

GAUTENG DEPARTMENT OF EDUCATION
SENIOR CERTIFICATE EXAMINATION

MERCANTILE LAW SG

TIME: 3 hours

MARKS: 300

INSTRUCTIONS:

- Answer Question 1 (COMPULSORY) and any FIVE other questions.
 - Only the first SIX questions will be marked.
 - Plan the length of your answers according to the marks allocated to each question. Make sure that your answers are neatly and systematically arranged.
 - Answer all the questions in your answer book and not on the question paper.
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**QUESTION 1
COMPULSORY**

- 1.1 Fill in the missing word/s and write them next to the question number in your answer book.
- 1.1.1 A partnership agreement doesn't have to be in writing. It can also be done _____ or even through _____.
- 1.1.2 A company has an unlimited existence, and it will only cease to continue when it is _____ according to the Companies Act.
- 1.1.3 The _____ of a Close Corporation implies the cancellation of the registration of the founding statement.
- 1.1.4 _____ is the transfer of rights from one person to another.
- 1.1.5 A/An _____ is an agent that has authority to sell goods on a public auction.
- 1.1.6 Suretyship is the agreement between the surety and the _____.
- 1.1.7 Examples of personal security that creditors can use to protect themselves against bad debt is _____, _____ and _____.
- 1.1.8 To determine to what extent the principal is liable for the wrongful acts of the agent, one must establish whether the agent acted as _____ of the principal or as _____.

(12)

- 1.2 Indicate whether the following statements are TRUE or FALSE. If it is false, write FALSE and give the correct answer only for the **underlined** word(s).
- 1.2.1 Possession is essential for a valid lien and must be uninterrupted.
- 1.2.2 The order of preference under a covering bond depends on the date of the debt.
- 1.2.3 The insolvent estate is divided into two groups, namely the specially-secured portion and mortgages.
- 1.2.4 In a joint will the testators are reciprocally benefited.
- 1.2.5 The pledgee is the person who receives payment from a cheque.
- 1.2.6 A Commanditaire partner is under no circumstances liable for an amount larger than the contributed amount.
- 1.2.7 The Certificate to commence business is evidence that the company complies with all the registration requirements of the Companies Act.
- 1.2.8 A tenant may dismantle and remove necessary improvements at the termination of the lease contract.
- 1.2.9 A factor is an agent that takes goods under his control and sells them under his own name.
- 1.2.10 When the officer in charge fails to find sufficient disposable property to satisfy the judgement against the debtor, this is an act of insolvency.

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- 1.3 Match the description in **Column B** to the Latin term in **Column A**. Write down the appropriate letter next to the question number in your answer book, (e.g. 1.3.7 H).

COLUMN A		COLUMN B	
1.3.1	Delegatus non potest delegare	A.	Good faith
1.3.2	Estoppel	B.	Agent must perform his duties in person. He may not delegate his duties.
1.3.3	Vis major	C.	Act of God
1.3.4	Negotiorum Gestor	D.	Conduct
1.3.5	Uberrimae fides	E.	The benefit of division
1.3.6	Beneficium divisionis	F.	A person who on his own, without authorisation, acts on behalf of an absent person to safeguard his property against destruction.
		G.	By ratification

(12)
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QUESTION 2 PARTNERSHIPS

- 2.1 The following is a list of **characteristics** of different forms of ownership. Identify only the characteristics of **partnerships** and write them down in your answer book.
- 1-10 natural persons
 - 2-20 persons
 - Name ends with Pty. Ltd.
 - Contributions can be capital and labour
 - Usually has two directors
 - The object is making a profit
 - Has an unlimited existence
 - Has members and not shareholders
- (6)
- 2.2 Explain the **anonymous** partner. (8)
- 2.3 “Every partner has a right to share in the **profit**”. Explain this statement. (8)
- 2.4 Explain the partner’s duty of **good faith** AND name **TWO other duties** of partners. (12)
- 2.5 Name **THREE** reasons why a **court** would terminate a partnership. (6)

