



higher education & training

Department:
Higher Education and Training
REPUBLIC OF SOUTH AFRICA

MARKING GUIDELINE

**NATIONAL CERTIFICATE
NOVEMBER EXAMINATION
MERCANTILE LAW N5**

25 NOVEMBER 2013

This marking guideline consists of 8 pages.

GENERAL REMARKS**NOVEMBER 2013**

1. Answers in this memorandum are used as guidelines 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.

Consult with the examiner where uncertainties occur.
2. Answers must be in full sentences at ALL times, especially where it is required and except when it has been indicated that the answer should consist of only one word.
Should answers not be fully described, full marks cannot be given to that student's answer/s. For specific details check each question carefully.

NO half marks are allocated.
3. Should a candidate do more than the required amount of questions, **ONLY THE FIRST FOUR QUESTIONS, WHICH INCLUDE THE COMPULSORY QUESTION** must be marked.

In such cases, delete the fifth question by drawing a red line across that section of the answer paper. Should any uncertainty arise, consult the examiner.
4. ALL borderline cases (76 - 79 marks out of 200) **MUST** be thoroughly checked.

A practical or semester mark must still be added to the raw marks.

SECTION A: (COMPULSORY)**QUESTION 1**

1.1	1.1.1	LIMITED (Ltd)✓✓ CC✓✓	(2) (2)
	1.1.2	jointly✓✓ jointly and severally✓✓	(2) (2)
	1.1.3	legal personality✓✓	(2)
1.2	1.2.1	D✓✓	
	1.2.2	C✓✓	
	1.2.3	C✓✓	
	1.2.4	D✓✓	
	1.2.5	C✓✓	
	1.2.6	A✓✓	
	1.2.7	D✓✓	
	1.2.8	B✓✓	
	1.2.9	A✓✓	
			(9 × 2) (18)
1.3	1.3.1	False✓✓ = Capital or labour or skills ✓	
	1.3.2	True✓✓	
	1.3.3	True ✓✓	
	1.3.4	True ✓✓	
	1.3.5	True ✓✓	
	1.3.6	True ✓✓	
	1.3.7	True ✓✓	
	1.3.8	False ✓✓ = Agent is responsible ✓	
	1.3.9	True ✓✓	
	1.3.10	True ✓✓	
			(2 × 3) + (8 × 2) (22)
TOTAL SECTION A:			50

SECTION B: (ANSWER ANY THREE QUESTIONS FROM THIS SECTION)**QUESTION 2**

2.1	2.1.1	Commanditarian	
	2.1.2	Silent	
	2.1.3	Active or general or ordinary	
	2.1.4	Active or general or ordinary	
	2.1.5	Silent	
			(5 × 2) (10)

- 2.2
- Each partner has a right to share in the profits
 - As stipulated in the agreement
 - May not be excluded from division of profits
 - Profits divided pro rata (in proportion) to partners contributions
 - Profits can be divided equally
 - Partners are not entitled to interest on capital or compensation
- (5 × 2) (10)
- 2.3
- No formalities prescribed for valid partnership
 - Can be orally, in writing or even in conduct
 - Desirable for partners to have a written contract
- (Any 2 × 2) (4)
- 2.4 Partners insure themselves to cover claims against partnership on their death or retirement of partners.
Premiums are paid by the partnership.
- (2 × 2) (4)
- 2.5 DEREGISTRATION✓✓ By registrar of cc (CIPRO) on application by any member✓✓
Means cancellation of the registration
LIQUIDATION✓✓ registrar believes cc is not in business✓✓
consequent dissolution of cc auction assets to pay creditors✓✓
- (10)
- 2.6 One to ten members✓✓
- (2)
- 2.7
- Full name of the cc✓✓
 - Principal business to be carried out by the cc✓✓
 - Postal address and address of registered office ✓✓
 - Full name, Id No, postal and residential address of each member✓✓
 - Each member's interest in cc, expressed as %✓✓
 - Full particulars of each member's contributions in cc
 - Name and address of accounting officer for cc
 - Date on which financial year ends
- (Any 5 × 2) (10)
[50]

QUESTION 3

- 3.1
- 3.1.1 True✓✓
- 3.1.2 False✓ - Only the company is declared insolvent✓
- 3.1.3 False✓ - Certificate of incorporation✓
- (3 × 2) (6)
- 3.2
- Company without share capital ✓✓
 - Liability of members is limited in memo of association ✓✓
 - Main object = advancement of religion, art, culture etc ✓✓
 - Profits must be used for advancement of objectives named ✓✓
 - Last words in name should be 'limited by guarantee'✓✓
- (5 × 2) (10)

3.3

NATURAL PERSON	COMPANY
<ul style="list-style-type: none"> • Physically perceptible • Rights are his/her own • Takes legal action on own affairs and assets • Dies sooner or later • Can be sent to prison, serve sentence and/or be fined • Assets his/her own 	<ul style="list-style-type: none"> • An imaginary entity • Rights belong to company • Does legal action through a management body • Granted perpetuance by law • Can only be given a fine • Assets belong to company

(Any 4 × 2)

(8)

3.4

3.4.1

- Name may not be same as that of a company already registered ✓✓
- Registrar can refuse to register name if he is of opinion that the name could mislead the public ✓✓
- Name must consist of at least 3 letters of the alphabet ✓✓
- Letters not forming a pronounceable word, must be followed by words describing the main business ✓✓
- Words such as government, state may not be used without permission of the state president ✓✓
- Words such as bank may not be used without permission of the minister of finance
- Words eg. hotel, motel must be registered as a hotel

