MERCANTILE LAW

STANDARD GRADE

2013

POSSIBLE ANSWERS

MARKS: 300

10 pages.
QUESTION 1 (COMPULSORY)

1.1 True
1.2 False = Silent or commanditaire partner
1.3 True
1.4 False = Certificate of incorporation
1.5 False = Prospectus
1.6 False = Must do the mandate himself
1.7 False = Founding Statement
1.8 False = Forfeiture clause
1.9 True

1.10 Silent partner
1.11 Kustingsbrief
1.12 Drawer
1.13 Act of God
1.14 Joint will
1.15 In writing
1.16 Memorandum of association

1.17 C
1.18 B
1.19 B
1.20 B
1.21 C
1.22 D

True
False = 1=

(24)

(7x2)(14)

(6x2)(12)

[50]
QUESTION 2: WILLS

2.1  2.1.1 Letters of Executorship
     2.1.2 Solvent
     2.1.3 14; 16
     2.1.4 writing
     2.1.5 two
testator
     2.1.6 last stipulation

2.2 – Witness to a will and spouse.
     – Nominee and spouse.
     – Any beneficiaries.
     – Blood hand.

2.3 – Codicil
     – Where the testator drew up a new testament.
     – Destruction, e.g. burns, tears it up.

2.4 – Must take in possession all goods, books or documents.
     – Must render an inventory.
     – Open a banking account in the name of the estate.
     – Publish a notice in the Government Gazette of his appointment.
     – 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.

2.5  2.5.1 – A will is a unilateral, voluntary declaration that,
            – Must be made in prescribed legal manner.
            – In which a person determines what must happen to his
estate after his death.

2.5.2 – The administration of the deceased estate culminates (ends)
in an executor’s report.
     – The executor certifies that the Account is a true and just
account.
     – The administrative process is complete when all liabilities
have been paid and all assets have been transferred to the
inheritors (beneficiaries).
     – The executor is now relieved of his office.

2.5.3 – Person dies without a will
     – Takes place in accordance with common law.
QUESTION 3: PARTNERSHIPS

3.1 – Two to twenty persons agree
     – Expectation of making a profit
     – Capital and/or labour are united
     – Deposited in a joint fund — common property

3.2 – Right to share in profits
     – Right of control
     – Right to compensation
     – Right to division of assets at dissolution
     – Right to inspection of books

3.3 – Each partner has a right to a share in the profits.
     – Stipulated in the agreement.
     – Partners must not be excluded from the division of profits.
     – Divided pro-rata, in proportion to the partner’s contributions.
     – Profits can be divided equally.
     – Are not entitled to interest on capital, or compensation.

3.4 – Partners insure themselves to cover claims against the death or retirement of a partner.
     – The premiums are regarded as an expense against the partnership agreement.

3.5 3.5.1 – No formalities are prescribed for a valid partnership.
     – It can come into existence orally, through writing or even through conduct.
     – It is, however, desirable for partners to bind themselves by
       means of a written contract.

3.5.2 – The period
     – The nature of the business
     – The contributions
     – Withdrawals
     – Interest on withdrawals
     – Salaries or bonuses
     – Management and authority
     – Division of profits and losses
     – Settlement of disputes
     – Procedure at death

3.6 – Mutual agreement
     – 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.
       • Unbearable disputes.
QUESTION 4: COMPANY LAW

4.1 NATURAL PERSON  COMPANY
- Physically perceptible  Imaginary entity
- Rights belong to him  Rights belong to company
- Does his legal action himself  Management body on behalf of company
- Dies sooner or later  Perpetuance by law
- Prison sentence  Only be given a fine.
- Assets belong to him  Assets belong to the company

(4x2)(8)

4.2 A company with share capital, acquires its capital by issuing shares. This type of company has two forms, namely, the public and private company.
- A company without share capital, obtains its funds from donations; known as company limited by guarantee.

(6)

4.3 4.3.1
- Public company end with Limited.
- The name may not be the same as that of a company already registered.
- 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 is registered as a hotel.

(5x2)(10)

4.3.2 A company can change its name by means of a special resolution.
- The Registrar can order a company to change its name if, in his opinion, it is undesirable.

(2x2)(4)

4.3.3 In a legible form outside its office
- Appears on notices, letters, invoices.

(2x2)(4)

4.3.4 The registrar upon written application and payment of prescribed fee
- may reserve a name which he approves for a period of two months.

(2x2)(4)

4.4 The registration requirements have been complied with;
- The company is duly incorporated in accordance with the Act.

(2x2)(4)

4.5 Memorandum of association
- Articles of association
- Notice of registered office
- Written consent to act as director
- Written consent to act as auditor
- Proof of payment of registration money
- Proof of payment of annual subscription

(5x2)(10)

[50]
QUESTION 5: CLOSE CORPORATIONS/PLEDGES AND MORTGAGES

5.1 5.1.1 1 and 10

5.1.2 Cooperation agreement (2x2)(4)

5.2 Deregistration
   – Means the cancellation of the registration
   – Registrar believes the CC is not in business
   – Written statement signed by all members

Liquidation of a CC
   – Assets are sold on auction
   – Paying the creditors' with the output (2x5)(10)
   – A written document, i.e. a mortgage bond.
   – Must be drawn up by a notary public.
   – Contains 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.

5.3

5.4 5.4.1 – The existence of a bond depends on the existence of a valid
   debt.
   – A bond covering a future advance. (2x2)(4)

5.4.2 – Result from an order of court.
   – The sheriff of the court attaches the property of the debtor. (2x2)(4)

5.4.3 – A special kind of mortgage on immovable property.
   – 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. (3x2)(6)

5.5 Discharge of the principal debt.
   – By payment of interest and the insured debt.

Renunciation of rights.
   – Where the pledge or mortgagee gives up his security.