- 2.6 Fill in the **missing word(s)** and write them down next to the question number in your answer book.
- 2.6.1 The purpose of a _____ is for partners to insure one another's lives and to compensate the remaining partners for loss as a result of death or retirement of one of the partners.
- 2.6.2 All partners are _____ and _____ liable for debts.
- 2.6.3 When partners in a butchery business buy stud horses in the name of the business, they don't have _____ to do so.
- 2.6.4 Where there is no agreement concerning the division of losses in the partnership, the general rule is that _____. (5)
- 2.7 A written **partnership agreement** contains certain aspects for running a partnership. State FIVE matters which may possibly appear in a partnership agreement. (5)
- [50]

QUESTION 3
COMPANIES ACT / CLOSE CORPORATIONS

- 3.1 Identify the following **forms** of ownership:
- 3.1.1 Majowi CC
- 3.1.2 Takalani Industrial Supplies (Pty.) Ltd.
- 3.1.3 Sweets and Company Ltd. (6)
- 3.2 Answer the following questions in connection with the **forms of ownership**.
- 3.2.1 What is the **possibility of continuity** of a close corporation and a public company respectively? (2)
- 3.2.2 What is the most **important document** of a close corporation and a company respectively? (2)
- 3.3 Discuss THREE aspects the promoters are responsible for during **floatation** of a company. (6)
- 3.4 What does the word **limited** mean at the end of the name of a public company? (2)
- 3.5 Name THREE differences between a company and a natural person. (6)
- 3.6 Name FOUR characteristics of a close corporation. (8)

- 3.7 At formation of a close corporation, certain documents must be submitted to the Registrar of close corporations. Name TWO such documents. (4)
- 3.8 Name TWO **rights** of the members of a close corporation. (4)
- 3.9 Explain the **dissolution** of a close corporation. (10)
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QUESTION 4
LEASE OF IMMOVABLE PROPERTY

- 4.1 Read the following piece of information, then answer the question that follows.
- John Black leases a house, 5 Salem Street, Johannesburg, to Bo Brady. Both parties signed the written contract of lease for a period of two years. Rental of R3 000-00 is payable monthly.
- 4.1.1 Does this contract comply with the **requirements** for the existence of contracts of lease? Substantiate your answer. (6)
- 4.2 Fill in the missing word(s) and write them down next to the question number in your answer book.
- 4.2.1 A contract of lease for 10 years or longer, for lease of land, must be done in writing and must be _____.
- 4.2.2 In an annual contract of lease _____ (period) notice must be given to terminate the contract.
- 4.2.3 The landlord's right to terminate the contract of lease if the tenant fails to pay rent is known as _____.
- 4.2.4 _____ is determined by the Rent Tribunal (Rent Board) and is determined in relation to the value of the property. (4)
- 4.3 Explain the following terms:
- 4.3.1 Statutory tenant (4)
- 4.3.2 Necessary improvements (6)
- 4.3.3 "Hire goes before sale" (Huur gaat voor koop) (6)
- 4.4 What is the **purpose** of the Rent Control Act (Rental Housing Act)? (4)
- 4.5 Discuss the **steps** a tenant can take where a landlord fails to do repairs to the property. (6)
- 4.6 Explain the **duty** of the landlord to ensure the tenant's undisturbed use and enjoyment of the leased property. (6)

- 4.7 List FOUR reasons for the termination of lease contracts. (8)
[50]

QUESTION 5
AGENCY

- 5.1 Sally employs Macy as agent. On which THREE aspects must they agree before they can sign the contract of agency? (6)
- 5.2 Name TWO examples of contracts of agency that were concluded through conduct. (4)
- 5.3 Match the description in **Column B** to the term in **Column A**. Write down only the question number and the matching letter (e.g. 5.3.8 K) in your answer book.

