



higher education & training

Department:
Higher Education and Training
REPUBLIC OF SOUTH AFRICA

N990(E)(J11)H

NATIONAL CERTIFICATE

LEGAL PRACTICE N6

(13030126)

11 June 2019 (X-Paper)
09:00–12:00

This question paper consists of 13 pages and 1 addendum.

DEPARTMENT OF HIGHER EDUCATION AND TRAINING
REPUBLIC OF SOUTH AFRICA
NATIONAL CERTIFICATE
LEGAL PRACTICE N6
TIME: 3 HOURS
MARKS: 200

NOTE: If you answer more than the required FIVE questions in SECTION B, only the first five will be marked. Clearly cross out ALL work you do NOT want to be marked.

INSTRUCTIONS AND INFORMATION

1. SECTION A is COMPULSORY and must be answered by ALL the candidates.
 2. Answer any FIVE questions from SECTION B.
 3. Read ALL the questions carefully.
 4. Number the answers according to the numbering system used in this question paper.
 5. Start each question on a NEW page.
 6. Draw a line across the page at the end of EACH question.
 7. ALL questions must be answered in full sentences unless indicated otherwise.
 8. Write neatly and legibly.
-

SECTION A (COMPULSORY)**QUESTION 1**

1.1 Various options are given as possible answers to the following questions. Choose the correct answer and write only the letter (A–D) next to the question number (1.1.1–1.1.10) in the ANSWER BOOK.

1.1.1 Choose the INCORRECT ONE.

A contract is terminated by ...

- A agreement.
- B death.
- C effluxion of time. ☒
- D specific performance.

1.1.2 An example of a tacit duty of a seller in a contract of sale:

- A To deliver the article sold
- B To care for the article until delivery takes place
- C To guarantee that there are no invisible defects
- D To guarantee that there are no visible defects

1.1.3 Shaun and Tyron concluded a contract whereby Shaun would sell a motor car to Tyron for R90 000. The terms regarding the purchasing price and the article are known as ...

- A naturalia.
- B essentialia.
- C incidentalia. ☒
- D implied terms.

1.1.4 A prodigal ...

- A cannot enter into a contract at all.
- B must be assisted when entering into a contract whereby his/her assets are involved.
- C can enter into a contract from which he/she will only receive a benefit.
- D must be assisted by a curator when entering into a contract.

1.1.5 Songeswi borrows money from Peter to run a brothel. Such an agreement is ...

- A void.
- B valid. ☒
- C voidable.
- D unenforceable.

1.1.6 Where a latent defect is discovered in the article bought and the article can still be used, but to a lesser extent, the buyer can institute the ...

- A actio redhibitoria.
- B actio quanti minoris.
- C actio ex empto.
- D actio empti.

1.1.7 Where a buyer buys a house, ownership will pass by means of ...

- A traditio longa manu.
- B symbolic delivery.
- C registration at the Deeds Office. ☒
- D traditio brevi manu.

1.1.8 An instalment sale transaction is subject to ...

- A a resolutive condition.
- B a suspensive condition.
- C both a resolutive and a suspensive condition.
- D no conditions.

1.1.9 The following category of persons have no contractual capacity:

- A Minors aged fifteen
- B Drunk or intoxicated persons
- C Insolvent persons
- D Prodigals

1.1.10 A characteristic of a marriage in community of property:

- A Accrual can be calculated.
- B Antenuptial contract must be drafted. ☒
- C Debts are shared.
- D Transfer of ownership registered separately in name of spouses.

(10 × 1) (10)

1.2 Choose the correct word or words from those given in brackets. Write only the word or words next to the question number (1.2.1–1.2.15) in the ANSWER BOOK.

1.2.1 A (mortgagor/mortgagee) is a person who taxes his property in exchange for a financial loan. ☒

1.2.2 The (expedition/reception) theory is the applicable theory where a contract is concluded by post.

- 1.2.3 Where a minor concludes a contract without the prescribed assistance and consent is given afterwards, it is referred to as (rectification/ratification). ƴ
- 1.2.4 A usufruct is an example of a (personal/land) servitude.
- 1.2.5 (Assignment/delegation) means that the debtor in a contract is substituted by another debtor.
- 1.2.6 A (mistake/misrepresentation) is an example of a voidable contract.
- 1.2.7 The cooling off period protects the credit (provider/receiver).
- 1.2.8 A claim on grounds of unjustified enrichment is an example of a (real/personal right). ƴ
- 1.2.9 The credit provider is the (seller/purchaser).
- 1.2.10 Where the seller keeps the article to do the necessary alterations, delivery takes place through (actual/constructive) delivery.
- 1.2.11 The (preamble/heading) identifies the transferor in the deed of transfer.
- 1.2.12 (Acquisitive/extinctive) prescription means that debts come to an end as a result of the time running out. ƴ
- 1.2.13 A personal servitude is a limited (real/civil) right which grants the holder the right to do something on another's property.
- 1.2.14 An advertisement is an (offer/invitation) to do business.
- 1.2.15 An error in (corpore/persona) is a mistake regarding the identity of a thing. ƴ

(15 × 2) (30)

- 1.3 Choose a description from COLUMN B that matches the item in COLUMN A. Write only the letter (A–E) next to the question number (1.3.1–1.3.5) in the ANSWER BOOK.

