

GAUTENG DEPARTMENT OF EDUCATION  
SENIOR CERTIFICATE EXAMINATION

MERCANTILE LAW SG

Possible Answers / Moontlike Antwoorde  
Feb / Mar / Maart 2006

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QUESTION 1  
COMPULSORY

- 1.1 Joint üü and separateüü
- 1.2 Legal personality üü
- 1.3 Partnership üü
- 1.4 Name üü  
Memorandum of association üü  
Articles of association üü
- 1.5 Prospectus üü
- 1.6 69 üü
- 1.7 Founding Statement üü (20)
- 1.8 False üü = Statutory tenant ü
- 1.9 True üü
- 1.10 True üü
- 1.11 False üü - Agent must perform mandate in personü (10)
- 1.12 C üü
- 1.13 I
- 1.14 F
- 1.15 H
- 1.16 G
- 1.17 J
- 1.18 N
- 1.19 K
- 1.20 L
- 1.21 B

10x2=(20)  
[50]

**QUESTION 2**  
**WILLS / INSOLVENCY**

- 2.1
- 2.1.1 False üü = codisill ü
- 2.1.2 False üü = Letters of Excutorship ü
- 2.1.3 True üü
- 2.1.4 True üü
- 2.1.5 True üü (12)
- 2.2
- \* The administration of the deceased estate culminates (complete) in an executor's report. üü
  - \* The liquidation account (executors account), supported by receipts, prove that the executor has concluded his duties.
  - \* The executor certifies that the Account is a true and just account.
  - \* Complete bank statements must be handed in to the Master.
  - \* These statements serve as record of all money received and paid out.
  - \* The administrative process is complete whenever all liabilities have paid and all assets have been transferred to the inheritors (beneficiaries).
  - \* The executor is now relieved of his office. 5x2=(10)
- 2.3
- 2.3.1 In writing ü
- 2.3.2 Last stipulation
- 2.3.3 Two  
Attest
- 2.3.4 Mark  
Magistrate / commissioner of oaths 6x1=(6)
- 2.4
- Compensation by reason of personal injury or defamation üü
  - A pension to which he is entitled to.
  - Indemnification or compensation.
  - Assets obtained after sequestration, as a result of his own labour.
  - The clothing and bedding and other essential means of livelihood.
  - Life policies taken out on the insolvent's own life.
  - Assets obtained by the sale or exchange. 5x2=(10)
- 2.5
- 2.5.1
- Person who is no longer in position to pay his debts
  - His liabilities exceeds his assets. 2x2=(4)
- 2.5.2
- Whereby on the order of the Supreme court, all the assets of the insolvent are taken from him,
  - and placed under the control of the trustee. 2x2=(4)
- 2.5.3
- The assets of the insolvent are sold on a auction
  - in order to pay creditors. 2x2=(4)
- [50]**

**QUESTION 3**  
**PARTNERSHIPS / PLEDGE AND MORTGAGE**

- 3.1
- 3.1.1 Anonymous / silent ü
- 3.1.2 Ordinary partner
- 3.1.3 Universal partner
- 3.1.4 Ordinary partner
- 3.1.5 Anonymous partner
- 3.1.6 Commandaite partner 6x1=(6)
- 3.2
- \* Since partners are co-owners of a joint business, üü partners are obliged to look after the interests of the partnership as if they were their own interest.
- \* If the partnership suffers damages as a result of the acts of a partner, the partner will have to compensate his co-partners for such damages.
- \* He will also be liable for any profits which the partnership has lost due to such acts.
- \* It is expected from a partner to exercise care and skill. 4x2=(8)
- 3.3
- 3.3.1
- \* It is an absolute prerequisite that the pledgee be put in possession of the object pledged. üü
- \* Followed by delivery of a movable object to the pledgee.
- \* No formalities are set.
- \* The agreement can be in writing or oral.
- \* Delivery can also occur by means of symbolic delivery, as in the case where the key to a warehouse, is handed over to the pledgee 4x2=(8)
- 3.3.2
- A written document, i.e. a **mortgage bond**. üü
  - Must be drawn up by a notary public.
  - Contain the following: the property bonded, interest, the repayment of the purchase price.
  - Must be signed by the owner.
  - Registrar signs and validates with the official seal.
  - Registration in offices of registrar of deeds.
  - Must be submitted within two months. 6x2=(12)
- 3.4
- 3.4.1
- A special kind of mortgage on immovable property. üü
  - It is a bond granted by a buyer if he does not possess sufficient capital
  - In favour of the seller who has advanced him the money. 2x2=(4)
- 3.4.2
- The most important motive for advancing money is to earn interest. üü
  - The mortgage bond will stipulate how much, when, etc.
  - This stipulation may not be contrary to the law. 2x2=(4)

3.5.1

- \* Where the mortgagee obtains the ownership of the property üü
- \* The creditor inherits the property.

