higher education & training

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REPUBLIC OF SOUTH AFRICA

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NATIONAL CERTIFICATE

MERCANTILE LAW N5

(13030105)

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This question paper consists of 10 pages.

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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 will be marked. Clearly cross out ALL work you do NOT want to be marked.

INSTRUCTIONS AND INFORMATION

1. SECTION A is COMPULSORY.
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. ALL the answers must be in FULL SENTENCES except where indicated otherwise.
7. Write neatly and legibly.

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SECTION A (COMPULSORY)

QUESTION 1

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 debtor commits a deed of insolvency when he or she comes to an agreement with one of his or her creditors to set him or her partially free of his or her debt.

1.1.2 A public company may commence with business as soon as its memorandum of association is registered with the deeds office.

1.1.3 The shares of a private company may be noted on the Johannesburg Stock Exchange (JSE).

1.1.4 Where a minor stands surety for another minor (debtor), the surety (minor) is not liable for the minor's debts.

1.1.5 An agent who acts on behalf of a principal and divulges it to the other (third) party is liable under the contract as if he himself or she herself is the contracting party.

1.1.6 The partners (members) of a partnership must all contribute money to become valid members whereas the members of a close corporation must contribute money, skills and/or labour to become members of the CC.

1.1.7 The pledgee can use the fruits or proceeds of the pledged goods for his or her own gain.

1.1.8 If the mortgagor fails to pay, the mortgagee can claim the capital sum and interest by calling on the foreclosure clause.

1.1.9 Under the new company's act no new close corporations may be formed but an existing close corporation that has been sold may continue to do business in that capacity until its owner decides to change the ownership to that of a private company.

1.1.10 Where it is clear that the estate of the debtor is insolvent, the curator has to decide which assets of the insolvent estate will be liquidated or not and how much money will be divided amongst the creditors of such debtor.

(10 × 2) (20)

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1.2 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 (1.2.1–1.2.10) in the ANSWER BOOK.

1.2.1 If a member of a CC handles the affairs of that CC in an improper manner, he/she may be …

A penalised by not allowing him or her to attend a certain number of members' meetings
B asked to resign as a member of that CC.
C held personally liable for the debts of that CC.
D penalised by having his or her member's interest (%) reduced.

1.2.2 Situation whereby a right to recovery is ceded as security for a debt or obligation:

A Lien
B Pledge
C Cession to secure an obligation
D Mortgage

1.2.3 A representative which is appointed by either the buyer or the seller to negotiate a contract of sale on his behalf is a/an …

A broker.
B del credere agent.
C estate agent.
D factor.

1.2.4 The word LIMITED or the abbreviated version thereof (Ltd) as it appears at the end of the name of a company indicates that the … .

A capital of a company is limited to a certain amount.
B shareholders or owners of such company is limited to a certain number.
C liability of shareholders is limited.
D number of shares that may be offered for sale is limited.

1.2.5 The assets which serve as security for preference creditors in an insolvent estate is known as ... assets.

A fixed
B movable
C sequestrated
D specially-secured

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1.2.6 … occurs when the insolvent debtor petitions the court to surrender his or her estate for the benefit of the creditors.

A Compulsory sequestration
B Voluntary surrender
C Liquidation
D Insolvency

1.2.7 Which ONE of the statements is correct with regard to an ordinary partnership?

A Membership varies from 1 to 20 partners
B A partnership agreement may only be entered into orally
C Active partners are jointly and severally liable for partnership debts
D The partners must only contribute capital to the partnership

1.2.8 Co-sureties are two or more persons …

A liable for the same debt.
B with a right to the same debt.
C who agree to pay the surety's debt only under certain conditions.
D liable for somebody else's debt.

1.2.9 The insolvent debtor can be relieved of the disabilities imposed on him or her by sequestration …

A by consolidation of the estate debt.
B by an offer of composition (accord) to the creditors.
C through rehabilitation.
D by an act of insolvency.

1.2.10 Which of the following information is not contained in the memorandum of association of a company?

A Name of the company
B Who may negotiate contracts on behalf of the company
C Amount of share capital
D Functions of an audit committee

(10 × 2) (20)

1.3 Complete the following sentences by using the words in the list below. Write only the word(s) next to the question number (1.3.1–1.3.10) in the ANSWER BOOK.

undisclosed; indemnify; limited; limited by guarantee; debt/obligation; insolvency; prospectus; estoppel; agent; surety; mortgage; lien holder; del credere; tacit hypothec; articles of association; principal; ratification; doctrine of constructive notice; certificate of incorporation; anonymous; partnership; Turquand rule; certificate to commence business; close corporation; representative

1.3.1 The … is a person who, without being instructed, acts on behalf of an absent person to safeguard that person's property against damage.

1.3.2 By law it is compulsory for a … as a business entity to appoint an accounting officer.

1.3.3 The … of the landlord extends over the movable property of the tenant in respect of rental in arrears.

1.3.4 The doctrine of … binds a person to the impression that he or she has created.

1.3.5 A company without share capital is known as ...

1.3.6 According to the doctrine called … anyone who deals with a company is seen to be knowledgeable as to the contents of that company's public documents.

1.3.7 A … serves as proof that a company has been duly incorporated according to company law.

1.3.8 … is the approval of a legal action by a person which was carried on by another person for him or her and to which that person did not have the authority to do so.

