higher education & training

Department:
Higher Education and Training
REPUBLIC OF SOUTH AFRICA

NATIONAL CERTIFICATE

MERCANTILE LAW N5

(13030105)

2 December 2019 (X-Paper)
09:00–12:00

This question paper consists of 11 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. 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 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 (1.1.1–1.1.5) in the ANSWER BOOK.

1.1.1 The situation whereby a right to recovery is ceded as security for a debt/obligation:

A Lien
B Pledge
C Cession to secure an obligation
D Mortgage

1.1.2 Under the new Companies Act 2008, Office Supplies (Pty) Ltd, a private company is entitled to commence business on receipt of the:

A Memorandum of association.
B Certificate of clearance.
C Memorandum of incorporation.
D Certificate to commence business.

1.1.3 A significant difference between the Companies Act of 1973 and 2008 is that it makes provision for …

A issuing no-par value shares.
B abolition of no-par value shares.
C issuing a prospectus.
D merging all classes of shares into one.

1.1.4 Which statement is correct? A close corporation is created by the …

A Submission of the co-operation agreement.
B Payment of the prescribed registration fee.
C Registration of its memorandum of association.
D Registration of a founding statement.

1.1.5 Thabo's estate was sequestrated beginning March this year. Which of the following items fall within his insolvent estate?

A R800 that David paid him in December last year when he crashed into and damaged his (Thabo's) car.
B His monthly pension paid since March this year.
C Shoes he bought in January for R1900.
D R3 500 that a client paid him in March for his services as a bookkeeper.

(5 × 2) (10)

1.2 Indicate whether the following statements are TRUE or FALSE. Choose the answer and write 'True' or 'False' next to the question number (1.2.1–1.2.10) in the ANSWER BOOK. Correct the statement if it is FALSE.

1.2.1 A partnership pays income tax on the net profit of the business and each partner pays income tax on his or her pro rata share of the profit.

1.2.2 If any person knowingly permits another to perform acts in his or her name and does not object, a contract of agency is formed by estoppel.

1.2.3 Compulsory sequestration of a debtor's estate takes place when the court issues an order for rehabilitation on the application of the creditor.

1.2.4 Similar to a partner who has access to the partnership's books and shareholder has a right to the company's accounting records.

1.2.5 A surety replaces the principal debtor's liability and does not strengthen it.

1.2.6 A non-profit company must have directors dependent on their lives – thus when they die, the company dissolves, just like a partnership.

1.2.7 The South African Bureau of Standards (SABS) is an example of a personal liability company which falls under the category of profit companies.

1.2.8 Under the new Companies Act of 2008, the concept of 'par value' shares have been abolished, although companies may still issue shares of 'no par value'.

1.2.9 South African businesses, regulated under the new Companies Act of 2008, consist of companies and close corporations of whom the Registrars of Companies and of Close Corporations continue to manage their registration and other regulatory requirements as needed from time to time.

1.2.10 A pledgee's right extends only over the goods given or handed over as security but not to the additions to those goods.

(10 × 2) (20)

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1.3 Choose an item/word from COLUMN B that matches a description in COLUMN A. Write only the letter (A–L) next to the question number (1.3.1–1.3.10) in the ANSWER BOOK.

COLUMN A		COLUMN B	
1.3.1	Common law benefit which allows the surety to claim that the creditor first try to receive payment from the principal debtor before he can claim from the surety	A	personal liability companies
1.3.2	Leads to unilateral dissolution of a partnership	B	private placing
1.3.3	Agreement whereby movable goods are given as security for a debt	C	undue preferences
1.3.4	Professional associations	D	sharing net losses
1.3.5	Voidable disposition	E	division
1.3.6	Business conversion not a possibility after 2008	F	close corporations
1.3.7	Any partner's duty	G	transfer of shares
1.3.8	Common law benefit which allows the surety to claim that the creditor apportion the principal debt between co-sureties	H	pledge
1.3.9	Means to obtain capital by offering shares for sale	I	excussion
1.3.10	Termination of membership in a company	J	wilful negligence
		K	rehabilitation
		L	mortgage

(10 × 2) (20)
[50]

TOTAL SECTION A: 50

SECTION B

Answer any THREE questions in this section

QUESTION 2

2.1 As a student offering Mercantile Law N5 for your N6 National Certificate, you are approached by one of the students at your college for advice. The student says that his parents are getting a divorce and his father, who holds a business in a CC of which his mother holds a 10% interest, would like to know what will happen to his wife's 10% share after the divorce?

Advise the student. (2 × 2) (4)

2.2 NO new close corporations may be formed. CCs registered up and until the new companies act of 2008 came into effect may continue to exist and thus might still offer an opportunity to new entrants to become members to an existing CC in this manner.

