

**GAUTENG DEPARTMENT OF EDUCATION
SENIOR CERTIFICATE EXAMINATION**

MERCANTILE LAW SG

QUESTION 1

- 1.1 C
- 1.2 C
- 1.3 C
- 1.4 A
- 1.5 C 5x2=(10)
- 1.6 False = Specially secured assets
- 1.7 False = Testator
- 1.8 True
- 1.9 True
- 1.10 True (12)
- 1.11 Drawer
- 1.12 Suretyship
Pledges
Life insurance policy
- 1.13 Kustingsbrief
- 1.14 Benefit of division
- 1.15 Employee - Independent contractor
- 1.16 Memorandum of association
- 1.17 Debtor and creditor lien 10x2=(20)
- 1.18
- Del credere guarantees that third parties will meet their obligations and for that he receives additional commission.
- 1.19
- No alterations (changes) are allowed on cheques.
- 1.20
- Is schedule to an existing will. which is made to amend or augment it
- 1.21
- To cover a future debt 4x2=(8)

[50]

QUESTION 2
COMPANY LAW / CLOSE CORPORATIONS / PARTNERSHIPS

- 2.1
- 2.1.1 Certificate of incorporation
- 2.1.2 Companies limited by guarantee
- 2.1.3 Co-operation agreement
- 2.1.4 Private company
- 2.1.5 Partnership agreement / articles
- 2.1.6 Private and public company
- 2.1.7 Founding statement
- 2.1.8 Partnership
- 2.1.9 Prospectus
- 2.1.10 Partnership
- 2.1.11 Certificate to commence business
- 2.1.12 Memorandum of association
- 2.1.13 Close corporation
- 2.1.14 Companies limited by guarantee
- 2.1.15 Public companies 15x2=(30)
- 2.2
- Members may be jointly and severally held liable for debts
 - Where the name is used without the abbreviation CC
 - Where a member fails to make a contribution as required by the Act
 - Where the number of members exceeds ten, each member will be liable
 - Where the corporation makes a payment for the acquisition of a member's interest
 - Where the post of accounting officer is vacant for a period of six months. 5x2=(10)
- 2.3
- **Deregistration**
 - Means the cancellation of the registration.
Registrar believes the CC is not in business
 - **Liquidation of a CC**
Assets are sold on auction under supervision of Master
Paying the creditors with the output 2x5=(10)
- [50]**

QUESTION 3
LEASE OF IMMOVABLE PROPERTY / PARTNERSHIP

3.1

3.1.1 Written application

3.1.2 The agreement forbids it

3.1.3 Sub Letting

3.1.4 Hire before sale

3.1.5 Statutory tenant

(6)

3.2

- The tenant must use the property properly and for the purpose for which it was hired.
- If the property is misused the landlord is entitled to terminate the lease, with or without damages.
- In the case where the misuse is of a less serious nature the Court may order that only damages be paid.
- The tenant may not effect any alterations without the consent of the landlord.
- The landlord is considered to have tacitly agreed if he lets property for a purpose for which it is obviously not suited, e.g. a stable hired as a storeroom.

4x2=(8)

3.3

- By the expiry of time, e.g. one year
- By notice given by either of the parties, e.g. a month for a year's lease
- By mutual agreement of both parties, the landlord and the tenant
- By merger of the tenant and the landlord, inherits the property from the landlord
- By insolvency of the **tenant**
- Destruction of the leased property, fire
- By cancellation by either of the parties
- By the death of either of the parties, if such a condition has been written into the lease.

4x2=(8)

3.4

3.4.1

- * He will be in partnership and commandite.
- Business is carried out in the name of only one partner.
- Undisclosed partner's liability may not exceed his/her contribution.
- His position remains untouched, even if he becomes known to the public.
- Partners lose their limited liability if names are disclosed.
- Not liable to third party, only to disclosed partners - to the extent of contributions

4x2=(8)

3.4.2

- * Two or twenty (OR MORE) persons must agree.
- * The expectation of making a profit
- * Capital and/or labour must be united.
- * Deposit in a joint fund and become the common property of the partners

4x2=(8)

3.4.3

- The period
 - The nature of the business
 - The contributions of each partner
 - Authorised withdrawals, salaries, interest on capital, withdrawals
 - Sharing of profits and losses
 - Settlement of disputes
 - Management and authority of partners
 - Procedure at death or retirement
 - Management and authority of partners
- 6x1=(6)

3.4.4

- No partner to be excluded from sharing profits.
 - It is normally stipulated in the agreement.
 - They have the right to divide profits in any ratio.
 - Can be divided pro rata according to contributions
 - Can be divided equally
 - Not entitled to interest on capital or any other compensation
- 3x2=(6)
[50]

QUESTION 4
PLEDGES AND MORTGAGES / COMPANIES ACT

4.1

- * Delivery is essential for the formation of a pledge.
 - With written or verbal agreement
 - No formalities are required for pledges
 - If the article is already in possession it is sufficient if the parties enter into agreement to pledge.
 - Pledgee must indicate the goods and separate them
- 4x2=(8)

4.2

- * Special mortgage must be registered.
 - * A written document (mortgage bond) must be drawn up.
 - * Must be drawn up by a notary public.
 - * Contains the following particulars:
 - the property bonded
 - the interest to be paid
 - the date and manner of payment.
 - * The bond must be signed by the owner.
 - * The Registrar of Deeds signs the document.
 - * He validates the bond with the official seal.
 - * It is important that the bond must be submitted for registration within two months.
- 5x2=(10)

