COMMERCIAL LAW 101

Duration: 2 Hours

80 Marks

EXAMINERS:

FIRST:
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SECOND:
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This paper consists of 14 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 14 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.
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. Roman-Dutch law
4. English law

QUESTION 2
Which ONE of the following statements regarding the application of the stare decisis doctrine is INCORRECT?
1. A High Court, irrespective of whether it is a full bench or not, is bound by the decisions of the Supreme Court of Appeal.
2. One High Court is not bound to follow the decisions of a High Court in another area of jurisdiction.
3. Within the area of jurisdiction of one High Court, a full bench is bound by an earlier decision of the full bench of the same Court.
4. If there are conflicting judgments of different High Courts, a magistrate’s court can follow any decision it deems to be correct.

QUESTION 3
Which ONE of the following statements is CORRECT?
In Varargos v Fiducia Bank Ltd 1989 (4) SA 584 (W).
1. Fiducia Bank Ltd is the applicant.
2. Varargos is the defendant.
3. 1989 is the year in which the case was reported.
4. 584 is the number of the case.

QUESTION 4
Which ONE of the following rights is infringed where a person makes defamatory statements about another person?
1. Personality right
2. Personal right
3. Real right
4. Intellectual property right

QUESTION 5
Scotch wishes to grant Mthakathi a usufruct to live in Scotch’s house. The parties are not sure of the law regarding usufruct.
Which ONE of the following statements is INCORRECT?
1. Mthakathi would have the right to let the house if he had to move to another province.
2. Mthakathi is entitled to demolish one wing of the house and install a swimming pool in that area.
3. Mthakathi is not allowed to sell Willie the right to occupy the house.
4. Scotch can grant Mthakathi a usufruct to last until Mthakathi graduates from university in four years’ time.

QUESTION 6
John’s isolated shop is plundered periodically and the only reasonable way of protecting his property is by setting up a gun inside the shop with a conspicuous sign warning that the gun has been set. If a thief is injured or killed by the gun, John will NOT be liable because his actions will have been justified.
This is an example of .......
1. voluntary assumption of risk.
2. necessity.
3. self-defence.
4. consent by the injured party.

QUESTION 7
Which ONE of the following actions should someone who has paid a sum of money to another in the mistaken belief that it was due, institute to recover the money from that other person?
1. condicio indebiti
2. actio in Iurinum
3. actio legis Aquilae
4. rei vindicatio

QUESTION 8
Which ONE of the following is NOT a requirement for the conclusion of a valid contract?
1. Each party to the contract must have capacity to act.
2. There must be consensus between the parties.
3. It must be physically possible to perform in terms of the contract.
4. The contract must be permitted by law.
5. The contract must be in writing, signed and dated.

[TURN OVER]
QUESTION 9

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

Which ONE of the following statements is CORRECT?

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

QUESTION 10

In which ONE of the following situations does consent NOT exist?

1. Ann, the seller, tells the purchaser that he is buying a 1992 model car, while it is in fact a 1990 model.
2. Ann, the seller, does not know whether the purchaser is Jonathan Lee or his brother John Lee.
3. Surgeon Lecoq convinces his patient, a very sick Leake, shortly before Leake is to undergo an operation, to sell his car cheaply to him.
4. Ann persuades Noko at gunpoint to sell him his 1994 model Land rover for R500, although it is worth R3,000.

[TURN OVER]
QUESTION 14
Which ONE of the following persons has limited capacity to perform juristic acts?

1. an unmarried adult who has been drinking heavily
2. a man who has been declared a profligate by the court
3. a divorced woman of nineteen years old
4. a minor under the age of seven years

(2)

QUESTION 15
Susan is eighteen years old and lives with her parents. She concludes a written contract in terms of which she buys a flat from Steven, a thirty-five year old man, for R20 000. She intends to use the money she received as a gift from her uncle to pay the purchase price.

Which ONE of the following statements is CORRECT?

1. The contract between Susan and Steven is void, because it was concluded without the consent of her guardian and the Master of the High Court.
2. The contract between Susan and Steven is void, because it was concluded without the consent of the High Court.
3. The contract between Susan and Steven is void, because it was concluded without the consent of her guardian.
4. The contract between Susan and Steven is void, because Susan does not have the capacity to act.

(2)

QUESTION 16
Lanya and Nic are married in community of property.

Which ONE of the following statements is CORRECT?

1. If Lanya’s grandfather bequeathed his farm to Lanya with the express condition that it is to be excluded from the joint estate, it is possible for Lanya to retain the farm as specific separate property.
2. Although Lanya’s grandfather bequeathed his farm to Lanya with the express condition that it is to be excluded from the joint estate, it is impossible for Lanya to retain the farm as specific separate property, because in a marriage in community of property there is only one common estate.
3. If Lanya’s grandfather bequeathed his farm to Lanya with the express condition that it is to be excluded from the joint estate, it will only be possible for Lanya to retain the farm as specific separate property if Nic gives written consent.

