



higher education & training

Department:
Higher Education and Training
REPUBLIC OF SOUTH AFRICA

NATIONAL CERTIFICATE

MERCANTILE LAW N4

(13030094)

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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 N4
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. Answer all the questions in SECTION A.
 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. Use only a black or blue pen.
 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 (1.1.1–1.1.10) in the ANSWER BOOK.

1.1.1 Which ONE of the following is not a requirement for misrepresentation?

- A There must be an untrue statement. 
- B The misrepresentation must have induced the contract as it stands.
- C The misrepresentation must be lawful.
- D The misrepresentation must be made by one contracting party to another contracting party.

1.1.2 Spoliation means ...

- A goods must be weighed to determine the purchase price.
- B let the buyer be aware.
- C the true owner will be guilty where he/she takes the law into his/her own hands.
- D an action instituted to take back what belongs to you.

1.1.3 Which ONE of the following scenarios is an example of an unlawful credit agreement? 

- A Peter, a minor, enters into a contract together with his guardian.
- B Jack, a pensioner, enters into a credit agreement.
- C Emma is under administration and enters into a credit agreement without the consent of the administrator.
- D Elizabeth, a recently divorced woman, enters into a credit agreement.

1.1.4 Customs refer to ...

- A writings of the old authorities on common law.
- B mainly the 17th and 18th century Roman-Dutch Law.
- C general unwritten law.
- D law laid down by an organ of state.

1.1.5 Restraint of a trade clause can be enforced by ...

- A partners competing with each other.
- B a seller of a business competing with the buyer. 
- C a retiring partner who does not compete with the partnership.
- D an employee to not compete with his employer during his/her employment.

1.1.6 Duty of a landlord:

- A To inspect the property at any time
- B To pay the rent
- C To ensure the tenant undisturbed use 
- D To increase the rent for improvements made to the property

1.1.7 The Labour Relations Act 66 of 1995 ...

- A makes provision for training and skills development.
- B regulates protection against unfair discrimination.
- C deals with aspects regarding trade unions, collective bargaining, dismissals and the CCMA.
- D lays down the minimum terms and conditions of employment.

1.1.8 Alley buys a chain from Jay, thinking it is a nine-carat gold chain, while Jay is selling a gold-plated chain to Alley:

- A Error in corpore 
- B Error in negotio
- C Error in substantia
- D Error in persona

1.1.9 Zoe is selling cattle and points out the cattle to Peter who is buying it:

- A Constitutum possessorium
- B Traditio brevi manu
- C Traditio longa manu
- D Symbolic delivery

1.1.10 Logan sells his printing store which he believes to be profitable:

- A Innocent misrepresentation 
- B Fraudulent misrepresentation
- C Negligent misrepresentation
- D Intentional misrepresentation

(10 × 1) (10)

1.2 Choose the correct term from those in brackets. Write only the answer next to the question number (1.2.1–1.2.15) in the ANSWER BOOK.

1.2.1 A (natural/juristic) person obtains legal entity by means of legal operation.

1.2.2 (Mistake/Misrepresentation) means there is a consensus but a defect in the consensus.

1.2.3 Mora (debitoris/creditoris) refers to the failure of the debtor to perform on time.

1.2.4 When goods are removed from a debtor by means of a court order it is known as sale (in execution/of auction).

1.2.5 (Voluntary/Involuntary) debt rearrangements means a consumer can apply in person to be declared over-indebted.

1.2.6 Goods brought onto and carried into a leased property is known as (colonus partiarius/invecta et illata).

1.2.7 An independent contractor is also known as locatio conductio (operarum/operis).

1.2.8 (Administrative/Mercantile) Law forms part of public law.

1.2.9 (Public/Private) Law regulates the relationship between individuals on an equal footing.

1.2.10 (Mentally ill persons/Minors) have no contractual capacity.

1.2.11 (Merx/Pretium) refers to a certain article.

1.2.12 A (stokvel/small agreement) is voluntary association involving a rotating financial scheme with social or economic functions.

1.2.13 The (tenant/landlord) is allowed to sublet unless prohibited by the contract of lease.

1.2.14 A (mandatory/prohibitive) interdict can be used to pay an employee any outstanding amounts owed to him/her.

1.2.15 A person who brings a civil action is known as a (plaintiff/defendant).

(15 × 2) (30)

- 1.3 Choose an item from COLUMN B that matches a term in COLUMN A. Write only the letter (A–E) next to the question number (1.3.1–1.3.5) in the ANSWER BOOK.

COLUMN A		COLUMN B	
1.3.1	Pretium	A	old contract substituted for new contract
1.3.2	Statutory rights	B	good faith
1.3.3	Bona fide 	C	private law
1.3.4	Family Law	D	price
1.3.5	Novation	E	National Credit Act

(5 × 2)

(10)
[50]**TOTAL SECTION A: 50****SECTION B**

Answer any THREE questions in this section. 

QUESTION 2

- 2.1 List FIVE requirements for an offer to be valid. (5)

- 2.2

Tony leased his flat to Pepper for a year. Pepper has not paid her rent for the past two months. Tony has heard of a tacit hypothec but only knows that it is a remedy available at the disposal of the landlord where the lessee is in breach.

Explain the tacit hypothec as it applies to a contract of lease. (5 × 2) (10)

- 2.3 State in each of the following cases whether a valid contract came into existence and substantiate the answer.

