### Question 1

#### Marks

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<tr>
<th>Question No</th>
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### WARNING

1. A candidate who, without authorisation, takes into the examination venue, any book, document or object which could assist him in the examination, and does not hand over such material to the invigilator before the official commencement of the examination, will be guilty of infringing the University's examination regulations and will be liable to punishment as determined by Council.

2. Rough work may be done only on the examination question paper and must be labelled as such.

3. No notes may be made on any part of the body, such as the hands, or on any garment.

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CLA1503 (496881) May/June 2018
Commercial Law IC

Duration 2 Hours 80 Marks

EXAMINERS
FIRST MR MP MAKAKABA
SECOND 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.

ANSWER ALL THE QUESTIONS.

STUDENT NUMBER. _______________________

INSTRUCTIONS

1. This is a closed book examination
2. The paper consists of 15 pages in total, make sure that your paper contains ALL the pages and ALL the questions
3. The paper is divided into the following 2 SECTIONS
   - SECTION A consists of written questions. Your answers have to be completed in the space provided on the examination paper itself. SECTION A counts 40 marks.
   - SECTION B consists of 20 multiple choice questions (2 marks each). The answers to the multiple choice questions have to be filled in on the mark-reading sheet provided to you. SECTION B counts 40 marks
   - THE EXAM PAPER COUNTS 80 MARKS
4. At the end of the examination you have to hand in both the mark-reading sheet containing your answers to the multiple choice questions as well as this examination paper
5. Write your student number on this examination paper and on your mark-reading sheet
6. You have 120 minutes (2 hours) at your disposal to answer ALL the questions. Make good use of this time
**SECTION A**

**QUESTION 1**
Indicate which of the statements below are either **TRUE** or **FALSE** by placing a cross in the correct block

(5)

<table>
<thead>
<tr>
<th>STATEMENT</th>
<th>TRUE</th>
<th>FALSE</th>
</tr>
</thead>
<tbody>
<tr>
<td>1  The English law is not one of the authoritative sources of the South African law</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2  Constitutional supremacy means that the Constitution is the highest law of the country and any law which is contrary to its provisions may be declared invalid</td>
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<tr>
<td>3  Contracts in restraint of trade are 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</td>
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<td></td>
</tr>
<tr>
<td>4  Prevention of performance is the form of breach of contract in terms of which a debtor does something he or she may <strong>NOT</strong> do in terms of the agreement</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5  In an insurance contract an uncertain event insured against is known as a risk</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
MATCH EACH of the statements below with ONE of the concepts/terms listed below, writing the correct concept/term in the appropriate box below.

<table>
<thead>
<tr>
<th>CONCEPT/TERM</th>
<th>STATEMENT</th>
<th>CONCEPT/TERM</th>
</tr>
</thead>
<tbody>
<tr>
<td>Negligence</td>
<td>The act of restoring something that has been taken away, lost or surrendered to the rightful owner</td>
<td>Instalment</td>
</tr>
<tr>
<td>Actio empti</td>
<td>An unlawful threat of harm or injury, made by a party to a contract or by someone acting on his/her behalf, which causes the other to conclude a contract</td>
<td>Restitution</td>
</tr>
<tr>
<td>Misrepresentation</td>
<td>The amount paid or undertaken to be paid in return for an undertaking to provide insurance</td>
<td>Premium</td>
</tr>
<tr>
<td>Ratification</td>
<td>A remedy which the purchaser can use to enforce his or her rights against the seller and to claim damages</td>
<td>Duress</td>
</tr>
<tr>
<td></td>
<td>A process of validating a contract concluded by a person not so authorised</td>
<td></td>
</tr>
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</table>
QUESTION 3
List FIVE common-law rights of the purchaser (5)

________________________________________

________________________________________

________________________________________

________________________________________

________________________________________

________________________________________


QUESTION 4

Read the following scenario and answer the questions that follow

Troy leases his citrus farm Wonderboom, to Brian for a period of twelve years in exchange for 10% of the crop produced each season, with the consent of the relevant ministry. Troy and Brian sign a written lease agreement, but the lease is not registered against the farm's title deed.

(a) List the THREE essential elements of a contract of lease (3)

________________________________________

________________________________________

________________________________________
(b) Discuss whether Troy and Brian's contract of lease is valid even though the rent is not an amount determinable in money? (5)

(c) What are the consequences of Troy and Brian's contract of lease to creditors and successors of the lessor, since it is not registered against the title deed? (4)
QUESTION 5

Read the following scenario and answer the question that follows

Sipho and Masilo, an estate agent, enter into a contract in terms of which Masilo undertakes to sell a poultry farm on behalf of Sipho. They agree that if Masilo succeeds in selling the property, Sipho will pay him 7% of the selling price as commission. Their contract also provides that Masilo will not be liable for expenses incurred in the execution of the task. However, Masilo’s estate is sequestrated before the property is sold, because of financial problems.

