education

Department:
Education
REPUBLIC OF SOUTH AFRICA

SENIOR CERTIFICATE EXAMINATION – 2010

MERCANTILE LAW

STANDARD GRADE

2010

MARKS: 300

TIME: 3 hours

This question paper consists of 13 pages.

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INSTRUCTIONS AND INFORMATION

1. Answer QUESTION 1 and any FIVE other questions.

2. NOTE: Should the candidate answer more than six questions, only the first SIX questions will be marked.

3. All questions are to be answered in the ANSWER BOOK and not on the question paper.

4. Read the questions carefully and do only what is requested.

5. Where possible, questions are to be answered in point form and in full sentences.

6. Plan the length of your answers according to the marks allocated to each question.

QUESTION 1 (COMPULSORY)

Choose an item from COLUMN B that matches the Latin term in COLUMN A. Write only the letter (A – H) next to the question number (1.1 – 1.7) in the ANSWER BOOK.

COLUMN A		COLUMN B	
1.1	Vis mayor	A	performance of mandate in person
1.2	Delegatus delegare non potest	B	the benefit of excussion
1.3	Estoppel	C	unavoidable accident
1.4	Beneficium excussionis	D	the benefit of division
1.5	Beneficium divisionis	E	conduct
1.6	Negotiorum gestor	F	resident address of undersigned
1.7	Domicilium	G	natural disaster
		H	person who safeguards the property of someone else against destruction

(7 x 2) (14)

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 (1.8 – 1.20) in the ANSWER BOOK.

1.8 Which ONE of the following is correct with regard to an ordinary partnership?

A Membership varies from 1 to 20.
B A partnership may only be entered into orally.
C Active partners are jointly and severally liable.
D The partners must only contribute capital to the partnership.

1.9 Dr Mac Gyver is a partner who takes an active part in the management of the partnership. He is a ...

A dormant partner.
B commanditary partner.
C ordinary partner.
D limited partner.

1.10 Which document stipulates the regulations regarding the name of a public company?

A Memorandum of association
B Companies agreement
C Prospectus
D Articles of association

1.11 What is the purpose of the articles of association of a private company?

A Determine the actions of a company in the outer world
B Proof that the company has been registered
C Regulate the internal affairs of the company
D Regulate the number of members

1.12 Which ONE of the following is a close corporation?

A Dietlof Ltd
B Leraille (Pty) Ltd
C Jackie CC
D Marelize, Jacques and Son

1.13 What was the purpose of the Rent Board according to the Rent Act?

A To lease properties
B To act as agent between tenants and landlords
C To ensure that the aims of the Rent Act are implemented
D Protection of property

1.14 Samantha guarantees Trust Bank ... that she will stand surety for her partner.

A orally
B through conduct
C in writing
D telephonically

1.15 A pledgee (pawnshop) obtains a right over the debtor's ... property.

A fixed
B immovable
C movable
D movable and immovable

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1.16 An agent who undertakes to sell goods for his principal and to guarantee that the third parties with whom he concludes the contract will meet their obligations, is an ...

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

1.17 A lien is an implied right granted by law to a person who is in possession of another person's property on which he has expended ...

A assets or liabilities.
B income or expenses.
C money or labour.
D capital or skill.

1.18 ... occurs when the insolvent petitions the court for the surrender of his/her estate for the benefit of his/her creditors.

A Compulsory sequestration
B Voluntary surrender
C Liquidation
D Insolvency

1.19 The following persons are capable of acting as witnesses to a will:

A Persons of 12 years or older
B Persons of 14 years or older
C Persons of 16 years or older
D Persons of 18 years or older

1.20 An insolvent estate is divided into two groups, namely the secured assets and the ...

A free residue.
B preference creditors.
C general mortgages.
D fixed assets. (13 x 2) (26)

Indicate whether the following statements are TRUE or FALSE. Write only 'true' or 'false' next to the question number (1.21 – 1.25) in the ANSWER BOOK.

1.21 The two essential attributes of a company, which also distinguish it from a partnership, are legal personality and perpetual succession.

1.22 A crossed cheque bearing the words 'not negotiable', is still transferable.

1.23 The formalities which, amongst others, must be complied with when buying a house or land is a written contract and the registration thereof.

1.24 A surety for a minor is not liable for the minor's debt.

1.25 A codicil is a schedule or annexure to an existing will which is made to supplement or to amend the will. (5 x 2) (10)
[50]

QUESTION 2: PARTNERSHIPS

2.1 Distinguish between the liability of a partner for partnership debts during the existence of the partnership, and after dissolution thereof. (8)

2.2 A partnership can be dissolved by a court order on application of one or more of the partners. List FIVE cases where the **court** will grant an order for the dissolution of a partnership. (10)

2.3 Complete the following sentences by filling in the missing words. Write only the word(s) next to the question number (2.3.1 – 2.3.4) in the ANSWER BOOK.

