higher education & training

Department:
Higher Education and Training
REPUBLIC OF SOUTH AFRICA

MARKING GUIDELINE

NATIONAL CERTIFICATE

NOVEMBER EXAMINATION

MERCANTILE LAW N5

11 NOVEMBER 2014

This marking guideline consists of 8 pages.

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GENERAL REMARKS

1. Answers found in this marking guideline are used as a **guideline** and must not be seen as the only correct answer/s.
Marks must still be allocated to a candidate's answer provided that the answer has a similar meaning/idea. Semantic differences could occur and the examiner should be consulted where uncertainties occur during a marking memorandum discussion.

2. Answers must be in **full sentences at all times**, where expressly required by and stated in the question paper.
Should answers not be fully described, defined or analysed, full marks **cannot** be given to a candidate's answer/s. For specific details, scrutinise each question carefully.
NOTE: No half marks are allocated.

3. Should a candidate do more than the required number of questions, **ONLY THE FIRST FOUR QUESTIONS, WHICH INCLUDE THE COMPULSORY QUESTION** must be marked. In cases where FOUR questions in total have been exceeded, delete the fifth (last) question by drawing a red line across that section of the answer script.

   The marker must indicate his/her decision not to mark the particular question by writing the following statement at the bottom of that question. Please sign and date afterwards.

   "THE CANDIDATE HAS ANSWERED MORE THAN THE REQUIRED NUMBER OF QUESTIONS (REFER EXAMINATION INSTRUCTIONS 1 & 2)"

   Should any uncertainty arise, consult the examiner.

4. All borderline cases (raw score of 76 to 79 marks out of 200) must not be tampered with in any way. Do not inflate the marks unilaterally. Make a supporting statement in your marker's report and leave the adjustment of marks to the process of moderation.
A practical - or semester mark must still be added to these raw scores.

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SECTION A (COMPULSORY)

QUESTION 1

1.1	1.1.1	D		
	1.1.2	H		
	1.1.3	F		
	1.1.4	J		
	1.1.5	I		
	1.1.6	B		
	1.1.7	A		
	1.1.8	E		
	1.1.9	G		
	1.1.10	C		
			(10 × 2)	(20)
1.2	1.2.1	B		
	1.2.2	D		
	1.2.3	A		
	1.2.4	B		
	1.2.5	B		
			(5 × 2)	(10)
1.3	1.3.1	Suretyship		
	1.3.2	Rehabilitation		
	1.3.3	Anonymous or sleeping partnership		
	1.3.4	Improvement lien		
	1.3.5	Members distribution		
			(5 × 2)	(10)
1.4	1.4.1	False		
	1.4.2	True		
	1.4.3	False		
	1.4.4	True		
	1.4.5	True		
	1.4.6	True		
	1.4.7	False		
	1.4.8	False		
	1.4.9	True		
	1.4.10	False		
			(10 × 1)	(10)
				[50]

TOTAL SECTION A: 50

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SECTION B

Answer any THREE questions in this section.

QUESTION 2

2.1
- Contract of mandate/by agreement ✓✓
- Estoppel/ostensible authority ✓✓
- Operation of law/implied by law ✓✓
- Ratification ✓✓
- Authority implied on the facts (Any 4 × 2) (8)

2.2 2.2.1 YES ✓✓
In terms of our law if a debtor has been sequestrated it is sufficient proof of excussion ✓✓ (2 × 2) (4)

2.2.2 YES and NO ✓✓
If there are a number of sureties for the same debt, each of them are in principle JOINTLY and SEVERALLY liable to the creditor. ✓✓ (2 × 2) (4)

2.2.3 Susan can rely on the benefit of division to ensure she is only held liable for her PRO RATA SHARE of the debt (taking into account the number of other sureties, i.e. Belinda) ✓✓
This defence must be pleaded at the start of the proceedings (1 × 2) (2)

2.2.4 NO, it would not have made any difference ✓✓
Everyone who qualifies as a surety in this case (Susan and Belinda) is taken into account in order to determine the pro rata share in terms of the beneficium divisionism ✓✓ (2 × 2) (4)

