higher education & training

Department:
Higher Education and Training
REPUBLIC OF SOUTH AFRICA

N1080(E)(J23)H
JUNE EXAMINATION

NATIONAL CERTIFICATE

MERCANTILE LAW N5

(13030105)

23 June 2014 (Y-Paper)
13:00–16:00

This question paper consists of 12 pages.

BUSINESS STUDIES

Copyright reserved

DEPARTMENT OF HIGHER EDUCATION AND TRAINING
REPUBLIC OF SOUTH AFRICA

NATIONAL CERTIFICATE
MERCANTILE LAW N5
TIME: 3 HOURS
MARKS: 200

NOTE: If you answer more than the required number of questions, only the required number of questions will be marked. All work you do not want to be marked must be clearly crossed out.

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 correctly according to the numbering system used in this question paper.
5. Write neatly and legibly.

BUSINESS STUDIES

Copyright reserved

QUESTION 1 (COMPULSORY)

1.1 Indicate whether the following statements are TRUE or FALSE. Choose the answer and write only 'true' or 'false' next to the question number (1.1.1–1.1.10) in the ANSWER BOOK.

1.1.1 A company is an independent bearer of rights and duties simply because it possesses legal personality.

1.1.2 A general partner's authority may be limited or excluded by mutual agreement.

1.1.3 When the court sequestrates the estate of a partnership, it will simultaneously sequestrate the estate of each member of that partnership. This, however, does not apply to an anonymous partner.

1.1.4 If the Registrar of Companies is satisfied that all the registration requirements have been fulfilled, the Registrar will enter the company in the register and issue a memorandum of association.

1.1.5 According to the Companies Act, only public companies may offer shares in the articles of association.

1.1.6 To be declared insolvent, means to be guilty of an act of insolvency.

1.1.7 'Delegatus nion potest delegare' means that the agent may appoint other persons to do what he or she has undertaken.

1.1.8 The agreement of cooperation serves as the charter of the close corporation. This document must be drawn up in a prescribed form and must be signed.

1.1.9 A pledge is a real right which the creditor has over the movable property of the debtor and as such the agreement is only valid if the property is already in possession of the pledge.

1.1.10 A salvage lien is an example of a debtor – and creditor lien whereby money and/or labour is spent on saving it from decay or destruction.

(10 × 2) (20)

BUSINESS STUDIES

1.2 Complete the following sentences by filling the missing word(s). Write only the word(s) next to the question number (1.2.1–1.2.5) in the ANSWER BOOK.

1.2.1 The … partner may not interfere in the management and control of the partnership, but has the right of access to the books.

1.2.2 The aim, nature and name of a public company are determined by and recorded in an important document called the …

1.2.3 An agent, who earns a higher commission than ordinary agents and guarantees that the principal will receive his or her asking price, is named a … agent.

1.2.4 The … is a form of ownership where its member/ownership is not expressed as a ratio, but as a percentage.

1.2.5 Where an insolvent debtor approaches one or more of his or her creditors, making them a written offer to pay them back over a period of time, this act is referred to as …

(5 × 2) (10)

1.3 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 (1.3.1–1.3.10) in the ANSWER BOOK.

1.3.1 The membership of a member of a close corporation may be terminated by an order of court if …

A the member has disposed of his/her member's interest.
B the conduct of a member makes it reasonably impossible for the other members to associate with him/her carrying on the business of the close corporation.
C the estate of the member has been sequestrated.
D a member has died and disposed of his/her interest in his/her will.

1.3.2 Which of the following is NOT a ground for automatic dissolution of a partnership? Indicate the incorrect option.

A Expiration of the term for which the partnership was established.
B The retirement of a partner.
C The death of a partner.
D The breach by a partner of his/her fiduciary duties.

BUSINESS STUDIES

Copyright reserved

1.3.3 Sisipho, Unathi and Tony formed a partnership. Unathi's estate is sequestrated. The effect of the sequestration of Unathi's estate is as follows:

A It will have no effect, because a partnership is an entity separate from its members.
B The partnership dissolves immediately. The partners then become joint and several co-debtors in respect of the partnership debts.
C The partnership estate as well as the personal estates of Sisipho, Unathi and Tony will be sequestrated simultaneously.
D The partnership estate will be sequestrated simultaneously, but the personal estates of Sisipho and Tony will be excluded.

1.3.4 Which document stipulates the payment of directors and meetings of a company?

A Memorandum of association
B Articles of association
C Rights issue of shares
D Minutes of directors' meetings

1.3.5 A pledgee obtains a right over the debtor's property which …

A was sold to him/her.
B the debtor has given to him/her as a gift.
C incidentally comes into the possession of the pledgee.
D has been delivered to the pledgee as surety.

1.3.6 An implied right granted by law to any person who is in possession of another's property on which he or she has spent money and/or labour, is called (a) …

A mortgage.
B pledge.
C lien.
D surety.

1.3.7 … occurs when the creditors of an insolvent debtor petitions the court for the surrender of his or her estate.