(2)

QUESTION 17
Raiza is nineteen years old and a full-time student. During the vacation, she concludes a contract of employment with Mpho, who operates a fast food delivery service. Raiza’s salary will be R1 500 for the five-week vacation. After having worked for a week, Raiza asks Mpho for an advance of R800 on her salary. Mpho lends the money to Raiza, who spends R500 on a pair of sunglasses as a twenty-first birthday present for her boyfriend, Armod. Raiza does not return to her job, and uses the remaining R300 for a bus ticket to visit a friend in Durban. Raiza’s father is furious when Mpho tells him what has happened. He would never have agreed to Raiza’s taking a holiday job, as he feels that he provides her with enough money for her needs and that she should spend vacations with her family.

Which ONE of the following statements is CORRECT?

1. Mpho can enforce the contract against Raiza, because Raiza is an emancipated minor.
2. Mpho can enforce the contract against Raiza’s father, because Raiza is still dependent on him.
3. Mpho can recover the sunglasses from Armod, and the value of the bus ticket from Raiza’s father.
4. Mpho has no enforceable legal remedy.

(2)

QUESTION 18
Which ONE of the following statements is CORRECT?

1. If Cassim, who is deeply in love, offers to give Sharcen, the object of his affections, the sun, the moon and the stars in a contract of donation, a valid contract does not come into existence because the objects of the donation are not capable of being privately owned.
2. If Jabu bets Sancho R500 that the All Blacks will win the next Rugby World Cup, the contract between them is void, because it is a wagering contract.
3. If Frans, the famous chef and owner of Cajun Café, agrees with Karl, the buyer of the restaurant, that Frans 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.
4. John and Peter decide to run a brothel and draw up an agreement on how they will divide the profits. A valid contract comes into existence.

(2)

QUESTION 19
Mr. Reed, a wealthy businessman, marries his twenty-one year old secretary. In terms of their duly registered antenuptial contract, he appoints her as the sole heir to his fortune. On his death his children contest the validity of this undertaking in the antenuptial contract.

Which ONE of the following statements is CORRECT?

1. The undertaking is not valid since it is contrary to good morals.
2. The undertaking is not valid since it cannot be legally executed.
3. The undertaking is valid since it amounts to a valid donation between the living.
4. The undertaking is valid since parties about to be married may appoint each other as heir in an antenuptial contract.

(2)
QUESTION 20
Which ONE of the following statements is INCORRECT?

1. A wagering contract is valid.
2. A wagering contract is void.
3. A wagering contract is unenforceable. (2)

QUESTION 21
Sue is the plaintiff in a civil case. Her attorney tells her that she doesn’t have a good case. Sue decides to continue with her claim and to pay Mr. Corrupt, the magistrate hearing her case, an amount of money in order to ensure success. She goes to his chambers, and hands him a suitcase full of twenty rand notes. He promises that he will ensure that her claim succeeds.

Mr. Corrupt delivers judgment against Sue in favor of the defendant.

Which ONE of the following statements is CORRECT?

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

QUESTION 22
Which ONE of the following statements is CORRECT?

1. Formalities are required for the formation of all contracts.
2. All parties prescribe formalities for their contracts; compliance is optional.
3. Writing is a formality required for all contracts of sale.
4. A contract of lease may be concluded without any formalities. (2)

QUESTION 23
Thomas owes Ulrich R10 000 and he asks Roger to stand surety for his debt. Roger asks your advice. He says he is not certain whether:

A. if the suretyship contract is in writing, he is the only person who can sign it
B. the suretyship contract must be in writing
C. the suretyship contract can be concluded orally or in writing
D. the surety or his agent can sign the suretyship contract

Advise Roger on which of the above statements are CORRECT?

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

QUESTION 24
Which ONE of the following contractual terms is a condition?

1. Keenan will rent Lyle’s house if Lyle fences the stand on which the house is situated.
2. Keenan will rent Lyle’s house for the period Lyle will be overseas on a six month contract.
3. Keenan will rent Lyle’s house if Lyle’s employer decides to send him overseas for a period of three months or longer. (2)

QUESTION 25
Francesca buys an Uno from Lakeside Motors. One of the terms of the contract is that the colour of the car must be red. This is an ...

1. suspensive condition.
2. express term.
3. resolutive condition.
4. supposition. (2)
QUESTION 26

Betty is appointed as director of Toko Ltd in terms of a contract which will terminate after three years. In her last year as director she concludes a building contract on behalf of Toko Ltd. In terms of the building contract, building will start two months before Betty’s contract with Toko Ltd terminates.

Four statements are made about these contracts:

A. Betty’s contract as director is subject to a suspensory time clause.
B. Betty’s contract as director is subject to a resolutive time clause.
C. The building contract is subject to a resolutive time clause.
D. The building contract is subject to a suspensory time clause.

Which of the above statements are CORRECT?

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

(2)

QUESTION 27

Which ONE of the following statements is CORRECT?

