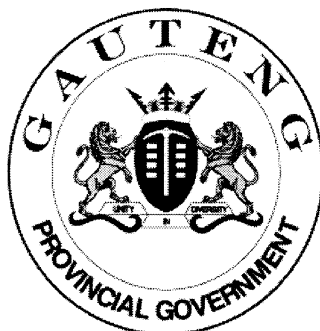


SENIOR CERTIFICATE EXAMINATION



FEBRUARY / MARCH

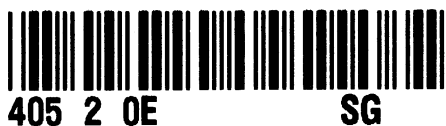
2007

MERCANTILE LAW



MERCANTILE LAW SG

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10 pages

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**GAUTENG DEPARTMENT OF EDUCATION
SENIOR CERTIFICATE EXAMINATION**

MERCANTILE LAW SG

TIME: 3 hours

MARKS: 300

INSTRUCTIONS:

- Answer QUESTION 1 and any FIVE other questions.
- Only the first six questions will be marked.
- Questions must be answered in point form and in full sentences.
- Plan the length of each answer according to the marks allocated to the question.
- It is in your own best interest to write neatly and legibly.
- Circle the questions you have answered on the front page of your answer book.

**QUESTION 1
COMPULSORY**

- 1.1 The following is a **list** of possible answers to the descriptions that follow. Choose the **correct** term to fit the description and write it down next to the correct question number.

- | | | |
|--|---|--|
| <ul style="list-style-type: none"> • Table B • Memorandum of association and Articles of association • Prima facie • Partnership policy • Estate agent • Surety for surety • Surety • Reasonable rent • Negotiorum Gestor • Pledge • Partnership through conduct • Mortgage bond • Statement of affairs | <ul style="list-style-type: none"> • Draft • Delegatus non potest delegare • Intestate • Members register • Executor • Curator • Testator • Balance sheet • Sequestration • Liquidation • Company limited by guarantee • Factor | <ul style="list-style-type: none"> • Table A • Representational capacity • Certificate of incorporation • Limited • Cheque • Beneficium Excussionis • Prospectus • Founding statement • Beneficium Divisionis • Memorandum of association • Certificate to begin with business • Ordinary partnership • Life insurance policy |
|--|---|--|

- 1.1.1 In this type of partnership the partner is liable towards third persons who, in good faith, undertook contracts with that partnership on the grounds of his/her conduct.

- 1.1.2 A partner binds the partnership by giving guarantees concerning the solvency of clients.

- 1.1.3 Partners insure one another's lives and compensate the remaining partners for the loss which the death or retirement of one of the partners brings about.
- 1.1.4 This word indicates that shareholders will only lose their share capital should the company become insolvent.
- 1.1.5 The company's objectives may include the promotion of charity, art, education, etc.
- 1.1.6 These documents form the constitution of the company.
- 1.1.7 This is a model set of articles for a public company.
- 1.1.8 Evidence that the company complies with the registration requirements of the Companies Act
- 1.1.9 Written notice or advertisement that invites the public to buy shares or debentures in the company.
- 1.1.10 Every public company must be in possession of a _____, in one of the official languages, at the registered office.
- 1.1.11 Information is accepted as the truth until the opposite is proven.
- 1.1.12 Serves as the constitution of a close corporation.
- 1.1.13 Is fixed by the Rent Board (Rent Tribunal).
- 1.1.14 Instructions must be executed in person.
- 1.1.15 Sells goods in his/her own name, on behalf of the principal.
- 1.1.16 Someone who is willing to act on behalf of other persons in the buying or selling, renting or leasing of immovable property.
- 1.1.17 A person who stands surety for someone who has already taken on the debt of another person.
- 1.1.18 The benefit of excussion
- 1.1.19 A right which the creditor obtains on the immovable property of the debtor with the object of securing an obligation.
- 1.1.20 The process whereby, on the order of the Supreme Court, all the insolvent's assets are taken away from him and placed under control of a trustee (curator).
- 1.1.21 Takes the form of a balance sheet. It is a list of all the assets and liabilities of an insolvent person.

- 1.1.22 This person takes control of an insolvent estate.
- 1.1.23 This person takes control of the estate of a deceased person.
- 1.1.24 Person dies without leaving a will.
- 1.1.25 Order of a person directed at his/her bank, instructing the bank to pay someone else on demand.

25x2=[50]

QUESTION 2 PARTNERSHIPS/NEGOTIABLE DOCUMENTS

- 2.1 Study the following document and answer the questions that follow.

