

GAUTENG DEPARTMENT OF EDUCATION
SENIOR CERTIFICATE EXAMINATION

MERCANTILE LAW SG

FEB / MAR 2006

TIME: 3 hours

MARKS: 300

INSTRUCTIONS:

- Question 1 is **compulsory**.
 - Answer any FIVE questions from Questions 2 to 9.
 - Do not answer more than SIX questions. If you answer more, only the first six questions will be marked.
 - Plan the length of your answers according to the marks allocated to each question.
 - Number each question in accordance with the numbering system used in this question paper.
 - Please ensure that your answers are neatly and systematically arranged.
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**QUESTION 1
COMPULSORY**

Complete each of the following sentences by filling in the missing word(s). Write your answers next to each question number.

- 1.1 Partners generally take an active part in the management of the partnership and are fully, i.e. _____ and _____, responsible for all the debts of the partnership.
- 1.2 A company is an independent bearer of rights and duties, because it possesses _____.
- 1.3 If a partner exceeds his authority by concluding an agreement on behalf of the partnership with a third party, who is not aware of this limitation, the _____ will be bound.
- 1.4 If the Registrar of Companies is satisfied that all the requirements have been fulfilled the Registrar will enter the _____ of the company in his register and issue a certificate of incorporation. The company thus comes into existence, in that the Registrar, on the _____ and on the _____ certifies that the company is incorporated.

- 1.5 According to the Companies Act, only public companies may offer shares in a _____.
- 1.6 During 1984 a form of corporate body with legal personality namely the Close Corporation was legislated under Act _____ of 1984.
- 1.7 The _____ serves as the charter of the Close Corporation. This document must be drawn up in the prescribed form. (20)

State whether the following statements are TRUE or FALSE. If the answer is FALSE, correct that part of the statement, which is in bold.

- 1.8 If a lease has expired and a tenant continues to occupy a property in person, he/she is regarded as a **squatter**.
- 1.9 A **broker** is an agent authorized to sell goods at a public auction.
- 1.10 A **written authority** is required for the institution of a legal action in court.
- 1.11 Delegatus non protest delegare means that **the agent may appoint other persons to do what he has undertaken**. (10)

Match the descriptions listed in **Column B** with the correct terms listed in **Column A**. Write down the number of each term in **Column A** one below the other and next to it the letter of the corresponding answer from **Column B** (Example 1.22 = P).

Column A	Column B
1.12 Suretyship	A. Crossing a cheque means an addition on the face of a cheque
1.13 Pledges	B. Two parallel transverse lines across the face of the cheque without any words between them
1.14 Enrichment liens	C. There is a form of personal security, which creditors use to protect themselves against the possibility of bad debts
1.15 Incorporeal rights	D. Takes place where one or more creditors apply for the sequestration of a debtor's estate
1.16 Voluntary surrender	E. It is often considered to be an independent will in a small format
1.17 Rehabilitation	F. It is right to retain possession of that property until the necessary expenses, which have been incurred bona fide, are paid to him

1.18	Statement of affairs	G. An application by the debtor himself for the sequestration of his own estate
1.19	Intestate succession	H. Are pledged by means of cession
1.20	Legal mortgages	I. A contract in terms of which one person obtains a real right over the moveable property of another, with the object of securing the obligation
1.21	General crossing	J. Is the termination of insolvency
		K. If a person dies without a will, succession takes place in accordance with common law
		L. The sheriff of the Court attaches the property of a debtor in execution of a Court decision.
		M. A will made by two or more persons
		N. Takes the form of a balance sheet of the insolvent and shows the deficiency

10x2=(20)
[50]

QUESTION 5 WILLS / INSOLVENCY

2.1 State whether the following statements are TRUE or FALSE. If the answer is FALSE, correct that part of the statement, which is in bold.

2.1.1 A will and a **reciprocal will** are considered to be the same thing.

2.1.2 Immediately after the issue of the **letter of appointment**, the executor must take into custody all goods, books or documents of the deceased.