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

2.3.2 All partners must share in the ... of the partnership.

2.3.3 No ... are required for the formation of a partnership.

2.3.4 An ... partner is a partner who does not participate in the management of the partnership. (8)

2.4 One of the mutual rights of the partners is the right to compensation. Discuss this right in full. (8)

2.5 State FOUR requirements of good faith which emanates from the duty of a partner to be accountable. (8)

2.6 Discuss the *right of representational power* of partners relative to third parties under the following headings:

2.6.1 Description (4)

2.6.2 TWO examples of cases where the partner has NO representational capacity (4)
[50]

QUESTION 3: COMPANY LAW

3.1 Which requirements are set regarding the amendment (changes) of the memorandum of association of a company? (4)

3.2 Answer the following questions briefly and to the point:

3.2.1 How does a public company obtain its share capital? (2)

3.2.2 With which words does the name of a private company end? (2)

3.2.3 Which document serves as proof that a company is properly registered and that all the requirements of the Companies Act for registration have been complied with? (2)

3.2.4 Name the company that does not have share capital and whose members' liability is limited to the amount which they undertook to contribute, in the case of the company's liquidation. (2)

3.2.5 Explain the change of a company's name. (4)

3.2.6 Describe the term *prospectus*. (4)

3.3 State THREE consequences which arise from the fact that a company is a separate entity clothed with juristic personality. (6)

3.4 List FOUR differences between a company and a natural person. (8)

3.5 When application is made for the registration of a company, certain documents must be submitted. Name FIVE of these documents. (10)

3.6 State THREE kinds of information that must be mentioned in the members' register. (6)
[50]

QUESTION 4: HIRING OF IMMOVABLE PROPERTY

4.1 Study the following article and answer the questions which follow.

CHANGES AT BUSINESS CENTRE

A business centre in Gauteng has had problems with tenants. Two businesses were closed recently due to non-payment and sequestration. The centre is coming together, according to the owners William and Natalie.

In the past, changes have been made to the offices and shops without the permission of the landlords.

The landlords now demand a written contract with all new tenants.

4.1.1 Name the legal remedy which the landlord has against the tenant if the tenant does not pay rent. (2)

4.1.2 May the contract be concluded orally? State a reason for your answer. (4)

4.1.3 When will the tenant become a statutory tenant under the Rents Act, in terms of a contract of hire? (4)

4.1.4 Explain how the rights of the tenant are affected by the insolvency of the landlord. (6)

4.1.5 Who are the landlords? (2)

4.1.6 What must the parties agree upon in a lease contract? (6)

4.1.7 The tenant cannot force the landlord to effect the necessary repairs. However, if the latter fails to do so, the tenant may resort to legal remedies. State THREE remedies available to the tenant. (6)

4.1.8 How many tenants did the business centre recently have problems with? (2)

4.2 State FOUR factors which one may use to determine reasonable rent. (8)

4.3 Briefly state FIVE reasons for the termination of lease contracts. (10)
[50]

QUESTION 5: AGENCY/LIENS

5.1 State FOUR ways in which a contract of agency may come into being. (8)

5.2 List the points that parties must agree upon to attain free consent when a contract of agency is concluded. (6)

5.3 Indicate whether the following statements are TRUE or FALSE. If the statement is FALSE, state the correct answer for the underlined part.

5.3.1 <u>An agent does not have the right to commission</u> if the principal gains no advantage from the agent's contract.

5.3.2 An agent acts as an <u>independent contractor</u> should he/she work under the control of the principal. (6)

5.4 There are TWO exceptions to the rule that an agent is obliged to execute his/her instructions personally. List these exceptions. (4)

5.5 Name THREE duties of the principal towards the agent. (6)

5.6 Name TWO differences between a creditor/debtor lien and a salvage lien. (4)

5.7 The following are examples of different types of liens. Identify the type of lien in each case.

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

5.7.2 The lien which a person has for expenses incurred in respect of the payment of premiums on insurance, in order to prevent it from expiring

5.7.3 The lien which a person has for expenses incurred in respect of the building of a dam on a farm

5.7.4 Confiscating the property of hotel guests for outstanding fees

5.7.5 The retention of cattle which have been fed and watered by the transporter (5 x 2) (10)

5.8 Briefly explain the legal consequences of a lien. (6)

[50]

QUESTION 6: INSOLVENCY

6.1 Answer the following questions concisely:

6.1.1 How can the insolvent be relieved from the restrictions of insolvency? (2)

6.1.2 What is the situation called where a person's assets exceed his/her liabilities? (2)

6.1.3 At which meeting of creditors is the curator's report on the matters and state of the insolvent's estate given? (2)

6.2 What must the applicant (creditor) prove before the court will issue a final order of sequestration? (6)

6.3 State whether the following statements are TRUE or FALSE. If the statement is FALSE, correct the underlined words.

6.3.1 <u>Compulsory sequestration</u> of a debtor's estate occurs when the court grants a sequestration order at the request of the creditors.

