Tutorial Letter 101/3/2018
Commercial Law 1C
CLA1503
Semesters 1 & 2

Department of Mercantile Law

IMPORTANT INFORMATION
Please register on myUnisa, activate your myLife e-mail addresses and make sure that you have regular access to the myUnisa module website, CLA1503-2018-S1/S2, as well as your group website.
1 INTRODUCTION

Dear Student

We are pleased to welcome you as a student of Commercial Law 1C (CLA1503) and hope that you will find it interesting and rewarding. We shall do our best to make your studies of this module successful. You will be well on your way to success if you start studying early in the semester and resolve to do the assignments properly.

This tutorial letter (CLA1503/101/2018) contains important information about this module. We urge you to read it carefully and to keep it at hand when working through the study material, preparing for the assignments, preparing for the examination and addressing questions to your lecturers.

In this tutorial letter, you will find the two compulsory assignments for both semesters 1 and 2 and instructions on the preparation and submission of the assignments (see paragraph 8 below regarding the importance of the assignments for admission to the examinations and their contribution towards a year mark for the module).

This tutorial letter also provides you with all the information you need with regard to the prescribed tutorial material and how to obtain it. Finally, we include in this tutorial letter certain general and administrative information concerning this module. Please study this information carefully and make sure that you obtain the prescribed material as soon as possible. Apart from this tutorial letter, you will also receive other tutorial letters during the semester.

Your study material for CLA1503 will consist of a study guide and tutorial letters (namely, tutorial letters 101 (this tutorial letter)); 102 (in which we confirm your lecturers and the prescribed study material, set out rules for the examination and describe the kind of questions which you may expect in the examination); and 201 (which contains the commentaries and feedback on the assignments) which you will receive from the university and a prescribed textbook which you must purchase. These tutorial letters will not necessarily be available at the time of registration. Tutorial letters will be dispatched to students as soon as they are available. You can also access such study material on myUnisa.

You are therefore encouraged to register on myUnisa, a tool which enables you to communicate with other students and lecturers, submit assignments, access library resources and download study material. You can access myUnisa on http://my.unisa.ac.za. Go to the website and log in using your student number and password. You will see [CLA1503-18-S1/S2] in the row of modules displayed in the orange blocks at the top of the webpage. Select the More tab if you cannot find the module you require in the orange blocks. Then click on the module you want to open.

For further information on myUnisa and other administrative information, please consult the publication Study @ Unisa.

Right from the start we would like to point out that you must read all the tutorial letters you receive during the semester immediately and carefully, as they always contain important and, sometimes, urgent information.

We wish you much success in your studies!
2 PURPOSE OF AND OUTCOMES FOR THE MODULE

2.1 Purpose

The aim of this module is to provide you with a general understanding of the South African legal system and to equip you with knowledge, skills, attitudes and competencies to analyse and solve well-defined problems relating to the general principles of the law of contract and to specific contracts and other aspects of commercial law in South Africa.

This module is delivered using myUnisa and the internet as well as peer group interaction. Your lecturers and e-tutors will interact with you on myUnisa and via e-mail.

2.2 Outcomes

The outcome of this module is threefold:

- the study units that deal with the South African legal system and science of law provide you with a general overview of the law and enable you to relate the different sections of the law to one another.
- the study units that deal with the general principles of the law of contract ought to enable you to identify, analyse and solve basic legal problems relating to the law of contract. You should be able to give advice on how contracts arise, what the effect of a particular clause in a contract is, what the implications of breach of contract are and how contracts are terminated.
- the study units that deal with various types of contracts and other important aspects of commercial law are primarily to enable you to identify different types of contracts and distinguish between them.

At the end of this module you must be in a position to analyse information relating to the functioning of the South African legal system and how it applies within the South African legal framework. You must also be able to apply the general principles of the law of contract and the general business principles relating to certain specific contracts and other aspects of commercial law within a legal framework to real life situations.

3 LECTURER(S) AND CONTACT DETAILS

3.1 Lecturer(s)

Please DO NOT contact lecturers on issues that are not related to the content of the module since the lecturers might not have information that you may require. There is support staff which is employed specifically to deal with particular issues. Please consult the publication Study @ Unisa which you received with your study material and see paragraph 5 below.

