higher education & training

Department:
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REPUBLIC OF SOUTH AFRICA

NATIONAL CERTIFICATE

MERCANTILE LAW N5

(13030105)

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09:00–12:00

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 and must be answered by all candidates in the ANSWER BOOK.

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. Use only a black or blue pen.

7. Write neatly and legibly.

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SECTION A

QUESTION 1

Various options are given as possible answers to the following questions. Choose the correct answer and write only the letter (A–D) next to the question number (1.1–1.10) in the ANSWER BOOK.

1.1 A public company must have at least … director(s).

A 1
B 4
C 3
D 2

1.2 A personal liability contract is …

A a public company.
B mainly used by professional associations.
C a non-profit company.
D regulated by the Public Finance Management Act.

1.3 The type of share that will receive a dividend after payment to ordinary shareholders:

A Issued share
B Deferred share
C Preference share
D No-par value share

1.4 The report that reflects the financial position of a company:

A Cash-flow statement
B Auditors' report
C Balance sheet
D Income statement

1.5 The document that regulates the internal regulations of a close corporation:

A Memorandum of Incorporation
B Association agreement
C Founding statement
D Memorandum of Association

1.6 Choose the INCORRECT option. Characteristics of suretyship:

A A real right
B Can be applicable to any type of debt
C Must be in writing
D A contract between the creditor and the surety

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1.7 An asset that does not form part of the insolvent's sequestrated estate:

A Remuneration for work done after sequestration
B Remuneration for work done before sequestration
C Remuneration for work done before and after sequestration
D Commission earned for work done before sequestration

1.8 Partners are … liable for the debts of the partnership.

A pro rata
B in solidum
C only percentage-wise
D jointly

1.9 This doctrine determines that where a bona fide outsider transacts with a representative of a company, the third person can assume that all internal requirements and procedures have been complied with.

A Ultra vires doctrine
B The doctrine of constructive notice
C The Turquand rule
D Both A and B

1.10 Individuals who initiate the establishment of a company:

A Directors
B Shareholders
C Promotors
D Auditors

(10 × 2) **[20]**

QUESTION 2

Indicate whether the following statements are TRUE or FALSE by writing only 'True' or 'False' next to the question number (2.1–2.10) in the ANSWER BOOK.

2.1 A pledge is a personal right.

2.2 A partnership is not a legal entity.

2.3 Directors are appointed to run a close corporation.

2.4 Brokers are appointed to negotiate a contract for a seller.

2.5 A surety can be liable for more than the principal debt.

2.6 Mortgages and pledges are conventional securities.

2.7 A pledge agreement between parties must be in writing.

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2.8 A hypothec is created by operation of law.

2.9 Non-profit companies must have at least two directors.

2.10 The Notice of Incorporation is the founding document of a company.

(10 × 1) **[10]**

QUESTION 3

Choose a term from COLUMN B that matches a description in COLUMN A. Write only the letter (A–J) next to the question number (3.1–3.10) in the ANSWER BOOK.

COLUMN A		COLUMN B	
3.1	A real right	A	suretyship
3.2	A lien	B	a right exercised over the property of another to save it from decay
3.3	Salvage lien	C	can be enforced against the whole world
3.4	A voidable disposition	D	a right of retention
3.5	Income statement	E	reflects the financial position
3.6	Balance sheet	F	reasonable remuneration granted by a court
3.7	Actio pro socio	G	given to a conveyancer to register property
3.8	Special power of attorney	H	asset is sold for much lower than value to alienate it from insolvent estate
3.9	A personal right	I	reflects the financial results
3.10	Quantum meruit	J	claim of a partner against co-partners for delivery of their contribution

(10 × 1) **[10]**

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QUESTION 4

Define the following concepts:

4.1 Negotiorum gestor

4.2 Benefit of division

4.3 Improvement lien

4.4 Rehabilitation

4.5 Pre-incorporation contract

(5 × 2) **[10]**

TOTAL SECTION A: 50

SECTION B

Answer any THREE questions from this section.

QUESTION 5

Read the following scenario and answer the questions.

5.1

Pule, Constance and Jabu want to start a business of manufacturing and selling bed linen. Their business will be in Durban. They have agreed that Pule will contribute R250 000 to buy the linen, Jabu will do the sewing and Constance will do the packing. Constance will also contribute a delivery van. The parties agree to be jointly and severally liable.