3.5.2

- \* A mortgage is prescribed after 30 years. üü
- \* A pledge is prescribed after 6 months

3.5.3

- \* If the thing is only partly destroyed, the bond continues to be in operation on the portion which remains undamaged.

3.5.4

- \* If the debt together with all the interest are paid.

4x2=(8)  
[50]

#### QUESTION 4 THE COMPANIES ACT

4.1

- \* A company **with share capital**ü acquires its capital by issuing shares. This type of company has two forms, namely, the public and private company. ü

- \* A company **without share capital**; ü obtains its funds from donations; known as company limited by guarantee. ü

2x2=(4)

4.2

- \* The preparation of a memorandum and articles of associationüü
- \* The nomination of directors.
- \* The procurement (provision) of capital.
- \* The issue of a prospectus, if it is a public company.
- \* Negotiations for the acquisition of property.

4x2=(8)

4.3

4.3.1

- Is the most important document of the company. üü
- Forms with the articles the charter of the company. üü
- Determines the actions to the outer world

2x2=(4)

4.3.2

- The company's internal affairs are regulated in the articles of association. üü
- It arranges the domestic affairs of the company

2x2=(4)

4.3.3

- Prospectus, notice, advertisement or other invitation offering üü
- any shares of a company to the public."
- The purpose of the issue of a prospectus is, to obtain capital for the company.

2x2=(4)

## 4.4

- If a prospectus contains untrue statements with the intention of defraud the public, then the following persons will be held liable: üü
- Each promoter / director
- Each person who authorised the prospectus
- Each expert who's report was included in the prospectus
- Persons who bought shares will receive compensation for the loss 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. 4x2=(8)

## 4.5

## 4.5.1

- Public company ends with "Limited." üü
- The name may not be the same as that of a company already registered. üü
- Can refuse to register a name which in his opinion is calculated to mislead the public.
- Name must consist of at least three letters of the alphabet.
- Word or words describing the main business.
- Words such as Government or State – with consent of State President.
- Words such as Bank – with consent of Minister of finance.
- Hotel or motel are registered as a hotel. 5x2=(10)

## 4.5.2

- A company can change its name by means of a special resolution. üü
- The Registrar can order a company to change its name if, in his opinion, it is undesirable. 2x2=(4)

## 4.6

- \* The registration requirements have been complied with;üü
  - \* The company is duly incorporated in accordance with the Act. 2x2=(4)
- [50]**

### QUESTION 5 LEASE OF IMMOVABLE PROPERTY

## 5.1

- The tenant may not be prejudiced
- The trustee offers the leased property for sale by public auction.
- With the retention of the lease.
- Long-term or short-term lease. 3x2=(6)

## 5.2

- \* The tenant does the necessary repairs himself and deduct the costs, **provided** he has informed the landlord.
- \* The tenant may claim a reduction in rent.
- \* The tenant may vacate the property without being liable for further rent. 3x2=(6)

- 5.3
- 5.3.1 Must have been aware of the defect üü
- 5.3.2 Landlord ü / tenant ü
- 5.3.3 Forfeiture clause üü
- 5.3.4 In writing / registered üü
- 5.3.5 Rent Board üü 5x2=(10)
- 5.4
- 5.4.1
- \* Where the tenant has, in turn, leased out the rented object, this is termed sub-letting. üü
  - \* A contract of sub-letting is an ordinary lease contract.
  - \* The rights and duties of the sub-lessor and sub-tenant is, exactly the same as in an ordinary lease contract. 2x2=(4)
- 5.4.2
- \* Unless the parties agree otherwise, the tenant has the right to sublet. üü
  - \* **Rural properties** may not be subleased without the written consent of the landlord.
  - \* He may sublet an urban property without permission 2x2=(4)
- 5.4.3
- \* Cession constitutes the transfer of rights under a contract. üü
  - \* While the obligations continue to be those of the tenant.
  - \* The consent of all three parties is necessary, the landlord, the tenant and the new tenant. 2x2=(4)
- 5.5
- Punctual payment of rent üü
  - Taking proper care of property
  - Returning property in good condition to the landlord when the lease expires 3x2=(6)
- 5.6
- By the expiry of time e.g. one year. üü
  - By notice given by either of the parties, e.g. a month on a year contract
  - By mutual agreement between landlord and tenant
  - By merger of the tenant and the landlord, inherits the property
  - By insolvency of the **tenant**
  - Destruction of the leased property
  - 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. 5x2=(10)

