CLA1503 (495615) May/June 2015

COMMERCIAL LAW IC

Duration 2 Hours

80 Marks

EXAMINERS
FIRST
SECOND
MR MB MASUKU
PROF TE MANAMELA

Closed book examination

This examination question paper remains the property of the University of South Africa and may not be removed from the examination venue

This paper consists of 13 pages plus instructions for the completion of a mark reading sheet.

Please complete the attendance register on the back page, tear off and hand to the invigilator

ANSWER ALL THE QUESTIONS.

STUDENT NUMBER: ________________

INSTRUCTIONS:

1. This paper consists of 40 multiple choice questions each counting 2 marks. The paper therefore counts out of 80 marks.
2. The paper consists of 13 pages in total. Please make sure that your paper contains all 40 questions and all the pages.
3. Please answer the questions on the mark reading sheet supplied.
4. Please write your student number on this paper as well as on the mark reading sheet.
5. You may use this paper to do your rough work on, but you are under an obligation to return this paper as well as the mark reading sheet at the end of the examination.
6. Should you fail to return the English and the Afrikaans versions of this paper as well as the mark reading sheet, your mark reading sheet will not be marked.
7. Make good use of the time. You have more than enough time to complete this paper. You have 120 minutes at your disposal to answer 40 questions, thus you have 3 minutes per question.
8. Good luck with the examination. We trust that you will be successful.

|TURN OVER|
QUESTION 1
Which ONE of the following statements regarding the case citation below is CORRECT?

_National Sorghum Breweries Ltd v Corpcapital Bank Ltd 2009 (10) SA 11 (SCA)_

1. The case is reported in the eleventh part of the 2009 Law Reports.
2. The case is reported in the 2009 South Asian Law Reports.
3. The case is reported on page 10 of the South African Law Reports.
4. The case is reported in the 2009 South African Law Reports. (2)

QUESTION 2
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 3
The right to claim performance from someone is a/an

1. personal right
2. intellectual property right
3. personality right
4. real right (2)

QUESTION 4
Which ONE of the following is an original method of acquiring ownership?

1. delivery
2. registration
3. cession
4. prescription (2)

QUESTION 5
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)

[TURN OVER]
QUESTION 6

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 rescind 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. (2)

QUESTION 7

Thabo wants to buy Ramokgadi's car. Thabo and Ramokgadi agree that Thabo may take the car, but Ramokgadi is under the impression that Thabo is only hiring the car from him.

Which ONE of the following statements is CORRECT?

1. A contract came into existence between Thabo and Ramokgadi.
2. There is no consensus with regard to the object of performance.
3. The parties have no intention to be contractually bound.
4. The parties have not reached consensus on the nature of the contract. (2)

QUESTION 8

Robert wants to rent a house belonging to Johnny. Johnny tells Robert about the terms of his offer. Robert is not sure whether he should accept the offer or not and he asks for more time to consider it. They agree that the offer will remain open for a period of one week. The following day Johnny is approached by Masedi, who also wants to rent the house.

Which ONE of the following statements is CORRECT?

1. Johnny may let the house to Masedi because there is no contract that forbids him from doing so.
2. Johnny may let the house to Masedi while his offer to Robert is still open.
3. Johnny must keep the offer open for a period of one week until Robert has rejected or accepted it.
4. Johnny may not let the house to Masedi even after the period of one week has lapsed, but must wait until Robert has given him an answer. (2)

[TURN OVER]
QUESTION 9

Aunt Molly is sick in hospital and fears that she won't live much longer. Her nephew, Gary, visits her every day and agrees to feed her ten cats back home. In return for feeding the cats, he persuades her to sell him her car for far less than its market value. Aunt Molly has no other choice but to agree to the sale of the car as there is no one else to feed her precious cats.

Which ONE of the following statements is INCORRECT?

1. Aunt Molly contracts to her detriment as a result of undue influence
2. Aunt Molly can choose to uphold the contract
3. Aunt Molly can cancel the contract and claim damages
4. Aunt Molly was forced into the contract and therefore it is null and void

QUESTION 10

Nomsa signed a contract to rent a flat from Lauren for R800 a month. When they were negotiating the contract, Lauren told Nomsa that the monthly levy for water and electricity was R130. In fact, the levy was increased to R190 three months before the agreement was made. It appears that Lauren, who has always paid the levy by debit order, never looked at her accounts or statements and was unaware of the increase. Nomsa would have leased another flat, had she known that the levy was R190.

