higher education & training

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NATIONAL CERTIFICATE

MERCANTILE LAW N5

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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 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.
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. ALL the answers must be in FULL SENTENCES except where indicated otherwise.
6. Start each question on a NEW page.
7. Write neatly and legibly.

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SECTION A (COMPULSORY)

QUESTION 1

1.1 Choose a word/item from COLUMN B that matches a description in COLUMN A. Write only the letter (A–J) next to the question number (1.1.1–1.1.10) in the ANSWER BOOK.

COLUMN A		COLUMN B
1.1.1	Not a signing party to a suretyship contract	A limited by guarantee
1.1.2	Mortgages that result from an order of court	B certificate of incorporation
1.1.3	Number of shareholders in a public company is determined by the ...	C par value
1.1.4	Two or more persons agree to stand in and pay the debt of the principal debtor, if the latter cannot pay the debt	D principal debtor
1.1.5	Partners protect themselves against claims against the partnership in event of death or insolvency of one partner	E association agreement
1.1.6	Document serves as proof that a company has been granted legal personality apart from its members	F issued capital
1.1.7	A company without share capital	G ordinary partners
1.1.8	The equivalent document for a CC which is a memorandum of association for a company	H legal
1.1.9	Jointly and separately liable for the debts of the business	I indemnification
1.1.10	A type of share of which the amount thereof is indicated in the balance sheet	J co-sureties

(10 × 2) (20)

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1.3 Various options are provided as possible answers to the following questions. Choose the answer and write only the letter (A–D) next to the question number (1.2.1–1.2.5) in the ANSWER BOOK.

1.2.1 A Close Corporation (CC) is established by means of the registration of the …

A members' fiduciary duties.
B form CK1.
C maximum membership.
D association agreement.

1.2.2 Disky Music (Pty) Ltd is entitled to begin doing business on receipt of the …

A memorandum of association.
B certificate of incorporation.
C prospectus.
D certificate to commence business.

1.2.3 The following is NOT one of the duties of an agent …

A have to delegate authority where possible.
B must give an account of his or her actions.
C act in a fiduciary manner at all times.
D perform his or her mandate at all costs.

1.2.4 *Minimum subscription* means the …

A minimum value at which a share of the company will be issued.
B amount which, in the opinion of the directors, must be obtained from the issue of shares.
C minimum amount a shareholder must pay when buying shares.
D minimum number of shares a director must buy in the company.

1.2.5 A pledgee obtains a right over the debtor's property which …

A is sold to the debtor.
B has been delivered by the debtor to the pledgee as surety.
C has been handed over by third person to the pledgee.
D incidentally comes in possession of the pledgee.

(5 × 2) (10)

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1.3 Complete the following sentences by filling the missing word(s). Write only the word(s) next to the question number (1.3.1–1.3.5) in the ANSWER BOOK.

1.3.1 The existence of a valid contract of ... depends on the existence of a valid debt.

1.3.2 Through ... the insolvent is relieved of every disability imposed on him/her by insolvency.

1.3.3 The ... partnership type is where the contributions of partners may not consist of labour.

1.3.4 A type of enrichment lien that exists where the market value of the debtor's property has been increased by the lienholder in the debtor's absence is called a/an ... lien.

1.3.5 Whereas directors may receive remuneration in the form of incentives or bonuses in the company they serve, members of a close corporation receive a ... as remuneration.

(5 × 2) (10)

1.4 Indicate whether the following statements are TRUE or FALSE. Choose the answer and write only 'true' or 'false' next to the question number (1.4.1–1.4.10) in the ANSWER BOOK.

1.4.1 The term *negotiorum gestio* refers briefly to the situation when a company is in financial trouble and the court has to decide whether to place it under a new management.

1.4.2 Fiduciary duties of any director, agent, partner or even a member of a close corporation mean that they must always act and behave in such manner that they are seen as trustworthy people.

1.4.3 *Collusion* is the term given to the situation in respect of insolvency where the insolvent debtor makes a deal with only some of his or creditors to release him or her of paying their debt.