## QUESTION 6

### AGENCY / NEGOTIABLE DOCUMENTS

- 6.1
- By express authorityü
  - By operation of the law
  - By conduct (estoppel)
  - By ratification 4x1=(4)

## 6.2

- \* This means that an agent must at all times act in the exclusive interest of his principal. üü
- \* An agent may not act in such a way that his own interests clash with those of the principal.
- \* An agent may not make any secret profit from the execution of his work.
- \* If such profits are made, the agent must hand over the profits to his principal.
- \* An agent may not accept bribes in the execution of his instruction.
- \* An agent may not disclose secret information, to third parties.
- \* The agent must keep his property apart from that of his principal. 5x2=(10)

## 6.3

## 6.3.1

- \* Is a person who, without being instructed, acts on behalf of an absent person, üü
- \* in order to safeguard that property against destruction. 2x2=(4)

## 6.3.2

- \* Negotoirum gestor may demand no commission (remuneration).
- \* He may claim repayment of the actual expenses. 2x2=(4)

## 6.3.3

- Take steps to save the house of an absent owner.
- Spornet provides food to transported cattle. 1x2=(2)

## 6.4

- Principal must pay the agent the promised remuneration, in terms of the agreement or by custom.
- The agent is entitled to a reasonable remuneration for his services.
- He is entitled to remuneration only if he has carried out his instructions.
- If he has performed the services, the principal is compelled to pay, even in cases where the principal derives no advantage.
- In the case of estate agents he is liable to pay commission only on the happening of a specified event.
- If he introduces a buyer and that introduction results in the agreement, the principal must remunerate him.
- Doyle vs. Gibbon. 5x2=(10)

## 6.5

- \* The bank undertakes to collect all cheques paid into the client's account.
  - Two parallel lines across the face of the cheque, without any words.
- \* Special crossing
  - Across the face of the cheque the name of the banker. With or without the words not "negotiable" added to it. 2x3=(6)
  - Must be paid in specific bank.

6.6

- \* The relationship between the bank and client can be described as a debtor-creditor relationship
- \* If the bank allocates overdraft facilities and the client uses it by means of cheques, the bank becomes the creditor and the client debtor
- \* The bank undertakes to collect all cheques paid into the client's account
- \* Based on service rendering and mutual trust
- \* If cheque is stolen it becomes the client's risk.
- \* If cheque is forged, it is the bank's risk

5x2=(10)  
[50]

### QUESTION 7 CLOSE CORPORATION / LIENS

7.1

- \* An Agreement of cooperation ought to be used to arrange the mutual relationships among members. üü
- \* A Close Corporation offers limited liability to its members.
- \* But members can be severally and jointly liable for the debts of the corporation towards third parties.
- \* Each member must prevent clashes between personal interest and that of the Close Corporation.
- \* He may not compete for business with the Close Corporation.
- \* Each member must act honestly and in good faith.
- \* Each member who acts in such a manner that the CC is harmed, will be liable for any losses incurred by the CC.

5x2=(10)

7.2

7.2.1 Founding Statement üü

7.2.2 1 and 10 üü

7.2.3 Cooperation agreement üü

3x2=(6)

7.3

- Deregistration ü

- \* Means the cancellation of the registration üü
- \* Registrar believes the CC is not in business
- \* Written statement signed by all members stating CC is no longer in business

- Liquidation of a CCü

- \* Assets are sold on auction üü
- \* Paying the creditors with the output

2x5=(10)

7.4

7.4.1

- It must be legal possession. ü

- \* Implies physical control üü
- \* With the intention of holding the property for personal benefit.

- The possession must be uninterrupted.

- \* If he parts with the property voluntarily, the lien thereon is not revived.