1. A forum-gold clause is subject to the provisions of the Conventional Penalties Act.
2. A cancellation clause makes provision for a party who is in breach of contract to lose his/her right to restitution.
3. A penalty, in terms of a penalty clause is recoverable on the ground that the debtor has committed breach of contract provided that the creditor proves that he/she has suffered damages.
4. An entrenchment clause provides that the agreement may only be altered by means of written amendment.

(2)

QUESTION 28

When will a court apply the guideline of interpreting a contractual term against the interest of the party who formulated that term?

1. Whenever the term appears to the court to be unfair.
2. Only when the term appears in a standard-form contract.
3. Only when the term is ambiguous or vague.
4. The court will never apply such a guideline.

(2)
QUESTION 32

The management of Thanong University enters into an agreement with Roy Building Contractors in terms of which Roy Building Contractors will build two hostels which will accommodate five thousand students. The contract stipulates that the hostels must be ready before 31 December 2004 in order to enable the management to start allocating the rooms to the students at the beginning of January 2005. Roy Building Contractors only finishes the work at the end of January 2005 and the hostels can only accommodate four thousand and ninety students. The reason why the buildings are not finished by the agreed time is that Roy Building Contractors gave all the builders in its employ two weeks of holiday leave during December 2004.

Which forms of breach of contract occurred in this set of facts?

1. prevention of performance by the debtor and morta debitori
2. morta debitori and positive malperformance
3. morta creditori and positive malperformance
4. only morta debitori

QUESTION 33

Which ONE of the following statements is CORRECT?

1. Compensation for pain and suffering can be claimed on the basis of contract where it is the direct result of the breach of contract.
2. Cancellation of a contract is a normal remedy which is always available to contracting parties.
3. 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.
4. Damages calculated according to the creditor’s negative interest places him/her in the same patronial position in which he/she would have been had proper and timely performance been taken place.

QUESTION 34

In which of the following instances will damages be claimed according to the innocent party’s positive interest?

1. misrepresentation
2. breach of contract
3. duress
4. undue influence

QUESTION 35

Which ONE of the following statements is CORRECT?

The exception non adimpleti contractus ...

1. prevents a party from doing something that is contrary to the terms of the contract.
2. allows a party to claim performance until the other party has performed in terms of the contract.
3. orders a party to a contract to do what he/she undertook to do in that contract.
4. orders a party to render a reduced performance.

QUESTION 36

Alex sells his car to Brian and his library of rare books to Chris. It is an express term of his contract with Brian that the car must be delivered by 6 June. The contract between Alex and Chris does not stipulate any date for the delivery of the books to Chris. Alex does not deliver the car to Brian or the books to Chris.

Which ONE of the following statements is CORRECT in respect of the legal steps that may be taken against Alex?

1. Brian and Chris may, in principle, claim delivery of the car and the books respectively.
2. Brian cannot claim delivery of the car but can only cancel the contract.
3. Chris is immediately entitled to cancel the contract for the sale of the books.
4. Brian cannot apply for an interdict to prevent Alex from selling the car to Edward at a higher price.

QUESTION 37

Consider the following statements:

A. Impossibility of performance renders a contract void if the impossibility exists at the time that the agreement is concluded.
B. Impossibility of performance is a form of breach of contract if the impossibility occurs after conclusion of the contract and is culpably caused by one of the contracting parties.
C. Impossibility of performance is a fact whereby rights arising from contracts are terminated if the impossibility occurs after conclusion of the contract and if it is caused by factors beyond the control of the contracting parties.

Which of the above statements is/are CORRECT?

1. only A
2. only B
3. B and C
4. A, B and C
QUESTION 38
Which ONE of the following statements regarding novation is CORRECT?

1. Novation does not extinguish the original obligation between the parties.
2. If the novation is void for whatever reason the old obligation is also void.
3. The effect of novation is to extinguish the original debt and therefore to extinguish accessory obligations.
4. A valid novation will take place even though the initial obligation was invalid.  

(2)

QUESTION 39
Which ONE of the following statements is CORRECT?

1. If Joe borrows R5,000 from James on 1 December and they agree that Joe will pay the money back on 30 December, prescription regarding the debt begins to run on 1 December.
2. Joe may sell a third of what Mike owes him to James without Mike’s consent.
3. Joe owes Big Bank a total of R100,000 in respect of various transactions. He deposits an amount of R10,000 with the bank, but fails to stipulate how the payment must be allocated. The bank is obliged to apply the whole sum towards the reduction of Joe’s obligations in respect of the capital on his home loan.
4. Joe (Pty) Ltd’s debt of R10,000 in favour of the Carry-on Construction Co (Pty) Ltd is extinguished when the two companies merge.  

(2)

QUESTION 40
Which ONE of the following statements is CORRECT?

1. Where a divisible performance becomes partially impossible the whole obligation is terminated.
2. Where the creditor is prepared to accept partial performance in regard to an indivisible performance, it will have the same consequences as that of impossibility of performance.
3. A contract can never be terminated by a creditor as a result of temporary impossibility of performance, irrespective of the duration of the impossibility.  

(2)

TOTAL: [80]