Explain to students in the same study group as you the various ways whereby membership of an existing close corporation may nowadays be obtained.
(4 × 2) (8)

2.3 Name THREE functions of an agreement to co-operate in a close corporation.
(3 × 2) (6)

2.4 It is customary for partnership law to divide partnerships into three classes of which one such class is 'extraordinary' partnerships.

Apply your knowledge of the anonymous partner as a type of extraordinary partnership and formulate an explanation to make its meaning clear with regard to the membership, liability to third parties, control and sharing of losses. (5 × 2) (10)

2.5 Asanda, Marissa and Thandeka decide to form a partnership. It is agreed that Thandeka shall join as a commanditarian partner (en commandité). One year they voluntarily decide to have the financial records audited. Upon this they discovered that they have assets worth R600 000 and debts to the value of R920 000. Within the next month the partnership is sequestrated.

The private estates of each partner is worth R200 000, R3 million and R950 000 respectively.

What effect does the sequestration of the estate of their partnership have on the partnership and on the estates of Asanda, Marissa and Thandeka?

Use the information above to show how the creditors of this partnership will get their money back and (if applicable) from whom? (6 × 2) (12)

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2.6 The table shown below is a comparison between the Companies Act No 61 of 1973 and the new Companies Act No. 71 of 2008. Write down the missing answers next to the question numbers (2.6.1–2.6.5) in the ANSWER BOOK.

COMPANIES ACT NO 61 of 1973	COMPANIES ACT NO 71 of 2008
Memorandum and articles of association submitted for registration	2.6.1
Companies with share capital and limited by guarantee as types of companies	2.6.2
Members: Public company – minimum 7 Private company – minimum 1	2.6.3
Audit of books of a close corporation is optional	2.6.4
Remedy against sequestration offered to company: Judicial Management	2.6.5

(5 × 2) (10)
[50]

QUESTION 3

3.1 Adrian is the owner of a farm. A mortgage bond of R900 000 in favour of Easy Finance Bank is registered on the farm. The mortgage bond serves as security for money (R900 000) that Adrian borrowed from the Bank.

After a year Adrian inherited money from his uncle and managed to pay back R450 000 of the borrowed money whereupon he decided to sell half of the farm. Having obtained the legal services of a conveyancer, he will sell a sub-divided portion to Maria. Must Adrian obtain permission from Easy Finance Bank before the subdivided portion can be duly registered in Maria's name?
Adrian is of the opinion that it is unnecessary, as half the borrowed money has been repaid and that only half the original property is therefore subject to the mortgagee's bond.

According to Adrian, the sub-divided portion is the portion 'for which he had already paid.' Advise Adrian accordingly. (4)

3.2 Bongiwe is an agent for Spotless Skin Cosmetics. She sells beauty products for the company she represents.

Discuss Bongiwe's liability towards the company and the public (customers/consumers) as agent as a result of each of the following:

3.2.1 Express guarantee (2 × 2) (4)

3.2.2 Fraudulent misrepresentation (2 × 2) (4)

3.2.3 Implied guarantee of authority (2 × 2) (4)

3.3 A husband and wife want to begin a business as a partnership. They are of opinion that since they are married (which is seen as a partnership of sorts) they need not enter into any formalities. They approach you for advice and the question whether it is essential for their (business) partnership agreement to be in writing?

Formulate your reply to them by writing 'yes' or 'no' and thereafter motivating your answer. (3 × 2) (6)

3.4 Write a short note on the rehabilitation of an insolvent (3 × 2) (6)

3.5 Briefly explain defeasible dispositions under the following headings:

3.5.1 Meaning of defeasible dispositions (2)

3.5.2 Voidable preferences (2 × 2) (4)

3.5.3 Dispositions without value (2 × 2) (4)

3.6 List THREE advantages for the creditor where the debtor's estate is being sequestrated. (3 × 2) (6)

3.7 From all the various types and forms contracts or agreements can take, each one or type can be clearly set apart from the other through their unique characteristics.

With the above statement in mind, state THREE characteristics of representation or agency that sets it apart from other forms of legal instruments. (3 × 2) (6)

[50]

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QUESTION 4

4.1 It is said that 'possession is essential for the existence of a lien'. State, with reasons, whether a valid lien exists in each of the following instances.

4.1.1 An accountant keeps his/her client's books until the client has paid him/her for preparing the income statement and balance sheet.