COLUMN A		COLUMN B	
1.3.1	Casus fortuitus	A	transfer of rights in a contract from one creditor to another creditor
1.3.2	Cession	Y	
1.3.3	Conveyancer	B	practising attorney with additional skills
1.3.4	Merx	C	act by the state
1.3.5	Notary	D	jurisdiction to certify antenuptial contracts
		E	article

(5 × 2)

(10)
[50]**TOTAL SECTION A: 50****SECTION B**

Answer any FIVE of the SIX questions.

QUESTION 2

- 2.1 Name any FIVE land servitudes. (5)
- 2.2 State in each case on which basis Landile, seventeen years old, will be bound to the contract, although he is still a minor.
- 2.2.1 He bought a TV set on an instalment sale transaction basis. He told the shop that he was eighteen years old.
- 2.2.2 He enters into a contract with Virgin Active unassisted and goes to the gym every day. He does not pay and claims that he cannot be bound as he is still a minor.
- 2.2.3 He has a full-time job, does not live with his parents anymore and entered into a contract of lease unassisted. (3 × 2) (6)
- 2.3 Briefly discuss the *actio redhibitoria* available to the buyer as a special remedy for latent defects. (5 × 2) (10)

2.4 Indicate in each of the following instances the applicable form of delivery that will take place. 

2.4.1 Where a car is bought.

2.4.2 Where a container of goods is bought.

2.4.3 Where cattle are pointed out.

2.4.4 Where the article is already in possession of the buyer.

(4 × 2) (8)

2.5 Fill in the missing word:

Where a contract is ..., no rights and obligations can flow from it.

(1)
[30]

QUESTION 3

Read the following article and answer the questions.





What is a deed of transfer and what does it contain?

A deed of transfer is a legal document and has a dual purpose.

What does the content look like?

In the first place it stipulates the name of the conveyancer and the person for whom he/she is acting, as well as the power of attorney of the conveyancer granting him/her the authority to act.

The name of the person to whom the transfer will take place is then stated, followed by an accurate description of the property to be transferred. The transfer includes a reference to the original deed of transfer and/or reference to the urban area where the property is situated.



The deed of transfer then sets out the various conditions of title that regulate the use of the property. These conditions usually place restrictions on how the land may be used. For example, a servitude may be in place to install drains on the premises.

[Downloaded and adapted from <https://finansies.solidariteit.co.za/en/deed-transfer-contain/>]

3.1 Briefly discuss the dual purpose of a deed of transfer.

(2 × 2) (4)

3.2 Define a *conveyancer*.

(2)

- 3.3 What is the purchaser referred to in the deed of transfer? (1)
- 3.4 An accurate description of the property is known as the ... clause. (1)
- 3.5 This clause refers to the current title deed under which the land is held. (1)
- 3.6 What kind of servitude is the right to install drains on the premises? (1)
- 3.7 List any TWO personal servitudes that may be included in the deed of transfer. (2)
- 3.8 By making use of an example, indicate what the consideration clause in the deed of transfer will look like. (2)
- 3.9 'The establishment clause contains the name of the transferor.'

Indicate how this clause will appear in each of the following cases.

3.9.1 Persons married in community of property

3.9.2 A minor

(2 × 2) (4)

- 3.10 'Transfer duty needs to be paid to the government by the buyer when buying land.' Calculate the transfer duty in the following case:
Property bought for R2,6 million

Property value	Rates of transfer duty
R0–R600 000	0%
R600 001 –R1 000 000	At 3% of amount from R600 000,01
R1 000 001–R1 500 000	R12 000 plus % of amount above R1 000 000,00
R1 500 001 and above	R37 000 plus 8% of amount above R1 500 000,00

(9)

- 3.11 Who appoints the conveyancer? (1)
- 3.12 Suppose the buyer applies for a bond.
List the TWO transactions that are normally applicable to such a bond. (2)

[30]

QUESTION 4

- 4.1 Complete the POWER OF ATTORNEY (ADDENDUM A) by making use of the following information:

Seller:

Amelia Joubert

Unmarried

ID 5909040037084

Y

Buyer:

Elmarie Sylvester

Married out of community of property

ID 6903030037084

Property: Erf 1266 RAVENSMEAD

REGISTRATION DIVISION: WESTERN CAPE

Size of property: 1 800 square metres

Appointed conveyancer Stephan Nel

Deed number: T 6576/1994

Date on which property was sold: 1 July 2018

Y

Purchase price: R1,3 million (20)

- 4.2 Briefly discuss the difference between an underhand document and a notarial document. (4)

- 4.3 Discuss cession under the following headings:

4.3.1 Definition Y

4.3.2 Application to mineral rights

4.3.3 Application to prospecting rights

(3 × 2) (6)
[30]

QUESTION 5

Read each of the following scenarios based on the contract of sale and answer the questions.