6.3.2 Only <u>creditors</u> who have already <u>proved their claims</u> against the insolvent estate, may vote at a meeting of creditors.

6.3.3 The election of a curator (trustee) of an insolvent estate must first be approved by the <u>master</u> of the higher court, before he is appointed.

6.3.4 When a partnership estate is sequestrated, the <u>private estate of an ordinary partner</u> is sequestrated simultaneously therewith. (8)

6.4 Discuss *voluntary sequestration* under the following headings:

6.4.1 Description (4)

6.4.2 Formalities for the notice of surrender (10)

6.5 Briefly discuss the serving of a rule nisi on a debtor. (6)

6.6 List FIVE assets which do not form part of the insolvent's sequestrated estate. (10)
[50]

QUESTION 7: MORTGAGE AND PLEDGE/CLOSE CORPORATION

7.1 What is the mortgage called which is security for the payment of future debts? (2)

7.2 Describe how a person must go about, and which document must be drawn up, to register a special mortgage on immovable property like a house. (10)

7.3 Explain what the tacit hypothec of the seller of credit entails, in terms of an instalment sale where the tenant becomes insolvent. (4)

7.4 Explain what a foreclosure clause in a deed of mortgage entails. (4)

7.5 Complete the following sentences by filling in the missing words. Write only the word(s) next to the question number (7.5.1 – 7.5.4) in the ANSWER BOOK.

7.5.1 There are two kinds of express mortgages, namely ... and ...

7.5.2 A mortgagee's right extends not only over the property given as security, but also over the ...

7.5.3 In a ... one person obtains the right over the movable property of another person to secure an obligation.

7.5.4 In a ... one person obtains the right over the immovable property of another person to secure an obligation. (10)

7.6 Answer the following questions in connection with a close corporation:

7.6.1 What is the minimum and the maximum number of members? (4)

7.6.2 Who is liable for the debts? (2)

7.6.3 With which words does the name of a close corporation end? (2)

7.6.4 An attribute of a close corporation is its legal personality. What does this mean? (2)

7.6.5 State the TWO documents that must be handed in to the registrar. (4)

7.6.6 Name TWO instances where a close corporation dissolves. (4)

7.6.7 What must the members contribute to the business? (2)

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QUESTION 8: SURETYSHIP/NEGOTIABLE INSTRUMENTS

8.1 State THREE formalities with which a contract of suretyship must comply. (3 x 2) (6)

8.2 When will a surety not be able to lay claim to the benefit of excussion? (3 x 2) (6)

8.3 Complete the following sentences by filling in the missing words. Write only the word(s) next to the question number (8.3.1 – 8.3.3) in the ANSWER BOOK.

8.3.1 Where two or more persons pledge themselves as sureties for a debtor, they are known as ...

8.3.2 It is clear that the surety ... the debtor's liability and does not replace it.

8.3.3 A surety is jointly and ... liable with the principal debtor. (3 x 2) (6)

8.4 Give FOUR reasons for the termination of suretyship. (4 x 2) (8)

8.5 Study the cheque below and answer the questions that follow.

HIGHVELD BANK		
		28 October 2009
PAY	T Benton	or Order
AMOUNT	Ten thousand rand	R10 000-00

		Z Wong

8.5.1 List the parties involved in the cheque, as well as each party's name. (8)

8.5.2 Explain the effect of crossing a cheque and writing the words 'not negotiable' on it. (4)

8.5.3 Explain the effect of crossing a cheque and writing the words 'not transferable' on it. (4)

8.6 Name FOUR cases where a bank is obliged to dishonour payment of a cheque. (4 x 2) (8)

[50]

QUESTION 9: WILLS

9.1 Distinguish between a *joint will* and a *mutual will*. (6)

9.2 Answer the following questions in full sentences:

9.2.1 When will a person's estate be divided in accordance with the rules of the intestate succession law? (2)

9.2.2 What is the minimum age at which someone may draw up a valid will? (2)

9.2.3 Under whose supervision are deceased estates administered? (2)

9.2.4 Name TWO ways of revoking a will. (4)

9.3 Describe the following concepts:

9.3.1 A will (4)

9.3.2 Administration of a deceased estate (4)

9.4 Who are disqualified by law from benefiting under a will? (6)

9.5 Name in logical order FIVE duties of the executor. (10)

9.6 Discuss the Master under the following headings:

9.6.1 Appointment (4)

9.6.2 THREE duties (6)
[50]

TOTAL: 300

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