The lecturers responsible for this module are as follows:

<table>
<thead>
<tr>
<th>NAME</th>
<th>TELEPHONE NUMBER</th>
<th>EMAIL ADDRESS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mr MP Makakaba</td>
<td>012 429 8567</td>
<td><a href="mailto:makakmp@unisa.ac.za">makakmp@unisa.ac.za</a></td>
</tr>
<tr>
<td>Mr R Van Niekerk</td>
<td>012 429 8394</td>
<td><a href="mailto:rvanniek@unisa.ac.za">rvanniek@unisa.ac.za</a></td>
</tr>
<tr>
<td>Mr MB Masuku</td>
<td>012 429 8836</td>
<td><a href="mailto:mankgmb@unisa.ac.za">mankgmb@unisa.ac.za</a></td>
</tr>
</tbody>
</table>
Letters concerning the content of this module should be sent to:

**The Module leader (CLA1503)**
Department of Mercantile Law
PO Box 392
UNISA
0003

PLEASE NOTE: Letters to lecturers may not be enclosed with or inserted into assignments.

3.2 Department

You may, alternatively also contact the departmental secretary on (012) 429 8460.

3.3 University

To contact the University, follow the instructions in the brochure *Study @ Unisa* which you received with your study material. This publication contains information on how to contact the University (e.g. to whom you may write, important telephone and fax numbers, addresses and details of the times certain facilities are open).

Remember to have your student number available whenever you contact the University.

Whenever you write to a lecturer, please include your student number to enable the lecturer to help you more effectively.

4 MODULE RELATED RESOURCES

4.1 A study guide and other tutorial letters

You will receive this tutorial material from the Department of Despatch. You can also access the study material on *myUnisa* under “Official Study Material”.

4.2 Prescribed books

The prescribed textbook for CLA1503 is *General Principles of Commercial Law 8th ed (2015)* Juta, co-authored by H Schulze (General Editor), R Kelbrick, T Manamela, P Stoop, E Manamela, E Hurter, B Masuku and C Stoop. **You should purchase this prescribed textbook.** The prescribed books can be obtained from the University’s official booksellers. If you have difficulty finding the book at these booksellers, please contact the Prescribed Books Section at 012 429 4152 or email vospresc@unisa.ac.za.

Only the following chapters in the prescribed textbook have to be studied for this module:

Chapter 1: The South African Legal System
Chapter 2: Introduction to the Science of Law
Chapter 3: Law of Contract: Introduction
Chapter 4: Consensus
Chapter 5: Capacity to Perform Juristic Acts
Chapter 6: The Agreement must be Possible
Chapter 7: Formalities
Chapter 8: Terms of the Contract
Chapter 10: Breach of Contract
Chapter 11: Remedies for Breach of Contract
Chapter 12: Transfer and Termination of Personal Rights (Please Note: Only paragraphs 12.1 (Introduction), 12.2 (Cession) and 12.2.1 (The consequences of cession) are prescribed)
Chapter 13: The Contract of Sale
Chapter 14: The Contract of Lease
Chapter 15: The Contract of Insurance
Chapter 20: The Law of Agency
Chapter 21: Forms of Business Enterprise (Please Note: Paragraph 21.4 (21.4.1-21.4.8) (Company Law) is not prescribed)
Chapter 23: Security
Chapter 24: Banking Law: Selected Topics (Please Note: Only paragraph 24.1.3.2.4 (FICA) is prescribed)
Chapter 30: Consumer Protection

4.3 Recommended books

There are no recommended books for CLA1503.

4.4 Electronic reserves

There are no electronic reserves for CLA1503.

4.5 Joining myUnisa

If you have access to a computer that is linked to the internet, you can quickly access resources and information at the University. The myUnisa learning management system is the University's online campus that will help you communicate with your lecturers, with other students and with the administrative departments at Unisa – all through the computer and the internet.

You can start at the main Unisa website at http://www.unisa.ac.za and then click on the myUnisa orange block. This will take you to the myUnisa website. To go to the myUnisa website directly, go to https://my.unisa.ac.za. Click on the Claim UNISA Login on the right-hand side of the screen on the myUnisa website. You will then be prompted to give your student number in order to claim your initial myUnisa details as well as your myLife e-mail login details.

For more information on myUnisa, consult the brochure Study @ Unisa, which you received with your study material.

It is very important that you log in to myUnisa regularly to check if there are no new announcements and to participate in the Discussion Forum. You can set your myLife e-mail account to receive the announcement e-mails on your cellphone.