- 5.1 Carel buys a second-hand car from Randall for R50 000. A week later, he discovers a serious problem in the gearbox, so serious that he cannot use the car at all.
- 5.1.1 What kind of defect is this? (1)
- 5.1.2 Which remedy does Carel have at his disposal? (1)
- 5.1.3 Can Carel claim damages from Randall? (1)
- 5.1.4 Suppose a 'voetstoots clause' was included in this contract.
What would Carel's position be then? Motivate your answer. (2)
- 5.2 Helen bought twenty bottles of wine from a wine farm. The parties agreed that Helen would collect the wine the following day. After the transaction, and before Helen could collect the wine, part of the cellar was destroyed in a fire caused by lightning. The owner admitted that he had not separated Helen's wine from the rest of the wine that had been destroyed.
- 5.2.1 Would you say that this was an 'accidental loss'? Motivate your answer. (2)
- 5.2.2 Who normally carries the loss for something like this? (1)
- 5.2.3 Who will carry the loss in this case? Motivate your answer. (2)
- 5.2.4 When is a contract *perfecta*? (3)
- 5.2.5 List any TWO of Helen's duties. (2)
- 5.2.6 List any THREE duties of the wine farm. (3)
- 5.3 Arrange the following steps as applicable to the registration of property in chronological order. Write down only the question number and the number of the applicable step.
- 5.3.1 1 Buyer receives pro forma statement, for example transfer duties.
- 5.3.2 2 Seller's solvency statement is completed; seller's procuration of transport; seller's transfer duty statement
- 5.3.3 3 Conveyancer is appointed.
- 5.3.4 4 Buyer applies for a mortgage bond.

- 5.3.5 5 The draft deed of transfer is prepared.
- 5.3.6 6 Upon approval of bond, the conveyancer proceeds with the completion of the transfer documentation.
- 5.3.7 7 Buyer and seller sign the offer to purchase.
- 5.3.8 8 Letter is forwarded to estate agency to confirm that commission will be paid once registration has occurred.
- 5.3.9 9 Tax clearance certificate from the relevant municipality is obtained.
- 5.3.10 10 Transfer duty invoice from the receiver of revenue is obtained.
- 5.3.11 11 Documents are submitted to the Deeds Office.
- 5.3.12 12 Existing title deed is obtained.

(12 × 1) (12)
[30]

QUESTION 6

You have been working for a legal firm for six years. You completed your studies at a TVET college where you studied to become a legal secretary. The college has invited you as a guest speaker to address the current N6 legal secretary students on some basic principles of the law of contract.

PRESENT YOUR ANSWER IN POWER POINT/SLIDES FORMAT

6.1 Definition of a *contract*. (5)

6.2 FIVE requirements (essentialia) of a valid contract (5)

6.3 THREE kinds of contractual capacity. Present your answer as follows:

KIND OF CONTRACTUAL CAPACITY	DESCRIPTION	EXAMPLE

(3 × 3) (9)

6.4 FIVE ways in which an offer can be terminated (5)

- 6.5 THREE types of mistakes that render a contract void. Present your answer as follows: ∩

TYPE OF MISTAKE	EXAMPLE

(3 × 2)

(6)
[30]

QUESTION 7

- 7.1 Briefly explain the following content of a mortgage bond:

- 7.1.1 The heading
- 7.1.2 The preparation clause
- 7.1.3 Mortgage coverage
∩
- 7.1.4 Domicilium citandi et executandi
- 7.1.5 The execution clause
- 7.1.6 The mortgagee/bondholder

(6 × 2)

(12)

- 7.2 'Delivery cannot always take place from hand to hand.' Briefly explain the following forms of delivery where actual delivery cannot take place.

- 7.2.1 Traditio brevi manu
∩
- 7.2.2 Traditio longa manu
- 7.2.3 Registration at the Deeds Office

(3 × 2)

(6)

7.3 Indicate in each of the following cases whether the statement is TRUE or FALSE. Choose the answer and write 'True' or 'False' next to the question number (7.3.1–7.3.8) in the ANSWER BOOK. Correct the statement if it is FALSE.

7.3.1 Occupation and ownership have the same legal implication.

Y

7.3.2 The accrual system is applicable to marriages out of community of property.

7.3.3 The transferee in the deed of transfer refers to the purchaser.

7.3.4 A prodigal has no contractual capacity.

7.3.5 The mortgagor is the debtor.

Y

7.3.6 A personal right can be enforced against the whole world.

7.3.7 Usufruct is an example of a personal servitude.

7.3.8 Parties do not need an antenuptial contract when getting married out of community of property.

(12)
[30]

TOTAL SECTION B: 150
GRAND TOTAL: 200

(13030126)

ADDENDUM

EXAMINATION NUMBER

[illegible]

QUESTION 4.1

POWER OF ATTORNEY TO PASS TRANSFER

I/We, the undersigned

do hereby appoint _____ and/or

With power of substitution to be my true and lawful Attorney and Agent to appear before the

and there to declare that I/We did on the day of

Sell to

For the sum of

The following property, namely

IN EXTENT

HELD BY DEED OF TRANSFER