IMPORTANT INFORMATION:
This tutorial letter contains important information about your module.
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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 (CLA1503/101/2013) 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 the assignments, preparing for the examination and addressing questions to your lecturers.

In this tutorial letter you will find the two assignments for semester 1 and 2, instructions on the preparation and submission of the assignments (See 7.2.1 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 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. These tutorial letters will not necessarily be available at the time of registration. Tutorial letters will be despatched to students as soon as they are available.

Your study material for CLA1503 will therefore 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 of the examination and describe the kinds of questions you may expect in the examination); and 201 (which contains the memoranda and commentaries on the assignments) which you will receive from the university and a prescribed textbook which you must purchase. You can also access the study guide and tutorial letters on myUnisa.

You are also encouraged to register on myUnisa, a tool which will enable 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

For further information on myUnisa and other administrative information please consult the publication my Studies @ 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 hope that you will enjoy this module and wish you all the best!
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.

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 ought to 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 to 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)

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 MB Masuku (Module leader)</td>
<td>012 429 8836</td>
<td><a href="mailto:mankgmb@unisa.ac.za">mankgmb@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 JJ Baloyi</td>
<td>012 429 8076</td>
<td><a href="mailto:baloyjj1@unisa.ac.za">baloyjj1@unisa.ac.za</a></td>
</tr>
<tr>
<td>Ms C van der Westhuizen</td>
<td>012 429 8395</td>
<td><a href="mailto:vdwesc@unisa.ac.za">vdwesc@unisa.ac.za</a></td>
</tr>
</tbody>
</table>

Letters 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 Ms T Manganyi on (012) 429 8460.

3.3 University

If you need to contact the University about matters not related to the content of this module, please consult the publication my Studies @ Unisa which you received with your study material. This booklet 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).

Always have your student number at hand when you contact the University.

4 MODULE-RELATED RESOURCES

4.1 Prescribed book


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

Chapter 2: Introduction to the Science of Law
Paragraphs to be studied: 2.1 and 2.2 (2.2.4, the whole of 2.2.4.1 and the whole 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

Chapter 3: Law of Contract: Introduction
Paragraphs to be studied: the whole of 3.1 and 3.2 
Paragraphs which you need to read only: 3.3 and 3.4

Chapter 4: Consensus
Study the whole chapter

Chapter 5: Capacity to Perform Juristic Acts
Paragraphs to be studied: 5.1, the whole of 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: Possibility of Performance
Study the whole chapter
Chapter 7: Formalities
Study the whole chapter

Chapter 8: Terms of the Contract
Paragraphs to be studied: 8.1, the whole of 8.2, the whole of 8.3, the whole 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, the whole of 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

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: the whole of 13.1, the whole 13.2, the whole of 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

Chapter 14: The Contract of Lease
Paragraphs to be studied: 14.1, the whole of 14.2, 14.3, the whole of 14.4, the whole of 14.5
Paragraphs which you need to read only: the whole of 14.6 and 14.7

Chapter 15: The Contract of Insurance
Paragraphs to be studied: the whole of 15.2, 15.3 (15.3.1-15.3.3.1) and the whole of 15.4
Paragraphs which you need to read only: 15.1, 15.3.3.2, 15.5, and 15.6

Chapter 20: The Law of Agency
Paragraphs to be studied: 20.1 and the whole of 20.3
Paragraphs which you need read only: the whole of 20.2

Chapter 21: Forms of Business Enterprise
Paragraphs which you need to read only: the whole of 21.4

Chapter 23: Security
Paragraphs to be studied: 23.1, 23.2 (23.2.123.2.5.2) and the whole of 23.3
Paragraph which you need to read only: 23.2.5.3

Chapter 29: Consumer Protection
Paragraphs to be studied: 29.1 and 29.2 (29.2.1-29.2.4.8.8 and the whole of 29.2.6)

Additional paragraphs to be studied: Chapter 24; par.1.3.2.4
Paragraphs which you need to read only: the whole of 29.2.5 and 29.2.7
Prescribed books can be obtained from the University’s official booksellers. If you have difficulty locating your book(s) at these booksellers, please contact the Prescribed Books Section at 012 429 4152 or e-mail vospresc@unisa.ac.za.

4.2 Recommended books

There are no recommended books for this module

4.3 Electronic Reserves (e-Reserves)

There are no e-reserves for this module

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 my Studies @ Unisa which you received with your study material.