4.6 Library services and resource information

For brief information, go to www.unisa.ac.za/brochures/studies. For detailed information, go to http://www.unisa.ac.za/library. For research support and services of personal librarians, click on "Research support".
The Library has compiled numerous library guides:

- finding recommended reading in the print collection and e-reserves – http://libguides.unisa.ac.za/request/undergrad
- requesting material – http://libguides.unisa.ac.za/request/request
- postgraduate information services – http://libguides.unisa.ac.za/request/postgrad
- finding, obtaining and using library resources and tools to assist in research – http://libguides.unisa.ac.za/Research_Skills
- contacting the Library/finding us on social media/frequently asked questions – http://libguides.unisa.ac.za/ask

5 STUDENT SUPPORT SERVICES FOR THE MODULE

For information on the various student support systems and services available at Unisa (e.g. student counselling, tutorial classes, language support), please consult the publication Study @ Unisa which you received with your study material.

Students are also encouraged to register for myUnisa and myLife in order to interact with fellow students and e-tutors. If you need further information about myUnisa and myLife, please contact myUnisaHelp@unisa.ac.za or myLifeHelp@unisa.ac.za (respectively) or send an SMS to 43582.

Unisa offers e-tutor services to students registered for CLA1503. The e-tutor is there to guide you through your study material. Once you have registered, you will be allocated to a group of students and an e-tutor. Thereafter, you will receive an sms informing you about your group, the name of your e-tutor and instructions on how to log onto myUnisa in order to receive further information on the e-tutoring process. The e-tutor service is free of charge. All you need to be able to participate in e-tutoring is a computer with internet connection. If you live close to a Unisa regional Centre or a Telecentre contracted with Unisa, please feel free to visit any of these facilities to access the internet.

Free computer and internet access:

Unisa has entered into partnerships with establishments (referred to as Telecentres) in various locations across South Africa to enable you (as a Unisa student) free access to computers and the Internet. This access enables you to conduct the following academic related activities: registration; online submission of assignments; and engaging in e-tutoring activities, etc. Please note that any other activity outside of these is for your own costing e.g. printing, photocopying, etc. For more information on the Telecentre nearest to you, please visit www.unisa.ac.za/telecentres.
6 MODULE SPECIFIC STUDY PLAN

Refer to the publication *Study @ Unisa* for general time management and planning skills. Please make an immediate note of the closing dates for assignments. **Lecturers may not grant extensions for the submission of assignments and failure to submit Assignment 01 before the submission date or failure to submit it at all will mean that you do not have admission to the examination.**

7 MODULE PRACTICAL WORK AND WORK-RELATED LEARNING

Not applicable for this module.

8 ASSESSMENT

8.1 Assessment criteria

At the end of this module you should be in a position to analyse information relating to the functioning of the South African legal system and how it applies within the South African legal framework. You should be able to apply the general principles of the law of contract and the general business principles relating to certain specific contracts and other aspects of commercial law within a legal framework to real life situations.

Outcome 1:

Analyse information relating to the functioning of the South African legal system and how it applies within the South African legal framework.

Assessment criteria:

- find, analyse, synthesise and evaluate the relevant sources to solve well-defined legal problems regarding the functioning of the South African legal system
- show a basic understanding of the types and functions of different courts in South Africa
- demonstrate a basic understanding of the application of the doctrine of stare decisis
- demonstrate an understanding of the science of law as it relates to commercial law
- identify, analyse and serve the commercial needs of individuals and society creatively and innovatively

Outcome 2:

Apply general principles of the law of contract and general business principles relating to specific contracts and other aspects of commercial law within a legal framework to real life situations.
Assessment criteria:

- identify legal issues regarding the general principles of the law of contract in real or simulated fact scenarios
- interpret and analyse real life occurrences within the framework of the law of contract and within the framework of the principles of law relating to specific contracts and certain aspects of commercial law
- choose correct procedures to solve specific business problems relating to the general principles of the law of contract, specific contracts and other aspects of commercial law
- integrate information from different sources to address basic problems relating to the general principles of the law of contract, specific contracts and certain aspects of commercial law in a business environment
- apply knowledge of the general principles of the law of contract, specific contracts and certain aspects of commercial law to authentic and simulated scenarios
- use the information to explore relationships between business and principles of the law of contract
- identify, analyse and serve the commercial needs of individuals and society creatively and innovatively
- demonstrate efficient information-gathering, analysis and synthesis, and evaluation skills
- demonstrate an understanding of the world as a set of related systems by recognising that problem-solving contexts do not exist in isolation, and by acknowledging their responsibilities to those in the local and broader community

8.2 Assessment plan

The tuition method for this module consists of both formative assessment and summative assessment. The year mark counts 20% and the examination mark counts 80%. In other words: the mark obtained for the two compulsory assignments (year mark) will count 20% towards your final mark, provided that you obtain an examination mark of at least 40%.

