Tutorial Letter 201/1/2018

Commercial Law 1C

CLA1503

First Semester

Department of Mercantile Law

IMPORTANT INFORMATION:
This tutorial letter contains important information about your module.
Dear Student

This tutorial letter contains the feedback on Assignment 01.

The aim of this feedback is to draw your attention to certain important aspects of the questions which you may have overlooked. Read the feedback carefully to make sure that you understand how you could have answered the questions. If you are still not sure after reading the feedback, go back to the original source in your prescribed textbook.


### 2.2 FEEDBACK ON ASSIGNMENT 01 (Unique no: 863139)

#### QUESTION 1
*(Chapter 8: Terms of the Contract, paras 8.3 and 8.4)*

(i) A time clause determines a specific time when or the period within which the contract will either become operative or be dissolved. The moment must be specified or determined or ascertainable or determinable. In other words it must be certain that the moment or event will take place. It is certain that Simon will die although it is uncertain when he will die. The moment for performance is therefore determinable.

A condition on the other hand, is a contractual term which renders the operation and consequences of the contract dependent on the occurrence, or non-occurrence, of a specified uncertain future event. The future event must be specified and there must be no doubt which event will render the obligation operative or terminate them but it must be uncertain whether the event will indeed occur. It is certain that Simon’s death will occur and therefore it cannot be a condition. (2)

(ii) Contracts which are subject to time clauses are legal and binding, as long as they are not contrary to the good morals and public policy. A contractual relationship between Moses and Xolile arises immediately after the conclusion of the contract, although it is subject to a suspensive time clause, and performance is only claimable when Simon dies. (3)

(iii) This is an example of a suspensive time clause. It is a time clause because it is dependent on the occurrence of an event that is certain to occur (it is certain that Simon will die). It is suspensive because the obligations flowing from the contract will only come into effect when the future event occurs (whenever Simon dies). Although a contractual relationship arises between the parties when the contract is concluded, performance can only be claimed when Simon dies. (2)
QUESTION 2  
(Chapter 4: Consensus, para 4.4.2.2)

Duress is an unlawful threat of harm or injury, made by a party to a contract or by someone acting on his behalf, which causes the other party to conclude a contract. For example, Mark points Ben with a gun so that Ben can sign a contract of sale of a car belonging to Ben. [2]

QUESTION 3  
(Chapter 11: Remedies for Breach of Contract, para 11.3.1)

True. This is one of the circumstances under which the creditor has a remedy of cancellation in the event of *mora debitoris.* [1]

QUESTION 4  
(Chapter 2: Introduction to the Science of Law, para 2.1.2.1)

The two categories of legal persons are natural persons and juristic persons. Natural person refers to a human being and a juristic person refers to an entity (for example, a company or university) that is recognised as a holder of rights and powers and is subject to duties. [4]

QUESTION 5  
(Chapter 3: Law of Contract: Introduction, para 3.1.2)

(i) No valid contract arises between Kgotso and Mosidi. The agreement between Kgotso and Mosidi is merely a social appointment. The two parties have an agreement but not a contract as social appointments do not create legally enforceable obligations. They only create moral duties. (3)

(Chapter 4: Consensus, para 4.2.2)

You were required to give any THREE of the following requirements of offer and acceptance:

(ii) (a) The offer must be made with the intention that the offeror will be legally bound by the mere acceptance thereof by the offeree.
(b) The offer must be complete.
(c) The offer as well as the acceptance must be clear and certain.
(d) The offer must be made either expressly (in writing or orally) of tacitly by means of conduct (for example by a nod of the head or the handing over of money).
(e) The offer must be addressed either to a particular person or persons, or in general to an unknown person or persons or to the general public.
(f) The offer and acceptance must be communicated. (3)

TOTAL: [20]

We wish you all the best with your studies. Please contact us should you experience any problems relating to the contents of this module.

THE LECTURERS

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