Advise Sipho whether he can revoke the mandate because Masilo’s estate has been sequestrated (4)
QUESTION 6
Name and describe TWO categories of persons that are recognised by the law (4)

_________________________________________________________________________

_________________________________________________________________________

_________________________________________________________________________

_________________________________________________________________________

TOTAL FOR SECTION A. 40 MARKS
Answer all multiple choice questions using the MARK-READING SHEET provided to you.

**QUESTION 1**

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

1. Lauren engages a professional caterer to provide food for a party to which ten guests have been invited. Thirty minutes after the agreed time, five guests phone Lauren and inform her that they will miss the appointment. Lauren wants to sue the guests for breach of contract.

2. John, exceedingly drunk, undertakes in front of witnesses at Papa’s Bar, to give one of his cars to Alex if Alex fixes his house’s broken windows in exchange. Moments later John collapses in the street. The next morning he remembers nothing of his agreement with Alex.

3. The organizers of the *Rhino 2008 Rally* make an offer to pay Rex R20 000 if he can drive the 500 kilometres between Johannesburg and Bloemfontein in an hour. Rex accepts the offer.

4. Peter and Andrew agree that Peter will hand R100 to Andrew and that Andrew will hand over his silver pen to Peter in full exchange.

**QUESTION 2**

*Which ONE of the following statements is CORRECT?*

1. The *ratio decidendi* consists of all the remarks and opinions by the judge giving the decision.

2. An *obiter dictum* can be persuasive for other courts.

3. “Obiter dictum” means the reason for the judgment.

4. The *ratio decidendi* of a minority judgement is binding on other courts.

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CLA1503
May/June 2018

SECTION A

8
QUESTION 3

Your friend, Tebogo, informs you that she would like to report a crime that took place in her neighbourhood to the police.

Which ONE of the following branches of the law will apply in this matter?

1. Family law
2. Law of persons
3. Private law
4. Public law

(2)

QUESTION 4

Which ONE of the following statements is INCORRECT?

1. The law of family is concerned with the relationship between family members
2. The law of family is concerned with the relationship between parents and children
3. The law of personality is concerned with a person’s right to his or her reputation
4. The law of personality is concerned with a person’s right to privacy

(2)

QUESTION 5

Pabi’s motor car has been involved in an accident. She now wishes to rent a car. She concludes an oral agreement with Joe in terms of which she will rent his car. However, Joe is labouring under the impression that Pabi is buying the car from him.

Which ONE of the following statements is CORRECT?

1. A valid contract has come into existence between Pabi and Joe
2. There is no consensus with regard to the object of performance
3. The parties have no intention to be contractually bound
4. The contract is void because the parties have not reached consensus on the nature of the contract

(2)
QUESTION 6

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 is appointed for him, any contract concluded by Peter without the curator’s assistance is voidable. (2)

QUESTION 7

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 8

Which ONE of the following obligations is created when Hosea and Lerumo agree that Hosea will buy one of Lerumo’s two dogs?

1. Generic obligation
2. Alternative obligation
3. Facultative obligation
4. Restorative obligation. (2)
QUESTION 9

Which ONE of the following contracts between Mr Robby and Ms Louwna will be legally possible to perform?

1. Mr Robby undertakes to have all Ms Louwna’s speeding tickets quashed in return for her husband’s rugby tickets for the season
2. Mr Robby accepts a wager from Ms Louwna in terms of which he undertakes to pay her R30 000 if the pig Lucky Nelson wins the Durban July Cup
3. Mr Robby agrees with Ms Louwna to murder her husband, who is having an affair with Miss Small, his secretary, for R10 000
4. Mr Robby sells 200 square metres of ocean just off Mossel Bay to Ms Louwna for R600 000 to be registered in terms of title deed no T/456 in the Cape Town Deeds office

QUESTION 10

Under certain circumstances an electronic signature can legally fulfil the same function as a traditional handwritten signature

Which ONE of the following statements regarding the form of an electronic signature is INCORRECT?

1. An electronic signature can be a typed name at the end of a document
2. An electronic signature can be a scanned handwritten signature
3. An electronic signature can be the use of complex identification technology if it is intended to act as a signature
4. An electronic signature can be a handwritten signature at the end of a document

QUESTION 11

Which ONE of the following statements regarding the exceptio non adimpleti contractus is CORRECT?

1. It is available to the defendant where the plaintiff has cancelled the contract because of the defendant’s breach of the contract and the plaintiff claims damages instead of specific performance
2. It is available where the plaintiff does not have to perform, for instance, in the case of a contract of donation
3. The court will order specific performance where the plaintiff who wants to rely on specific performance by the defendant has not rendered his or her performance
4. A court may at its discretion, refuse to allow a defendant to rely on the exceptio and order him or her to render a reduced counter-performance, where fairness requires it
QUESTION 12

Randy, who owns a shop that sells seafood, buys fresh fish from Saldanha Fisheries. Randy and Saldanha Fisheries agree that Saldanha Fisheries will deliver the fish to Randy’s shop on 15 March. On that date, Randy forgets that Saldanha Fisheries will deliver the fish, and closes his shop for the day in order to attend a funeral in a nearby town. When Saldanha Fisheries arrives at Randy’s shop with the fish, the doors are locked and there is nobody to receive the fish.