You therefore need to obtain a subminimum of at least 40% in the examination before your year mark will be taken into account. This means that a student who has obtained at least 40% in the examination and who has a good year mark will have a great advantage above another student who has no year mark or a poor year mark.

8.3 General assignment numbers

There are two assignments per semester, namely assignment 01 and 02.
### 8.4 Assignments due dates and unique numbers

**FIRST SEMESTER**

The first semester assignments can be found under the Addendum.

<table>
<thead>
<tr>
<th>Assignment number</th>
<th>Due date</th>
<th>Unique number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Assignment 01:</td>
<td>15 March 2018</td>
<td>863139</td>
</tr>
<tr>
<td>Assignment 02:</td>
<td>05 April 2018</td>
<td>716520</td>
</tr>
</tbody>
</table>

**SECOND SEMESTER**

The second semester assignments can be found under the Addendum.

<table>
<thead>
<tr>
<th>Assignment number</th>
<th>Due date</th>
<th>Unique number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Assignment 01:</td>
<td>03 September 2018</td>
<td>889780</td>
</tr>
<tr>
<td>Assignment 02:</td>
<td>27 September 2018</td>
<td>656423</td>
</tr>
</tbody>
</table>

### 8.5 Submission of assignments

Assignments are seen as part of the study material for this module. You will thus be actively engaged in learning when you do the assignments, study the study guide and the prescribed textbook and discuss the work with fellow students or e-tutors. **Your assignments must reach us on or before the submission dates.** For detailed information and requirements as far as assignments are concerned, see the publication *Study @ Unisa*.

**TAKE NOTE:** **ASSIGNMENTS RECEIVED AFTER THE FINAL SUBMISSION DATE WILL NOT BE MARKED**

No extension for the submission of the assignments will be given. Please **DO NOT** approach your lecturers with such requests, as we are unable to grant extensions.

### 8.6 The assignments

(a) There are two assignments per semester. **Assignment 01 is a written assignment whilst Assignment 02 consists of ten multiple-choice questions.** The total of each assignment is 20 marks.

(b) Assignments consisting of multiple-choice questions **must be answered on a mark-reading sheet or online** and will be marked by computer. Check that **Unisa** has supplied you with mark-reading sheets.

(c) **Students may submit assignments done on mark-reading sheets by post or electronically via myUnisa.** Assignments may **not** be submitted by fax or e-mail.
(d) Written/typed assignments must be submitted as a typed/written document. No mark-reading sheet is required because this is a written assignment.

(e) **Students may submit written/typed assignments by post or electronically via myUnisa.** Assignments may **not** be submitted by fax or e-mail. When submitting your written/typed assignment electronically via myUnisa, **please make sure that your assignment is submitted in PDF format.**

(f) For detailed information and requirements as far as assignments are concerned, see the publication *Study @ Unisa* which you received with your study material. You will find instructions on the use of mark-reading sheets for answering multiple-choice questions in *Study @ Unisa*. Read these instructions carefully and follow them strictly to avoid unnecessary mistakes.

(g) Assignments submitted by mail should be addressed to:
The Registrar
PO Box 392
UNISA
0003

(h) When submitting an assignment on a mark-reading sheet by post, you must send **ONLY YOUR MARK-READING SHEET** in an envelope. **DO NOT** include a cover sheet with your mark-reading sheet.

(i) To submit an assignment **via myUnisa**, do the following:

Go to **myUnisa**.
- Log in with your student number and password.
- Select the module.
- Click on assignments in the left-hand menu.
- Click on the assignment number you want to submit.
- Follow the instructions on the screen.

(j) Please remember to allocate the same unique number to the assignment as the one given in the tutorial letter. Remember that your first assignment must be numbered 01 and your second assignment must be numbered 02.

(k) Please ensure that your name, address, student number, module code, assignment number and unique number for both your assignments appear correctly when submitting the assignments. **This information must be absolutely correct.**

(l) It is wise to **make copies of assignments** before submitting them, in case they get lost in the post.

