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NATIONAL CERTIFICATE

MERCANTILE LAW N5

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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 Choose a term/word from COLUMN B that matches a description in COLUMN A. Write only the letter (A–J) next to the question number (1.1.1–1.1.5) in the ANSWER BOOK.

COLUMN A		COLUMN B	
1.1.1	Doctrine binding a person to the impression that he/she created	A	interest
1.1.2	Main aim of the sequestrating creditor is to save the debtor from financial ruin	B	promoter
1.1.3	Person who takes the initiative to float a public company	C	ratification
1.1.4	Document regulating the internal relations and administrative matters between the corporation and the members and between the members themselves	D	director
1.1.5	Remuneration received by a shareholder	E	dividend
		F	sequestration
		G	cooperation agreement
		H	founding statement
		I	estoppel
		J	friendly sequestration

(5 × 2) (10)

1.2 Complete the following sentences by using the words in the list below. Write only the missing word or words next to the question number (1.2.1–1.2.10) in the ANSWER BOOK.

balance sheet; salvage lien; invitation; co-sureties; shares; debtor-and-debtor lien; judicial; improvement lien; authorised; distinguishable; free residue; creditor-and-creditor lien; founding statement; enrichment lien; concurrent; sureties; unit trusts; twenty; prospectus; uninterrupted; representative; debtor-and-creditor lien; statement of assets; multiple; legal personality; secured assets

1.2.1 There are THREE main types of liens, namely …, … and …

1.2.2 When two or more persons stand surety for the same debt, they are called …

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1.2.3 The record of assets and liabilities that must be submitted by the insolvent when he/she applies to be sequestrated is called a/an …

1.2.4 The maximum membership of a partnership is …

1.2.5 Possession is an absolute necessity for the existence of a valid lien. Such possession must be … and …

1.2.6 A company is an independent bearer of rights and obligations because it possesses …

1.2.7 A close corporation is established by registering a …

1.2.8 An insolvent estate is divided into two groups, namely the … and the …

1.2.9 In order to establish the extent to which the principal is liable for the wrongful actions (delicts) of the agent, it must be established whether the agent acted as … of the principal or as …

1.2.10 The order of preference in which the creditors of an insolvent will be paid for money owing to them after sequestration is firstly the secured … and then the … creditors.

(15 × 2) (30)

1.3 Indicate whether the following statements are TRUE or FALSE. Choose the answer and write only 'True' or 'False' next to the question number (1.3.1–1.3.5) in the ANSWER BOOK.

1.3.1 Rehabilitation is the legal process of taking away an insolvent's assets by means of a court order.

1.3.2 The one thing a partnership and a close corporation have in common is that both forms of ownership have a founding statement.

1.3.3 The close corporation is a business entity comprising a minimum of ten members.

1.3.4 A covering bond is a bond to secure a future debt.

1.3.5 The aim of the 'beneficium division' is to give the creditor sufficient time to sue the debtor for payment of his/her debt.

(5 × 2) (10)

[50]

TOTAL SECTION A: 50

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SECTION B

Answer any THREE questions in this section.

QUESTION 2

2.1 Name FOUR characteristics of a partnership. (4 × 2) (8)

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

2.3 Name FOUR ways in which representation (representative capacity) can arise. (4 × 2) (8)

2.4 Distinguish between *voluntary surrender* and *compulsory sequestration*. (4 × 2) (8)

2.5 From the various descriptions below (2.5.1–2.5.3), correctly identify (name) the kind of agent in each instance.

2.5.1 Unless forbidden to do so, this agent may sell the principal's goods on credit.

2.5.2 This agent is a licensed agent who only sells goods for cash unless authorised by the principal to sell on credit.

2.5.3 Unlike the estate agent, this agent usually negotiates the purchase price and the sale of movable goods only.

(3 × 2) (6)

2.6 Read the short scenarios below. After examining each scenario, give sufficient reasons to indicate whether or not each scenario demonstrates an act of insolvency.

Write 'Yes' or 'No' and provide a reason for your answer next to each answer.

2.6.1 Heather, a school teacher, writes a letter to her bank, informing them that she is experiencing financial difficulties and cannot pay her mortgage of R9 000 per month. She is, however, willing to pay a monthly amount of R5 500.

