higher education & training

Department:
Higher Education and Training
REPUBLIC OF SOUTH AFRICA

# NATIONAL CERTIFICATE

# MERCANTILE LAW N5

(13030105)

**30 September 2020 (X-paper)**
**09:00–12:00**

**This question paper consists of 12 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

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**INSTRUCTIONS AND INFORMATION**

1. Answer all the questions in SECTION A.

2. Answer any THREE questions in SECTION B. If you answer more than THREE questions in SECTION B, only the first three questions will be marked.

3. Number the answers according to the numbering system used in this question paper.

4. Start each section on a new page.

5. Use only a black or blue pen.

6. Write neatly and legibly.

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## SECTION A

## QUESTION 1

Various options are given as possible answers to the following questions. Choose the correct answer and write only the letter (A–D) next to the question number (1.1–1.10) in the ANSWER BOOK.

1.1 Choose the incorrect answer. Representation is characterised by the following:

A One person acts on behalf of another person.
B The act is authorised.
C All parties are bound by the act.
D It is a legal act.

1.2 An example of a special power of attorney:

A A guardian acting on behalf of a minor
B A curator acting on behalf of an insane person
C Conveyancers registering a mortgage bond
D A curator acting on behalf of an insolvent estate

1.3 An example of a personal security:

A Pledge
B Suretyship
C A lien
D Hypothec

1.4 Choose the incorrect answer. Assets that do not form part of the insolvent's sequestrated estate:

A Life policies
B Remuneration for work done before sequestration
C Pension monies
D Clothing and other essential means of livelihood

1.5 Characteristics of a partnership include:

A Maximum of 10 persons
B Limited liability
C May sue in its own name and can be sued
D Good continuity

1.6 Form of delivery for immovable property as contribution by a partner:

A Constructive delivery
B Actual delivery
C Cession
D Transfer at the Deeds Office

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1.7 Pick n Pay is an example of a … company.

A state-owned
B private
C personal-liability
D public

1.8 Choose the incorrect answer. Characteristics of a debenture:

A A form of borrowed capital
B Debenture holders are creditors.
C Interest must be paid.
D Forms part of equity.

1.9 The most important document in the case of a close corporation:

A Memorandum of Incorporation
B Articles of Association
C The Association Agreement
D Memorandum of Association

1.10 An example of a salvage lien:

A Construction of fences on a farm
B A carrier having a lien on the goods carried by him for transport charges
C Expenses incurred in order to care for livestock in the absence of the owner to keep the stock alive
D Sinking a borehole to provide water for personal use

(10 × 2) **[20]**

**QUESTION 2**

Indicate whether the following statements are TRUE or FALSE. Choose the answer and write only 'True' or 'False' next to the question number (2.1–2.10) in the ANSWER BOOK.

2.1 For a valid lien to exist, actual physical control over the property, together with the intention to keep the property for your own advantage are compulsory.

2.2 Close corporations may still be established.

2.3 Suretyship is not terminated when the principal debt comes to an end.

2.4 The benefit of excussion means that the creditor should first take steps against the principal debtor before addressing the surety.

2.5 A suretyship is a real right.

2.6 Partners have limited liability.

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2.7 A pledge is a personal right.

2.8 A partnership agreement does not have to be in writing.

2.9 A public company may be listed or unlisted.

2.10 Companies still have association agreements.

(10 × 1) **[10]**

**QUESTION 3**

Choose a term from COLUMN B that matches a description in COLUMN A. Write only the letter (A–J) next to the question number (3.1–3.10) in the ANSWER BOOK.

| COLUMN A | | COLUMN B | |
|---|---|---|---|
| 3.1 | Lien | A | person who borrowed money from a financial institution to finance immovable property |
| 3.2 | Mortgagor | B | debts owed by both parties to each other are compared and the difference paid |
| 3.3 | Special power of attorney | C | individuals who initiate the establishment of a company |
| 3.4 | Uberrima fides | D | legal entity |
| 3.5 | Judicial pledge | E | to act in good faith |
| 3.6 | Goodwill | F | right to keep property until total payment is received for expenses incurred |
| 3.7 | Dividends | G | earnings distributed to shareholders |
| 3.8 | Close corporation | H | the sheriff of the court attaches the property of the debtor in execution of a court order |
| 3.9 | Promoters | I | example of an incorporeal asset |
| 3.10 | Set-off | J | authority granted to a conveyancer to register a mortgage bond |

(10 × 1) **[10]**

**QUESTION 4**

Define the following concepts:

4.1 Liquidation

4.2 An instalment-sale transaction

4.3 A pledge

4.4 A factor

4.5 A disposition without value

(5 × 2) **[10]**

**TOTAL SECTION A: 50**

**SECTION B**

Answer any THREE questions from this section.

**QUESTION 5**

Read the extract below and answer the questions.



With an economy with a very low growth rate and unemployment, more and more South Africans are finding themselves with overwhelming debt. If you're deep in debt, filing for insolvency could allow you to rebuild your financial life. However, this is something to consider only after you've exhausted all other options.