(m) Do not submit the same assignment a second time. The computer will simply reject it as a duplicate assignment.
Soon after the closing date of the multiple choice questions assignment, you will receive a computer print-out giving your answers, the correct answers, and your marks for the assignment. For the written assignment, markers will comment constructively on your work. You will also receive Tutorial Letters CLA1503/201/2018 with commentaries and feedback on the two compulsory assignments.

**Please note:** Each year a number of students submit faulty mark-reading sheets which cannot be processed by the computer. Sheets that are rejected by the computer are returned to students without being marked.

Do not plagiarise. **Plagiarism** is the act of taking words, ideas and thoughts of others and passing them off as your own. It is a form of theft which involves a number of dishonest academic activities.

**PLEASE NOTE:** Each student must submit his or her own work. It is unacceptable for students to submit identical assignments on the basis that they worked together. This will amount to plagiarism and none of these assignments will be marked. Furthermore, these students may be penalized or subjected to disciplinary proceedings of the University.

**PLEASE FOLLOW THE ABOVE INSTRUCTIONS CAREFULLY.**

**8.7 Commentaries and feedback on assignments**

The commentaries and feedback on the two compulsory assignments will be sent to all students registered for this module in Tutorial Letters CLA1503/201/2018 as mentioned above.

As soon as you have received these commentaries and feedback, please compare them with your answers. The assignments and the commentaries/feedback on the assignments constitute an important part of your study material for the examination.

**8.8 The examination**

For general information and requirements about the examination, see **Study @ Unisa.**

**8.8.1 Examination admission**

All students who submit the compulsory assignment 01 in time (before or on the date of submission) will be admitted to the examination regardless of the mark obtained for the assignment. Students, who do not submit the compulsory assignment 01 before or on the due date, will not receive admission to write the examination. The mark obtained for the two compulsory assignments will count towards your final mark provided you obtain an examination mark of at least 40% (subminimum).
8.8.2 Examination period

This module is a semester module. This means that if you are registered for the first semester you will write the examination in May/June 2018 and the supplementary examination will be written in October/November 2018. If you are registered for the second semester you will write the examination in October/November 2018 and the supplementary examination will be written in May/June 2019.

During the course of the semester, the Examination Section will provide you with information regarding the examination in general, examination venues, examination dates and examination times.

8.8.3 Examination paper

At the end of the semester you will write one two-hour paper on this module. The examination paper consists of multiple-choice questions as well as written questions. The total allocation for the paper is 80 marks. In Tutorial Letter CLA1503/102/2018 we shall send you more information on the format of the examination paper.

8.8.4 Previous examination papers

Previous examination papers are available to students on myUnisa. However, please note that the format of the examination paper changed from 2017. The paper will consist of multiple choice questions (40 marks in total) and written questions (40 marks in total). Some of the previous examination papers that are available on myUnisa might therefore only contain multiple choice questions. These papers will give you an idea of the kind of questions you may expect in the examination. Lecturers will not mark these papers, nor supply the correct answers to the questions.

You may also accept that examination questions will be similar to the questions asked in the activities in your study guide and in the assignments.

9 FREQUENTLY ASKED QUESTIONS

See Study @ Unisa brochure which contains an A-Z guide of the most relevant study information.

10 CONCLUSIONS

Do not hesitate to contact us if you are experiencing problems with the content of this tutorial letter or with any academic aspect of the module.

We wish you a fascinating and satisfying journey through the learning material and trust that you will complete the module successfully.

Enjoy the journey!
ADDENDUM

APPENDIX A: FIRST SEMESTER COMPULSORY ASSIGNMENTS

ASSIGNMENT 01
FIRST SEMESTER UNIQUE NUMBER: 863139
(15 March 2018:)

QUESTION 1

Moses enters into a contract of sale with Xolile to buy a new truck from him (Xolile) one month after Simon’s death.

Answer the following questions:

(i) Distinguish between a time clause and a condition.  (2)
(ii) Indicate the legality of the contractual relationship between Moses and Xolile.  (3)
(iii) Name and describe the type of a time clause in this case.  (2)

QUESTION 2

Define and give one example of duress.  [2]

QUESTION 3

State whether the following statement is True or False:

Where the parties have agreed that the creditor can cancel the contract in the event of the debtor’s fault, the creditor will be able to cancel the contract even if the default is not a material breach.  [1]

QUESTION 4

Name and describe two categories of persons that are recognised by the law.  [4]
QUESTION 5

Kgotso and Mosidi arrange telephonically to meet at Ahmad's coffee shop at 19h00 the next day.