4.3

4.3.1 If the debt together with all the interest due is paid.

4.3.2 Creditor becomes the owner of the property or person inherits the property

- 4.3.3 A mortgage prescribed after 30 years. Pledge after 6 months
- 4.3.4 Mortgage may be set aside by an order of the Court on the grounds of fraud or if it is found that, when the mortgage was entered into, an attempt was made to evade the Insolvency Act. 4x2=(8)
- 4.4
- * A company has **legal personality**. This means that it can acquire rights and duties apart from its members; and can sue and be sued in its own right.
 - * Perpetual succession. Continue to exist even though its members change. Only cease to exist when declared insolvent.
 - The word "limited" means limited liability of shareholders towards debt of a company. 2x3=(6)
- 4.5
- * No person may issue a prospectus if it has not been registered beforehand with the Registrar.
 - * No prospectus may be issued more than three months after the registration. Will not be issued:
 - Person (e.g. lawyer) withdraws his consent
 - Names are not accompanied by their written consent.
 - Declares that part of the shares are underwritten
 - * Prospectus must be signed by each director.
 - * The prospectus must be handed in for registration within 14 days
 - * On the cover, it should be mentioned that a copy is duly registered. 3x2=(6)
- 4.6
- 4.6.1 One to fifty
- 4.6.2 Seven
- 4.6.3 Special resolution
- 4.6.4 Liability of shareholders is limited
- 4.6.5 This means that it is considered correct until the contrary is proved. 6x1=(6)
- 4.7
- 4.7.1
- The Registrar upon written application and payment of the prescribed fee may reserve a name which he approves for a period of two months. 2x2=(4)
- 4.7.2
- In a conspicuous place outside its offices or the place where it does business
 - It must appear on all official notices, letters, invoices, receipt, negotiable instruments, etc. 1x2=(2)
- [50]

**QUESTION 5
LIENS / INSOLVENCY**

5.1

- * A lien is a right to retain another's property on which expenses (money or labour) have been incurred with the express or implied consent of the owner until authorised expenditure has been paid to him.
- * Nobody may sue on the basis of a lien.
- * Lien may be used as a defence against a claim for return of the goods
- * The court will order return on condition that the owner compensates the lien holder for his expenses.
- * A lien may provide a real security.

4x2=(8)

5.2

- * **Salvage lien**
 - Expenses in respect of essential repair work to a building or other object of another
 - Expenses for the safe-keeping of animals by supplying food and accommodation to keep them alive
 - Expenses for the storage of an object in safe-keeping
 - Expenses in respect of payment of premiums on a life policy in order to prevent it from lapsing
 - Rent payment of a flat
 - Care of perishable goods
- * **Improvement lien**
 - If a possessor of a farm, for example, sinks a borehole on the farm.
 - Expenses in respect of the building of a dam
 - The construction of a building on a property
 - The planting of a crop and cultivation of land
 - Construction of fences on a farm

2x5=(10)

5.3

- 5.3.1 Retention on building but not on birdcage
- 5.3.2 No retention - no labour / capital has been spent
- 5.3.3 Retains the lien - debtor - longer creditor lien

3x2=(6)

5.4

- Sequestration and all restrictions as a result thereof are lifted.
- Debts which came into existence before sequestration are considered to be redeemed.
- The insolvent once again becomes completely contractually capable.
- Rehabilitation does not affect the liability of a surety of the insolvent.

3x2=(6)

5.5

- The creditor has established his claim.
- The debtor has committed an act of insolvency.
- There is reason to believe that it will be to the advantage of the creditors.

3x2=(6)

5.6

5.6.1 Liquidation

5.6.2 Voluntary surrender

5.6.3 Free residue

3x2=(6)

5.7

- A spouse implies legally married people and people living together as husband / wife.
- The Insolvency Act provides that the insolvent's spouse's estate also settles in the Master until a curator is appointed.
- The solvent spouse can apply to the court for a temporary exemption from passing of the assets to the curator if he/she can prove that:
 - he/she trades separately from the insolvent, or
 - He/she will be seriously prejudiced if the property devolves
 - He/she is willing and capable of making arrangements for the safeguarding of the insolvent estate.
 - The solvent spouse can claim release of the property by proving to the curator that:
 - * The property belonged to him/her immediately before the marriage
 - * The property was obtained in terms of an anti-nuptial contract
 - * It is a protected policy in terms of the Insurance Act
 - * It was obtained during the marriage in terms of a title which is legally valid against the insolvent's creditors

4x2=(8)
[50]

QUESTION 6 WILLS / INSOLVENCY

6.1

- Must take in possession all goods, books or documents of the deceased
- Must render an inventory of the deceased's assets to the Master.
- Open a banking account in the name of the estate.
- Publish a notice in the Government Gazette of his appointment and tell creditors to submit their claims.
- Must ascertain whether the estate is insolvent or not
- If he finds that the estate is insolvent, he must give notice to the Master.
- If the estate is insolvent he must inform the creditors.
- If the estate is solvent, he goes ahead with the planning for the liquidation.
- The estate must be reduced to money according to legal requirements.