2.1.3 If the **estate is solvent**, the executor goes ahead with the planning for liquidation.

2.1.4 Legally all persons **14 years** and older, are able to act as witness at the making of a will.

2.1.5 A **joint will** is a will made by two or more persons; they need not necessarily be married.

(12)

2.2 Explain the **completion** of the administrative process of a deceased estate.

(10)

2.3 Complete the following formalities in the formation of a will:

2.3.1 Since 1954 every will must be in _____.

2.3.2 To eliminate any uncertainty and fraud, it is safest to sign the will immediately after the _____ thereof.

2.3.3 The _____ witnesses must _____ and sign the will.

2.3.4 Where the testator signs the will by means of a _____, a _____ must certify that the will is that of the testator concerned. (6)

2.4 Sequestration has the effect of disposing the insolvent of his/her estate and placing it under the control of a Master. State FIVE assets which do not form part of an insolvent's sequestrated estate. (10)

2.5 Explain the following terms:

2.5.1 Insolvency (4)

2.5.2 Sequestration (4)

2.5.3 Liquidation (4)

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QUESTION 3 PARTNERSHIPS / PLEDGES AND MORTGAGES

3.1 Name the kind of partner in each of the following cases:

3.1.1 This partner loses his protection only if he holds himself out publicly as an ordinary partner or is presented as an ordinary partner.

3.1.2 This partner takes an active part in the management of the partnership.

3.1.3 Where the partners intend that all they may acquire during the existence of the partnership shall be partnership property.

3.1.4 In the event of the insolvency of the partnership, each partner is obliged to contribute additionally from his private possession.

3.1.5 This partnership is constituted when two or more persons enter into a partnership in the name of only one of the persons.

3.1.6 This partner contributes only a specific sum to the partnership and under no circumstances is he liable for an amount larger than the contributed amount. (6)

- 3.2 Explain the promotion of common interest in a partnership. (8)
- 3.3 You wish to raise a loan and you offer the lender of the money your radio as pledge and a mortgage upon your house as security. Set out briefly the formalities which must be complied with in order to effect the
- 3.3.1 pledge. (8)
- 3.3.2 mortgage. (12)
- 3.4 Explain the following concepts / terms:
- 3.4.1 Legal mortgages (4)
- 3.4.2 Interest as a special clause in a mortgage bond (4)
- 3.5 Explain the termination of mortgages and pledges under the following headings:
- 3.5.1 Merger (2)
- 3.5.2 Prescription (2)
- 3.5.3 Destruction of mortgaged property (2)
- 3.5.4 Discharge of principal debt (2)
- [50]**

QUESTION 4 COMPANY LAW

- 4.1 The Companies Act, No. 61 of 1973 makes provision for the creation of different kinds of companies. Name the TWO kinds of companies, and the provision of capital. (4)
- 4.2 Explain what must be included in the flotation (creation) of a company. (8)
- 4.3 Explain the following documents:
- 4.3.1 Memorandum of association (4)
- 4.3.2 Articles of association (4)
- 4.3.3 Prospectus (4)
- 4.4 Explain the consequences of untrue statements in the prospectus regarding civil liability. (8)
- 4.5 Discuss the name of a public company under the following headings:
- 4.5.1 Explanatory notes on the name (10)
- 4.5.2 Change of name (4)
- 4.6 State the TWO most important requirements a company must comply with before a certificate of incorporation may be issued. (4)
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QUESTION 5
LEASE OF IMMOVABLE PROPERTY

- 5.1 Explain how the rights of the tenant are affected by the insolvency of the landlord. (6)
- 5.2 State the THREE legal remedies a tenant may apply if the landlord fails to effect the necessary repairs. (6)
- 5.3 Write down only the missing parts:
- 5.3.1 The landlord must compensate the tenant for loss sustained as a result of defects in the property, for example, a roof that leaks. However, it is essential that _____.
- 5.3.2 The _____ himself must pay all rates levied on the property by the state or local authority; unless the parties have expressly agreed that the _____ will pay the rates.
- 5.3.3 A _____ 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 on due date.
- 5.3.4 A long-term lease (lease of 10 years and longer) has to be in _____ and has to be _____.
- 5.3.5 A reasonable rent is a rent fixed by the _____. (10)
- 5.4 Discuss the implied duty a landlord has to recognize the tenant's right to sublet under the following headings:
- 5.4.1 Description of the term **subletting** (4)
- 5.4.2 Conditions to subletting (4)
- 5.4.3 Cession of a contract of lease (4)
- 5.5 State THREE implied duties of a tenant. (6)
- 5.6 State in full sentences, FIVE reasons for the termination of leases. (10)
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QUESTION 6
AGENCY / NEGOTIABLE DOCUMENTS