(i) Does a contract arise between Kgotso and Mosidi? Motivate your answer. (3)

(ii) Give any THREE of the requirements of offer and acceptance. (3)

TOTAL: [20]
QUESTION 1

Which **ONE** of the following sources will a South African lawyer consult on Roman law?

1. the Constitution of the Republic of South Africa, 1996
2. Customary Law
3. *the Corpus Iuris Civilis*
4. South African Statute Law (2)

QUESTION 2

Jaco is a famous inventor of new environmentally friendly trucks. He stands in his ultra-modern workshop admiring the revolutionary new electrically powered truck that he designed for the company, Big Trucks, which still owes him R5 000 000.

This sentence contains four legal objects, one from each of the four categories of Jaco’s subjective rights.

The R5 000 000 owed to Jaco is an example of …

1. a real right.
2. a personality right.
3. a personal right.
4. an immaterial property right. (2)

QUESTION 3

In which **ONE** of the following situations was a **VALID** contract concluded?

1. Sally engages as professional seafood caterer to provide seafood for her birthday party, to which twenty guests have been invited. All the guests confirm that they will attend Sally’s birthday party. The day before the party ten of the guests inform Sally that they will not attend the party because they prefer to attend a street party on the same time and date in Sandton.
2. Nicolas enters into an agreement with himself and undertakes that he will save R500 each month by paying R500 into his savings account on the first day of each month.
3. Peter purchases a new pair of running shoes for R600 on the official website of Nike.
4. Reeze undertakes to sell the moon and one star to Shana for R500. (2)
QUESTION 4

Peter studies for a B.Com-degree at Unisa. While writing an examination he sees a beautiful girl, Maureen, at the examination hall and falls head over heels in love with her. He rushes to her, introduces himself and invites her to go to the movies with him. They agree to meet the next Friday at 6 o'clock in front of Sterkinekor. Peter arrives at Sterkinekor on the agreed time, but Maureen is not there. After he has waited for more than two hours, he decides to go home, and consults his Commercial Law textbook to see whether he can take legal action against Maureen for not honouring their appointment. Only later Peter learns that Maureen's car broke down on her way to Sterkinekor.

Which ONE of the options provided below will complete the following sentence CORRECTLY?

Peter's appointment with Maureen was NOT a contract because ...

1. their appointment was not in writing and signed by them.
2. they did not have the intention to create legally enforceable obligations.
3. it was not physically possible for Maureen to honour their appointment.
4. it was not juridically possible for Maureen to honour their appointment. (2)

QUESTION 5

Morake owes Ismael an amount of R70 000. Morake and Ismael enter into an agreement in terms of which Ismael will cancel 30% of the debt if Morake agrees to sponsor Ismael’s visit to the “Blue House” brothel.

Which ONE of the following statements is CORRECT?

1. Morake and Ismael’s contract is lawful because they have reached consensus.
2. Morake and Ismael’s contract is lawful because they both have capacity to enter into juristic acts.
3. Morake and Ismael’s contract is unlawful because their agreement is partially enforceable.
4. Morake and Ismael’s contract is unlawful because their agreement is contrary to good morals. (2)

QUESTION 6

Chris and Paul enter into a contract in terms of which Paul has to deliver a dozen bottles of export wine to Chris. Chris has already paid the purchase price. Paul now indicates that he does not intend to perform in terms of the contract.

Which ONE of the following types of breach of contract has Paul committed?

1. Repudiation
2. Mora debitoris
3. Positive malperformance
4. Prevention of performance (2)
QUESTION 7

On 10 August 2011 Lina concludes an agreement with the AMG Insurance Company in terms of which the company undertakes to compensate Lina for any damage that she might suffer if the house that she inherited from her father, should be damaged by fire. She undertakes to pay a monthly premium of R300 and the first premium will be due on 31 August 2011. On 20 August 2011, the house is completely burnt down.

Which ONE of the following statements is CORRECT?

1. As a valid contract of insurance came into existence on 10 August 2011, AMG is bound to compensate Lina for the damage.
2. A valid contract of insurance will only come into existence when the first premium is paid by Lina.
3. Although a valid contract of insurance was concluded on 10 August 2011, Lina will only be covered by the contract when the first premium has been paid.
4. As Lina inherited the house and did not pay for it herself, she does not have an insurable interest in the house and the contract is invalid.