2.6.2 It has been reported that Andile, the owner of a hotel, the Mthatha Inn, was seen removing all the furniture and fittings from the hotel. It becomes apparent that the hotel owes R140 000 to Distiller's (Pty) Ltd for wine and spirits Andile had bought from them the past three months.

2.6.3 Ayesha, an affluent accountant who manages her own firm of accounting practitioners, approaches two of her creditors, XYB Bank and Rustic Furniture Supplies, informing them that she is willing to settle her debts by paying each of them only 30 cents in the rand.

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2.6.4 Pieter approaches one of his creditors, requesting them to visit his business and to take goods to the value of the money he owes them. He promises them that should they be willing to do this, he will remain a loyal customer forever.

(4 × 2) (8)

2.7 Discuss the following requirement for a valid partnership agreement:

Each partner must contribute something to the partnership. (4 × 2) (8)

[50]

AND/OR

QUESTION 3

3.1 Does a close corporation have a legal personality? Explain briefly. (3 × 1) (3)

3.2 Contrast the following features (distinguishing characteristics) in (3.2.1–3.2.5) below that exist between a close corporation and a partnership (in general).

HINT: Draw a table (3 columns and 6 rows) as shown in the example and write the answers in the table in your ANSWER BOOK.

Example:

	CLOSE CORPORATION	PARTNERSHIP
3.2.1 Legal personality		
3.2.2 Liability for business debts		
3.2.3 Effect of change in membership		
3.2.4 Responsibility to exercise fiduciary duty		
3.2.5 Submission of annual income tax returns		

(5 × 2) (10)

3.3 Write a brief note on the fiduciary duties of the members of a close corporation. Refer to the consequences should a member breach one of these duties. (6 × 2) (12)

3.4 Mrs Baleni is the managing director of XPlatco Ltd, a mining company. Mr Curtis, the owner of a mineral-rich farm, Platinum Hills, informs Mrs Baleni that he is willing to sell his farm to XPlatco Ltd at a purchase price of R8 million.

Mrs Baleni buys the farm in her personal capacity for the asking price of R8 million. She later sells the farm to XPlatco Ltd that desperately needs the land to enable it to continue its mining operations at the farm's market value of R10 million.

Evaluate the situation above and answer the questions below.

3.4.1 In terms of the Companies Act 71 of 2008, would you say that Mrs Baleni acted in accordance with her fiduciary duties as company director?

Answer 'Yes' or 'No' and give reasons for your answer. (2 × 2) (4)

3.4.2 Assume that Mrs Baleni is guilty of breaching her duty as director. Name the fiduciary duties she has not fulfilled. (2)

3.4.3 Assume that the shareholders are not satisfied with Mrs Baleni's conduct and approach you for advice. They would like to know with regard to Mrs Baleni's actions whether there there are any remedies (course of action) available to them.

Advise them accordingly and provide reasons for your answer. (2 × 2) (4)

3.5 You have a married friend who has a credit card with Bank X and who has (as surety) applied to the bank for his wife to share (as co-debtor) his credit card allowing her the same user rights as he has. His wife has been shopping a lot lately, thereby running up expenses on her card. She now struggles to pay the monthly amount owing on her credit care, and because she has not paid the card for some months, the bank demands (through legal action) that your friend pay her credit card debts.

He approaches you for advice. As this is clearly a case of suretyship where the creditor (bank) demands payment from the surety, advise your friend on the options he has with regard to the three common-law privileges available to him.

3.5.1 Which of the three privileges will he be able to use as defence against the bank's demands that he pay all his wife's credit card debts? (2)

3.5.2 Outline in a sentence a description of the specific remedy you recommend him to use. (3)

3.6 State THREE consequences of insolvency for the insolvent debtor. (3 × 2) (6)

3.7 Explain briefly the meaning of defeasible (voidable) dispositions as applicable under the Insolvency Act. Write down ONE example of such a disposition. (2 × 2) (4)

[50]

AND/OR

QUESTION 4

4.1 Discuss the articles of association of a public company under the following headings:

4.1.1 Definition (2)

4.1.2 Form and legal requirements. (4 × 2) (8)

4.1.3 Contents (3 × 2) (6)

4.2 What is the purpose of business rescue for a company? (2 × 2) (4)

4.3 The director of a company must display the necessary care and diligence/skill when executing his/her capabilities. Briefly explain this statement. (3 × 2) (6)

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

4.5 Discuss the conversion of a company into a close corporation (CC) under the following heading:

Implications of a conversion into a CC (3 × 2) (6)

4.6 Name TWO effects of rehabilitation on an insolvent. (2 × 2) (4)

4.7 Carefully read the scenarios below. In each scenario, specify the duties the agent or representative does NOT comply with.