Which ONE of the following statements is CORRECT?

1. The contract is void because of misrepresentation
2. The contract is valid and Nomsa has no legal remedy
3. The contract is voidable, but since Lauren did not mislead Nomsa on purpose, Nomsa cannot claim damages
4. Nomsa may claim damages from Lauren, and may also choose whether to uphold or rescind the contract

QUESTION 11

Which ONE of the following statements is CORRECT?

1. Wendy, a seven year old girl, inherits a very valuable diamond ring from her grandmother. Peter, Wendy's father, sells the ring to Sandy for R20 000, while its actual value is R90 000. Wendy will never be able to remedy this detrimental contract.
2. Mr John agrees with his best friend, Mr Zwane, that his seventeen year old daughter, Beauty, will marry Mr Zwane. Beauty refuses to marry Mr Zwane, because she wants to study medicine at the Medical University of South Africa. The marriage nevertheless takes place without her consent, because arranged marriages are part of her culture. The marriage is valid.
3. John, a thirteen year old boy, undergoes an HIV test without his guardian's consent. John is able to do so lawfully.
QUESTION 12

Peter has been an alcoholic for the past twenty years. His wife, Mandy, is worried as he sells all his possessions to buy liquor. Mandy applies for a court order to have him declared a prodigal and a curator appointed to administer his estate. The court declares Peter a prodigal and appoints Ms Zondi as his curator.

Which ONE of the following statements is INCORRECT?

1. Once she is appointed, Ms Zondi must consent to contracts entered into by Peter.
2. Before Peter is declared a prodigal and a curator appointed, he will not have acting capacity to conclude a contract for the sale of his farm, while he is virtually unconscious after having drunk twelve glasses of whisky.
3. On the appointment of Ms Zondi, Peter loses his acting capacity.
4. When Peter is declared a prodigal and a curator appointed, any contract concluded by Peter without assistance is voidable. (2)

QUESTION 13

Victor, a minor over the age of seven, inherits cattle worth R200 000 from his late grandmother. Because he lives in a flat with his guardian, Abel, Victor wants to sell the cattle and invest the money.

Which ONE of the following statements is CORRECT?

1. Victor needs Abel's assistance to sell the cattle.
2. Victor does not need Abel's assistance to sell the cattle.
3. Victor needs Abel's assistance as well as the consent of the Master of the High Court to sell the cattle.
4. Victor needs Abel's assistance as well as the consent of a Judge of a High Court to sell the cattle. (2)

QUESTION 14

Musa and Lihle married out of community of property on 1 November 1999.

Which ONE of the following statements is CORRECT?

1. Musa and Lihle have a joint estate.
2. Musa and Lihle both lose their full capacity to act on marriage.
3. Musa and Lihle are jointly and severally liable to third parties for debts incurred for necessaries for the common household.
4. Lihle has to give her consent for the sale of a farm which belongs to Musa. (2)

QUESTION 15

Which ONE of the following agreements is lawful?

1. A contract which is unreasonable or unjust.
2. A contract which is against public policy.
3. A contract which is contrary to good morals.
4. A contract which is contrary to a statute. (2)

[TURN OVER]
QUESTIONS

QUESTION 16

Joely is the plaintiff in a civil case. The advocate tells her that she doesn’t have a good case. Joely decides to continue with her claim and to pay Mr Carm, the judge hearing her case, an amount of money in order to ensure success. She goes to his chambers, and hands him a suitcase full of American dollar notes. He promises that he will ensure that her claim succeeds.

Mr Carm delivers judgement against Joely in favour of the defendant.

Which ONE of the following statements is CORRECT?

1. Joely will succeed with an action against Mr Carm to reclaim the money she paid him since he is in breach of contract.
2. Joely will succeed with an action against Mr Carm to reclaim the money she paid him, because he has been unjustifiably enriched.
3. Joely will not succeed with an action against Mr Carm to reclaim the money since her agreement with him is contrary to public policy and therefore legally impossible.
4. Joely will not succeed with an action against Mr Carm since they did not reach consensus on the amount.