2.3
- Where partner acted/contracted impliedly for benefit of partnership ✓✓
- Where actions were incidental to the proper conduct of the business ✓✓
- Where actions fall within scope of the partnership business ✓✓ (3 × 2) (6)

2.4
- Where creditor has a liquidated claim for not less than R100 against debtor✓✓
- Two/more creditors who have in ave. claims of not less than R200 against debtor✓✓
- Debtor committed act of insolvency or is insolvent ✓✓
- Reason to believe that it is advantageous to creditors if debtor's estate is sequestrated✓✓ (4 × 2) (8)

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2.5 Nominal – Amount of capital stated in memorandum of association amount company is authorised to issue ✓✓

Issued – The part of nominal capital which has been issued/allocated to shareholders✓✓ (2 × 2) (4)

2.6
- Each member must make a contribution of money, property or services ✓✓
- The extent of each member's interest must be expressed in a % (total 100%) ✓✓
- Can become a member from a standing member or his deceased estate of by means of admission of additional member through present members which reduce their interest to accommodate a new member ✓✓
- Can obtain a member's interest from an existing member (a selling transaction) ✓✓
- Where a member's estate is sequestrated the curator can sell the member's interest to existing members or to an outsider ✓✓
- By means of a ruling in a will unless the existing members have objections to it and the interest is sold to the corporation, members or outsiders✓✓

(Any 5 × 2) (10)
[50]

QUESTION 3

3.1
- Capacity to represent partnership – partners must be duly authorised to bind the partnership to contracts/judicial acts (express or implied authority) ✓✓
- Joint and separate liability of each partner partner's representative capacity may be restricted or excluded by agreement per se ✓✓
- Partnership bound by the application of estoppel ✓✓
- Partnership may expressly or tacitly ratify the actions of a partner who acted outside the scope of his/her mandate ✓✓
- Partnership only bound if contract was concluded in name of the partnership ✓✓

(Any 2 × 2) (4)

3.2
- Each partner must contribute that which promised to give✓✓
- Can be in form of money and/or labour and/or industry ✓✓
- Can also be goods/things in specie and/or skill ✓✓
- Must hand over all fruits/appendages borne of/by goods from date of promise to date of contribution ✓✓

(4 × 2) (8)

3.3
- Where attorneys institute legal action in a high court✓✓
- Conveyancers register transfer of property/land✓✓
- Registration of mortgage in deeds office ✓✓
- To buy/sell property or interest in property/land ✓✓

(4 × 2) (8)

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3.4 3.4.1 Ordinary shares✓✓
Deferred/floating shares✓✓
Preference shares✓✓ (3 x 2) (6)

3.4.2
- Dividends are received after the preference shares have received their dividends ✓✓
- Dividends received only if ordinary shares have received a prescribed minimum dividend ✓✓
- Are first to be receiving dividends and expressed as a fixed % of the nominal value of the shares ✓✓ or
- Only entitled to dividends if profits are available for division and the dividend is declared in accordance with the articles of association ✓✓ (3 × 2) (6)

3.5
- Records showing assets & liabilities/members' contributions, undrawn profits/revaluations of fixed assets ✓✓
- Register of fixed assets - dates of acquisition, depreciation/asset disposals if any ✓✓
- Records showing daily cash received or paid out ✓✓
- Records showing all credit transactions in detail ✓✓
- Statements of annual stocktaking ✓✓
- Vouchers supporting the entries ✓✓ (Any 5 × 2) (10)

3.6
- An insolvent debtor ✓✓
- All members of a partnership ✓✓
- Agent of an insolvent debtor, specially authorised✓✓
- A person entrusted with administration of estate (curator bonis) ✓✓
- Executor of estate of deceased insolvent debtor ✓✓ (4 × 2) (8)

[50]

QUESTION 4

4.1 4.1.1
- Disposition Without Value ✓✓
- Voidable Preferences ✓✓
- Undue Preferences ✓✓ (3 × 2) (6)

4.1.2 Voidable dispositions ✓✓ (2)

4.1.3 Disposition without value ✓✓ (2)

4.1.4 'Sold his car valued at R200 000 to his son-in-law for R30 000' ✓✓ (2)