(2)

QUESTION 8

Khomotso and Stanford, an estate agent, enter into a contract in terms of which Stanford undertakes to sell a poultry farm on behalf of Khomotso. They agree that if Stanford succeeds in selling the property, Khomotso will pay him seven per cent of the selling price as commission. Their contract also provides that Khomotso will not be liable for expenses incurred in the execution of the task. Because of financial problems, Stanford’s estate is sequestrated before the property is sold.

Which ONE of the following statements is CORRECT?

1. Khomotso need not pay Stanford any commission if Stanford sells the farm, since a contract of mandate is a gratuitous undertaking to perform a task.
2. The contract between Khomotso and Stanford is invalid, since it excludes Khomotso’s liability for expenses incurred during the execution of the task.
3. The contract between Khomotso and Stanford is not terminated when Stanford’s estate is sequestrated.
4. Khomotso may only revoke their contract for a legally acceptable reason, otherwise the revocation itself may amount to breach of contract.

(2)
QUESTION 9

A group of twenty-two auditors meet to consider forming a partnership. They meet to agree on the contribution each one of them will make to the partnership. Some of the partners want the partnership to deal only with audits and others want it to deal only with tax matters.

Which ONE of the following issues needs to be addressed before the requirements for a partnership will be satisfied?

1. The parties must determine a common objective.
2. The parties need to reduce the number of prospective partners to less than twenty.
3. The parties need to put the agreement in writing.
4. The parties must stipulate the amount each member must contribute. (2)

QUESTION 10

Paulus owes money to Paul. The full amount of the debt is secured by a suretyship contract in which Evert is the surety; and also by a cession to Paul of Paulus’s right to receive payment from Ryan.

Which ONE of the following statements is INCORRECT?

1. Paulus may cede to Evert his right to receive payment from Ryan.
2. Paulus is not entitled to sue Ryan for the money he owes him in order to pay Paul.
3. Evert is not entitled to the benefit of division if Paul attempts to recover the entire debt from him.
4. Evert may possibly obtain a right to the money which Ryan owes to Paulus if he settles the entire debt. (2)
APPENDIX B: SECOND SEMESTER COMPULSORY ASSIGNMENTS

ASSIGNMENT 01
SECOND SEMESTER UNIQUE NUMBER: 889780
(03 September 2018)

QUESTION 1

Danie enters into a contract of sale with Henco for the sale of his motorbike to Henco for R20 000. They agree that Danie shall deliver the motorbike in good condition to Henco after the motorbike rally in Polokwane.

Answer the following questions:

(i) Which TWO of the most important essential characteristics or *essentialia* did Danie and Henco agree before the contract can be described and treated as a contract of sale?  
     (2)

(ii) What is the *naturalia* of the contract in this case?  
     (1)

(iii) What are the *incidentalia* in this case?  
     (1)

        [4]

QUESTION 2

Define and give one example of a condition.  
     [2]

QUESTION 3

State whether the following statement is True or False:

The term rescission refers to the act of withdrawal from a contract as a result of breach of contract, while cancellation refers to an act of withdrawing from a contract due to reasons other than breach of contract.  
     [1]
QUESTION 4

Moipone, a fourteen-year-old girl, wants to undergo an HIV test without her guardian’s consent.

(i) Advice whether Moipone is legally allowed to undergo an HIV test without her guardian’s consent. (3)

(ii) Apart from age, give SIX factors which influence an individual’s capacity to act. (6)

[9]

QUESTION 5


TOTAL: [20]
QUESTION 1

Which **ONE** of the following legal systems is the basis of the South African legal system?

1. Dutch law
2. Roman law
3. English law
4. Roman-Dutch law

(2)

QUESTION 2

Which **ONE** of the following subdivisions of the law forms part of private law?

1. law of contract
2. criminal law
3. international law
4. company law

(2)

QUESTION 3

Contracts differ from other types of agreements.

Which **ONE** of the following statements is **CORRECT**?

1. A contract cannot be entered into by more than two parties.
2. An agreement is a particular type of contract.
3. An agreement is a source of legal obligations.
4. A contract creates legally enforceable obligations.

(2)

QUESTION 4

Trevor and Angie arrange a surprise party for their friend, Tim, at an exclusive restaurant. In order to ensure Tim’s presence at the party, Trevor arranges to pick up Tim at his flat for a game of tennis. Trevor arrives at the agreed time, but Tim is not there. The party is cancelled, but Trevor and Angie forfeit the booking fee they have paid. They later find out that Tim could not keep his appointment with Trevor, since his car had broken down on his way home from work.

Which **ONE** of the following statements is **CORRECT**?