A Compulsory sequestration
B Voluntary surrender
C Liquidation
D Rehabilitation

BUSINESS STUDIES

Copyright reserved

1.3.8 The class or division of shares that receives dividends only if ordinary shares have received a certain prescribed minimum dividend is called … shares.

A preference
B founding
C cumulative
D capitalisation

1.3.9 Unlike most agents, this type of agent does not sell movable property.

A Auctioneers
B Brokers
C Factors
D Estate agents

1.3.10 Ntombi is a partner in a firm of architects. She does a lot of site visits to clients and as a result has many business related expenses. As her business advisor, she asks you whether she has a right to compensation. The advice you give her is that she has …

A a right to compensation if all the partners are in agreement.
B as a partner, a right to compensation for her expenses.
C no right, since a partnership is about sharing in profits and losses.
D no claim for expenses since it is part of her daily tasks.

(10 × 2) (20)
[50]

TOTAL SECTION B: 50

BUSINESS STUDIES

Copyright reserved

SECTION B

Answer any THREE questions in this section.

QUESTION 2

2.1 One of ways in which representative capacity (agency) can be established is by means of Estoppel.

Name the FOUR elements that must be proved to the court should a person use this means to act as an agent of another person (principal). (4 × 2) (8)

2.2 The agent has certain duties to fulfill towards his or her principal. One of these duties is that of honesty and to act in good faith so that a relationship of trust can be established.

Name FOUR aspects of this duty that will tarnish or affect the level of trust between the agent and principal negatively. (4 × 2) (8)

2.3 State FOUR duties of the principal towards the agent. (4 × 2) (8)

2.4 Alfie and Bulelwa enter into an agreement whereby Alfie will buy Bulelwa's car. While negotiating the deal, Alfie's younger brother, Michael, comes forward and tells Bulelwa that Alfie is not actually buying the car for himself but is acting on his (Michael's) behalf.

2.4.1 In terms of agency, identify the well-known principle that is referred to in the statement above. (1 × 2) (2)

2.4.2 Assume Bulelwa knew all along (before Michael came forward) that Alfie was not buying the car for himself but for someone else.

Who can she (Bulelwa) hold responsible for this transaction? (1 × 2) (2)

2.4.3 Consider that the car is sold and that, under the above circumstances, Bulelwa has not received payment for the car.

Advise her on her rights as from whom she can claim the selling price of her car. (2 × 2) (4)

2.5 Name the THREE common law privileges that are provided to a surety in the case of the debtor not paying his/her debts. (3 × 2) (6)

BUSINESS STUDIES

2.6 Pledges and surety ship as different types of security, can be compared in terms of various aspects.

Hint: Draw the table below in your ANSWER BOOK and analyse each by writing your answers in the spaces provided.

ASPECTS	PLEDGES	SURETY SHIP
Type of right/s afforded each by law		
Two requirements to be valid		

(6 × 2) (12)
[50]

QUESTION 3

3.1 With reference to insolvency, describe the following terms:

3.1.1 Insolvency (4)

3.1.2 Order of payment (4)

3.1.3 Order of payment (4)

3.1.4 Voluntary surrender (2)

3.2

> Lungisile CC, is a successful business rendering a reliable, fast and safe transport service to and from rural areas to a city in the Eastern Cape. In order to expand his business, Lungisile is looking to have more people join the CC, contributing much needed capital to fund future expansion and offering transport to Johannesburg. A number of persons are interested in becoming members of that close corporation. Currently the business consists of only Lungisile, his sister, Johanna and their grandmother, Nena as members.

Advise Lungisile about whom of the following persons may become members in terms of the Close Corporations Act and how some of the situations below will affect the CC.

3.2.1 Thabo, an unrehabilitated insolvent

3.2.2 Sammy, Thabo's 17 year old son

3.2.3 Noma, Thabo's wife

3.2.4 A group of nine people who belong to a Church Choir and who travel frequently from Alice to East London.

BUSINESS STUDIES

Copyright reserved

3.2.5 When Nena suddenly died earlier this year, she left her member's interest in the CC to the pastor of the church in her estate (will).

3.2.6 How would the membership of the CC be affected if Johanna was declared insolvent and her estate being sequestrated?

(6 × 1) (6)

3.3 Briefly list the FIVE fiduciary duties that a member has towards a Close Corporation. (5 × 2) (10)

3.4 Lungisile CC approaches you for advice. Lungisile (owner) says he heard recently from his tax consultant that the new body concerned with the registration of companies and existing close corporations, the Companies and Intellectual Property Commission (CIPC), is not registering any new applications for Close Corporations and that it is perhaps better for him to consider closing down the current business and form another business venture.

Explain to Lungisile the TWO options under which the CC could be dissolved.

(2 × 5) (10)

3.5 Not long after you have given Lungisile advice on how he could go about the dissolution of his CC, you visit him at the business premises. When you arrived, you could see that everybody was busy moving all the office furniture to one side of the building and the rest of the smaller items for example the two computers, printers, facsimile (fax) machines, scanner and telephones to one corner. The six vehicles (mini buses) used in the CC are being cleaned and are parked neatly in the opposite side of the garage next to the office reception area.