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

1. Randy committed breach of contract in the form of *mora debitoris*  
2. Randy committed breach of contract in the form of *mora creditoris*  
3. Randy committed breach of contract in the form of repudiation of the contract  
4. Randy committed breach of contract in the form of prevention of performance by the creditor

(2)

QUESTION 13

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

1. An order for specific performance is a court order which commands a contracting party to render the performance he or she has undertaken to render.  
2. Cancellation of a contract is a normal remedy which is always available to contracting parties.  
3. Compensation for pain and suffering can be claimed on the basis of contract where it is the direct result of the breach of contract.  
4. Damages calculated according to the creditor’s negative interest places him or her in the same patrimonial position in which he or she would have been had proper and timeous performance taken place.

(2)

QUESTION 14

Which **ONE** of the following options regarding the duty to maintain an object of lease by the lessor is **CORRECT**?

1. The lessor will be liable for damages sustained by the lessee only if he had knowledge of the defects or is reasonably expected to be aware of the defects.  
2. The lessor must allow for normal wear and tear and must also include repairs caused by the fault of the lessee as well as continue to maintain the object of lease in the same condition in which he or she was obliged to deliver it.  
3. Once the lessee pays the rent to the lessor, an obligation to maintain the property passes to him, irrespective of whether the property has been delivered to him (the lessee).  
4. Where the lessee claims a reduction of rent because of repairs he or she has made on the object of lease, the lessee need not prove that the repairs were done after the lessor failed to respond to a demand to have them done.

(2)
QUESTION 15

Which ONE of the following statements is CORRECT?

1. Movables are transferred by way of registration in the name of the purchaser at the Deeds Office
2. A purchaser who wants to institute a claim because of a latent defect in the merx must prove that he or she was unaware of the defect when the contract was concluded
3. The risk of accidental damage to the merx passes from the seller to the purchaser after the purchaser has become the owner
4. The seller can transfer ownership of the merx to the purchaser even if he or she is not the owner of the merx (2)

QUESTION 16

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

An agent will NOT incur personal liability where he or she

1. acted for an unnamed principal
2. confirms that he has the necessary authority to act on behalf of the principal
3. tactfully warrants that he has the required authority
4. acted under a false impression, created by the principal, that he or she has authority (2)

QUESTION 17

Which ONE of the following statements regarding the insured’s duty to disclose is CORRECT?

1. Before the conclusion of the contract the insured must disclose to the insurer all relevant material facts of which he or she is aware
2. If the insured does not comply with the duty to disclose, the contract will be void
3. The insurer can only dispute the contract if the insured makes a positive misrepresentation
4. The insured must disclose to the insurer all facts that he or she considers material (2)
QUESTION 18

Khanyi imports olive oil to South Africa. Khanyi authorises Brian to buy olive oil on her behalf. The first time Brian goes overseas to purchase olive oil, he notices that dates are very cheap and realises that Khanyi could make a large profit by selling dates in South Africa. He buys a shipload of dates on behalf of Khanyi.

Which ONE of the following statements is CORRECT?

1  Khanyi will not be liable for payment of the purchase price of the dates, since Brian acted outside the scope of his authority when he bought the dates.
2  Khanyi will be liable for payment of the purchase price of the dates, since she falsely created the impression that Brian had authority to act on her behalf.
3  Brian will be personally liable for payment of the purchase price of the dates, because he (Brian) falsely created the impression that he had the necessary authority to buy the dates.
4  Khanyi will be liable for payment of the purchase price of the dates, but she will have a right of recourse against Brian for the payment of the purchase price.

(2)

QUESTION 19

Tshepo, a farmer who farms on his uncle’s farm, owns one tractor which he uses every day. Tshepo wants to borrow R600 000 from DEO Bank in order to buy some dairy cows. DEO Bank requires security for the loan in order to ensure that Tshepo will repay the loan. Tshepo 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 Tshepo to secure his obligations under the loan?

1  a mortgage bond
2  pledge
3  a notarial bond
4  a lien

(2)
QUESTION 20

In terms of the Consumer Protection Act of 2008, a supplier may not as a condition for entering into a transaction require that a consumer must purchase goods or service from the supplier or a designated third party or enter into an additional agreement for the supply of these goods or services.

Which **ONE** of the following is **NOT** a defence against bundling in terms of section 13 of the Consumer Protection Act?

1. The convenience of bundled goods outweighs the limitation of the consumer’s right to choose suppliers
2. Bundling is beneficial for the increase of the sales of stores that sell goods
3. Bundling is to the economic benefit of the consumer
4. The bundled goods are offered separately and at individual prices

TOTAL FOR SECTION B: 40 MARKS

TOTAL: [80]

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