**WHAT IS THE MEANING OF INSOLVENCY?**

Does this mean that you simply cannot pay your debts? No, it is not as simple as this!

There are also acts of insolvency – beware of this! Do not try to hide from your creditors. If you are found guilty of any act of insolvency, your creditors may apply for the sequestration of your estate.

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**CAN A PERSON BE VOLUNTARILY SEQUESTRATED?**

Indeed – you can! But this is definitely not a way to escape your responsibilities and liabilities. There must be definite benefits for the creditors. However, as the insolvent debtor, can also benefit from this.

So what are the differences then between compulsory and voluntary surrender?

**KNOW YOUR RIGHTS AND DUTIES DURING SEQUESTRATION**

As an insolvent you should be fully aware of what you may do and should not do. Do you think you can continue your job? If so, what will be the effect on your job?

**MAY A PERSON WHO FACES SEQUESTRATION STILL ALIENATE HIS ASSETS?**

Definitely not! The curator of his estate will have a look at when the insolvent got rid of his assets and whether one creditor received an advantage or preference over the other creditors. One of the biggest advantages in granting a sequestration order is the fact that creditors must be treated equally, unless he or she is a preferential creditor.

**WILL ALL THE INSOLVENT'S ASSETS FORM PART OF THE INSOLVENT ESTATE?**

Fortunately not! The insolvent still needs to continue with his or her life.

**WILL THE INSOLVENT BE ASSISTED TO OVERCOME HIS/HER FINANCIAL DIFFICULTIES AND TO MAKE A NEW START?**

This is why sequestration takes place, followed by a rehabilitation period. A rehabilitation order will be issued after a while.

5.1 One of your friends reads the above article on insolvency, but he is still in the dark. He asks you a number of other questions. Can you answer your friend's questions?

5.1.1 What does it mean to be insolvent? (2)

5.1.2 What do you mean when you talk about acts of insolvency? Explain any FIVE acts of insolvency to me. (5 × 2) (10)

5.1.3 What are the differences between compulsory and voluntary sequestration? Present the differences to me using the table below:

| COMPULSORY SEQUESTRATION | VOLUNTARY SEQUESTRATION |
|---|---|
| | |
| | |

(4 × 1) (4)

5.1.4 Will I be able to continue my job after sequestration? Please explain this to me. (2)

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5.1.5 Will all my assets form part of my insolvent estate? Can you give me THREE examples of assets that will not form part of my sequestrated estate? (3)

5.1.6 I have a number of creditors. I see they mention payments to preferential creditors first. I have the following debts: a mortgage bond on my house; money I owe for the construction of a fence on my farm; school fees; an account at the local shop; outstanding rent; money I owe on an instalment-sale transaction; outstanding electricity accounts and money I borrowed from friends that I need to pay back.

Please tell me who my preferential creditors are. (4)

5.1.7 I realise that I am in financial trouble, but are there any real advantages to be sequestrated voluntarily? You will convince me if you can name any TWO advantages. (2)

5.1.8 The creditors will certainly not allow a voluntary sequestration if they do not also benefit from it. Explain to me how they will benefit. (3 × 2) (6)

5.1.9 Please explain to me what the consequences of a rehabilitation order will be. (3 × 2) (6)

5.1.10 After how many years will rehabilitation occur automatically? (1)

5.2 Briefly discuss FIVE circumstances in which the membership of members of a close corporation can be terminated. (5 × 2) (10)

**[50]**

## QUESTION 6




The new Companies Act, that was promulgated in 2009 and has been effective since May 2011, completely rewrites South African law. The new Act aims to modernise the law, align it with international best practice, and makes it more business friendly – especially by streamlining it with other South African legislation, such as the Promotion of Access to Information Act.

By simplifying it and making it less prescriptive, the new Act encourages entrepreneurship as well as economic and employment growth. It is more flexible (for example, companies are allowed to change certain requirements according to their own circumstances) and adaptable (smaller companies have less onerous responsibilities than large public companies with regard to corporate governance and financial reporting).

6.1 The new Companies Act makes provision for FOUR types of companies. List these four types of companies. (4)

6.2 The article states that the new Act encourages entrepreneurship. Thuli, Neo and Vasti live in the same area. They each run a Spaza shop selling food to their neighbours. They serve the same market and they realise that there is an increasing need to hold more stock. They decide to establish a supermarket. They approach you and ask your advice on forming a company. Refer in your discussion to the TWO most important documents necessary to establish a company and any THREE functions of each document. (10)

6.3 During the process of forming Doe Ltd, Juba entered into a contract with Dijo Ltd on behalf of Doe Ltd. It is now four months since the company's incorporation and Juba is concerned about the possibility that he will be held jointly and severally liable on account of this contract he entered into before the company was incorporated. Briefly discuss the requirements that must be satisfied before Doe Ltd will be bound by Juba's pre-incorporation contract with Dijo Ltd. (5 × 2) (10)

6.4 The article mentions that financial reporting must take place. List the FIVE financial year-end statements a company must submit. (5)