6 MODULE-SPECIFIC STUDY PLAN

Refer to my Studies @ Unisa for general time management and planning skills. Please make an immediate note of the closing dates for assignments. We may not grant extensions for the submission of assignments and failure to submit assignment 01 will mean that you do not have admission to the examination.

7 ASSESSMENTS

7.1 ASSIGNMENTS

7.1.1 Assignments and Learning

Assignments are seen as part of the learning material for this module. When you do the assignments, study the study guide and the prescribed textbook and discuss the work with fellow students or tutors.

Your assignments must reach us on or before the submission date. For detailed information and requirements as far as assignments are concerned, see the publication my Studies @ Unisa.

7.1.2 General remarks

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. The assignments are marked by computer immediately after the due date, and late submissions cannot be marked.
7.1.3 Format of assignments and number of assignments

(a) Each of the two assignments consists of five multiple-choice questions for which a mark-reading sheet must be completed.

(b) Assignments consisting of multiple-choice questions must be answered on a mark-reading sheet that 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. Written answers on a sheet of paper will not be marked.

(d) For detailed information and requirements as far as assignments are concerned, see the publication my Studies @ 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 my Studies @ Unisa. Read these instructions carefully and follow them strictly to avoid unnecessary mistakes.

(e) Assignments should be addressed to:

The Registrar
PO Box 392
UNISA
0003

(f) When submitting an assignment on a mark-reading sheet by mail, you must send ONLY YOUR MARK-READING SHEET in an envelope. Do not include a cover sheet with your mark-reading sheet.

(g) To submit an assignment via myUnisa:

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.

(h) 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.

(i) Please ensure that your name, address, student number, module code, assignment number and unique number for the assignment (see 7.1.5 below) appear on the mark reading sheet, and that this information is correct.

(j) It is wise to make copies of assignments before submitting them, in case they get lost in the post.
(k) Do not submit the same assignment a second time. The computer will simply reject it as a duplicate assignment.

(l) Soon after the closing date of each assignment you will receive a computer printout giving your answers, the correct answers, and your marks for the assignment. You will also receive a tutorial letter **CLA1503/201/2013** with detailed commentary on each question of each of the two 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.

**THEREFORE, PLEASE FOLLOW THE INSTRUCTIONS CAREFULLY.**

7.1.4 Commentaries and feedback on the assignments

The commentaries on the two compulsory assignments will be send to all students registered for this module in Tutorial Letter **CLA1503/201/2013** as mentioned above.

As soon as you have received the commentaries, please check your answers. The assignments and the commentaries on the assignments constitute an important part of your study material for the examination.

7.1.5 Assignment submission dates and unique numbers

The closing dates for the submission of the assignments are:

**FIRST SEMESTER**

The first semester assignments can be found under the Addendum (Appendix A).

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<th>Unique number</th>
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<tr>
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<td>12 March 2013</td>
<td>779975</td>
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<tr>
<td>Assignment 02:</td>
<td>03 April 2013</td>
<td>822132</td>
</tr>
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</table>

**SECOND SEMESTER**

The second semester assignments can be found under the Addendum (Appendix B).

<table>
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<th>Unique number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Assignment 01:</td>
<td>02 September 2013</td>
<td>899396</td>
</tr>
<tr>
<td>Assignment 02:</td>
<td>25 September 2013</td>
<td>864299</td>
</tr>
</tbody>
</table>

7.2 EXAMINATION

For general information and requirements about the examination, see **my Studies @ Unisa**.
7.2.1 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. Students, who do not submit the compulsory assignment before or on the due date, will not receive admission to write the examination. The mark obtained for the compulsory assignment will count towards your final mark.

The marks obtained for the assignments will - provided you obtain an examination mark of at least 40% - count 20% of your final mark. You need to obtain a sub minimum 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.

7.2.2 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 2013 and the supplementary examination will be written in October/November 2013. If you are registered for the second semester you will write the examination in October/November 2013 and the supplementary examination will be written in May/June 2014.

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.

7.2.3 Examination paper

At the end of the semester you will write one two-hour paper on this module. The examination paper consists of 40 multiple-choice questions only; each correct answer to a question counts two marks. The total allocation for the paper is 80 marks. In Tutorial Letter CLA1503/102/3/2013 we shall send you more information on the format of the examination paper.

7.2.4 Previous examination papers

A previous examination paper is available to students on myUnisa. However, please note that the 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.

8 FREQUENTLY ASKED QUESTIONS

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

QUESTION 2

Constitutional supremacy means that...

