership exists✓✓
Provide labour, provide building material, contribute money to cover building costs✓✓
Alternative answer:
No, not a valid partnership✓✓
To cover operational costs. No mention of profit✓✓ (2 × 2) (4)

4.1.2 Contribution by partners✓✓
Carry on business for joint benefit of all partners✓✓
Business should be carried on to make a profit✓✓
Partnership agreement/contract should be legal✓✓
Clear intention to form partnership must be present✓✓ (4 × 2) (8)

4.1.3 4.1.3.1 No✓✓ there is a conflict of interest✓✓ (4)

4.1.3.2 Duty of good faith (utmost confidence/mutual trust)✓✓ (2)

4.2 No✓✓ individual partners represent partnership and act for and on behalf of the business✓✓ or
A partnership cannot sue or be sued in own name✓✓ (2 × 2) (4)

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4.3 A company with share capital✓ acquires capital by selling shares✓ types: private & public companies✓
A company without share capital✓ obtains funds from donations✓ known as company limited by guarantee✓ (2 × 3) (6)

4.4 Memorandum of association✓✓
Articles of association✓✓
Notice of company registered office✓✓
Written consent to act as director/s✓✓
Written consent to act as auditor✓✓
Proof of payment of registration money✓✓
Proof of payment of annual subscription✓✓ (Any 5 × 2) (10)

4.5 4.5.1 Ultra vires doctrine✓✓ (2)

4.5.2 Yes ✓✓
Board of directors cannot ratify this by general meeting, only by special resolution ✓✓ (2 × 2) (4)

4.6 Dividends may not be paid out of share capital✓✓
Company may purchase its own shares, by special resolution✓✓
Shares acquired may not be issued at a discount✓✓ (3 × 2) (6)
[50]

QUESTION 5

5.1 By subscribing to the memorandum of association ✓✓
When your name is entered in the register of members ✓✓ (2 × 2) (4)

5.2 The contract should be in writing✓✓
The promoters must profess to be agents of the company ✓✓
The memorandum of association on registration must contain the power to ratify such contracts✓✓
Two copies of such contracts be lodged with the Registrar✓✓
The company must ratify the contract after incorporation and, if a company with share capital, it must already be authorised to do business✓✓ (5 × 2) (10)

5.3 Shares✓✓
Debentures✓✓ (2 × 2) (4)

5.4 5.4.1 No (not a valid partnership) ✓✓
This partnership is not to the benefit of all ✓✓
Riaan is excluded from sharing in the profit ✓✓ (3 × 2) (6)

5.4.2 All partners have access to property of partnership ✓✓
Free access to books/deeds/documents✓✓
May make extracts from them✓✓
May ask auditors/experts for explanations unless forbidden by agreement.✓✓ (4 × 2) (8)

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5.6 Partnership nature requires utmost good faith✓✓
Highest degree of trust and confidence✓✓
Partner not to acquire advantages for himself alone✓✓
All partners must account for secret profits✓✓
Personal interest never placed before partnership✓✓
Inform all partners of everything/no secrets✓✓
Circumstances will decide whether transaction fall within scope of business or not✓✓
Partners must account for business' assets held in their possession✓✓
Partners controlling administration must submit an annual accounting ✓✓
(Any 6 × 2) (12)

5.7 Goods bought under the instalment sale transaction and on which the buyer (insolvent debtor) still owes money✓✓ will not be subject to the provisions of a sequestration order on the debtor's insolvent estate ✓✓

Before any goods are attached or removed, the credit grantor or seller has a preferential claim to those goods ✓✓ (3 × 2) (6)
[50]

TOTAL SECTION A: 150
GRAND TOTAL: 200

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