Absa Midrand	GOLDEN BANK	<u>21 July 2007</u>
Betaal _____ Pay _____ Bedrag van _____ Amount of _____	<u>J. Nel</u> <u>Five hundred rand only</u>	Or bearer Or order <div style="border: 1px solid black; padding: 2px; text-align: center;">R 550 ----- 00</div>
12345 6789 2346 7890		_____ K. Cook

- 2.1.1 What is the name of the drawer? (2)
- 2.1.2 What is the name of the payee? (2)
- 2.1.3 What is the name of the drawee? (2)
- 2.1.4 Is this an order- or a bearer cheque? (2)
- 2.1.5 What type of crossing appears on the cheque? (2)
- 2.1.6 Will the bank honour this cheque? Substantiate your answer. (6)
- 2.2 Indicate whether the following statements are TRUE or FALSE. If the statement is FALSE, write FALSE and the **correct** answer for the **underlined word(s)** next to the question number in your answer book.
- 2.2.1 The partner's duty to share in the losses can be excluded by agreement. (2)
- 2.2.2 Partners automatically have a right to remuneration for their services. (2)
- 2.2.3 An En Commandite **partner** takes an active part in the management of the partnership. (2)
- 2.2.4 If a partnership is not showing any profit, it can be dissolved by the court. (10)

- 2.3 You and a friend want to enter into a **partnership**. Only your name is mentioned in the partnership name.
- 2.3.1 What **type** of partnership is it? (2)
- 2.3.2 What are your **rights** in the partnership? Name FOUR rights. (8)
- 2.3.3 Name THREE **reasons** why you would dissolve your partnership. (6)
- 2.3.4 Name FOUR aspects you would mention in the written partnership agreement. (8)
- [50]

QUESTION 3 COMPANIES ACT

- 3.1 Choose the **correct answer** from the possible answers given and write it next to the question number.
- 3.1.1 Which document does a public company use to invite the public to buy shares?
- A. Memorandum of association
 - B. Articles of association
 - C. Prospectus
 - D. Certificate of incorporation
- 3.1.2 This document arranges the internal affairs of the company.
- A. Memorandum of association
 - B. Articles of association
 - C. Prospectus
 - D. Certificate of incorporation
- 3.1.3 Which document stipulates the remuneration to be paid to directors?
- A. Memorandum of association
 - B. Articles of association
 - C. Prospectus
 - D. Certificate of incorporation (6)
- 3.2 Name THREE differences between public and private companies. (6)
- 3.3 Name TWO similarities between a company and a natural person. (4)
- 3.4 Name THREE aspects that promoters would be responsible for at the creation (floatation) of a company. (6)

- 3.5 Name FOUR documents that must be handed in at the formation of a public company. (8)
- 3.6 Write notes on the following with regard to the **name** of a company:
- 3.6.1 FOUR restrictions (8)
- 3.6.2 Reservation thereof (4)
- 3.6.3 Display of the name (4)
- 3.7 Name TWO consequences of untrue statements in the prospectus. (4)
- [50]

QUESTION 4 CLOSE CORPORATION/LIENS

- 4.1 Indicate which of the following are examples of Debtor and Creditor-, Salvage- or Improvement liens.
- 4.1.1 A shoemaker on the shoes he repaired.
- 4.1.2 An auditor on the statements he prepared.
- 4.1.3 Feeding a dog to keep it alive until the owner returns.
- 4.1.4 Sinking a borehole on a farm. (8)
- 4.2 Name THREE cases where the creditor will not lose his lien on goods. (6)
- 4.3 Indicate whether the creditor has a lien or not in the following cases. Give in each case a reason for your answer.
- 4.3.1 The building contractor doesn't want to hand over the key of the completed dwelling to the aspirant buyer because the latter doesn't want to pay him.
- 4.3.2 The building contractor ceases building for a certain period and puts a fence around the premises.
- 4.3.3 The pawnshop owner gives a woman's washing machine back to her so that she can quickly do the washing, on condition that she returns it after washing day. She refuses to return it. (6)
- 4.4 What are the legal consequences of a lien? Name TWO facts. (4)
- 4.5 Name FOUR characteristics of a close corporation. (8)
- 4.6 Name THREE rights of the members of a close corporation. (6)
- 4.7 Explain the **dissolution** of a close corporation. (12)
- [50]

QUESTION 5 LEASE OF IMMOVABLE PROPERTY

- 5.1 Indicate whether the following statements are TRUE or FALSE. If the statement is FALSE, write down the answer for the **underlined word(s)** next to the question number in your answer book.
- 5.1.1 The landlord of immovable property must be the owner of the property that he is leasing.
- 5.1.2 A contract of lease for land for a period of 10 years and longer must be registered.
- 5.1.3 Rural property may be sublet without the permission of the landlord.
- 5.1.4 When the landlord becomes insolvent, the tenant may not be prejudiced. (10)
- 5.2 Name THREE essentials that parties must be in agreement with for a lease contract to exist. (6)
- 5.3 The landlord must execute all necessary repairs. Name the **remedies** of the **tenant** where the landlord fails to repair. (6)
- 5.4 Explain the following:
- 5.4.1 Forfeiture clause (4)
- 5.4.2 Rent Act (Rental housing tribunal) (4)
- 5.4.3 Statutory tenant (4)
- 5.5 Explain: **Hire goes before sale**. ("Huur gaan voor koop.") (10)
- 5.6 Name THREE cases where a landlord may issue an order for eviction to a tenant. (6)
- [50]**