(2)

QUESTION 17

After twelve years in a business partnership, which sells tyres, Timothy wants to terminate Timothy and Polly’s business partnership. Since Timothy’s business partner, Polly, will be entitled to half the assets of the partnership at the time of the termination, he concludes a contract with a professional killer, Mr Assassin, in terms of which he will pay Mr Assassin the amount of R10,000 to kill Polly. The next day Polly dies of natural causes.

Which ONE of the following statements is CORRECT?

1. Mr Assassin is not entitled to payment in terms of the contract because performance has become impossible.
2. Mr Assassin is not entitled to payment because the agreement between him and Timothy is contrary to public policy.
3. Mr Assassin is entitled to payment in terms of the contract because performance has become impossible.
4. Mr Assassin is not entitled to payment because it is an implied term of the contract that Polly must be killed by Mr Assassin, not die of natural causes.

(2)
QUESTION 18

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

Contracts in restraint of trade are

1. in principle invalid and unenforceable, because a person's freedom to compete in the employment market is restrained and it is therefore contrary to public policy
2. in principle valid but unenforceable, because parties may conclude an agreement to this effect but a court will give precedence to public interest over contractual commitment if these interests are in conflict
3. in principle valid and enforceable, because the law permits the restraint of a person's freedom to trade if the parties freely conclude an agreement to this effect. (2)

QUESTION 19

Grant leases his penthouse next to the Greenpoint Stadium in Cape Town to Joel for R2 000 a day for the duration of the World Cup Soccer tournament in 2010. Neither of them knows that the penthouse was destroyed by a construction company in 2009.

Which **ONE** of the following statements regarding possibility to perform is **CORRECT**?

1. A valid contract was concluded and Joel can claim alternative housing from Grant.
2. The contract is void because of initial impossibility of performance.
3. A valid contract was concluded, but it was terminated because of supervening impossibility of performance.
4. The contract is void because of mistake. (2)

QUESTION 20

Which **ONE** of the following contracts must be in writing and signed in order to be valid?

1. A contract where a wager is made
2. A contract where a car is sold.
3. A contract where land is sold
4. A contract where a house is leased. (2)

QUESTION 21

Amod wants to sell his car to Bhana. On 12 February 2012 they reach agreement on the purchase price. On 30 March 2012 Amod's attorney drafts the agreement and Amod and Bhana sign it.

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

1. Since formalities are required by legislation, the contract came into existence on 12 February 2012
2. Since legislation requires that a contract for the sale of a vehicle must be in writing, the contract came into existence on 30 March 2012.
3. It will depend on the intention of Amod and Bhana whether the contract came into existence on 12 February or 30 March 2012.
4. The contract will come into existence when Amod delivers the car to Bhana. (2)

[TURN OVER]
QUESTION 22

Moses undertakes to buy Xolile a new truck one month after Simon’s death has occurred.

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

1. The moment for performance cannot be determined since it is uncertain when Simon will die.
2. A contractual relationship between Moses and Xolile arises and neither of them may rescind the contract.
3. This is an example of a resolutive time clause since the contractual obligation only has effect until the occurrence of a certain event.
4. This is an example of a suspensive condition since the contractual obligations are suspended until the condition is fulfilled. (2)

QUESTION 23

Francois lets his house to Claire. It is a material term of their contract that during the agricultural show, Claire will provide board and lodging to Andre for a week, and that if she does not do so, Francois may cancel the contract. Four statements are made about this contract.

A. The contract of lease is subject to the condition that Claire must provide Andre with board and lodging for that week.
B. The contract entitles Claire to occupy the house even though the agricultural show has not yet started.
C. Francois may cancel the contract before the agricultural show if Claire notifies him that she does not intend providing Andre with board and lodging.
D. If Claire breaches the material term about providing board and lodging to Andre, Francois must notify Claire of his intention to cancel the contract, before he will be entitled to cancellation.

Which of the above statements are **CORRECT**?

