higher education & training

Department:
Higher Education and Training
REPUBLIC OF SOUTH AFRICA

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NOVEMBER EXAMINATION

NATIONAL CERTIFICATE

MERCANTILE LAW N5

(13030105)

1 December 2016 (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 word(s) next to the question number (1.1.1–1.1.10) in the ANSWER BOOK.

1.1.1 A partnership contract is concluded by means of mutual consent. It may, therefore, be constituted in writing, orally or even by...

1.1.2 A company is an independent bearer of rights and obligations because it possesses the capacity of a …

1.1.3 The existence of a contract of surety-ship depends on the existence of a … debt.

1.1.4 A bond to secure a future debt is present in a … bond.

1.1.5 While the CK7 form is the official form used for registration of the name of a close corporation, the … form is necessary for the overall registration of close corporations.

1.1.6 According to this implied right of the … the landlord has a preferential right over the movable property of the tenant or any third person whose movables are found on the leased premises when the rent money is in arrears.

1.1.7 The assets in an insolvent estate which do not serve as security for secured creditors are better known as the ...

1.1.8 A mortgage bond becomes prescriptive after … years.

1.1.9 Where the number of members in a close corporation exceeds ten for a period of ... every member is liable for debts incurred while the excess continues.

1.1.10 The act whereby a person alienates his/her goods with the intention to prejudice creditors, is known as ...

(10 × 1) (10)

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1.2 Indicate whether the following statements are TRUE or FALSE. Choose the answer and write only 'true' or 'false' next to the question number (1.2.1–1.2.20) in the ANSWER BOOK.

1.2.1 In terms of the New Companies Act 71 of 2008 and the classification of various types of companies, a municipality, as a state-owned enterprise, is widely regarded as a public company.

1.2.2 A notice of voluntary surrender of an estate must be published in the Government Gazette and in a local newspaper in the area where the person lives.

1.2.3 The surety may never stand surety for an amount larger than the principal debt.

1.2.4 The purchasing price of shares does not have to be paid when application is made to acquire the shares.

1.2.5 The obligation of a partner to share in the net losses of a partnership can be excluded by agreement.

1.2.6 Compulsory sequestration of a debtor's estate takes places when the court issues an order for sequestration on the application of the debtor.

1.2.7 A partner's representational capacity may be limited by mutual agreement or excluded.

1.2.8 The principal is liable if the mandate to the independent contractor is illegal.

1.2.9 A surety for a minor is not liable for the minor's debts.

1.2.10 Where the agent is representing the principal that is not known to the public, the phenomenon is known as ratification.

1.2.11 Delivery is essential for the formation of a valid pledge.

1.2.12 A close corporation is a business entity comprising a minimum of ten members and whose combined interest in the business is expressed in percentage form

1.2.13 The *rule nisi* is aimed at giving the creditor sufficient time to sue the insolvent debtor for payment of the debt.

1.2.14 An advantage for the creditor where the debtor's estate is being sequestrated is that he/she must submit his/her claim for payment and prejudice the claims of any other creditors in the process.

1.2.15 Death or insanity, but not insolvency, of either the principal or agent will terminate the agreement between them.

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1.2.16 A surety replaces a debtor's liability.

1.2.17 The memorandum of incorporation is to the registered company what the founding statement is to the close corporation.

1.2.18 Par value shares have been abolished by the Company's Act of 2008.

1.2.19 Estoppel is also known as tacit authority.

1.2.20 An improvement lien, as a type of lien, fulfils the same function as a disposition without value under insolvency.

(20 × 1) (20)

1.1 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 (1.1.1 – 1.1.15) in the ANSWER BOOK.

1.1.1 Which of the following abbreviations or suffixes indicates the name of a company or business mainly used by professional associations?

A NPC
B SOC
C Inc
D Ltd

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

A Shares are available to the public
B A prospectus is issued
C The transfer of shares is restricted
D Maximum number of shareholders not restricted to fifty

1.1.3 Which document stipulates the remuneration (salary) to be paid to directors of a company?

A Memorandum of incorporation
B Founding statement
C Statement of comprehensive income
D Statement of financial position

1.1.4 Which one of the following forms of security will enjoy preference in respect of movable property?

A Right of pledge
B Special bond
C Right of retention
D Instalment sale hypothec

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1.1.5 How can the insolvent be relieved of the disabilities imposed on him/her by sequestration? By means of ...

A consolidation
B offer of composition (accord)
C confrontation
D rehabilitation

1.1.6 CALS Publishers (Pty) Ltd is entitled to commence business on receipt of the …

A memorandum of incorporation
B statement to act as director
C certificate to commence business
D founding statement

1.1.7 The following is NOT one of the duties of an agent:

A Obliged to follow instructions given by the principal
B To compensate the principal for any damages suffered
C To act in the interest of the principal
D To account properly towards the principal

1.1.8 Dr Singh is a partner who takes an active part in the management of the partnership business where he is a medical doctor. He is a/an … partner.