1.4.4 An estate agent can never, in person, sell his or her principal's property on an auction. It can only be done through an auctioneer.

1.4.5 The principal and agent can apply set-off in situations where each of them owes each other money.

1.4.6 A power of attorney is a situation whereby you approach an attorney for legal advice.

1.4.7 When an insolvent person disposes of any of his or her assets for much less than it's true (reasonable or fair) value, this act is referred to as composition and can be set aside by the courts.

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1.4.8 A seller, who sells movable goods on credit to a debtor and thereafter the buyer becomes insolvent, will be awarded by law a hypothec on those goods.

1.4.9 It is always possible for a private company to convert to a public company and vice versa.

1.4.10 The trustee of an insolvent estate may sell all the small items as soon as possible on a liquidation sale to have sufficient cash to pay for his immediate expenses in winding up the insolvent estate.

(10 × 1) (10)
[50]

TOTAL SECTION A: 50

SECTION B

Answer any THREE questions in this section.

QUESTION 2

2.1 'Before any person can act legally as agent and represent another person (principal), a relationship must clearly be present or at least be proven'.

Comment on this statement by referring to FOUR ways in which representative capacity can be established. (4 × 2) (8)

2.2 Susan and Belinda bind themselves as sureties for the debt of Marco. Marco owes his friend, Charles R26 800. In the meantime Marco's estate is sequestrated. Susan is sued for payment of the R26 800 by Charles in terms of the contract of suretyship.

Susan approaches you for advice and wants to know the following:

2.2.1 Can she (Susan) rely on the benefit of excussion in this case?
Write down 'yes' or 'no' and defend your answer by giving an acceptable answer as motivation. (2 × 2) (4)

2.2.2 Is Susan bound to pay the full amount of R26 800 to Charles (creditor)?
Write down 'yes' or 'no' and defend your answer by giving an acceptable answer as motivation. (2 × 2) (4)

2.2.3 Accept the answer to QUESTION 2.2.2 is 'NO', advise Susan what she should do next. (2)

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2.2.4 Would it make any difference to your answer in QUESTION 2.2.2 above if the various sureties (Susan and Belinda) were not aware of each other when they concluded their separate deeds of suretyship?

Write down 'yes' or 'no' and defend your answer by giving an acceptable answer as motivation. (2 × 2) (4)

2.3 Vinesh and Navena entered into a partnership to run a small clothing outlet. After a while it becomes known that Vinesh not only buys clothing (stock) for the shop, but also for his wife and children in the name of and on the business' account. Navena approaches you for advice.

Explain to her the fact that 'When a partner has acted beyond his implied authority, co-partners can impliedly ratify the transaction'. (3 × 2) (6)

2.4 XTY Film Distributors Ltd is a large distributor and supplier of computer games to the South African market. One of their prominent outlets, Zany Gamez (Pty) Ltd has been defaulting for some time now by not paying the amount of R125 000 for computer games they (XTY) has sold them since March 2014.

XTY Ltd approaches you for advice as they are interested in applying to the High Court to have Zany Gamez (Pty) Ltd sequestrated.

Assess the above information and on the grounds of this, advise XTY on why their application would be successful.

HINT: Refer to the FOUR instances in which a creditor may apply for the sequestration of a debtor's estate. (4 × 2) (8)

2.5 Read the scenario's below and answer the question.

A friend of yours have been promised, by her parents, an amount of R40 000 at the end of the year when she finishes her studies. She wants to make a good investment but at the same time also wants to launch her career by looking for opportunities of joining an established business as she does not want to start her own business from scratch.

You have recently seen an invitation by a Close Corporation wanting to expand their small business thereby inviting prospective people to acquire membership.