1. A and B
2. B and C
3. A and D
4. C and D. (2)

QUESTION 24

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)

[TURN OVER]
QUESTION 25

The "Oppenheimer" gallery has invited Bette to exhibit twenty of her most recent sculpture works at an exhibition which opens on 1 April. Peter and Bette enter into an agreement in terms of which Peter agrees to build stands for Bette's sculptures. Peter agrees to make the stands out of stainless steel in order to contrast properly with the bronze of the sculptures. They agree that Bette will pay Peter R150 000 when she collects the stands from him on 25 March. Peter uses plastic to build the stands for the sculptures. Bette meets Peter on 25 March to collect the stands. Peter claims payment of R150 000 for the stands. Bette refuses to pay for the stands. She claims that Peter has used plastic to build the stands with and that there is not enough time to build twenty stainless steel stands in time for the exhibition which opens on 1 April. Bette is of the opinion that Peter has breached their agreement.

Which ONE of the following statements CORRECTLY reflects the form of breach of contract that Peter has committed?

1. Peter's building the stands out of plastic constitutes repudiation
2. Peter's building the stands out of plastic constitutes positive malperformance (2)
3. Peter's building the stands out of plastic constitutes *mora debitoris*

QUESTION 26

The remedy of execution of the contract is the obvious remedy for breach of contract.

Which ONE of the following orders is an order for the execution of the contract?

1. an order for reduced performance (2)
2. an order for increased performance
3. an order for positive malperformance

QUESTION 27

Which ONE of the following statements is CORRECT?

1. The right of cancellation can be exercised by the innocent party at any time after his or her having become aware of the other party's breach of a contract
2. The right of cancellation lapses if the innocent party takes an unreasonably long time to exercise that right
3. The right of cancellation may be exercised by mere cancellation even if the other party is not informed of the innocent party's action
4. The right of cancellation allows the innocent party to give the other party the opportunity of rectifying his or her defective performance (2)
QUESTION 28

Which ONE of the following statements is a consequence of cession?

1. The cessionary does not have the right to collect the debt
2. The cedent can no longer cede his or her right to another person
3. The cessionary can no longer cede his or her right to any person
4. The cessionary only receives advantages attached to the right but not disadvantages

(2)

QUESTION 29

Which ONE of the following things can constitute the subject of a valid contract of sale between two parties?

1. a child
2. a claim
3. cocaine

(2)

QUESTION 30

Craig borrows Grabe's horse in order to compete in a race. Craig wins the race and decides to become a professional jockey. Without returning the horse to Grabe, he offers to buy it from him for R10 000. Grabe accepts the offer and Craig pays him there and then.

Which ONE of the following forms of delivery has taken place?

1. actual delivery
2. delivery with the short hand
3. symbolic delivery
4. delivery with the long hand

(2)

QUESTION 31

Which ONE of the following agreements meets the requirements for a valid contract of lease?

1. Taffy will make use of Ralph's garage when Ralph's car is not in the garage
2. Taffy may, if he wishes, demolish Ralph's garage and build a new one to his liking
3. In return for using Ralph's garage, Taffy will transport Ralph's child to school.
4. Taffy may make use of only the garage door to advertise his business

(2)
QUESTION 32

A lessee rents a property which subsequently appears seriously defective

Which ONE of the following statements is CORRECT?

1. Where Sihle, the lessee, elects to remain in occupation of the seriously defective property, he may claim a reduction in rent
2. If Sihle, the lessee, elects to remain in occupation of the seriously defective property, he may refuse to pay the rent
3. If Sihle, the lessee, cancels the contract because the leased property is seriously defective, he will not be liable for rent from the date of cancellation, notwithstanding the fact that he elects to remain in occupation
4. If Sihle, the lessee, effects repairs to the seriously defective property he may claim the estimated cost of the repairs as a reduction in rent

(2)

QUESTION 33

In the case of non-indemnity insurance

1. the insurer undertakes to pay the insured or the beneficiary a fixed sum of money if the event insured against takes place
2. the insurer undertakes to make good any damage which the insured may suffer
3. the insurer undertakes to pay a fixed sum of money at the expiry of a fixed period
4. the existence of an insurable interest is not required

(2)

QUESTION 34

The insured has a duty of good faith towards the insurer

Which ONE of the following statements is INCORRECT?