QUESTION 6 AGENCY/SURETY

- 6.1 Name THREE ways in which a contract of agency may be formed. (6)
- 6.2 Name THREE cases where the law requires written authority by the principal before the agent can perform his/her duties. (6)
- 6.3 Explain the **negotiorum gestor** under the following headings:
- 6.3.1 Definition (4)
- 6.3.2 Remuneration (4)

- 6.4 Identify the **type of agent** in the following descriptions:
- 6.4.1 Sells moveable property or negotiable documents on behalf of clients. (2)
- 6.4.2 Sells goods on behalf of the principal and guarantees that the buyer will pay. (2)
- 6.5 Explain the agent's duty of **good faith**. (8)
- 6.6 Write only the **missing word(s)** next to the question number in your answer book.
- 6.6.1 A contract of surety is an agreement between the surety and the _____. (2)
- 6.6.2 Before a contract of surety can be concluded a _____ must exist. (2)
- 6.6.3 The surety _____ the liability of the debtor, he doesn't replace it. (2)
- 6.6.4 The contract of surety must be in _____. (2)
- 6.6.5 The surety can bind him/herself conditionally if the principal debt is _____. (2)
- 6.6.6 Beneficium cedendarum actionum is the surety's right of _____. (6)
- 6.7 Explain the cases where the surety **cannot** claim the benefit of "beneficium excussionis". (6)
- 6.8 Name THREE reasons for the termination of a contract of surety. (6)

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QUESTION 7 PLEDGES AND MORTGAGES

- 7.1 Name TWO differences between pledges and mortgages. (4)
- 7.2 Name THREE formalities for effecting pledges. (6)
- 7.3 Name TWO rights of the pledgee (creditor). (4)
- 7.4 Explain the formalities that must be complied with on a **special bond** on immovable property. (10)
- 7.5 Write explanatory notes on the **kustingsbrief**. (10)

- 7.6 Write down only the **missing word(s)** next to the question number in your answer book.
- 7.6.1 A _____ secures an existing debt as well as a debt that will arise in future.
- 7.6.2 The _____ and _____ clauses are special clauses in mortgage bonds.
- 7.6.3 _____ results from an order of court. (4)
- 7.7 Name, in full sentences, FOUR reasons for the termination of pledges and mortgages. (8)
- 7.8 Name TWO types of mortgages which exist by the operation of law. (4)
- [50]**

QUESTION 8 INSOLVENCY

- 8.1 When will a person be
- 8.1.1 insolvent? (4)
- 8.1.2 sequestrated? (4)
- 8.1.3 liquidated? (4)
- 8.2 Name TWO acts of insolvency. (4)
- 8.3 Before a court will grant a final order of sequestration, it must be convinced of THREE facts. Name the THREE facts. (6)
- 8.4 The clerk of the court must send the original order of sequestration to the Master. Name another TWO persons that must receive notice of sequestration. (4)
- 8.5 Explain the **separate estate of the insolvent's spouse**. (10)
- 8.6 Name THREE persons who are disqualified from acting as trustee (curator) of an insolvent estate. (6)
- 8.7 Indicate whether the following statements are TRUE or FALSE. If the statement is FALSE, write down the correct answer for the underlined word(s) next to the question number in your answer book.
- 8.7.1 The insolvent estate is divided into two parts, namely secured assets and preferential creditors.
- 8.7.2 The landlord's hypothec of rent in arrear is one of the chief securities on moveable property.
- 8.7.3 Execution releases an insolvent person from the debt that was payable before sequestration. (8)

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QUESTION 9 WILLS

- 9.1 What is the difference between a **reciprocal** will and a **joint** will. (4)
- 9.2 Explain who is legally capable of **drawing up** a will. (8)
- 9.3 Name TWO persons who are disqualified from benefiting from a will. (4)
- 9.4 Write notes on the following with regard to the **revoking** of a will:
- 9.4.1 Meaning (2)
- 9.4.2 TWO cases where revoking may not take place. (4)
- 9.4.3 TWO methods of revoking (4)
- 9.5 Write down only the **missing word(s)** next to the number in your answer book:
- 9.5.1 An executor is named by the _____.
- 9.5.2 The executor's appointment is confirmed by a _____.
- 9.5.3 The executor must report to the _____ on the execution of his duties.
- 9.5.4 When a will cannot be found, it is assumed that the will was _____.
- 9.5.5 Legally all persons _____ years and older are capable of acting as witnesses to a will.
- 9.5.6 The testator/testatrix must sign in the presence of _____.
- 9.5.7 A _____ is an annexure (amendment or addition) to an existing will.
- 9.5.8 A will is the _____ and _____ declaration made in a prescribed manner.
- 9.5.9 _____ of a deceased estate implies the legal procedures that must be followed in order to divide the estate among the beneficiaries. (10)
- 9.6 Name THREE formalities required in the making of a will. (6)
- 9.7 Name FOUR duties of the executor. (8)

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TOTAL: 300

END