1. Trevor and Angie cannot recover the booking fee from Tim, because Tim and Trevor had not entered into a contractual agreement.
2 Trevor and Angie cannot recover the booking fee from Tim, because Tim cannot be blamed for the fact that his car had broken down.
3 Trevor and Angie cannot recover the booking fee from Tim, because Tim may resile from the contract owing to Trevor’s misrepresentation as to the reason for their meeting.
4 Trevor and Angie can recover the booking fee from Tim, because Tim has committed breach of contract by not meeting Trevor at the agreed time.

QUESTION 5
Which ONE of the following statements is CORRECT?

1 If Samuel, who is deeply in love with Sammy, promises Margate’s beach to her in a contract of donation, a valid contract does not come into existence because the objects of the donation is not capable of being privately owned.
2 Jeffrey and Joel decide to run a brothel and draw up an agreement on how they will divide the profits. A valid contract comes into existence.
3 If Joel bets Sandile R2000 that Zambia will win the next Africa Nation’s Soccer Cup, the contract between them is void, because it is a wagering contract.
4 If Rocher, the famous chef and owner Greenfields, agrees with Joel, the buyer of the restaurant, that Rocher will never again open or work in a restaurant in South Africa, the contract will be enforceable, because it is a principle of South African law that parties have freedom to contract.

QUESTION 6
Samuel and Philip enter into an agreement in terms of which Samuel agrees to deliver borehole equipment to Philip by train. The agreement provides for delivery to Philip at Randfontein, not later than 15 January. On its way to Randfontein the train is delayed as a result of a serious accident between two other trains. Hence the equipment is delivered to Philip only on 17 January.

Which ONE of the following statements is CORRECT?

1 Samuel is in breach of contract, because he has not performed by the date specified in the contract.
2 Philip can hold Samuel liable for breach of contract since it is Samuel’s own fault that he sent the borehole equipment by train.
3 Since Philip did not give Samuel a reasonable time within which to perform after the accident, Samuel is not in breach of contract.
4 If Samuel warrants delivery by 15 January, he will be in breach of contract, even though his late performance is due to circumstances beyond his control.
QUESTION 7

Mr Baloyi, a representative of an insurance company and a complete stranger to Mrs Khumalo, phones her and tells her that she can take out free household insurance at his insurance business.

Which ONE of the following statements is CORRECT regarding this contract?

1. An insurance contract has been concluded because there is an undertaking by Mr Baloyi to compensate Mrs Khumalo for patrimonial loss.
2. An insurance contract has not been concluded because it is unknown if Mrs Khumalo’s household contents will be damaged or stolen in future.
3. An insurance contract has been concluded because it is the intention of Mrs Khumalo and Mr Baloyi to protect Mrs Khumalo’s estate against risks.
4. An insurance contract has not been concluded because Mrs Khumalo did not undertake to pay a premium to Mr Baloyi.  

(2)

QUESTION 8

Mark is mandated by Ben to find and buy him a red 1975 Mercedes Benz 230 with low mileage. Marks finds and buys such a vehicle, but decides to buy the trailer, with which it was offered for sale, as well.

Which ONE of the following statements is CORRECT?

1. Mark can claim the expenses incurred in buying the trailer, from Ben.
2. Mark can claim remuneration for the trailer from Ben.
3. Mark can claim remuneration for the sourcing and the buying of the car from Ben.
4. Mark cannot claim anything from Ben because he did what he was not supposed to do, that is buying the trailer in addition to the car.  

(2)

QUESTION 9

A group of twenty-two auditors meet to consider forming a partnership. They meet to agree on the contribution each one of them will make to the partnership. Some of the partners want the partnership to deal only with audits and others want it to deal only with tax matters.

Which ONE of the following issues needs to be addressed before the requirements for a partnership will be satisfied?

1. The parties need to reduce the number of prospective partners to less than twenty.
2. The parties need to put the agreement in writing.
3. The parties must stipulate the amount each member must contribute.
4. The parties must determine a common objective.  

(2)
QUESTION 10

Which ONE of the following statements is CORRECT?

1. A contract of suretyship will be void if it is not signed by or on behalf of the principal debtor.
2. A contract of suretyship will be void if it is not signed by or on behalf of the surety.
3. A contract of suretyship may only be terminated in writing.
4. A surety may rely on the personal defences which may be at the disposal of the principal debtor.
5. A contract of suretyship is terminated by the death of the principal debtor. (2)