5x2=(10)

6.2

6.2.1 When a person dies without a will

6.2.2 14 years

6.2.3 Master

6.2.4 Reciprocal will

6.2.5 Revocation

5x2=(10)

6.3

- Witnesses to the will or their spouses
- The nominees or their spouses
- Any beneficiaries of the witnesses or their spouses
- "Bloodhand" 3x2=(6)

6.4

- After the first meeting and appointment of a trustee, the Master determines the date of the second meeting.
- The meeting is convened by the trustee by means of a notice in the Government Gazette and in an Afrikaans and an English newspaper in circulation in the district where the insolvent resides or where his principal place of business is.
- This notice, however, can also appear in a single newspaper if the newspaper appears in two official languages.
- At the second meeting:
 - * claims are proved against the estate
 - * the trustee's report on the matters and condition of the estate is received
 - * instructions are given to the trustee in connection with the administration of the estate.
 - * the interrogation of the insolvent and any other person 5x2=(10)

6.5

6.5.1 False -- left nothing behind is an act of insolvency

6.5.2 True

6.5.3 False = In the Gazette

6.5.4 True (10)

6.6

- Copy of the sequestration order must be sent to the Master
 - The deputy sheriff in every district
 - Every Registrar of Deeds
 - Messenger of the court who has taken possession of goods belonging to the estate.
 - Official supervising of a ship's register 4x1=(4)
- [50]**

QUESTION 7
AGENCY / NEGOTIABLE INSTRUMENTS

7.1

- The parties must be of one mind concerning the service.
- The remuneration attached thereto
- Rights and obligations are conferred on the principal
- The contract of agency is formed by free agreement. 3x2=(6)

7.2

- * When the principal signs a blank power of attorney
- * The owner stands by and allows another person to sell the article.
- * A person authorises his housekeeper to purchase household necessities on credit.
- * A parent permits his child to buy goods on credit on his behalf.
- * Previous transactions can be cited as proof

4x2=(8)

7.3

7.3.1

Punctual performance of mandate

- * An agent has the duty to carry out the instruction which he has undertaken.
- * If he does not do so the principal will be able to hold him liable for damages.
- * Furthermore, he will also forfeit his right to remuneration.
- * The agent must carry out his instruction with the necessary knowledge, care and skill.
- * The level of care which is required is that which a reasonable man would show.

3x2=(6)

7.3.2

Duty to perform mandate in person

- As a general rule, an agent is obliged to execute his instruction personally.
- He may not, therefore, give someone else the instruction.

However, there are **two exceptions**:

- * An agent can delegate his authority to someone if he obtained the necessary consent from his principal.
- * Where it is an acknowledged trade usage to appoint subagents
- * The obligation, however, rests on the agent to see to it that the sub-agent properly executes the instruction.
- If not, the agent will be liable for any damage which the principal suffered.

4x2=(8)

7.4

- * The agent must intend to act as an agent. He must profess to the third party that he is acting on behalf of another.
- * The agent must have a specific principal in mind when entering into the contract and such a principal must actually exist.
- * It must be possible to ratify the action.
- * The person on whose behalf the contract is entered into must indicate his ratification expressly or implicitly.

4x2=(8)

7.5

- Cheque has a twofold nature. Firstly it is a bill.
- Secondly it is a mandate from a customer to his bank to pay a certain amount of money.
- The relationship is based on commercial usage.
- Relationship is therefore one of debtor and creditor.
- A banker is entitled to refuse payment if the cheque does not comply with the necessary essentials.
- It is the duty of the customer to notify his banker if he knows that his signature is forged.

5x2=(10)

7.6

- The drawee banker could dishonour a cheque by non-payment.
 - Example: drawer has insufficient funds.
- 2x2=(4)
[50]

QUESTION 8 SURETYSHIP / LEASE OF IMMOVABLE PROPERTY

8.1

8.1.1

- The right of excussion
 - Arises as soon as the creditor holds the surety liable for the debt.
 - Surety may claim that the creditor should first take steps against the debtor.
 - Responsible for court costs
- 4x2=(8)

8.1.2

- Where the debtor is insolvent
 - Where the debtor is abroad and has left nothing behind
 - Debtor is protected by a personal remedy, e.g. minor
- 3x2=(6)

8.2

- His liability is limited to the terms of the contract.
 - His liability can never be greater than that in the contract.
 - The suretyship is an accessory liability.
 - He can act as surety for a smaller amount.
 - He can bind himself conditionally where debt is unconditional.
 - Where debt is conditional he cannot bind himself unconditionally.
 - Where he has assumed future liability he will be bound by it.
- 4x2=(8)

8.3

- Agreement between surety and creditor (bank)
 - Binds himself for the whole or part of a debtor's obligations
 - If the other person cannot pay he as surety must pay.
 - Security
- 2x2=(4)

8.4

- In the case of insolvency the tenant may not be prejudiced.
 - The trustee is to offer the leased property for sale, with retention of the lease on public auction.
 - In the case of long lease, it is registered.
 - Short term, tenant occupies the property
 - Venter vs. Venter
 - Must be paid in SA currency
 - May agree that rent is prepayable
 - In the case of the absence of an agreement, on the day upon which the lease is terminated.
- 4x2=(8)

8.5

8.5.1 Forfeiture clause

- The landlord has the normal contractual remedies at his disposal.
- i.e. a claim for specific performance, cancellation and in both cases a claim for damages.
- Because it is often difficult to eject the tenant if he has fallen in arrears with his rent, the majority of leases contain a forfeiture **clause**.
- A forfeiture clause is a stipulation in terms of which the landlord obtains the right to terminate the lease if the tenant fails to pay his rent.
- Venter vs. Venter

5x2=(10)

8.5.2

- May order specific performance
- May order specific performance and claim damages.
- Order the tenant to repair the property
- Hold the tenant liable for rent as long as he remains to occupy the property
- Court interdict.

3x2=(6)
[50]

**QUESTION 9
GENERAL**

9.1

- A partnership can also be formed tacitly.
- This means a partnership can be formed without a word.
- It can be formed by the conduct of the partners.
- Fink vs. Fink.
- A third person can bind him/herself by acting – he is partner in a particular partnership
- Liable to the third parties
- The intent of the parties can be determined by their words and actions

2x2=(4)

9.2

9.2.1 Auctioneer

1x2=(2)

9.2.2 The auctioneer may not sell the goods for less than the reserve price.

1x2=(2)

9.3

9.3.1

- Is a person who, without being instructed, acts on behalf of one who is absent, in order to safeguard that person's property against damage or destruction.