4.7.1 Zolani received a general power of attorney from Gary to act generally on his behalf. Six months after Gary had granted the power of attorney to Zolani, he visits Zolani's office and requests her to make the books pertaining to the power of attorney available for inspection. Zolani refuses.

4.7.2 Manya authorises Nico to negotiate a loan of R1 million from Quick Loans Ltd. Nico's commission will be 1% of the loan amount. Nico obtains an offer from Quick Loans Ltd to lend the R1 million on condition that Manya pays all legal charges in connection with the loan. Nico conveys the offer to Manya, and informs her that the legal costs will amount to R4 000. They conclude the deal but the legal costs in fact amount to R8 000, with the result that Manya's costs are R4 000 more than she had budgeted for.

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4.7.3 Bruce is a representative for Wheelz, a financial institution specialising in motor vehicle financing. The company laid down extensive guidelines according to which representatives should select potential customers. Bruce, however, acts recklessly and grants loans to each and every applicant for a loan without subjecting their applications to the prescribed selection procedure. As a result, the company suffers financial losses because borrowers fail to repay their loans.

4.7.4 Steven appoints Marwaan to sell his (Steven's) flat. Marwaan sells the flat to Sibusiso at a nominal amount. In reality, Sibusiso is in a partnership with Gary and the flat was sold to the partnership.

4.7.5 Sabeena, who is moving from Cape Town to Durban, appoints Herman, an estate agent, to sell her townhouse. Herman sells the townhouse to Sibongile at a nominal amount. In reality, Sibongile is in a partnership with Herman and the townhouse was sold to that partnership.

(5 × 2) (10)
[50]

AND/OR

QUESTION 5

5.1 Name THREE main classes/divisions of shares and indicate the characteristic of each class/division in relation to the receipt of a dividend.
(1 mark for class + 3 marks for classification) (3 × 4) (12)

5.2 Discuss mortgages under the following headings:

5.2.1 Which FIVE important pieces of information are essential and must be included (written into) in any legal mortgage bond document?
(5 × 2) (10)

5.2.2 Both debtors and creditors involved in mortgages have rights and duties under the provisions of the law.

State THREE of the mortgagee's duties under these prevailing circumstances. (3 × 2) (6)

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5.3 When your college's quarterly magazine was launched recently, you started an answer/reply column, Your Questions Answered, in which you and a few other students, under supervision of your lecturer in Mercantile Law, answer various questions with legal implications.

You do not provide a (professional legal) service and encourage students, their family and/or friends to send questions to your column asking advice, but also to seek legal advice in serious cases where they will need the expert advice of a lawyer.

HINT: Since space is a problem, keep your answers brief and to the point.

5.3.1 One of our company directors was arrested on a serious charge of theft.

(a) What happens to his position as director if the court finds him guilty and convicts him?

(b) Can the director continue to hold his position in the company?

(c) What does the Companies Act say in this regard?

(d) Can the court decide to grant/not to grant him authority to act as a director?

(4 × 2) (8)

5.3.2 My business is currently experiencing financial difficulties and I was about to send letters to my creditors informing them that I am unable to pay my debts. However, a friend warned me not to send these letters to my creditors as it would entitle my creditors to liquidate my business.

(a) Is this advice correct?

(b) What would the consequences of such letters to my creditors be?

(c) What does the Insolvency Act say in this regard?

(3 × 2) (6)

5.4 The following question does not relate in any way to the above-mentioned questions:

Consider the following statement below and write two paragraphs about the functions and duties of a company auditor.

'The company auditor plays a vigilant and objective role in ensuring that the shareholders' interests are well protected and that management of the company acted within reason'. (4 × 2) (8)

[50]

TOTAL SECTION B: 150
GRAND TOTAL: 200

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