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NOVEMBER EXAMINATION

NATIONAL CERTIFICATE

MERCANTILE LAW N5

(13030105)

25 November 2013 (X-Paper)
09:00–12:00

This question paper consists of 9 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 of questions will be marked. All work you do not want to be marked must be clearly crossed out.

INSTRUCTIONS AND INFORMATION

1. SECTION A is COMPULSORY and must be answered by ALL candidates.
2. Answer any THREE questions from 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 Complete the following sentences by filling in the missing word(s). Write only the missing word(s) next to the question number (1.1.1–1.1.3) in the ANSWER BOOK.

1.1.1 The closing word in the name of a public company must be ... and in the case of a close corporation ... (4)

1.1.2 Partners generally take part in the management of the partnership and are fully, i.e. ... and ..., responsible for all the debts of the partnership. (4)

1.1.3 A company is an independent bearer of rights and duties because it possesses ... . (2)

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 (1.2.1–1.2.9) in the ANSWER BOOK.

1.2.1 The persons who float (begin) a company are called the ...

A partners.
B directors.
C members.
D promoters.

1.2.2 Which statement is TRUE in respect of a private company?

A Shares are freely available to the public.
B A prospectus is issued.
C The transfer of shares is restricted.
D The number of shareholders is between 7 and 50.

1.2.3 Silent partners ...

A do not contribute anything to the partnership.
B must contribute capital to the partnership.
C must contribute skills/labour to the partnership.
D must contribute something only when the partnership is in a state of insolvency.

1.2.4 The minimum and maximum number of persons who may form a public company is ...

A 1 to 10.
B 2 to 20.
C 1 to 50.
D 7 to the shares issued.

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1.2.5 The word LIMITED in the name of a company indicates that the ...

A investment of the shareholders in the company is limited.
B shareholders are limited to a certain number.
liability of shareholders is limited.
C executive decisions taken by company management are
D limited.

1.2.6 ONE of the following is NOT part of the duties of an agent:

A Obliged to follow his/her instructions
B Must compensate his/her principal for any damages suffered
C Act in the interest of his/her principal
D Must give a proper account

1.2.7 Application for sequestration of a debtor's estate is made to the ...

A Court of appeal
B Magistrate's court
C Regional court
D High court

1.2.8 A close corporation (CC) is established by means of the registration of the ...

A memorandum of association.
B founding statement.
C articles of association.
D statement of affairs.

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

A held personally liable for the debts of the CC.
B asked to increase his/her personal contribution to the CC.
C asked to resign as a member of the CC.
D asked to divide his/her member's share equally amongst the remaining members.

(9 × 2) (18)

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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 (1.3.1–1.3.10) in the ANSWER BOOK. If the statement is FALSE, replace the word(s) in bold with the correct answer.

1.3.1 An essential requirement of a partnership is that each partner must contribute **only capital**.

1.3.2 **An auctioneer** is an agent authorised to sell goods at a public auction.

1.3.3 **Minors** are not allowed to stand surety for someone else.

1.3.4 An **improvement lien** is when a person spends money or labour on the property of someone else without his/her consent.

1.3.5 **Compulsory sequestration** is when the court issues an order for sequestration on the application of creditors.

1.3.6 A close corporation is a popular business type because the establishment thereof, in comparison with that of a private company, is **quite easy and uncomplicated**.

1.3.7 In the case of a public company with share capital, the number of shareholders is determined by the **issued capital**.

1.3.8 Expenses which arise as a result of the agent's negligence can be **recovered from the principal**.

1.3.9 The liability of **ordinary partners** for the debts of the partnership is unlimited.

1.3.10 Delivery is essential for the formation of a valid pledge, as it concerns the transfer of **movable property from the pledgee to the pledged**.

$(2 \times 3) + (8 \times 2)$ (22)

TOTAL SECTION A: 50

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SECTION B

ANSWER ANY THREE QUESTIONS FROM THIS SECTION

QUESTION 2

2.1 Name the kind of partner (universal/silent/commanditarian/ordinary/limited) in each of the following cases:

2.1.1 This partner contributes only a specific sum of money to the partnership and under no circumstances is he or she liable for an amount larger than the amount contributed.

2.1.2 This partner loses his or her protection only if he or she holds him/herself out publicly as a partner.

2.1.3 This partner takes an active part in the management of the partnership.

2.1.4 This partner is obliged to contribute additionally from his or her private possessions to the partnership in the event of insolvency.

2.1.5 This type of partnership is constituted when two or more persons enter into a partnership in the name of only one of the persons.