1.3.9 Partners normally … themselves against claims against the partnership at the retirement or death of a partner.

1.3.10 With regard to agency where the agent is representing the principal that is not known to the public, the phenomenon is known as the … principal.

(10 ×1) (10)
[50]

TOTAL SECTION A: 50

SECTION B

Answer any THREE questions in this section

QUESTION 2

2.1 Write down THREE valid reasons why people would rather establish a close corporation (CC) than a company or a partnership. (3 × 2) (6)

2.2 Write short explanatory notes on the name of a close corporation. (5 × 2) (10)

2.3 State FOUR characteristics of a partnership. (4 × 2) (8)

2.4 A company obtains a legal personality independent of its members.

List FOUR consequences which arise from this statement. (4 × 2) (8)

2.5 Supply reasons why the following statements regarding companies are not true:

2.5.1 When a company is listed on the Johannesburg Stock Exchange (JSE), a certificate of incorporation is issued to the public inviting them to buy shares

2.5.2 The Companies Act no. 61 of 1973 only makes provision for the establishment of those companies with a share capital.

2.5.3 Proceedings to sequestrate a company will be undertaken by a court in the district where such a company is doing business.

2.5.4 A business dealing in the selling of works of art can only register as an association not for gain and not as a Section 21 company.

2.5.5 The word Limited as featured in the name of a company means the shareholders of that company have to pay its debts should the company be sequestrated in future.

(5 × 2) (10)

2.6 Name FOUR acts of insolvency which the legislator created. (4 × 2) (8)

[50]

OR/AND

QUESTION 3

3.1 The founding statement of a close corporation drawn up in its prescribed form must reflect certain particulars.

List any SEVEN such particulars. (7 × 2) (14)

3.2 Briefly explain the following rights of partners:

3.2.1 Right of compensation

3.2.2 Right of division of assets after termination

(2 × 6)

3.3 Name the different types/classes of shares of a company. (4 × 2) (8)

3.4 When does a pledge holder not lose his or her right to an article, even though he or she loses possession of the article pledged? (3 × 2) (6)

3.5 Identify the type of agent involved in each of the following cases:

3.5.1 Bryan appoints Abongile to negotiate the purchase of a house from Joyce.

3.5.2 Martina has been struggling for months to find a buyer for her farm. The farmhouse and sheds must be sold with all the livestock and implements. Mandla, who is a suitably qualified agent, informs Martina that the easiest way to sell the farm and its contents is by means of a publicauction whereupon Martina appoints Mandla to conduct the sale.

3.5.3 Chanell appoints Lerato to negotiate the purchase of a TV from Faadiel.

(3 × 2) (6)

3.6 Comment on the following statement regarding companies. Under the new companies act, private – and public companies do not go insolvent, instead they are being subjected to a process of business rescue.

HINT: First state whether you agree with this statement or not; thereafter comment by writing down your answer/motivation for agreeing or disagreeing. (4)

[50]

OR/AND

QUESTION 4

4.1 Every person who becomes a member of a close corporation must make an initial contribution.

Name the forms in which this contribution can be made. (3 × 2) (6)

4.2 Discuss the possibility of a minor becoming a member of a close corporation. (3 × 2) (6)

4.3 Discuss the consequences of dissolution of a partnership in general. (2 × 2) (4)

4.4 Criticise the following statement regarding partnerships:

When a partner has acted beyond his or her implied authority, the copartners can impliedly ratify the transaction.

Briefly explain. (3 × 2) (6)

4.5 Briefly explain the effect of insolvency on the estate of a sequestrated partnership. (3 × 2) (6)

4.6 Name the requirements which must be complied with before contracts entered into before incorporation may be ratified by a company after incorporation. (4 × 2) (8)

4.7 Write down THREE common law privileges granted to a surety where the creditor demands payment from the surety. (3 × 2) (6)

4.8 Name TWO advantages the sequestration process has for creditors. (2 × 2) (4)

4.9 Write down TWO types of enrichment liens that exist. (2 × 2) (4)

[50]

OR/AND

QUESTION 5

5.1 Name the ways whereby membership at the establishment of a close corporation can be obtained. (4 × 2) (8)

5.2 Give reasons why the following statements about partnerships are not true:

5.2.1 An extraordinary partnership can consist of any number of partners.

5.2.2 As soon as a partnership is registered as a legal entity, the registrar of companies issues a certificate of incorporation to the partnership

5.2.3 Before a partner retires or dies, he or she can nominate another person to take their place in the partnership.

(3 × 2) (6)

5.3 Comment on the following statement:

A person may only be appointed as a partner if he/she makes a monetary contribution towards the partnership. (2 × 2) (4)

5.4 Name the requirements with which a partnership must comply before the partnership will be bound to any contract it enters into. (2 × 2) (4)

5.5 Write brief notes on the doctrine of constructive notice. (2 × 2) (4)

5.6 List FOUR documents which must accompany the prospectus when a company is submitted for registration. (4 × 2) (8)

5.7 What does a certificate of incorporation prove? (2)

5.8 What name is given to bonds which arise without any agreement? Also state HOW this can happen. (2 × 2) (4)

5.9 Explain briefly the meaning of defeasible (voidable) dispositions as applicable under insolvency and write down any TWO examples of such dispositions. (3 × 2) (6)

5.10 Name TWO cases where a creditor can apply for the sequestration of a debtor's estate. (2 × 2) (4)

[50]

TOTAL SECTION B: 150
GRAND TOTAL: 200

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