COLUMN A		COLUMN B	
5.3.1	Principal	A.	Has authority to sell goods on behalf of the principal and to guarantee that the clients will pay.
5.3.2	Independent contractor	B.	Is liable for the wrongful acts of his agent when he authorised the deeds.
5.3.3	Del credere-agent	C	Uses his own discretion when he performs his mandate.
5.3.4	Estate agent	D.	Acts on behalf of other persons in buying or selling, renting or leasing of immovable property.
5.3.5	Brokerage	E.	Commission of a broker
5.3.6	Without reserve	F.	Goods are sold for the highest bid.
5.3.7	Negotiorum gestor	G.	Someone who, on his own account, safeguards another person's property from damage
		H.	May not sell at a lower price

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- 5.4 Discuss the duty of the principal to pay the agents' **promised commission** as determined in the agreement. (8)
- 5.5 Name TWO cases where the agent is permitted to appoint sub-agents. (4)
- 5.6 Name FOUR ways in which a contract of agency can be terminated. (8)
- 5.7 Discuss the agent's duty to **account for his transactions**. (6)
[50]

QUESTION 6
SURETY / LIENS

- 6.1 Choose the correct answer from the given possible answers.
Write down only the appropriate **letter** next to the **question number** in your answer book.
- 6.1.1 Arises as soon as the surety demands from the creditor that steps be taken against the principle debtor first.
- A. Beneficium Excussionis
 - B. Beneficium Divisionis
 - C. Beneficium Cedendarum Actionum
 - D. Beneficium Domicilia
- 6.1.2 Before a contract of surety can be concluded, there must be a/an _____.
- A. personal remedy, e.g. a minor
 - B. insolvent debtor
 - C. principal debt
 - D. co-surety
- 6.1.3 A co-surety is _____.
- A. a surety for a surety
 - B. jointly and severally liable
 - C. abroad or insolvent
 - D. also a co-principal debtor
- 6.1.4 Expenses made without permission for the reparation of property, which were absolutely essential for the maintenance or preservation of the property, is an example of a/an _____.
- A. debtor-creditor lien
 - B. salvage lien
 - C. improvement lien
 - D. preservation lien
- 6.1.5 Expenses intended to increase the value of the property, is an example of a/an _____.
- A. debtor-creditor lien
 - B. salvage lien
 - C. improvement lien
 - D. preservation lien
- 6.2 Name THREE formalities for the existence of a contract of surety. (10)
- 6.3 Explain the surety's right of **Beneficium Divisionis**. (6)
- 6.3 Explain the surety's right of **Beneficium Divisionis**. (8)

- 6.4 Name TWO reasons why a contract of surety will be terminated. (4)
- 6.5 Explain TWO conditions for the existence of a debtor-creditor lien. (4)
- 6.6 State TWO **differences** between a debtor-creditor lien and an enrichment lien. (4)
- 6.7 Explain the role **possession** plays in the case of liens under the following headings:
- 6.7.1 TWO requirements (4)
- 6.7.2 TWO cases where the creditor will not forfeit his lien when the property is taken from him (4)
- 6.7.3 Example of a building contractor (6)
- [50]**

QUESTION 7 PLEDGES AND MORTGAGES

- 7.1 State whether the following statements are TRUE or FALSE. If the answer is **false**, give the **correct** term or word for the **underlined** word(s).
- 7.1.1 A covering bond is formed by an order of court.
- 7.1.2 A special bond covers a future advance.
- 7.1.3 Delivery is absolutely essential for pledges.
- 7.1.4 A mortgage bond is a right a creditor obtains over the immovable property of the debtor. (10)
- 7.2 Name TWO differences between pledges and mortgages. (4)
- 7.3 Discuss the **formalities** in the formation of a **special bond** on immovable property. (10)
- 7.4 Fill in the missing word(s). Write the answer next to the question number in your answer book.
- 7.4.1 A _____ is granted by a buyer of immovable property, if he does not possess sufficient capital, in favour of the seller who advanced him the money.
- 7.4.2 A _____ is a written document which is drawn up by a conveyancer and must be registered. (2)

- 7.5 Answer the following questions on **mortgage bonds**:
- 7.5.1 How is a bond formed **without agreement**, merely on the grounds of special circumstances which exist between the creditor and the debtor? (2)
- 7.5.2 Name THREE examples of bonds formed in this way. (6)
- 7.6 Identify the type of **special clauses** in a mortgage bond in the following cases:
- 7.6.1 The bond will stipulate the maximum rates that can be levied and it must not be contrary to the law.
- 7.6.2 It gives the mortgagee the right to cancel the bond and to call up the capital sum with interest after due notice. (4)
- 7.7 Name in full sentences, SIX **reasons** for the termination of pledges and mortgages. (12)
[50]