(4)

9.3.2

- He may demand no remuneration / he may only claim repayment for actual costs.

(2)

9.3.3

- To save a person's property from damages, e.g. fire
- To feed absent owner's animals to keep them alive.

(2)

9.4

- If a prospectus contains an untrue statements with the intention of defrauding the public, then the following persons will be held liable:
 - Each promoter / director
 - Each person who authorised the issue of the prospectus
 - Each expert whose report was included in the prospectus
- Persons who bought shares in good faith, will receive compensation for the loss or damages they suffered as a result of the untrue statement.
- Persons who are guilty of untrue statements will be made civilly liable.
- A subscriber may sue the company for rescission of his contract. 5x2=(10)

9.5

- It must be stated that a copy has been registered.
- That the required documents accompany it
- If a prospectus is not issued within three months after registration, it is considered not registered. 2x2=(4)

9.6

- The office of executor is an involved and responsible one.
- On the one hand the executor must account to the Master for the carrying out of his duties.
- He must act strictly in accordance with directives.
- If he does not, he is liable
- He is responsible to the heirs.
- He must always try to act in their best interests.
- He may not allow anybody to act in his place.
- He is responsible for any fraudulent dealings.
- He occupies a position of trust. 5x2=(10)

9.7

- Specified immovable property
 - * The parties must be in agreement as to the particular property.
 - * The landlord need not be the owner of the property - he can merely guarantee free use of occupation.
- Period of time, e.g. one year
 - * The tenant should not have the use of the property permanently.
 - * They must agree expressly or implicitly on the period of the lease
- Specified amount of rent
 - * The parties must agree that the tenant pay, in return for the use of occupation of the property.
 - * It must consist of a definite amount, whether it consists of money / or a share in the fruits of the property 2x5=(10)
 - * Must consist a definite amount. [50]

TOTAL: 300

**GAUTENGSE DEPARTEMENT VAN ONDERWYS
SENIORSERTIFIKAAT-EKSAMEN**

HANDELSREG SG

VRAAG 1

- | | | | | |
|------|---|--|----------|-----------|
| 1.1 | C | | | |
| 1.2 | C | | | |
| 1.3 | C | | | |
| 1.4 | A | | | |
| 1.5 | C | | 5x2=(10) | |
| 1.6 | Onwaar = Spesiaal versekerde bates | | | |
| 1.7 | Onwaar = Erflater | | | |
| 1.8 | Waar | | | |
| 1.9 | Waar | | | |
| 1.10 | Waar | | | (12) |
| 1.11 | Trekker | | | |
| 1.12 | Borgskap of Pande of Lewensversekeringspolisse | | | |
| 1.13 | Kustingbrief | | | |
| 1.14 | Voorreg van skuldverdeling / beneficium divisionis | | | |
| 1.15 | Werknemer / Diensbode Onafhanklike kontrakteur | | | |
| 1.16 | Akte van oprigting | | | |
| 1.17 | Skuldenaar en skuldeisersretensieregte | | | 10x2=(20) |
| 1.18 | Del credere waarborg dat die derde party hul verpligtings sal nakom en ontvang daarvan 'n verdere kommissie. | | | |
| 1.19 | Geen veranderings op tjeks is toelaatbaar nie. Bepaalde tjeks met veranderings sal nie deur banke aanvaar word nie. | | | |
| 1.20 | Is 'n aanhangsel tot 'n bestaande testament om dit aan te vul of te wysig. | | | |
| 1.21 | Is 'n verband ter dekking van 'n toekomstige skuld | | | 4x2=(8) |

[50]

VRAAG 2
MAATSKAPPYWET / BESLOTE KORPORASIE / VENNOOTSKAP

2.1

- 2.1.1 Sertifikaat van inkorporasie
- 2.1.2 Maatskappy beperk deur garansie

2.1.3 Samewerkingsooreenkoms

2.1.4 Privaat maatskappy

2.1.5 Vennootskapsooreenkoms / -kontrak

2.1.6 Privaat en publieke maatskappy

2.1.7 Stigtingsverklaring

2.1.8 Vennootskap

2.1.9 Prospektus

2.1.10 Vennootskap

2.1.11 Sertifikaat om besigheid te begin

2.1.12 Akte van oprigting

2.1.13 Beslote korporasie

2.1.14 Maatskappy beperk deur garansie

2.1.15 Publieke maatskappye

15x2=(30)

2.2

- Lede mag gesamentlik en afsonderlik aanspreeklik gehou word vir skulde
- Waar die naam sonder die afkorting BK verskyn
- Waar die lid versuim om 'n bydrae, soos deur die wet vereis word, te maak
- Waar die ledetal meer as tien is, sal elke lid aanspreeklik wees.
- Waar die korporasie 'n som geld betaal om 'n lid se belang te bekom
- Waar die pos van 'n rekeningkundige beampte vir 'n tydperk van ses maande vakant is

5x2=(10)

2.3

- **Deregistrasie**

Registrateur gronde het om te glo dat BK nie besigheid bedryf of nie in werking is nie

- **Likwidasie**

Verkoop van bates onder toesig van Meester

Met die doel om skuldeisers te betaal uit die opbrengs

2x5=(10)

[50]

VRAAG 3
HUUR EN VERHUUR VAN ONROERENDE EIENDOM / VENNOOTSKAPPE

3.1

3.1.1 Skriftelike aansoek

3.1.2 Dit in die kontrak verbied word

3.1.3 Onderverhuring

3.1.4 Huur gaan voor koop

3.1.5 Statutêre huurder

(6)

3.2

- Die huurder moet die eiendom behoorlik gebruik vir die doel waarvoor dit gehuur is.
- Indien die huursaak wangebruik word, is die verhuurder geregtig daarop om die kontrak te beëindig, sonder onkoste.
- Indien die wangebruik van 'n minder ernstige aard is, kan die hof bepaal dat slegs skadevergoeding betaal word.
- Die huurder mag nie enige veranderinge aanbring sonder die toestemming van die verhuurder nie.
- Dit word beskou dat die verhuurder stilswyend toegestem het waar hy 'n eiendom verhuur vir 'n doel waarvoor dit duidelik nie geskik is nie, bv. perdestal verhuur as 'n stookkamer.