- 6.1 State FOUR ways in which an agreement between a principal and an agent may be formed. (4)
- 6.2 Discuss an agent's duty of **good faith** towards the principal. (10)

- 6.3 Discuss the **negotiorum gestor** under the following headings:
- 6.3.1 Definition (4)
 - 6.3.2 Remuneration (4)
 - 6.3.3 One example (2)
- 6.4 Explain the following duty of the principal, "payment of promised commission". (10)
- 6.5 Explain briefly TWO kinds of crossings of cheques. (6)
- 6.6 What is the relationship between banker and client in the case of cheques? (10)

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QUESTION 7
CLOSE CORPORATION / LIENS

- 7.1 Explain a member's liability of a Close Corporation towards the debts of third parties. (10)
- 7.2 Write down only the missing word(s) next to the number of each question.
- 7.2.1 This document _____ serves as the charter of the Close Corporation.
 - 7.2.2 A Close Corporation consists of a minimum of _____ and a maximum of _____ members.
 - 7.2.3 The internal relationship between members and the Close Corporation are entered by a written _____. (6)
- 7.3 Explain TWO reasons for the dissolution of a Close Corporation. (10)
- 7.4 Discuss the part played by possession in liens under the following headings:
- 7.4.1 The two requirements (6)
 - 7.4.2 Two cases when the holder will not lose the lien (4)
 - 7.4.3 Exercise of control by the building contractor (6)
- 7.5 Name the kind of lien in each of the following cases:
- 7.5.1 A building contractor upon the building he/she has repaired or built, for the contract-price
 - 7.5.2 The sinking of a bore-hole on a farm to provide water for animals or private use, without permission

- 7.5.3 The care of perishable goods where the addressee resides at a distant place, and cannot take immediate delivery
- 7.5.4 An attorney, lawyer has liens on the documents prepared by them, for their fees and expenses (8)
[50]

QUESTION 8
SURETYSHIP / PARTNERSHIP / WILLS

- 8.1 Explain the validity of the **principal debt** under the surety contract. (10)
- 8.2 Name the THREE common law privileges that are provided to a surety. (6)
- 8.3 State FOUR ways in which a suretyship contract is terminated. (8)
- 8.4 Every partner has rights relative to his co-partners. Name FOUR of these rights. (8)
- 8.5 List, in full sentences, any FIVE reasons for the dissolution of partnerships. (10)
- 8.6 Describe those who may **not** benefit under a will. (6)
- 8.7 Name TWO methods of revocation of a will. (2)
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QUESTION 9
INSOLVENCY

- 9.1 Explain the process of compulsory sequestration under the following headings:
- 9.1.1 Provisional order of sequestration (6)
- 9.1.2 Serving of a rule nisi on the debtor (4)
- 9.1.3 Notice of sequestration (8)
- 9.2 Explain the effect of an order sequestration on the property of the solvent spouse. (12)
- 9.3 Choose the correct word in each of the following cases:
- 9.3.1 The (master / trustee) presides as chairman at all meetings of creditors.
- 9.3.2 On receiving a final sequestration order, the Master must immediately convene a (first / second / special) meeting of creditors.

- 9.3.3 The notice of the second meeting must be given in the (Government Gazette / Afrikaans newspaper / an English newspaper).
- 9.3.4 Only creditors who have already proved their claims are entitled to vote. Votes are reckoned according to the (value of the claim / number of votes).
- 9.3.5 On receipt of his (certificate of appointment / executor's letter) the trustee must publish his appointment and address in the Government Gazette. (10)
- 9.4 Complete the following duties of the trustee:
- 9.4.1 In the notification of his appointment, the trustee must call upon all debtors to _____.
- 9.4.2 The trustee must open a banking account in the _____.
- 9.4.3 After the _____ meeting of creditors the trustee must sell the property of the insolvent.
- 9.4.4 The trustee must, within six months from the date of his appointment, submit to the Master a _____ and _____ of the proceeds of the estate property. (10)
- TOTAL: 300**

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