4.2
- Memorandum Of Association ✓✓
- Articles Of Association ✓✓
- Certificate Of Incorporation ✓✓
- Certificate To Commence Business ✓✓
- Prospectus ✓✓ (5 × 2) (10)

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4.3 •Any person/s dealing with a company are taken to have clear notice of the memorandum and articles ✓✓
•Where 3rd persons and a company have a relationship involving an ultra virus such transactions are no longer void ✓✓
•People who deal with the company cannot be expected to know of irregularities or conflict in internal management of company ✓✓ (3 × 2) (10)

4.4 When there is sufficient reason to believe that company can be 'rescued' or revived financially by not liquidating it ✓✓

Aimed at rehabilitating the ailing company ✓✓
To help the financial crippling company to get a grip on its affairs under control of judicial management ✓✓
To become a successful firm again and to rescue it from further mismanagement ✓✓ (4 × 2) (8)

4.5 •Performance ✓✓
•Expiration of time or period engaged by principal elapsed ✓✓
•Impossibility of performance ✓✓
•Revocation by principal ✓✓
•Renunciation of mandate by agent ✓✓
•Termination Of Legal Relationship Between Agent And Principal ✓✓
•Change in status of parties (merger, death, insanity) ✓✓
•By mutual agreement ✓✓ (Any 5 × 2) (10)
[50]

QUESTION 5

5.1 •Must display the necessary care and skill in executing his capabilities ✓✓
•Must apply his knowledge and skill in handling company business ✓✓
•Allowed to delegate to capable person/s and may in absence of any suspicion accept that his duty has been performed ✓✓ (5 × 2) (10)

5.2 •An agent is entitled to commission if he/she finds a person who is both willing and able to buy and ✓✓
•Who as a result of the agent's introduction to the seller does indeed conclude a valid contract of sale ✓✓
•Although Ben did introduce Asanda to Noluthando and Asanda was willing to buy the house, she (Asanda) was not in a position to conclude a valid sale as she did not get a home loan due to her weak financial position ✓✓
•It is an express or tacit term in nearly all contracts with estate agents that a valid contract of sale must be concluded before an agent will be entitled to receive commission. ✓✓
- As the contract between Noluthando and Asanda was cancelled, Ben will not be entitled to any commission - the transaction was unsuccessful. ✓✓

(4 × 1) (4)

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5.3 •Debtor may be rehabilitated ✓✓
• Debtor not liable for debts incurred prior to sequestration of estate✓✓
(2 × 2) (4)

5.4 •Duty to contribute something ✓✓
•To share in losses as well as profits ✓✓
•To share in common goal/interest of business ✓✓
•To act act in good faith as they are liable for their actions ✓✓ (Any 3 × 2) (6)

5.5 •Surname & full forenames ✓✓
•Identity number ✓✓
•Size of interest expressed as % ✓✓
•Particulars of contribution and fair monetary value thereof (if applicable) ✓✓
•Residential address ✓✓
•Postal address ✓✓
•Signature of member or representative (where applicable) ✓✓
•Date of signature ✓✓
(Any 3 × 2) (6)

5.6 5.6.1 Is the document which regulates the internal or household affairs of the company ✓✓ (2)

5.6.2 •Must be in prescribed form and signed by each subscriber of the memorandum and witnessed thereto ✓✓
•Each subscriber must give full name/s, occupation, residential -and postal address ✓✓
•Must be registered and can be altered (differs between companies) ✓✓
• If forms are not modified to reflect essence of that type company
(eg private or public company) it must cease to operate as such ✓✓
(4 × 2) (8)

5.7 •Not entitled to unless agreed beforehand ✓✓
•Unless partnership benefited by special services ✓✓
•In excess of normal services ✓✓
•Reasonable compensation ✓✓
•Reimbursement expenses in service of partnership ✓✓
•Or injuries sustained in execution of duties ✓✓ (Any 5 × 2) (10)
[50]

TOTAL SECTION B: 150
GRAND TOTAL: 200

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