Distinguish between nominal (authorised) and issued share capital of a company. (2 × 2) (4)

2.6 Explain to your friend FIVE ways whereby membership of a close corporation can be obtained. (5 × 2) (10)

[50]

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QUESTION 3

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

3.2 Discuss the following requirement for a valid partnership agreement:

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

3.3 In general, the law requires no particular formalities for the conclusion of a contract of agency.

Name FOUR cases where the law, however, requires a written authority or power of attorney to act as an agent. (4 × 2) (8)

3.4 3.4.1 Name THREE main classes/divisions of shares. (3 x 2) (6)

3.4.2 Indicate the characteristics regarding the dividends named in QUESTION 3.4.1, of each class. (3 x 2) (6)

3.5 List any FIVE records of accounting that must be kept at the place(s) of business or at the registered office of a close corporation. (5 × 2) (10)

3.6 Name FOUR kinds or types of persons that may apply for voluntary surrender. (4 × 2) (8)
[50]

QUESTION 4

4.1 On 1 September 2014 John sold his car valued at R200 000 to his son-in-law for R30 000 and delivered it to him. On 30 September 2014 the estate of John is sequestrated. There is no doubt that John was in an insolvent condition at the time the transaction took place. John's trustee institutes legal action to have the transaction between John and his son-in-law set aside on the grounds of that a defeasible disposition took place.

4.1.1 Name THREE such defeasible dispositions the Insolvency Act makes provision for. (3 × 2) (6)

4.1.2 The term defeasible dispositions are also known as … dispositions. (2)

4.1.3 Write down the name of the type of (defeasible) disposition under which the trustee (in the scenario) wants to have the transaction set aside. (2)

4.1.4 Write down the words in the scenario above that have made you decide on the answer you supplied in QUESTION 4.1.3. (2)

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4.2 According to legal requirements, a company must submit all the necessary prescribed documents to the Registrar of Companies (nowadays called, CIPC) when application is made to register the company. (5 × 2) (10)

4.3 Name FIVE such prescribed documents. (5 × 2) (10)

4.4 When will the court place a company under judicial management and what is the purpose thereof? (4 × 2) (8)

4.5 As a member of the local Chamber of Commerce in your town or city where you live, you have been invited to give a short speech of 15 minutes to a special meeting of young estate agents, brokers and auctioneers regarding problems from these inexperienced agents in understanding the various ways in which their role and capacity as a kind of representative may come to an end (be terminated).

Write down, in point form, FIVE ways which you consider important in terminating agency and which you will briefly discuss with them. (5 × 2) (10)
[50]

QUESTION 5

5.1 One day while visiting your friend's house, you become involved in a friendly argument with him. He says he has read in a local weekend newspaper that a well-known business man and director of a very large national company has appeared in court after being investigated by the Scorpions regarding allegations of dishonesty and fraudulent activities in the company. According to the newspaper article, the director and other members of the board of directors stand accused of not complying with the fiduciary duties entrusted to them by the Companies Act. Your friend is very upset. He says that being a director of your own business surely gives one the right to manage and run the business any way you like and that a director is not accountable to anyone but him – or herself. Having heard him say this, you felt compelled to comment on what he has said.

Explain to your friend why you have a different view to his. (5 × 2) (10)

5.2 Noluthando gives estate agent Ben a mandate to find a purchaser for her house. Ben introduces Asanda to Noluthando and a deed of sale is concluded. It appears later that Asanda's application for a home loan is unsuccessful. The sale is cancelled. Ben alleges that a contract was concluded on his initiative and that he is therefore entitled to his commission of R42 000.

Explain to Ben how the law must be interpreted under these circumstances. (4)

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5.3 Name TWO advantages that the sequestration process of an insolvent debtor's property holds for him/her. (2 × 2) (4)

5.4 Name THREE duties or obligations of partners. (3 × 2) (6)

5.5 Give THREE particulars that are required in the founding statement of close corporations. (3 × 2) (6)

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

5.6.1 Definition (1 × 2) (2)

5.6.2 The form and legal requirements (4 × 2) (8)

5.7 Discuss the following RIGHTS of partners in a partnership:

The right to compensation (5 × 2) (10)
[50]

TOTAL SECTION A: 150
GRAND TOTAL: 200

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