A dormant
B commanditarian
C ordinary
D limited

1.1.9 An agent who undertakes to sell goods for his principal and who guarantees that the third parties with whom he concludes the contract will meet their obligations, is a/an …

A estate agent.
B auctioneer.
C broker.
D del credere agent.

1.1.10 … occurs when the creditors petition the court for the surrender of the debtor's estate for the benefit of themselves.

A Compulsory sequestration
B Voluntary surrender
C Liquidation
D Insolvency

(10 × 2) (20)

TOTAL SECTION A [50]

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SECTION B

Answer any THREE questions in this section

QUESTION 2

2.1 State FOUR characteristics of a partnership. (8)

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

2.3 State FOUR ways in which representation (agency) can arise. (8)

2.4 Distinguish between *voluntary surrender* and *compulsory sequestration*. (6)

2.5 State THREE consequences of insolvency. (8)

2.6 'A company obtains legal personality independent of its members.'

State FOUR consequences that arise from this statement. (8)

2.7 Discuss the following requirement for a valid partnership agreement:

Each partner must make a contribution. (8)

[50]

QUESTION 3

3.1 Name any FIVE reasons for the dissolution of a partnership. (10)

3.2 State the special privileges or advantages given to the surety under common law where the creditor demands payment from the surety. (6)

3.3 Discuss the *Ultra Vires doctrine* and its application to companies under common law. (4)

3.4 State the THREE rules that exist for the maintenance of share capital in a company according to the provisions of the New Companies Act 71 of 2008. (6)

3.5 State THREE effects of composition (accord). (6)

3.6 STB Tourism (Ltd) is a prospective company in the travel industry. They need additional capital to fund expansion of their business.

Advise them about the various ways in which they can obtain capital through the issue of shares. Write down any THREE ways or methods whereby they can achieve this. (3 x 2) (6)

3.7 Name THREE main classes/divisions of shares and indicate the characteristics of each class/division in relation to the receipt of a dividend. (3 x 2 x 2) (12)

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QUESTION 4

4.1 Write notes on the founding statement of a close corporation with specific reference to any FOUR particulars this statement must contain. (8)

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

4.3 There are TWO exceptions to the rule that an agent is obliged to execute his/her instructions personally.

List these exceptions. (4)

4.4 Name THREE duties of the principal toward the agent. (6)

4.5 The following are examples of different types of liens. In each case, identify the type of lien correctly.

4.5.1 The lien which a person has for expenses incurred by him/her in respect of the storage of furniture.

4.5.2 The lien which a person has for expenses incurred in respect of the payment of premiums on insurance, in order to prevent such insurance contract from expiring.

4.5.3 Confiscating the property of hotel guests for outstanding fees for their stay until the account has been settled.

4.5.4 The retention of cattle which have been fed and watered by the transporter from the auction house to the farm.

(4 × 2) (8)

4.6 Persons A, B and C are members of a close corporation. The business operates as a pet shop. One of the regulations of the agreement of co-operation between the members is that no member will be entitled to enter into a contract on behalf of the close corporation for an amount exceeding R20 000 without first obtaining the permission of the other members.
Person C orders exotic birds from Brazil for R145 000 without the necessary permission from person A or person B.
Persons A and B don't want the birds and deny any responsibility on the part of the close corporation regarding the agreement on the grounds of person C's lack of authority.

The seller of the birds wants to know whether the close corporation is bound to the contract entered into between him and person C.

Advise him by giving a fully motivated answer. (10)

4.7 Distinguish clearly between nominal – and issued share capital. Your answer must highlight the difference in meaning of these two classes of capital. (4)

4.8 'When a partner has acted beyond his/her implied authority, the co-partners can ratify the transaction'. Briefly explain. (6)

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QUESTION 5

5.1 Members in a CC have fiduciary duties towards the corporation.

Discuss these duties. (6)

5.2 Name TWO functions of an agreement to co-operate in a close corporation. (4)

5.3 Briefly describe the following types of agents:

5.3.1 Auctioneer (6)

5.3.2 Del credere agent (4)

5.4 List FIVE duties of the trustee of an insolvent estate. (10)

5.5 Discuss the appointment of an audit committee as regulated under the Companies Act 71 of 2008 under the following headings:

5.5.1 Composition (membership) of the committee (2)

5.5.2 Capacity of serving members in relation to the company they belong to (2)

5.5.3 Eight duties of the audit committee (16)
[50]

TOTAL SECTION B: 150
GRAND TOTAL: 200

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