4x2=(8)

3.3

- Deur tydsverloop, bv. een jaar
- Deur kennisgewing deur partye, bv. 'n maand vir 'n jaarkontrak
- Wedersydse ooreenkoms tussen huurder en verhuurder
- Deur samesmelting van huurder en verhuurder, erf die eiendom
- Insolvensie van **huurder**
- Vernietiging van gehuurde eiendom, brand.
- Deur kansellasië deur enige van die partye
- Deur die dood van enige van die partye, indien so 'n klousule in die kontrak ingeskryf is

4x2=(8)

3.4

3.4.1

* Kommanditêre vennoot

- Sake word gedoen in die naam van slegs een vennoot.
- Hy stort net 'n bepaalde bedrag in die vennootskap / is nie vir 'n groter bedrag as die gestorte bedrag aanspreeklik nie.
- Sy posisie bly onaangetas, selfs al word hy by die publiek bekend.
- Hy verloor sy beperkte aanspreeklikheid as hy as gewone vennoot na vore tree.
- Nie aanspreeklik aan derde party nie, slegs aan bekende vennote – tot die mate van bydrae.

4x2=(8)

3.4.2

- * Twee tot twintig (OF MEER) persone moet ooreenstem
- * Doel is om wins te maak.
- * Kapitaal en/of arbeid word saamgevoeg.
- * Bydraes word in 'n gemeenskaplike fonds gestort, gesamentlike eiendom van vennote.

4x2=(8)

3.4.3

- Die tydperk
- Aard van onderneming
- Bydraes van elke vennoot
- Gemagtigde onttrekkings, salarisse, rente op kapitaal, onttrekkings
- Verdeling van winste of verliese
- Skikking van geskille
- Bestuur en gesag van vennote
- Prosedure by ontbinding - afsterwe of uitrede 6x1=(6)

3.4.4

- Geen vennoot word uitgesluit uit die verdeling van die wins nie.
 - Word gewoonlik in die vennootskapsooreenkoms uiteengesit.
 - Mag die winste in enige verhouding verdeel.
 - Kan prorata tot hulle bydraes gemaak word.
 - Winste kan gelykop verdeel word.
 - Nie geregtig op rente op kapitaal of enige ander vergoeding nie. 3x2=(6)
- [50]**

VRAAG 4
PANDE EN VERBANDE / MAATSKAPPYWET

4.1

- * Lewering van die goedere is absoluut noodsaaklik vir ontstaan van 'n pand
- Skriftelike of mondelinge ooreenkoms
- Geen formaliteite word vereis vir pande nie
- As goed reeds in besit is, is dit voldoende as die partye ooreenkoms aangaan waaruit dit duidelik blyk.
- Plig van die pandhouer om goedere te skei, of om dit duidelik te merk. 4x2=(8)

4.2

- * Spesiale verband moet geregistreer word.
- * Skriftelike dokument, verbandakte moet opgestel word.
- * Moet deur 'n verbanduitmaker opgestel word.
- * Bevat onder andere die volgende:
 - Eiendom onder verband
 - Rente betaalbaar
 - Datum en wyse van terugbetaling
- * Die verbandakte moet deur die eienaar onderteken word.
- * Die Registrateur van Aktes onderteken verbandakte.
- * Bekragtig verband met sy ampseël.
- * Dit is belangrik dat die verbandakte binne twee maande vir registrasie ingedien moet word. 5x2=(10)

4.3

- 4.3.1 * Hoofskuld betaal tesame met alle rentes.

- 4.3.2 * Bv. as die pand- of verbandhouer eienaar van die eiendom word of iemand die eiendom erf

- 4.3.3 * 'n Verband verjaar na 30 jaar en 'n pand na 6 maande.
- 4.3.3 * Verband kan tersyde gestel word deur 'n hofbevel vanweë bedrog of as die verband aangegaan is in 'n poging om die Insolvensiewet te ontduik 4x2=(8)
- 4.4
- * 'n Maatskappy met **regspersoonlikheid** beklee. Dit beteken dat hy afsonderlik van sy lede draer van regte en verpligtinge kan wees; en in sy eie naam dagvaar en gedagvaar kan word.
- * Die woord "**beperk**" is 'n aanduiding dat die lede se aanspreeklikheid ten opsigte van die verpligting (skuld) teenoor die maatskappy beperk is tot die waarde van hulle aandelekapitaal. Beëindig slegs bestaan by bankrotskap.
- * Ewigdurende voortbestaan, al verander ledetal. 2x3=(6)
- 4.5
- * Geen persoon mag 'n prospektus uitreik alvorens dit deur Registrateur geregistreer is nie.
- * Mag nie later as drie maande na die datum van registrasie uitgereik word nie.
- * Sal nie uitgereik word nie as:
- * Persoon (bv. prokureur) sy toestemming terugtrek
- * Name nie vergesel is van skriftelike toestemming nie
- * Verklaar dat 'n gedeelte van aandele onderskryf is.
- * Prospektus moet deur elke direkteur onderteken word.
- * Die prospektus moet binne 14 dae ingedien word vir registrasie.
- * Op die voorkant moet vermeld staan dat 'n afskrif behoorlik geregistreer is. 3x2=(6)
- 4.6
- 4.6.1 Een tot vyftig
- 4.6.2 Sewe
- 4.6.3 Spesiale besluit
- 4.6.4 Aanspreeklikheid van aandeelhouers is beperk
- 4.6.5 Dit word as korrek beskou totdat teendeel bewys is. 6x1=(6)
- 4.7
- 4.7.1 Die Registrateur kan op skriftelike aansoek en teen betaling van 'n voorgeskrewe fooi 'n naam wat hy goedgekeur het vir twee maande reserveer. 2x2=(4)
- 4.7.2 In leesbare vorm aangebring word op 'n opsigtelike plek buite sy kantoor of die plek waar hy sake doen. Naam moet op alle amptelike kennisgewings, briewe, fakture, kwitansies, verhandelbare dokumente, ens. verskyn. 1x2=(2)
- [50]**