4.1.2 A jeweller keeps his/her client's watch until his/her fee for repairing the watch has been paid.

(2 × 2) (4)

4.2 State which type of enrichment – or debtor/creditor lien is present in each of the following cases:

4.2.1 During stormy weather a fisherman repairs someone else's boat, busy sinking in the harbour.

4.2.2 An auctioneer keeps the purchase price of the goods sold until his/her commission has been paid.

(2 × 2) (4)

4.3 What is meant by the phrase *benefit of cession of actions* in the context of contracts of suretyship? (3 × 2) (6)

4.4 Name FOUR deeds of insolvency as provided for under the Insolvency Act.

(4 × 2) (8)

4.5 Name the TWO important documents which are embodied in the constitution of a company. (2 × 2) (4)

4.6 Write notes on the founding statement of a close corporation with specific reference to any FOUR particulars this statement must contain. (4 × 2) (8)

4.7 Name the ways whereby membership at the establishment of a close corporation can be obtained. (4 × 2) (8)

4.8 State THREE functions of an agreement to co-operate in a close corporation.

(3 × 2) (6)

4.9 Read and comment on the following statement:

Is it correct to talk of partnership assets or liabilities or assets and liabilities of the partners? (2)

[50]

QUESTION 5

5.1 Three entrepreneurs, Morné, Louise and Sarah, wish to open an electronics shop, selling cell phones, accessories and computer gadgets.

They are unsure whether they should register a company for this purpose or do business in partnership.

Advise them on the differences between companies and partnerships.

HINT: Copy the table below in theANSWER BOOK and complete the table.

COMPANIES		**PARTNERSHIPS**
PRIVATE	**PUBLIC**	
Membership (min/max)? (1)	Membership (min/max)? (1)	Membership (min/max)? (2)
Dealing in shares with public. (1)	Dealing in shares with public (1)	Dealing in shares with public. (2)
How are they connected to this type of company? (1)	How are they connected to this type of company? (1)	How are they connected to a partnership? (2)
Implied or express authority to act as agent of the company? (2)	Implied or express authority to act as agent of the company? (2)	Implied or express authority to act as agent and bind the partnership? (2)

(18)

5.2 What happens when the contribution of (a) partner(s) cannot be calculated in terms of money? Explain. (2)

5.3 Why does the partnership agreement play such an important role in connection with the various contributions of partners in a partnership? (2)

5.4 Briefly explain the following rights of partners:

5.4.1 The right of compensation (2 × 2) (4)

5.4.2 The right of division of assets after termination (2 × 2) (4)

5.5 'When a partner has acted beyond his implied authority, the co-partners can impliedly ratify the transaction'.

Briefly explain. (3 × 2) (6)

5.6 Discuss the consequences of dissolution of a partnership in general with special mention of the partners and for outsiders. (2 × 2) (4)

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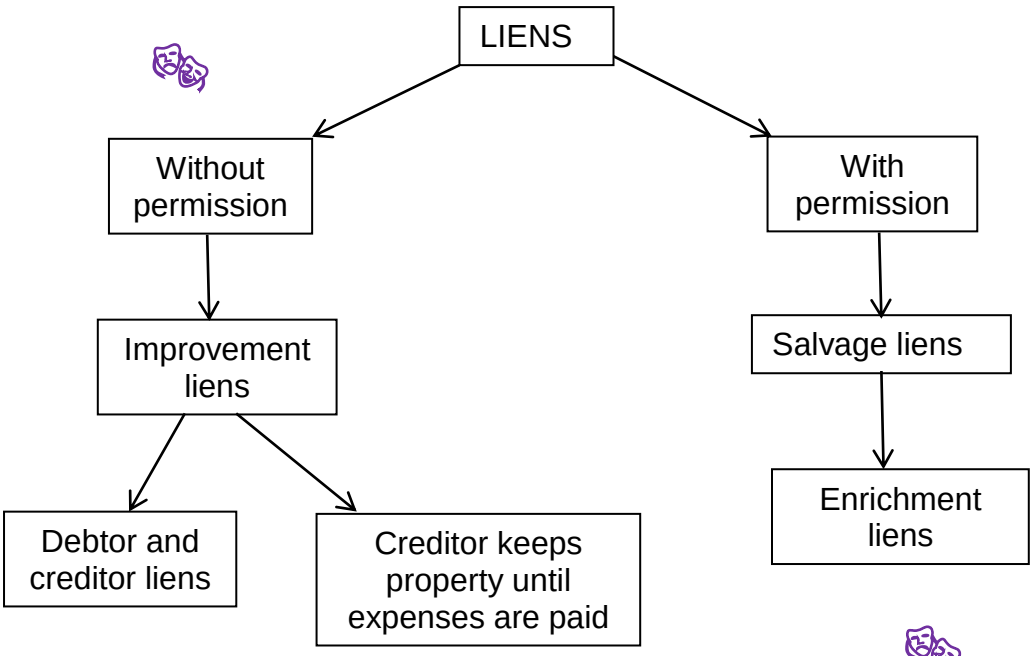
5.7 The schematic outline below depicts liens which you need to present to your lecturer in two days' time. However, someone had spilled their coffee on the printout and tried to fix it by typing out a new sheet with the information.
You realised, by looking at it, that the outline is wrong and need to rectify it so that it represents the various types of liens in its correct format.

HINT: Draw the outline in your ANSWER BOOK as shown below. Then change the labels around to fit in the correct spaces so that it ALL makes sense.



(5 × 2) (10)
[50]

TOTAL SECTION B: 150
GRAND TOTAL: 200

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