(5 × 2) (10)

2.2 Explain the right of the partner to share in the profits of a partnership. (5 × 2) (10)

2.3 Explain the origin of the partnership agreement. (2 × 2) (4)

2.4 Explain why it is important that partners take out an insurance policy; also state who is liable for the payment of the premiums. (2 × 2) (4)

2.5 Name and explain the TWO ways for dissolution of close corporations. (5 × 2) (10)

2.6 Of how many members (minimum and maximum) does a close corporation consist? (2)

2.7 Explain the contents of the founding statement as prescribed by the act to be lodged with the registrar of close corporations (CIPRO).

(5 × 2) (10)
[50]

AND/OR

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QUESTION 3

3.1 Indicate whether the following statements are TRUE or FALSE. Choose the answer and write only 'true' or 'false' next to the question number (3.1.1–3.1.3) in the ANSWER BOOK. If FALSE, replace the word(s) in bold with the correct answer.

3.1.1 A company is an independent bearer of rights and duties, because it possesses a **legal personality**.

3.1.2 When the court sequestrates the estate of a company, it **simultaneously sequestrates the estate of each shareholder.**

3.1.3 If the registrar of companies (CIPRO) is satisfied that all the requirements have been fulfilled, the registrar will enter the company in his/her register and issue a **memorandum of association**. (3 × 2) (6)

3.2 State FIVE characteristics to which a company limited by guarantee (Article 21) is subjected. (5 × 2) (10)

3.3 State FOUR differences between a *company* and a *natural person*. (4 × 2) (8)

3.4 Discuss the *name of a public company* under the following headings:

3.4.1 Explanatory notes on the name (5 × 2) (10)

3.4.2 Change of name (2 × 2) (4)

3.4.3 Display of the name (2 × 2) (4)

3.5 State the TWO most important requirements a company must comply with before a certificate of incorporation can be issued. (2 × 2) (4)

3.6 Explain the meaning of the following document:

Prospectus (2 × 2) (4)
[50]

AND/OR

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QUESTION 4

4.1 You wish to raise a loan. In return for the money, you offer the lender of the money your portable radio and mp3 player as pledge and a mortgage upon your house as security.

Briefly set out the formalities which must be complied with in order to effect the mortgage. (5 × 2) (10)

4.2 Explain the following concepts:

4.2.1 Legal mortgages (2 × 2) (4)

4.2.2 Interest as a special clause in a mortgage bond (2)

4.3 Savonnah takes her car to Sipho, a mechanic, for repairs. He repairs the car at a cost of R800,00

4.3.1 What type of lien is implied in the example above? (2)

4.3.2 Can Sipho keep the car until Savonnah pays for the repairs? Write 'YES' or 'NO' and give a reason for your answer. (2 × 2) (4)

4.4 Explain the *termination of mortgages and pledges* under the following headings:

4.4.1 Merger

4.4.2 Prescription

4.4.3 Destruction of the mortgaged property

4.4.4 Discharge of the principal debt

(4 × 2) (8)

4.5 Write down the formalities required to establish a suretyship agreement. (2 × 2) (4)

4.6 State whether the following agreements are valid suretyship agreements or not. Give a reason for your answer in each case.

4.6.1 Thabo orally agrees with a creditor to stand surety for a debt of up to R2 000,00 incurred by his friend Marlon. (3)

4.6.2 Your lecturer stands surety for the conduct, honesty and reliability of one of the students in your class. (2)

4.6.3 Miss Khumalo stands surety in writing for Mrs Rose for a debt incurred by her (Mrs Rose) at Quick Cash Bank. Miss Khumalo is a minor. (3)

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4.7 Name the kind of lien in each of the following cases:

4.7.1 The lien a building contractor has on the building he/she has repaired or built for the contract price.

4.7.2 The sinking of a bore-hole on a farm to provide drinking water for animals or for private use. This has been done without permission.

4.7.3 The care of perishable goods when the addressee resides at a distant place and cannot take immediate delivery.

4.7.4 The liens attorneys and lawyers have on the documents prepared by them for their professional fees and expenses. (4 × 2) (8)

[50]

AND/OR

QUESTION 5

5.1 Name FOUR duties of the agent in a contract of agency. (4 × 2) (8)

5.2 Discuss the *negotiorum gestor* under the following headings:

5.2.1 Definition (2 × 2) (4)

5.2.2 Remuneration (2 × 2) (4)

5.2.3 Give ONE example (2)

5.3 Explain the following duty of the principal:

Payment of the promised commission. (5 × 2) (10)

5.4 List FIVE acts of insolvency committed by a debtor. (5 × 2) (10)

5.5 Explain the following terms with reference to insolvency:

5.5.1 Liquidation (2 × 2) (4)

5.5.2 Rehabilitation (2 × 2) (4)

5.5.3 Statement of affairs (2 × 2) (4)

[50]

TOTAL SECTION B: 150
GRAND TOTAL: 200

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