VRAAG 5 RETENSIEREG / INSOLVENSIE

5.1

- * Is 'n reg om die saak van 'n ander waarop uitgawes aangegaan is, te behou totdat daardie uitgawes vergoed is.
- * Niemand kan op grond van retensiereg dagvaar nie.
- * Die retensie kan gebruik word as verdediging teen 'n eis om teruglewering van die goedere.
- * Die hof sal teruglewering gelas op voorwaarde dat retensiehouer vergoed word vir sy uitgawes.
- * Retensiereg is 'n vorm van sekuriteit. 4x2=(8)

5.2

- * Bergingsretensiereg
 - Uitgawes vir die noodsaaklike herstelwerk van eiendom of 'n voorwerp
 - Voer van diere van 'n ander om hulle aan die lewe te hou en te huisves
 - Onkoste vir veilige bewaring van 'n voorwerp
 - Betaling van versekeringspremies om te voorkom dat 'n polis verval
 - Betaling van woonstelhuur
 - Berging van bederfbare produkte
- * Verbeteringsretensiereg
 - Oprigting van 'n gebou op grond
 - Aanbring van heinings om 'n plaas
 - Onkoste aangegaan m.b.t. die bou van 'n dam op 'n plaas
 - Indien die bewoner van 'n plaas bv. 'n boorgat sink op die plaas
 - Aanplanting van 'n oes en bewerking van die plaas 2x5=(10)

5.3

- 5.3.1 Geldig vir die herstel van mure - maar ongeldig vir die bou van die voëlhok
- 5.3.2 Ongeldig - nie arbeid of kapitaal spandeer aan rekenaar nie
- 5.3.3 Geldig - debiteur - krediteursretensiereg 3x2=(6)

5.4

- Sekwestrasie en alle beperkings wat daarmee verbind word, word beëindig.
- Skulde wat ontstaan het voor sekwestrasie word as vereffen beskou.
- Insolvent word weer volkome regsbevoeg.
- Rehabilitasie onthef die borg nie van sy aanspreeklikheid vir insolvent nie. 3x2=(6)

5.5

- Die skuldeisers wat die versoek voorlê se eis is bewys.
- Die skuldenaar is insolvent of pleeg 'n daad van insolvensie.
- Daar rede is om te glo dat dit tot voordeel van die skuldeisers sal wees. 3x2=(6)

5.6

- 5.6.1 Likwidasie
- 5.6.2 Vrywillige boedeloorgawe
- 5.6.3 Vrye oorskot 3x2=(6)

5.7

- 'n Eggenote word beskou as 'n wettig getroude persoon of wat as man en vrou saamwoon.
- Insolvensiewet bepaal dat die insolvente persoon se eggenoot se boedel ook onder die Meester val totdat 'n kurator aangestel is.
- Die solvente eggenoot kan by die hof aansoek doen om tydelike vrystelling van oorgang van die bates as hy/sy kan bewys dat:
 - Hy/sy afgesonder van die insolvent handel dryf, of
 - Hy/sy ernstig benadeel sal word as die goed oorgaan.
 - Hy/sy bereid en in staat is om reëlings te tref ter beveiliging van die belange van die insolvente boedel.

Die solvente eggenoot kan vrygawe van die goed eis deur bewys aan die kurator voor te lê dat:

- Die goed onmiddellik voor huweliksluiting aan hom/haar behoort het.
- Die goedere kragtens 'n huweliksvoorwaardekontrak verkry is.
- Dit 'n beskermde polis kragtens die Versekeringswet is.
- Dit gedurende die huwelik verkry is kragtens 'n titel wat teenoor die insolvent se skuldeisers regsgeldig is.

4x2=(8)
[50]

VRAAG 6 TESTAMENTE / INSOLVENSIE

6.1

- Hy moet die bates van oorledene (goedere, boeke of dokumente) in sy bewaring neem
- Hy moet 'n inventaris van die oorledene se bates opstel vir die Meester
- Hy moet 'n bankrekening op die naam van die boedel open
- In Staatskoerant sy aanstelling aankondig en krediteure aansê om vorderings in te dien
- Hy moet vasstel of boedel solvent is of nie
- Boedel insolvent, Meester daarvan verwittig
- Indien insolvent, skuldeisers daarvan in kennis stel.
- Indien solvent is, voort met beplanning van likwidasie.
- Boedelgoedere tot geld maak, volgens wetlike vereistes.