QUESTION 8 INSOLVENCY

- 8.1 Give ONE **word** for each of the following descriptions. Write each word down next to the question number in your answer book.
- 8.1.1 When a person is no longer in a position to pay his debts and his liabilities exceed his assets
- 8.1.2 On an order of the Supreme Court, all the insolvent's assets are taken away from him and placed under the control of a trustee
- 8.1.3 According to this document a debtor is called upon to appear in court on a specific day and to give reasons why his/her estate should not be finally sequestered.
- 8.1.4 When a debtor himself applies to the court for the sequestration of his/her own estate which will be in favour of all his/her creditors
- 8.1.5 When the assets of an insolvent person are sold on a public auction to pay the creditors (10)
- 8.2 Explain the **separate estate** of the insolvent's spouse (husband of wife). (10)
- 8.3 The master must convene the **first meeting** of creditors of an insolvent estate. What potential opportunity exists at such a meeting? (6)
- 8.4 Name FOUR persons that are incapable of acting as a curator. (4)

- 8.5 Name FIVE duties of a curator. (10)
- 8.6 Answer the following questions on the **statement of affairs**.
- 8.6.1 Give a **description** of a statement of affairs. (4)
- 8.6.2 Name THREE **annexures** to the statement of affairs. (6)
- [50]**

QUESTION 9
WILLS / NEGOTIABLE DOCUMENTS

- 9.1 Match the description in **Column B** to the term or concept in **Column A**. Write down only the question number and the matching letter (e.g. 9.1.8 G) in your answer book.

COLUMN A		COLUMN B	
9.1.1	Codicil	A.	Names the executor
9.1.2	At 14 years of age	B.	Making an existing will void
9.1.3	At 16 years of age	C.	Schedule or annexure to an existing will which is made to augment or amend it
9.1.4	Murderer	D.	Witness to a will
9.1.5	Revocation	E.	May not benefit from a will
9.1.6	Will	F.	Capable of making a will

(12)

- 9.2 Fill in the missing word and write it next to the question number in your answer book.
- 9.2.1 The executor has a duty to account to the (a) about the conducting of his instructions and at the same time he has a responsibility towards the (b). (2)
- 9.3 Name THREE formalities in the formation of a will. (6)
- 9.4 Choose the correct answer from the given possible answers. Write down only the appropriate **letter** next to the **question number** in your answer book.
- 9.4.1 There is a similarity between a company and a natural person concerning their _____.
- A. continuity
B. legal personality
C. physical appearance
D. None of the above.

- 9.4.2 The articles of association contain among other items the following information:
- (i) Name of the company
 - (ii) Main objectives of the company
 - (iii) Notices of meetings
 - (iv) Remuneration of directors
 - (v) Procedure when transferring shares
- A. (i) and (ii)
 - B. (ii), (iii) and (iv)
 - C. (iii), (iv) and (v)
 - D. All of the above. (4)
- 9.5 Explain the reference to **Table A** and **Table B** with regard to companies. (4)
- 9.6 Name THREE restrictions on the name of a company. (6)
- 9.7 Give ONE **word** for each of the following descriptions. Write the word next to the question number in your answer book.
- 9.7.1 An unconditional written instruction by a person, given to his bank, to pay on demand a sum of money to a specified person
- 9.7.2 Two parallel lines across the face of a cheque (4)
- 9.8 Answer the following questions with regard to the CHEQUE below:
- 9.8.1 Name THREE **reasons** why the bank would dishonour this cheque. (6)
- 9.8.2 What is the difference between the terms **not transferable** and **not negotiable**? (4)
- 9.8.3 Who is the **drawee** of this cheque? (2)

Not negotiable	BOB BANK	23 October 2008 November of toonder of order
Pay	Betaal <u>N. O. BODY</u>	R 210 -----00
Bedrag van	<u>TWO HUNDRED RAND ONLY</u>	
Amount of		
1234-5678-90987		BRADY BLACK

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TOTAL: 300

END