Tutorial letter 102/3/2015

Commercial Law 1C
CLA1503

Semesters 1 & 2

Department of Mercantile Law

IMPORTANT INFORMATION:
This tutorial letter contains important information about your module.
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1 WELCOME

Dear Student

THE CONTENTS OF THIS TUTORIAL LETTER ARE IMPORTANT: YOU MUST STUDY IT IMMEDIATELY.

In this tutorial letter we introduce your lecturers, confirm the prescribed study material and highlight amendments that must be appended into your Study Guide in order to bring your Study Guide in line with the new prescribed textbook, *General Principles of Commercial Law 8th edition* (Juta) 2015. We furthermore, set out the rules for the examination and describe the type of questions which you may expect in the examination. Lastly, we also encourage you to register for *myUnisa* and *myLife* to interact with fellow students and e-tutors.

2 LECTURERS AND CONTACT DETAILS

If you have any queries regarding the module content, you can contact the lecturers telephonically, by post or via email.

The following are the lecturers for this module:

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3 PRESCRIBED STUDY MATERIAL

Commercial Law 7th ed (2010) Juta may not be used for the module, as it is outdated in certain important aspects.

Only the following chapters and/or paragraphs in the prescribed textbook have to be studied for this module:

Chapter 1: The South African Legal System

Paragraphs to be studied: 1.1, 1.2, 1.3, 1.4, 1.6.1 and 1.6.2
Paragraphs which you need to read only: 1.1.1, 1.1.2, 1.1.3, 1.6.3 and 1.6.4

Please take note of the following amendments to the study guide:
Page 2, line 9 reads “You are introduced to five types of courts....” This should be amended to read “…six types of courts…”
All references to “High Courts” should now read “High Court” because section 6 of the Superior Courts Act stipulates that there is only one High Court in South Africa with various divisions.

Pages 4 and 5 under heading number 3 please take note of the following:
- Constitution Seventeenth Amendment Act of 2012 and its impact on the jurisdiction of the Constitutional Court. Take further note of the composition and the seat of the Constitutional Court.
- The composition of the Supreme Court of Appeal.
- The Superior Courts Act 10 of 2013 as it relates to the various divisions of the High Court and the composition of each division of the High Court.
- The Small Claims Court and its jurisdiction, presiding officers and representation allowed before it etc.

Please take note of the following amendment to the textbook:-
Par 1.2.3, the third paragraph reads “The lower courts are those courts which are lower than the High Court and which are not required to keep a record of their proceedings”. Examples are the magistrates’ courts, the small claims courts and the different courts of black chiefs and headmen”. This should be amended to read that “The lower courts are those courts which are lower than the High Court and which are required to keep a record of their proceedings”.

Chapter 2: Introduction to the Science of Law

Paragraphs to be studied: 2.1 and 2.2 (2.2.4, 2.2.4.1 and 2.2.4.4)
Paragraphs which you need to read only: 2.2.1, 2.2.2, 2.2.3, 2.2.4.1.2, 2.2.4.2 and 2.2.4.3

Please take note in par 2.2.1 of the textbook that all South African citizens over the age of 18 are entitled to vote.

Chapter 3: Law of Contract: Introduction

Paragraphs to be studied: 3.1 and 3.2
Paragraphs which you need to read only: 3.3 and 3.4
Please take note in par 3.4 that transactions which are specifically excluded from the operation of the Electronic Communications and Transactions Act 25 of 2002 are listed under Schedule 1 of the Act.

Chapter 4: Consensus

Study the whole chapter.

Please take note the following in the study guide:

In par 4.4.2.1(a) that misrepresentation may also be inferred from circumstances that prevailed at the time the contract was concluded, and can even be tacitly made.

In par 4.4.2.1(a) that giving an honest opinion or estimate (such as a statement about the future profitability of a business), even if the opinion turns out to be mistaken, does not constitute a misrepresentation.

In par 4.4.2.1(b) that rescission is an obvious remedy where parties to the contract are involved.

In par 4.4.2.1(d) that the person to whom a representation is made is under no obligation to ascertain whether the representation is true or not.

In par 4.4.2.1.1 that the innocent party who elects to continue with the contract may claim specific performance or damages.

In par 4.4.2.2 that it is not necessary for the threat to be in the form of expressed words or actions. It can be implied, tacit, or by conduct and may also be by subtle forms of intimidation. The test is objective.