6.5 The fact that a company is a legal entity has definite advantages. Discuss THREE such advantages. (3 × 2) (6)

6.6 Investors can buy either shares or debentures in a company. Draw a table to list any THREE differences between a share and a debenture. (6)

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6.7 Briefly define the following concepts:

6.7.1 The doctrine of constructive notice

6.7.2 The ultra vires doctrine

6.7.3 The Turquand rule

(3 × 2) (6)

6.8 List the THREE most important classes of shares. (3)

**[50]**

**QUESTION 7**

7.1 Read the following scenario and answer the questions.




Ten years ago, Samantha was sitting in her best friend Rachel's kitchen, and an idea was born for them to start a business together. They would run a wedding planner business. As they would hire most of the décor, they did not need a lot of capital at the beginning, but decided to contribute R40 000 each.

Their only consideration was the excitement they felt. They soon had their first client, and agreed they would each work an equal amount of hours and split their profits 50/50. Within a year, their client base increased to the point that it allowed them to each work their goal of 30 hours per week.

After a few years, Rachel's time on the job and quality of work suffered. For every hour of work Rachel performed, Samantha was putting in two. Clients commented to Samantha about their dissatisfaction with Rachel's job performance. Rachel was sensitive by nature and exploded in teary screams when Samantha tried to tell her gently that the quality of her work had deteriorated.

Instead of both partners performing client services, Samantha slowly transitioned the business until they were independently attending to client needs. A few years later, Rachel was down to one client while Samantha's client base was blooming. Their partnership soon dissolved, and so did their friendship.

[Source: *https://www.businessknowhow.com/startup/partnership.htm, accessed on 5 August 2018*]

7.1.1 Is this a valid partnership? Substantiate your answer by referring to the essentialia of a partnership. Present your answer as follows:

| Essentialia | Motivation from case study |
|---|---|
| | |
| | |
| | |
| | |
| | |

(5 × 2) (10)

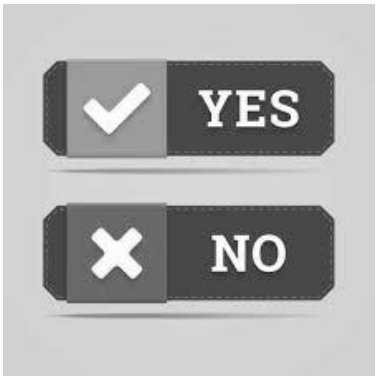
7.1.2 A partnership is not a legal entity. Briefly discuss any TWO consequences of this fact. (2 × 2) (4)

7.1.3 The article mentions that their partnership soon dissolved. There are various grounds on which a partnership may be dissolved. In this case, the partnership was probably dissolved by Samantha's unilateral act by means of a court order. Name the grounds on which Samantha could have done this. (2)

7.1.4 Discuss FOUR consequences of dissolution. (4 × 2) (8)

7.1.5 List FOUR duties of both Samantha and Rachel. (4)

7.2




**SURETYSHIP - BEWARE!!**

It can be very dangerous to sign suretyship for someone. First test your knowledge to make sure whether you fully understand this concept.

7.2.1 Define suretyship. (4)

7.2.2 Use an example to explain briefly why it can be dangerous to sign suretyship. (2)

7.2.3 A surety has THREE common-law privileges. Briefly discuss the following TWO privileges:

7.2.3.1 Benefit of division (3 × 2) (6)

7.2.3.2 Benefit of cession of action (3 × 2) (6)

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7.2.4 List any FOUR ways in which the principal debt may be terminated. (4)
**[50]**

## QUESTION 8

Study the scenario below and answer the questions.

| |
|---|
| Lwandile wants to sell his house, but does not want to do the marketing himself. He also does not have the legal knowledge to deal with all the aspects of the contract and therefore decides to appoint Amla Agencies to put his house on the market. One of the agents, Tsephiso, contacts him. |

8.1 List the FOUR characteristics of this representation. (4)

8.2 How was this contract of agency established? (1)

8.3 Discuss Tsephiso's duty to be honest and to act in good faith. (4 × 2) (8)

8.4 Suppose Amla Agencies instructed Tsephiso not to accept an offer below R1,2 million. The purchaser, however, offered R1,1 million, and Tsephiso went ahead with the sale. Lwandile also accepted this offer and a contract of sale was concluded.
Amla Agensies ratified this contract of sale.

Briefly discuss the ratification of this contract. In your answer you should also refer to the FOUR requirements for ratification. (5 × 2) (10)

8.5 Discuss the FOUR ways in which a contract of agency may be terminated. (4 × 2) (8)

8.6 Suppose Jarred is the buyer. Jarred took out a mortgage bond to enable him to buy this house.

8.6.1 Briefly discuss the information that should appear in a mortgage bond. (5 × 2) (10)

8.6.2 List any NINE ways in which a mortgage bond can be terminated. (9)
**[50]**

**TOTAL SECTION B: 150**
**GRAND TOTAL: 200**

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