2.3.1 Harry enters into a contract with William for the sale of cocaine.

2.3.2 Alex, 15 years old, enters into a gym contract with Fitness is the Future. 

2.3.3 Mel, who is mentally ill, enters into a contract with the assistance of a curator.

(3 × 2) (6)

- 2.4 Discuss *actio redhibitoria* as a remedy for breach of contract. (5 × 2) (10)

- 2.5 Define each of the following types of delivery and give an example of each:
- 2.5.1 Symbolic delivery
 - 2.5.2 Traditio longa manu
 - 2.5.3 Traditio brevi manu 
 - 2.5.4 Constitutum possessorium (4 × 2) (8)
- 2.6 List 10 pieces of information that must be disclosed in the case of small, intermediate and large credit agreements. (10)
- 2.7 Give the essentialia of a contract of sale. (1)
- [50]**

QUESTION 3

- 3.1 Differentiate between *void contracts* and *voidable contracts*. (5 + 5) (10)
- 3.2 Study each of the following case studies regarding the Basic Conditions of Employment Act 75 of 1997 and answer the questions.
- 3.2.1 Peggy is employed at ABC retailers. She works every Sunday and on public holidays without receiving extra remuneration. 
Advise Peggy on daily and weekly rest periods. (5 × 2) (10)
 - 3.2.2 Jack works at Playtime Casino for 10 hours a day without meal intervals.
Advise Jack on meal intervals. (2 × 2) (4)
 - 3.2.3 Emily works for a car-manufacturing company, Fast Cars, between 18:00 and 06:00. 
Advise Emily on night work. (3 × 2) (6)

3.3 Indicate whether the following statements are TRUE or FALSE by writing only 'True' or 'False' next to the question number (3.3.1–3.3.10) in the ANSWER BOOK.

- 3.3.1 Cession is done with the consent of all parties involved.
- 3.3.2 An example of a merger is where the lessee and the lessor get married in community of property. 
- 3.3.3 A tenant is not allowed to sublet the premises he/she is renting.
- 3.3.4 A landlord may not enter the premises to do necessary repairs or to do an inspection.
- 3.3.5 If a tenant suffered loss, he/she may claim damages.
- 3.3.6 According to the principle of placaat improvements cannot be removed and the tenant can claim compensation from the landlord.
- 3.3.7 The tacit hypothec can only be used for as long as the rent is in arrears. 
- 3.3.8 A forfeiture clause entitles the landlord to cancel the lease and eject the tenant if he/she does not pay.
- 3.3.9 A tenant may use, enjoy and misuse the lease property.
- 3.3.10 A lease can also be valid for an indefinite period and in such a case unreasonable notice can be given.

(10 × 1) (10)

3.4 Briefly explain THREE types of hiring relationships in Roman Law.  (3 × 2) (6)

3.5 Briefly distinguish between *acquisitive representations* and *warranties*. (2 + 2) (4)

[50]

QUESTION 4

4.1

Lindy owns a dog named Justice that went missing after she had forgotten to lock the gate. Lindy places the following advertisement in the *Weekly Times*: Missing: One pug. Answers to the name Justice. Reward: R5 000,00. Tel: 041 452 6082.

4.1.1 Is an advertisement a valid offer? Substantiate the answer.  (4)

4.1.2 Suppose Ben returns the dog to Lindy without knowing about the advertisement.

Would he be entitled to this reward? Substantiate the answer. (4)

4.2 List FOUR requirements for undue influence. (4 × 2) (8)

4.3 Indicate in each of the following cases the type of misrepresentation and briefly define each.

4.3.1 Siya sells an article and is completely under the impression that it is a new article. 

4.3.2 Nicky sells a second-hand article as new, knowing that it is not the case.

4.3.3 Bongani sells a business which he believes is profitable. (3 × 2) (6)

4.4 Name the circumstances under which a minor would be bound should he/she enters into a contract. (4 × 2) (8)

4.5 Give THREE essentialia of a contract of sale. (3)

4.6 List FOUR duties of an employer. (4)

4.7 Briefly discuss FIVE unlawful agreements that a credit provider may not enter into.  (5 × 2) (10)

4.8 Name THREE types of things that cannot be sold. (3)

[50]

QUESTION 5

- 5.1 Discuss *specific performance* as a remedy for an employee. (4 × 2) (8)
- 5.2 Indicate whether the following statements are TRUE or FALSE by writing only 'True' or 'False' next to the question number (5.2.1–5.2.10) in the ANSWER BOOK.
- 5.2.1 A lessee may have the necessary repairs done and then claim the costs from the landlord, but only with the consent of the landlord.
- 5.2.2 A credit bureau does not need to be registered. 
- 5.2.3 Sale res fungible occurs when items must be counted and separated first before the contract can be perfect.
- 5.2.4 Debts owed to the state arising from the sale or lease of land prescribe after 30 years.
- 5.2.5 Suretyship agreements must be written and signed by or on behalf of the parties.
- 5.2.6 A contract is perfect when the price is determined and the contract is unconditional. 
- 5.2.7 A tenant can only be evicted in terms of an order of court.
- 5.2.8 An employee is not obliged to sign a code of conduct.
- 5.2.9 Credit transactions are regarded as credit agreements.
- 5.2.10 Casus fortuitous means an act of God. (10 × 1) (10)
- 5.3 Discuss whether an option is a valid contract. (5)
- 5.4 Explain when a warranty against eviction will not be applicable. (4 × 2) (8)
- 5.5 List THREE categories of contractual capacity and give one example of each. (3 × 3) (9)
- 5.6 List THREE instances where a written agreement is required with regard to a contract of sale. (3)
- 5.7 List SEVEN ways in which a contract can be terminated. (7)
- [50]**

TOTAL SECTION B: 150
GRAND TOTAL: 200