2x3=(6)



## 7.4.2

- If the property is taken from his possession in an unlawful manner, e.g. theft, he does not lose his right. ÜÜ
- If he gives up the property to the insolvent's trustee. 2x2=(4)

## 7.4.3

- \* A building contractor who locks up a completed building and keeps the key exercises sufficient control. ÜÜ
- \* It is essential for the building contractor to exercise continual control over the building under construction.
- \* His own workmen's presence every day is sufficient proof of his possession.
- \* Absence during the night does not relieve him of his possession.
- \* If building has to be ceased, it must be fenced,
- \* Because a notice to the effect that trespassers will be prosecuted is insufficient. 3x2=(6)

## 7.5

7.5.1 Debtor and Creditor lien ÜÜ

7.5.2 Improvement lien

7.5.3 Salvage lien

7.5.4 Debtor and creditor lien 4x2=(8)**[50]**

### QUESTION 8 SURETYSHIP / PARTNERSHIP / WILLS

## 8.1

- For the existence of suretyship, it is essential that a valid principal debt exists. ÜÜ
- to which the surety's obligation is accessory.
- If the principal debt, therefore, expires, the surety will also be terminated.
- The surety's liability does not **replace** the liability of the debtor, but merely **strengthens it**.
- The principal debt does not already have to exist at concluding of the contract of suretyship.
- It can come into existence later, for example when someone stands surety for the conduct, honesty of another person.
- The surety will be liable for a smaller amount 5x2=(10)

## 8.2

- \* Benefit of excursion. ÜÜ
- \* Benefit of division
- \* Benefit of cession of action 3x2=(6)

## 8.3

- When the debt has been extinguished by payment, merger. ÜÜ
- Expiry of the agreed period.
- Where the surety retains the right to terminate the contract.
- Where debtor offers payment, but creditor refuses it, and the debtor then becomes insolvent. 4x2=(8)

- 8.4
- \* Right to share in profits üü
  - \* Right of control
  - \* Right to compensation
  - \* Right to division of assets at dissolution
  - \* Right to inspection of books. 4x2=(8)
- 8.5
- Mutual agreement üü
  - Lapse of the period for which the partnership has been formed
  - Completion of the business
  - Death of one of the partners
  - Change in the membership
  - Insolvency of the partnership
  - \* Notice of dissolution
  - \* An order of Court
  - \* The disappearance of a partner.
  - \* The incapacity, owing to a long illness.
  - \* Mental disorder of a partner.
  - \* Unbearable disputes. 5x2=(10)
- 8.6
- Witness to a will and spouse. üü
  - Nominee and spouse.
  - Any beneficiaries.
  - Bloodhand 3x2=(6)
- 8.7
- Codicilüü
  - Where the testator drew up a new testament. ü
  - Destruction, e.g. burn, tears it up. ü 1x2=(2)
- [50]**

### QUESTION 9 INSOLVENCY

- 9.1
- 9.1.1
- The creditor has established his claim. üü
  - The debtor is insolvent or has committed an act of insolvency.
  - There is reason to believe that it will be to the advantage of the creditors. 3x2=(6)
- 9.1.2
- At the same time a so-called **rule nisi** must be issued by which üü
  - the debtor is directed to state reasons, on a day stated in the order,
  - why his estate must not be finally sequestrated. 2x2=(4)

9.1.3

- Section 16 of the act provides that the debtor must receive notice of the final order.
- In terms of section 17 the Registrar must send copies of a sequestration order to:
  - the master
  - deputy sheriff in every district where the insolvent lives or conducts business.
  - every official who has goods of the insolvent under his attachment,
  - every Registrar of Deeds and,
  - every person in control of a registry of shipping.
  - The Master must also give notice of the order in the Government Gazette.

5x2=(10)

9.2

- \* Section 21 of the Insolvency Act provides that the insolvent’s spouse’s estate also settles in the master until a curator is appointed.
- \* The purpose of this provision is to prevent that the debtor carries over his assets to his spouse before sequestration.
- \* The solvent spouse can apply to the court for a 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 and
  - \* he/she is prepared and able to make arrangements to secure the interests 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 valid against the insolvent’s creditors.

6x2=(12)

9.3

- 9.3.1 Master
- 9.3.2 First meeting
- 9.3.3 Government Gazette
- 9.3.4 Value of the claim
- 9.3.5 Certificate of appointment

5x2=(10)

9.4

- 9.4.1 To pay their debts within a specified period
- 9.4.2 In the name of the insolvent estate.
- 9.4.3 Second
- 9.4.4 Liquidation account
- Plan of distribution

5x2=(10)

[50]

**TOTAL: 300**