Chapter 5: Capacity to Perform Juristic Acts

Paragraphs to be studied: 5.1, 5.2, 5.3 (5.3.2 and 5.3.3), 5.4, 5.5, 5.6 and 5.7
Paragraph which you need to read only: 5.3.1

Chapter 6: The Agreement must be possible

Study the whole chapter

Chapter 7: Formalities

Study the whole chapter

Please take note that the Stamp Duties Act 77 of 1968 is now repealed (see par 7.3.3 of the textbook).

Chapter 8: Terms of the Contract

Paragraphs to be studied: 8.1, 8.2, 8.3, 8.4, 8.6, 8.7, 8.8, 8.9 and 8.10
Paragraphs which you need to read only: 8.5, 8.9.2, 8.11 and 8.12

Chapter 10: Breach of Contract
Study the whole chapter

Chapter 11: Remedies for Breach of Contract

Paragraphs to be studied: 11.1, 11.2, 11.3 (11.3.6 and 11.3.7) and 11.4 (11.4.1)
Paragraphs which you need to read only: 11.3.1, 11.3.2, 11.3.3, 11.3.4, 11.3.5, 11.4.2, 11.4.3, 11.4.4 and 11.4.5

Please take note in par 3.7 of the study guide that the court may in certain circumstances dispense with restitution if it considers it equitable to do so, irrespective of the innocent party’s ability to make restitution.

Chapter 12: Transfer and Termination of Personal Rights

Paragraphs to be studied: 12.1 and 12.2 (12.2.1)
Paragraphs which you need to read only: 12.3 - 12.10

Chapter 13: The Contract of Sale

Paragraphs to be studied: 13.1, 13.2, 13.3, 13.4, and 13.5 (only 13.5.5)
Additional paragraphs to be studied: 16.3 (16.3.1, 16.3.2 (16.3.2.1 and 16.3.2.3) and 16.3.3 in Chapter 16
Paragraphs which you need to read only: 13.5.1-13.5.4.4

Please take note of the following:
- Page 95 of the study guide, under heading “1 Introduction” include (highlight) the following new information:
  - In chapters 4-7 of the textbook the basic requirements for the conclusion of a valid contract are discussed. Chapter 8 of the textbook places emphasis on certain additional characteristics or requirements (essentialia) which must be present. (See paragraph 13.1 of your textbook).
  - Page 95 of the study guide, under heading “1.1 The object of sale (merx)” include (highlight) the following information:

    The merx may consist of moveable or immovable goods, or may even be an incorporeal thing such as a claim, servitude or a patent (chapter 2). (See paragraph 13.1.1 of your textbook)

    Change the number of the Chapter referred to in this paragraph. For further reading on consumer protection see Chapter 30, previously Chapter 29. (See paragraph 13.1.2 of your textbook)

Chapter 14: The Contract of Lease

Paragraphs to be studied: 14.1, 14.2, 14.3, 14.4, and 14.5
Paragraphs which you need to read only: 14.6 and 14.7

Please amend the headings in the study guide with the following new information:
Page 102, heading “2 The essential elements of a contract of lease”
Page 102 heading “2.1 The use and enjoyment of a thing (property)”
Page 103, heading “4.1.1 The duty to deliver the leased object to the lessee”
Chapter 15: The Contract of Insurance

Paragraphs to be studied: 15.2, 15.3 (15.3.1-15.3.3.1) and 15.4
Paragraphs which you need to read only: 15.1, 15.3.3.2, 15.5, and 15.6

Please take note of the following:

Page 110, under heading “1 History and sources of the law of insurance” include (highlight) the following new information:
It must be noted that subject to certain conditions the Consumer Protection Act 68 of 2008 does not apply to contracts of insurance (see Chapter 30) (See paragraph 15.1 of your textbook).

Chapter 20: The Law of Agency

Paragraphs to be studied: 20.1 and 20.3
Paragraphs which you need read only: 20.2

Chapter 21: Forms of Business Enterprise

Paragraphs which you need to read only: 21.4

Please take note of the following:
Page 125 of the study guide, under the heading “3.1 Introduction”:

The omission of the Business Names Act 27 of 1960, and the reference to the Consumer Protection Act 68 of 2008 which places a number of restrictions on the name a partnership may have. (See paragraph 21.3.1 of your textbook).

Page 132, under the heading “4.2 Formation and membership of a close corporation” include (highlight) the following information:

All provisions in the Close Corporations Act 69 of 1984 relating to the formation of a close corporation are of no effect. (See paragraph 21.5.2 of your textbook).