5x2=(10)

6.2

6.2.1 Wanneer 'n persoon tot sterwe kom sonder 'n testament.

6.2.2 Veertien jaar

6.2.3 Meester

6.2.4 Wederkerige testament

6.2.5 Herroeping

5x2=(10)

6.3

- 'n Getuie van die testament en sy vrou
- Benoemde van die testament of sy vrou
- Enige begunstigdes van die getuies en sy vrou
- Die bloedhand

3x2=(6)

6.4

- Indien 'n kurator op die eerste byeenkoms verkies is, stel die meester die datum van die tweede byeenkoms vas.
- Kurator belê tweede byeenkoms by kennisgewing in die Staatskoerant, en in 'n Afrikaanse en Engelse nuusblad waar die insolvent of sy besigheid is.
- Die kennisgewing kan in 'n enkele nuusblad verskyn as dit in twee ampstale is.
- Die doel van die tweede vergadering is:
 - * Verdere geleentheid te gee vir bewys van vorderings teen boedel.
 - * Die verslag van die kurator oor die toestand en aangeleentheid aangaande die boedel te ontvang.
 - * Kurator opdrag te gee in verband met die bereddering van die boedel.
 - * Insolvent of enige ander persoon te ondervra. 5x2=(10)

6.5

6.5.1 Onwaar - slegs indien hulle niks agtergelaat is, is 'n daad van insolvensie begaan

6.5.2 Waar

6.5.3 Onwaar - en in Gazette (Staatskoerant)

6.5.4 Waar (10)

6.6

- Afskrif van elke sekwestrasie-order aan Meester gestuur.
 - Die Onderbalju van elke distrik
 - Registrateur van Aktes
 - Elke geregsbode wat goed in sy besit het wat aan die boedel behoort
 - Elke amptenaar wat by registrasie hawe toesig het. 4x1=(4)
- [50]**

VRAAG 7 AGENTSKAPPE / VERHANDELBARE DOKUMENTE

7.1

- Die partye moet dit eens wees oor die diens wat verrig word.
- Oor die vergoeding daaraan verbonde.
- Die regte en pligte wat die prinsipaal toekom.
- Die agentskapskontrak word vrywillig aangegaan. 3x2=(6)

7.2

- * Wanneer die prinsipaal 'n blanko magtiging teken.
- * Die eienaar staan by en sien toe dat 'n ander persoon sy eiendom verkoop.
- * Persoon laat sy huishulp toe om huishoudelike benodighede op krediet te koop
- * Wanneer 'n ouer uit gewoonte toelaat dat sy kind goedere namens hom op krediet koop.
- * Vorige transaksies word as bewys aangehaal. 4x2=(8)

7.3

7.3.1 **Stiptelike uitvoer van die opdrag**

- * 'n Agent is verplig om die opdrag wat hy onderneem het, uit te voer.
- * Indien hy dit nie doen nie, sal die prinsipaal hom vir skadevergoeding kan aanspreek.
- * Verder sal hy sy reg op vergoeding verbeur.
- * Die prinsipaal hom vir skade wat hy (prinsipaal) as gevolg van die ongemagtigde optrede gely het, kan aanspreek.
- * 'n Agent moet sy opdrag met die nodige kennis, sorg en vaardigheid verrig.
- * Die vlak van sorg wat geverg word deur 'n redelike persoon 3x2=(6)

7.3.2 **Uitvoer van die opdrag in eie persoon**

- 'n Agent is as algemene reël verplig om sy opdrag persoonlik uit te voer.
- Hy mag dit dus nie aan iemand anders oorlaat of iemand aanstel nie.

Hierop bestaan daar **twee uitsonderings**:

- * Wanneer die prinsipaal die aanstelling goedkeur.
- * Wanneer dit 'n erkende handelsgebruik is om subagente aan te stel.
- * Die agent is verplig om toe te sien dat subagent sy opdrag behoorlik uitvoer.
- Doen hy dit nie, sal die agent vir enige skade wat die prinsipaal gely het, aanspreeklik wees. 4x2=(8)

7.4

- * Die agent moes ten tye van die transaksie voorgegee het dat hy namens 'n prinsipaal optree.
- * Die agent moes die bedoeling gehad het om namens 'n prinsipaal op te tree en nie namens homself nie. Die prinsipaal moes ten tye van die transaksie bestaan het.
- * Die handeling moes in die naam van die prinsipaal verrig gewees het.
- * Die handeling moes nie onwettig gewees het nie. 4x2=(8)

7.5

- Die tjek het 'n tweeledige aard, eerstens is dit 'n wissel.
- Tweedens 'n magtiging van 'n kliënt aan sy bankier om bedrae uit sy rekening te betaal.
- Die verhouding is grootliks op handelsgebruik gebaseer.
- Verhouding is dus een van skuldenaar en skuldeiser.
- Bank is geregtig om betaling van tjek te weier as dit nie aan vereistes voldoen nie.
- Dit is die plig van die kliënt om die bank in kennis te stel indien hy vermoed dat sy handtekening vervals word. 5x2=(10)

7.6

- Beteken weiering / nie- betaling van tjek deur bank
 - A.g.v. trekker se onvoldoende fondse 2x2=(4)
- [50]**

VRAAG 8
BORGSKAP / HUUR EN VERHUUR VAN ONROERENDE EIENDOM

8.1

8.1.1

- Voorreg van uitwinning of uitskudding
- Ontstaan sodra die skuldeiser die borg aanspreek vir die skuld.
- Borg kan eis dat skuldeiser eers stappe teen skuldenaar doen
- Aanspreeklik vir hofonkoste 4x2=(8)

8.1.2

- Wanneer die skuldenaar insolvent is.
- Skuldenaar in die buiteland is en geen besittings agtergelaat het nie.
- Skuldenaar beskerm word deur 'n persoonlike verweermiddel, bv. minderjarige. 3x2=(6)

8.13

- Hy hom as borg en medeskuldenaar verbind.
- Hom nie op die reg te beroep nie. 2x2=(4)