1. The duty of good faith in insurance contracts includes the duty of the insured to pay the premium agreed upon
2. The duty of good faith requires that the insured refrain from giving the insurer false information regarding material facts
3. The duty of good faith includes the disclosure of all material facts the insured might be aware of before the conclusion of the contract, if asked for that information
4. The insured's duty of good faith assists the insurer in assessing the potential risk insured against and to determine an appropriate premium

(2)

QUESTION 35

In which ONE of the following relationships does representative capacity come about by AGREEMENT?

1. guardian and minor
2. director and company
3. curator and insane person
4. farmer and auctioneer

(2)
QUESTION 36

Edwin runs a cash loan business. He is married to Cathy who is an attorney. Cathy assists him with the collection of debts due to him. He employs ten people in his business.

Which ONE of the following statements is CORRECT?

1. Edwin runs his business as a sole proprietorship
2. Edwin and Cathy are partners running a business as a sole proprietorship
3. Edwin is not personally liable for the debts and liabilities of the business (2)

QUESTION 37

Themba, Philip and Sophy want to start a business. They agree that Themba and Philip will each contribute R50 000, while Sophy will contribute R80 000. They want to operate their business in the form of a partnership, but are not sure about their duties and rights as partners.

Which ONE of the following statements regarding the rights and duties of partners is CORRECT?

1. If one of the partners fails to deliver his or her contribution to the partnership, the other partners may use the actio pro socio to force him or her to deliver such contribution
2. Each partner is entitled to share equally in the profits of the partnership
3. Each partner is entitled to participate in the management of the partnership in proportion to the contribution he or she made to the partnership
4. The partners may use the assets of the partnership for personal aims (2)

QUESTION 38

Danie, a farmer who farms on his uncle's farm, owns one tractor which he uses every day. Danie wants to borrow R400 000 from Yank Bank in order to buy some dairy cows. Yank Bank requires security for the loan in order to ensure that Danie will repay the loan. Danie only has the tractor to offer as security for the loan, but he can't work on the farm without the tractor.

Which ONE of the following forms of security will be the best way for Danie to secure his obligations under the loan?

1. a mortgage bond
2. pledge
3. a notarial bond
4. a lien (2)

[TURN OVER]
QUESTION 39

John sells his pink motorcycle to Peter privately. The next morning when Peter wants to take the motorcycle for a ride, the motorcycle's ignition does not start.

Which ONE of the following statements is CORRECT in terms of the Consumer Protection Act?

1. If the motorcycle is defective, Peter will enjoy the protection of the Consumer Protection Act and will have the right to return the motorcycle to John.
2. If the motorcycle is defective, Peter will be protected by the Consumer Protection Act, because the transaction was done in the ordinary course of business.
3. If the motorcycle is defective, Peter will not be protected by the Consumer Protection Act, because when Peter bought the motorcycle privately, he was aware that the motorcycle was defective.
4. If the motorcycle is defective, Peter will not be protected by the Consumer Protection Act, because this was a once-off transaction and is therefore not a transaction to which the Consumer Protection Act applies.

(2)

QUESTION 40

Peter takes the Gautrain from Pretoria to Johannesburg to buy a crystal vase at the Glass Company. He picks up a crystal vase to which is attached a notice that reads "If you break, you pay". Peter slips on the floor and the crystal vase breaks.

Which ONE of the following statements is CORRECT in terms of the Consumer Protection Act?

1. Peter must pay for the crystal vase, because he was warned that if he broke it he would have to pay for it.
2. Peter must pay for the crystal vase he broke, because he was reckless when he handled it.
3. Peter will not be held liable for payment of the broken vase, as the warning on the notice is unenforceable.
4. Peter will not be liable for payment of the broken vase if he did not see the warning "If you break, you pay".

(2)

TOTAL: [80]
**UNIVERSITY OF SOUTH AFRICA**

**EXAMINATION MARK READING SHEET**

**PART 1 (GENERAL/ALGEMEEN) DEEL 1**

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**PART 2 (ANSWERS/ANTWOORDE) DEEL 2**

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**Notice:** This is a specimen only.