5.1.1 Define this form of business. (5 × 2) (10)

5.1.2 List the FIVE rights of Pule, Constance and Jabu. (5)

5.1.3 Suppose Jabu starts a sideline and sells linen in his private capacity directly to his friends. Pule and Constance discover this.

To which duty did Jabu not adhere to?
Discuss this duty in full. (4 × 2) (8)

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5.1.4 Suppose Pule is declared insolvent. What will be the effect of this? (2 × 2) (4)

5.2 Nowadays, creditors will always try to get some security for money or any other obligations due to him or her. One way of doing so, is by obtaining a pledge. With regard to this statement, answer the following questions:

5.2.1 Define a *pledge*. (4)

5.2.2 List the THREE requirements for the existence of a pledge. (3)

5.2.3 Briefly discuss the right of the creditor in the case of a pledge. (3 × 2) (6)

5.2.4 Discuss FIVE ways in which a pledge can be terminated. (5 × 2) (10)

[50]

QUESTION 6

Read the following scenario and answer the questions that follow.

Glitter Creations Ltd is a newly registered company that manufactures jewellery for special occasions. The company issued 1 000 shares of R100 each and as they still needed more capital, debentures were also issued.

6.1 What kind of company is this? (1)

6.2 How many directors must be appointed for this company? (1)

6.3 What will be the most important document of this company? (1)

6.4 List the THREE kinds of shares that can be issued. (3)

6.5 Briefly discuss any FOUR characteristics of debentures. (4 × 2) (8)

6.6 Which document is issued to invite possible investors to buy shares? (1)

6.7 Discuss the fiduciary duties of directors in detail. Include in your discussion also the objective norms set for a director. (7 × 2) (14)

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6.8 Suppose Glitter Creations Ltd is liquidated.

Discuss any FIVE consequences of the liquidation. (5 × 2) (10)

6.9 This type of company must appoint an audit committee.
Who can serve on this committee? (2)

6.10 List any FIVE duties of an audit committee. (5)

6.11 Discuss any TWO advantages of establishing a company instead of a partnership. (2 × 2) (4)
[50]

QUESTION 7

7.1 Thuli established a Close Corporation in 2007. Her business is still going strong, but she is considering converting her business into a private company.

7.1.1 Thuli compiled an association agreement to regulate the internal affairs of the business.

Discuss the functions of such an agreement. (3 × 4) (12)

7.1.2 List FIVE ways in which the membership of a member can come to an end. (5)

7.1.3 Although the general rule is that all members can participate in management, certain members may only participate with authority of the court.

List any THREE such members. (3)

7.1.4 Can this close corporation be converted into a private company? (1)

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7.2



DO YOU KNOW THE ROAD AHEAD?

7.2.1 When can a creditor apply for you to be sequestrated? (2 × 1) (2)

7.2.2 Which THREE things must the creditor prove before your estate as debtor will be placed under provisional sequestration? (3 × 2) (6)

7.2.3 What is meant by voluntary sequestration? (3 × 2) (6)

7.2.4 List any FIVE duties of the insolvent. (5)

7.2.5 The insolvent debtor can approach one or more creditors to make an offer to pay them back over a period of time.

(a) How is this known? (2)
(b) Discuss the effect of this type of agreement. (4 × 2) (8)

[50]

QUESTION 8

Agents are appointed to act on behalf of someone else, referred to as the principal. Various kinds of agents can be appointed, including an estate agent, a factor, an auctioneer and a del credere agent.

8.1 Briefly discuss the FIVE ways in which representation can be established by listing the way and giving an example of each. (5 × 3) (15)

8.2 List the FOUR duties of a representative or agent. (4)

8.3 Discuss a factor. (4 × 2) (8)

8.4 List FOUR duties of the principal. (4)

8.5 An auctioneer may have the right to retain the purchase price of the goods sold at an auction until the commission has been paid.

8.5.1 Define this kind of lien. (3)

8.5.2 Discuss the two requirements that must be met for a valid lien to exist. (2 × 4) (8)

8.6 Suppose an estate agent sells property to the buyer. The latter took out a mortgage bond to finance this transaction.

Discuss any FOUR rights of the mortgagee (the creditor). (4 × 2) (8)
[50]

TOTAL SECTION B: 150
GRAND TOTAL: 200

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