(Any 5 × 2)

(10)

3.4.2

May be voluntary by means of a special resolution ✓✓
By order of registrar of companies if deemed undesirable ✓✓

(2 × 2)

(4)

3.4.3

In a legible form outside its office/s ✓✓
Must appear on all its notices, letterheads, invoices, etc ✓✓

(2 × 2)

(4)

3.5

All registration requirements must be complied with ✓✓
The company is incorporated in accordance with the Companies Act ✓✓

(2 × 2)

(4)

3.6

A printed circular, introducing the company ✓✓
and thereby inviting the public to buy shares in the company ✓✓

(2 × 2)

(4)

[50]

QUESTION 4**4.1 FORMALITIES – MORTGAGE BOND**

- A written document (mortgage bond)✓✓
- Must be drawn up by a notary public✓✓
- Contents: description of property bonded; interest; payment of purchase price; period of repayment✓✓
- Must be signed by the owner of purchased property✓✓
- Registrar of deeds signs and validates with official seal✓✓
- Must be submitted for registration/transfer within two months (Any 5 × 2) (10)

- 4.2 4.2.1 Results from a court order✓✓
Sheriff of the court attached property of debtor✓✓ (2 × 2) (4)

- 4.2.2 Most important motive to advance money = interest earned✓✓
OR
Mortgage bond will stipulate how much interest to be paid and when it has to be paid and this stipulation may not be contrary to the law✓✓ (2)

- 4.3 4.3.1 Debtor's and creditor's lien/right of retention✓✓ (2)

- 4.3.2 Yes. ✓✓ Costs: capital, labour carried out. (2 × 2) (4)

- 4.4 4.4.1 **MERGER:** Situation where capacity of both debtor and creditor becomes vested in one and the same person (i.e. pledgee or mortgagee (debtor) becomes owner of the bonded/burdened property)✓✓

- 4.4.2 **PRESCRIPTION:** A mortgage expires after 30 years and a pledge prescribes after six months✓✓

- 4.4.3 **DESTRUCTION:** Total destruction of bonded property – mortgage still exists if the building is partly destroyed✓✓

- 4.4.4 **DISCHARGE OF PRINCIPAL DEBT:** Payment interest and insured debt✓✓ (4 × 2) (8)

- 4.5 Must be in writing✓✓
Must be signed by surety✓✓ (2 × 2) (4)

4.6	4.6.1	Not valid✓✓ = Contract must be in writing✓	(3)
	4.6.2	Valid✓✓	(2)
	4.6.3	Not valid✓✓ = Minors are not allowed to stand surety✓	(3)
4.7	4.7.1	Debtor and debtor's lien right	
	4.7.2	Salvage and retention rights	
	4.7.3	Salvage and retention rights	
	4.7.4	Debtor and debtor's lien right	
		(Death of one the parties does not terminate suretyship – thus not acceptable)	(4 × 2) (8)
			[50]

QUESTION 5

5.1	Duty to perform✓✓ Duty of utmost good faith towards principal✓✓ Duty to account to the principal✓✓ Duty to perform the mandate in person✓✓	(4 × 2)	(8)
5.2	5.2.1 A person who, without being instructed, acts on behalf of an absent person✓✓ to safeguard that person's property against destruction✓✓	(2 × 2)	(4)
	5.2.2 May demand no commission (remuneration)✓✓ May only claim repayment of actual expenses incurred✓✓	(2 × 2)	(4)
	5.2.3 Save house from being destroyed during stormy weather by closing up house/cover windows and doors✓✓ Spoornet provides food to transported cattle (one example✓✓)		(2)
5.3	<ul style="list-style-type: none"> • Principal must pay agent the promised remuneration as agreed or as per custom✓✓ • Agent is entitled to reasonable remuneration✓✓ • Agent entitled to remuneration only if he has carried out instructions✓✓ • If performed the service, principal compelled to pay even in cases where principal derives no advantage✓✓ • In case of estate agents, principal is liable for commission only on the happening of specified event (e.g. on selling house)✓✓ • If agent introduces buyer and it results in an agreement, then principal must pay the agent 	(Any 5 × 2)	(10)

5.4	<ul style="list-style-type: none"> • A debtor leaves SA with the intention of evading his/her debts✓✓ • He/she cannot comply with a judgment/decreed or sentence imposed by a responsible official✓✓ • By alienating/getting rid of or attempting to dispose of goods, with the intent to prejudice or disadvantage the creditor✓✓ • To remove and dispose of goods or to attempt to remove with the intention of prejudicing the creditors✓✓ • Agreement with one or more creditors in order to settle the debt fully or partially✓✓ • Whenever the debtor fails to present a statement of affairs • Informing the creditors that he/she cannot pay • Notice given in the government gazette of his/her intention to sell the business/company 	(Any 5 × 2)	(10)	
5.5	5.5.1	A situation in which the assets/property of an insolvent are seized and sold at a public auction✓✓ to pay off/to pay the creditors✓✓	(2 × 2)	(4)
		<ul style="list-style-type: none"> • Sequestration is ended✓✓ • Release of the insolvent from all incompetencies placed on his/her estate owing to sequestration. ✓✓ 	(2 × 2)	(4)
	5.5.3	• Balance sheet ✓✓ shows assets as well as shortfalls✓✓	(2 × 2)	(4)
			TOTAL SECTION B:	150
			GRAND TOTAL:	200

[50]

TOTAL SECTION B: 150
GRAND TOTAL: 200