Destruction
   – By total destruction of the burdened object. The mortgage will still
     exist if the building is partly destroyed.

Novation
   – Implies the substitution of a new debt or agreement.

Extinction of mortgagor title
   – Where the pledgee or mortgagor's title in the object ceases to exist.

Merger
   – By merger of debts (i.e. if the pledgee or mortgagee becomes owner
     of the burdened object) — Order of court
   – The object is sold in execution as a result of a court order or
     insolvency of the debtor.

Prescription
   – a mortgage expires after 30 years
   – a pledge after 6 months (4x3)(12)

[50]
QUESTION 6: LEASE OF IMMOBILE PROPERTY

6.1 LANDLORD
- Placing of leased property at disposal of tenant.
- Warranty against interference in property.
- Implementation of all necessary repairs to property.
- Compensation for defects in property.
- Paying of rates and taxes levies on property.
- Recognition of tenant's rights to sublet property.
- Compensation for improvements. (5x2)(10)

6.2 - 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)

6.3 6.3.1 Must have been aware of the defect
6.3.2 writing/registration (2x2)(4)

6.4 - A return of % on the value of the building.
- A return of % on the value of the ground.
- The amount paid in respect of rates.
- Amount in respect of furniture, linen used.
- Premiums paid in respect of house and furniture insurance.
- Amount in respect of collection fees.
- Amount paid as wages to the caretaker.
- Amount paid for the provision of water and electricity. (5x2)(10)

6.5 6.5.1 - Rent fixed by the rent board.
- After all circumstances have been taken into account (2x2)(4)
6.5.2 - If the lease contract is terminated as a result of passage of time or notice by the landlord he becomes a statutory tenant, personally living on rented property (2)
6.5.3 - Unless the parties agree otherwise, the tenant has the right to sublet.
- Rural properties may not be subleased without the written consent of the landlord.
- He may sublet an urban property without permission (2x2)(4)

6.6 - By the expiry of time e.g. one year.
- By notice given by either of the parties
- By mutual agreement between landlord and tenant
- By merger of the tenant and the landlord
- 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. (10) [50]
QUESTION 7: AGENCY/NEGOTIABLE DOCUMENTS

7.1 – By express authority
   – By operation of the law
   – By conduct
   – By ratification

7.2 – Principal must pay the agent the promised remuneration, in terms of the agreement or by custom.
   – The agent is entitled to a reasonable remuneration.
   – 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

7.3 – To perform his mandate (instructions)
   • Obedience to his principal’s instructions
   • Performance of mandate in person
   – To exercise care, skill and diligence
   – Duty of good faith
   – The duty to account to the principal

7.4 – Factor
   – Broker
   – Del credere agent
   – Estate agent
   – Auctioneer

7.5 – Legal action in the higher court.
   – Transfer of land.
   – Registration of land.
   – Buying or selling of ground on behalf of principal.

7.6 General crossing
   – 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.
     Must be paid in specific bank.

7.7 Material alterations – According to the Bills Act 2001, no altered cheques will be accepted by banks, even if they are signed.
   Non-material alterations – changing into an order cheque or by crossing it.
QUESTION 8: LIENS/SURETYSHIP

8.1  
8.1.1  
– It must be legal possession.
– The possession must be uninterrupted.  

8.1.2  
– If the property is taken from his possession in an unlawful manner.
– If he gives up the property to the insolvent's trustee.  

8.1.3  
– A building contractor who locks up a completed building and keeps the key exercises sufficient control.
– It is essential for the building contractor to exercise continual control over the building under construction.
– His own or his workmen's presence every day is sufficient proof of his possession.
– Absence during the night does not reprieve him of his possession.
– If the building has to be ceased, it must be fenced,
– Because a notice to the effect that trespassers will be prosecuted is insufficient.  

8.2  
Improvement lien
– Construction of building on land
– Construction of fences on farm
– Construction of a dam on a farm
– The sinking of a borehole

Salvage lien
– Essential repairs on the repair of another's property.
– Payment of premiums in order to keep up an insurance policy.
– Feeding of animals belonging to another person.
– Take care of perishable goods – cannot take immediate delivery.
– Any other correct example  

8.3  
– For the existence of suretyship, it is essential that a valid principal debt exists.
– 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 when concluding the contract of suretyship.
– It can come into existence later, for example when someone stands surety for the conduct or honesty of another person.  

8.4  
– Benefit of excussion
– Benefit of division
– Benefit of cession of action  

8.5  
– When the debt has been extinguished by payment, merger.
– Expiry of the agreed period.
– Where the surety retains the right to terminate the contract.
– Where the debtor offers payment, but the creditor refuses it, and the debtor then becomes insolvent.
QUESTION 9: INSOLVENCY

9.1 9.1.1  – 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.  

9.1.2  – At the same time a so-called rule nisi must be issued by which
– the debtor is directed to state reasons, on a day stated in the order,
– why his estate must not be finally sequestrated.

9.2 The solvent spouse can apply to the court for an exemption:
– 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.

9.3 9.3.1 Master

9.3.2 First meeting

9.3.3 Value of the claim

9.4  – Compensation by reason of personal injury or defamation
– A pension 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.

9.5 9.5.1 – Person who is no longer in a position to pay his debts
– His liabilities exceed his assets.

9.5.2 – The assets of the insolvent are sold at an auction
– in order to pay creditors.

9.5.3 – Divided into two portions namely specially-secured portion and free residue

9.5.4 – Takes on the form of a balance sheet
– Shows assets and deficiency

[50]

TOTAL: 300

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