Upon seeing this, you greeted Lungisile and enquired what was going on. He (Lungisile) informed you that the business had been struggling during the past year and since there were so many increases in the petrol price and the fact that e-tolling also came into effect on the highways on one of his main routes to Johannesburg, the business has gone into liquidation.

He and his staff are now preparing for the worst and are waiting for all the business assets to be confiscated. He is also afraid that his personal belongings might be taken away from him now that the business is insolvent. As his friend, you feel compelled to tell him not to worry too much as he should allow the accounting officer, appointed for the CC, to handle the business side of things. As far as his personal life and belongings are concerned, you advise him that should his (Lungisile's) personal estate be sequestrated, there are various assets that the court will not attach to his sequestrated estate. In hearing this, Lungisile says he is very relieved.

Name FIVE such assets which do not form part of any insolvent person's sequestrated estate. (5 × 2) (10)

[50]

BUSINESS STUDIES

Copyright reserved

QUESTION 4

4.1 Ten people decide to form a partnership. They will build a shelter for abandoned cats and dogs. One of the partners will provide the labour of a bricklayer who works for him in the construction business he owns. Another partner, whose business sells building equipment will provide building material at a reduced price. The other eight will contribute money to cover building costs. To cover the operational costs of the shelter, they will allow non-partners to use the facilities as a kitty hotel and kennels.

4.1.1 Has a valid partnership come into existence? Write down 'yes' or 'no' and defend your answer by using an extract (words) from the scenario above to motivate the reason for saying either 'yes' or 'no'. (2 × 2) (4)

4.1.2 Suppose, in the above scenario, that it is generally understood that the partners are for all intents and purposes involved in a legal partnership agreement.

What are the FOUR essential elements that characterises a legal partnership?

HINT: Your answers must be in full sentences, depicting the essence of each essential element. (4 × 2) (8)

4.1.3 Assume the partner who will provide the building material for the shelter, uses the idea of building the shelter in order to get special discounts from a wholesaler or other building contractors not only for this project, but also for his own business.

4.1.3.1 Is this allowed? State 'yes' or 'no' and write down a valid reason for your answer. (2 × 2) (4)

4.3.1.2 Which of the (fiduciary) duties of a partner has this partner, mentioned in QUESTION 4.1.3 NOT fulfilled? (2)

4.2 It is commonly known that a company has separate legal personality apart from its members or shareholders. However, does a partnership have this distinguishing characteristic too? Either way, defend your answer by explaining the legal nature specific to a partnership. (2 × 2) (4)

4.3 The Companies Act, 1973 (Act 61 of 1973) which is outdated, nevertheless makes provision for the creation of two kinds of companies.

Explain briefly the TWO kinds of companies. (2 × 3) (6)

4.4 Name FIVE documents that must be submitted when applying for registration of a company. (5 × 2) (10)

BUSINESS STUDIES

Copyright reserved

4.5 Xction Man Toys (Pty) Ltd manufactures and distributes children's action toys especially for the younger, energetic, active boys and girls. On closer inspection of its activities and registration documents, a journalist discovers that this company is also involved in the manufacturing of weapons.

4.5.1 Identify the important doctrine that has been contravened under the 1973 Companies Act. (2)

4.5.2 If this common law doctrine is upheld (enforced) against Xction Man Toys (Pty) Ltd, can the board of its directors ratify this 'confusion' about their business activities?

State 'yes' or 'no' and write down a valid reason for your answer. (2 × 2) (4)

4.6 The Companies Act of 1973 makes provision for the maintenance of share capital.

Write down the THREE rules that explain this concept. (3 × 2) (6)
[50]

QUESTION 5

5.1 With reference to membership and shareholding in a public company, write down TWO ways in which a member of the public can obtain membership. (2 × 2) (4)

5.2 Companies must comply with certain requirements, so that contracts entered into before incorporation, maybe ratified after incorporation takes place.

Name FIVE of these requirements. (5 × 2) (10)

5.3 Name TWO sources of long-term capital for a company. (2 × 2) (4)

5.4 Brad, Riaan and Cindy want to form a partnership. They want to buy and sell second hand motor vehicles. It is agreed that Brad will contribute R100 000 for the purchase of the first two vehicles. Riaan will service and clean the vehicles while Cindy will be the sales person. It is further agreed that the net profit derived from the sale of the vehicles will be divided equally between Brad and Cindy, while Riaan will be paid a monthly salary of R15 000.

Has a valid partnership come into existence between Brad, Riaan and Cindy?

State 'yes' or 'no' and support your answer by means of a convincing explanation. (3 × 2) (6)

HINT: Have all the essential elements of a partnership been met?

BUSINESS STUDIES

Copyright reserved

5.5 Briefly explain the following right of partners:

The right to inspection of the books (4 × 2) (8)

5.6 Explain the partner's obligation of responsibility (duty of good faith). (6 × 2) (12)

5.7 Briefly explain what the effect is of sequestration on the goods of the insolvent debtor where such goods have been purchased under an instalment sale (credit agreements) transaction. (3 × 2) (6)

[50]

TOTAL SECTION B: 150
GRAND TOTAL: 200

BUSINESS STUDIES

Copyright reserved