Chapter 23: Security

Paragraphs to be studied: 23.1, 23.2 (23.2.123.2.5.2) and 23.3
Paragraph which you need to read only: 23.2.5.3

Chapter 30: Consumer Protection

Paragraphs to be studied: 30.1 and 30.2 (30.2.1 - 30.2.4.8.8 and 30.2.6)
Additional paragraphs to be studied: Chapter 24; par 1.3.2.4
Paragraphs which you need to read only: 30.2.5 and 30.2.7

Please take note of the following amendments to tutorial letter 101:
Chapter 29 is indicated as dealing with Consumer Protection. For the purpose of this module, you don’t have to study chapter 29 (The Law of Administration of Estates).

Please take note of the following amendments to the study guide:

Study Unit 13 which makes reference to paragraph 29. All references to paragraph 29 must be amended to read as paragraph 30, for example, the Introduction refers to par 29.1 of the textbook. This should be amended to read (textbook par 30.1).

You should have received Tutorial Letter 101/3/2015 containing the assignments questions. Tutorial Letter 201/2015 and Tutorial Letter 202/2015 containing the memorandum and commentaries on the two assignments will be sent to every student after the assignments closing date. We recommend that while preparing for the examination, you answer the assignments questions again, this time without the aid of your study material. After trying to answer all the questions within an hour, check your answers against those in Tutorial Letters 201/2015 and 202/2015. This exercise should help you to establish which areas of the work you find difficult.

4  THE TYPE OF QUESTIONS YOU CAN EXPECT

The examination consists solely of multiple-choice questions. The questions are drawn from all prescribed chapters of the textbook. You should therefore study all the chapters when preparing for the examination. You have to study all the prescribed sections (paragraphs) in the prescribed chapters for the examination; please do not contact the lecturers to ask for tips and advice on what to leave out and what to concentrate on — learn everything equally well. It is unlikely that any of the questions in the assignment (see Tutorial Letter 101/3/2015) will appear in the examination; but they do provide a fair idea of the type of questions that you may expect in the examination. You will be expected to answer a mixture of questions: some will be direct questions testing your knowledge of the theory of the law; while others will be problem questions setting out a short set of facts and then requiring you to choose the appropriate legal comment on the problem.

PLEASE NOTE: You must make sure that you answer the correct examination paper during the examination. The module code on the question paper must be the same as the one for your registered module (CLA1503) and not any other module (e.g. CLA1501).

5  OLD EXAMINATION PAPERS

You will be provided with previous examination papers on myUnisa. The papers together with assignments questions should enable you to prepare for the examination and anticipate the type of questions you will have to answer.

Please note that full commentary is provided to each of the assignments questions in Tutorial Letters 201/2015 and 202/2015. This explains why a specific option is more correct than any of the other options. It is important for you to understand why one option is the correct option, rather than another, because if you do not understand that, you will not be able to identify the correct option if the sequence of options is changed, or if the question is phrased differently. It is equally important to understand the reasons why the incorrect options are incorrect.
In the case of previous examination papers available on myUnisa, no commentary is provided. The papers are provided merely to show you how the examination paper will look. Lecturers will not provide the solutions to these questions.

Please also note that even if questions might look the same, or similar, from year to year, it does not necessarily mean that they are identical, or that option X is always the correct option. If you spend your time memorising specific options or questions, you will not be using your time effectively and you might remain unable to answer the examination questions correctly, even if you have already seen similar questions before.

We are aware that examination papers and/or memorandums are offered for sale on myUnisa and on other websites. These papers are the property of Unisa and their sale by others is an infringement of Unisa’s copyright. Please also note that it is only the memorandum that is compiled by the lecturers for the module which is valid. Students and members of the community who sell the papers will face disciplinary or criminal proceedings. You must be careful not to buy such examination papers and/or memorandums because changes made to the syllabus in the past years render some of the questions from past examination papers irrelevant. As the law changes, the answers that were correct some few years ago might no longer be correct – the change to the age of majority is but one example.

If you have any further queries about the examination arrangements, please contact exams@unisa.ac.za or send an SMS to 32695. You will find further details in Tutorial Letter 101.

6 IMPORTANT INFORMATION

Students are also encouraged to register for myUnisa and myLife to interact with fellow students and e-tutors. E-tutors guide students online through the material and encourage students to study hard and persistently. If you need further information about myUnisa and myLife, please contact myUnisaHelp@unisa.ac.za or myLifeHelp@unisa.ac.za or send an SMS to 43582.

THE LECTURERS

UNISA