8.2

- Die borg se aanspreeklikheid is beperk tot die bepalings van die kontrak.
- Die borg se aanspreeklikheid kan nooit meer wees as dit wat in die kontrak bepaal word nie.
- Die borgskap is 'n hulplias.
- Kan borg staan vir 'n kleiner bedrag.
- 'n Borg kan hom voorwaardelik bind indien die skuld onvoorwaardelik is.
- Wanneer die hoofskuld voorwaardelik is, kan die borg hom nie onvoorwaardelik bind nie.
- Waar hy toekomstige aanspreeklikheid aanvaar het, sal hy daardeur gebind word. 4x2=(8)

8.3

- Die borg hom aanspreeklik stel dat skuldenaar sy verpligtings sal nakom.
- As daardie persoon nie betaal nie, sal hy as borg betaal.
- Sekuriteit 2x2=(4)

8.4

- In die geval van insolvensie mag die huurder nie benadeel word nie.
- Die trustee verkoop die verhuurde huis, met behoud van die huurkontrak, op die openbare veiling
- In geval van 'n langtermyn-huurkontrak word dit geregistreer
- Korttermyn, die huurder bewoon die eiendom. 4x2=(8)
- Venter vs. Venter
- Moet betaal word in S.A. geldeenheid.
- Mag ooreenkom dat huur vooruit betaal word.
- In afwesigheid van 'n ooreenkoms moet dit betaal word op die dag waarop die huurkontrak beëindig word. 5x2=(10)

8.5.1

- Verbeuringsbeding
- Huurder in gebreke val om huurgeld op vasgestelde datum te betaal
- Verhuurder reg om huurkontrak te beeindig, sonder kennisgewing
- Venter vs Venter
- Onverbiddelike reël
- Meeste huurkontrakte sluit 'n verbeuringsbeding in. 5x2=(10)

8.5.2

- Hy mag spesifieke uitvoering eis, asook skadevergoeding.
 - Hy mag beveel dat die huurder die eiendom herstel.
 - Hy is geregtig om die huurder aanspreeklik te hou vir huurgeld solank as huurder woning bewoon.
 - Bevel tot uitsetting van hof aanvra 3x2=(6)
- [50]**

**VRAAG 9
ALGEMEEN**

9.1

- 'n Vennootskap kan ook stilswyend ontstaan.
- dit kan met ander woorde uit die gedrag van partye afgelei word.
- Voorbeeld van Fink vs. Fink of enige ander voorbeeld.
- 'n Derde persoon bind homself as hy die skyn verwek dat hy 'n vennoot van 'n bepaalde vennootskap is.
- Hy is aanspreeklik teenoor die derde partye.
- Die bedoeling van die partye word afgelei uit hulle woorde en gedrag. (Enige) 2x2=(4)

9.2

9.2.1 Afslaer (2)

9.2.2 Mag nie vir minder as die reserweprys verkoop nie (2)

9.3

9.3.1

- Is 'n persoon wat uit sy eie sonder opdrag namens 'n afwesige persoon optree met die doel om daardie persoon se eiendom teen beskadiging of vernietiging te red. (4)

9.3.2

- Hy is nie geregtig op enige vergoeding nie, kan slegs sy werklike uitgawes eis. (2)

9.3.3

- Eienaar se eiendom red van brand.
- Voer van diere om hulle aan die lewe te hou. (2)

9.4

- Indien 'n prospektus 'n onware verklaring bevat om die publiek te mislei, sal die volgende persone aanspreeklik wees:
 - * Elke promotor, direkteur
 - * Elke persoon wat die uitreiking van die prospektus gemagtig het
 - * Elke deskundige wie se verslag by die prospektus ingesluit was
- Persone wat skuldig is aan onware verklarings in die prospektus is siviël aanspreeklik.
- Persone wat aandele gekoop het, sal vergoeding ontvang vir verliese gely a.g.v. onware verklarings.
- 'n Onderskrywer mag 'n maatskappy dagvaar vir die herroeping van sy kontrak. 5x2=(10)

9.5

- Afskrif behoorlik geregistreer is.
- Die vereiste dokumente dit vergesel.
- Indien 'n prospektus nie binne drie maande na registrasie uitgereik is nie, word dit nie as geregistreer beskou nie. 2x2=(4)

9.6

- Die eksekuteursamp is ingewikkeld en verantwoordelik.
- Aan die een kant moet hy aan die Meester verantwoording doen oor die uitvoering van sy pligte.
- Hy moet streng volgens die wetlike voorskrifte handel.
- As hy hierdie voorskrifte nie nakom nie, is hy strafbaar.
- Aan die ander kant is hy verantwoordelik teenoor die erfgename.
- Hy moet probeer om die grootste voordeel aan hulle te besorg.
- Kragtens wet is hy onbevoeg om iemand anders in sy plek aan te stel.
- Hy is aanspreeklik vir enige bedrog.
- Hy beklee 'n vertrouensamp. 5x2=(10)

9.7

- 'n Gespesifiseerde onroerende eiendom.
 - * Moet eens wees oor die vaste eiendom.
 - * Verhuurder hoef nie eienaar van die verhuurde eiendom te wees nie – hy kan bloot die gebruik daarvan waarborg.
- 'n Bepaalde termyn, bv. een jaar
 - * Uitdruklike ooreenkoms oor welke termyn die huurder die eiendom sal gebruik.
 - * Die huurder sal nie permanente gebruik en genot van die eiendom hê nie.
- 'n Gespesifiseerde som geld as huur.
 - * Dit moet in geld betaalbaar wees.
 - * Of dit kan bestaan uit 'n bepaalde opbrengs van die grond.
 - * Dit moet uit 'n definitiewe vasgestelde bedrag bestaan. 2x5=(10)

[50]