1. there may be no interference with judicial independence when a court applies the Constitution.
2. the Constitution is the highest law of the country and any law which is contrary to its provisions may be declared invalid.
3. Parliament is the highest legislative body and is entitled to make legislation without any interference.
4. no right given by the Constitution may be limited.

QUESTION 3

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

1. Sally engages a 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 a 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. The shoes will be delivered at his flat in Pretoria. The shoes will be delivered at his flat in Pretoria.
4. Reeze undertakes to sell the moon and one star to Shana for R500.
QUESTION 4

Mandla is a general dealer. He needs to appoint a sales person and to replace his delivery van with a bigger vehicle. If Mandla finds a buyer for the van and a suitable sales person he will conclude two contracts: a contract of sale in respect of the old vehicle and a contract of employment with the suitable applicant.

Which ONE of the following persons does NOT have the full capacity to conclude both of the contracts with Mandla?

1. Gloria, seventeen years old, who has been married to Dan for the last two years. They are married out of community of property.
2. Steven, whose estate was sequestrated after he lost a fortune in a shady business deal. Steven has not been rehabilitated yet.
3. Arthur, who is married in community of property to Stella.
4. Themba, sixteen years old, whose parents left him behind when they immigrated to America because he had his own job and flat.

QUESTION 5

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

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.

Total: [10]
QUESTION 1

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

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

1. Stuart and Chris may, in principle, claim delivery of the car and the books respectively.
2. Stuart 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. Stuart cannot apply for an interdict to prevent Donny from selling the car to Edward at a higher price.

QUESTION 2

Tshepo wins a gift voucher from Shine Car Fixtures. In terms of the voucher, she is entitled to a free carwash. Since she does not own a car, she cedes her right to the carwash to her friend Mpho.

Which ONE of the following statements is CORRECT?

1. An agreement between Tshepo and Shine Car Fixtures in terms of which a new obligation is created between Shine Car Fixtures and Mpho, is a cession of rights.
2. An agreement between Tshepo and Mpho in terms of which Mpho becomes entitled to performance by Shine Car Fixtures, is a cession of rights.
3. An agreement between Tshepo and Mpho in terms of which a new obligation is created between Shine Car Fixtures and Mpho, is a cession of rights.
4. An agreement between Shine Car Fixtures and Mpho in terms of which a new obligation is created between Shine Car Fixtures and Mpho, is a cession of rights.

QUESTION 3

Roelf, a motivational speaker, rents a room from Jason to use as a consultation room. Roelf and Jason agree about the rent but forget to discuss the date on which the rent must be paid. Roelf's consultations go well for the first two weeks until Jason’s son, Mawethu, brings some items into the room alleging that his father gave him permission to use part of the room as a tuckshop.

Which ONE of the following statements is CORRECT?

1. Jason has performed his duty to deliver the room to Roelf by merely putting the room at Roelf's disposal.
2. There is no contract of lease between Roelf and Jason because they did not agree about the date of payment of the rent.
3 There is a contract of lease between Roelf and Jason because they have agreed about the rent to be paid by Roelf.

QUESTION 4

Tsepo and three of his friends decide to start a company. The business of the company will be to buy expensive antiques and sell them. In the Memorandum of Incorporation they incorporate a clause which requires a director to get approval from the board of directors before concluding a contract which exceeds R25 000. Tsepo, one of the directors, buys a very rare piece of antique furniture from Eesa for R75 000 without prior approval, but tells Eesa that because of time constraints he could not wait for approval from the board. A contract of sale is concluded.

Which ONE of the following statements is CORRECT?

1 The transaction concluded by Tsepo is invalid since he exceeded the limits of his authority as incorporated into the Memorandum of Incorporation.
2 The company will be liable for Tsepo’s act.
3 Eesa may not rely on the codified Turquand rule since he knew that authorisation had not been given for the transaction.

QUESTION 5

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.

Total: [10]
APPENDIX B: SECOND SEMESTER COMPULSORY ASSIGNMENTS

ASSIGNMENT 01
SECOND SEMESTER UNIQUE NUMBER: 899396 (CLOSING DATE: 02 September 2013)

QUESTION 1

In front of ten other people, Robert calls Larry a thief and a pervert. Offended by these statements, Larry wishes to sue Robert.

Which of Larry’s rights has Robert infringed?

1 a personality right
2 a personal right
3 a real right
4 an intellectual property right

QUESTION 2

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 rescile 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 3

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

Which ONE of the following statements is CORRECT?

1 Joel and Jack’s contract is lawful because they have reached consensus.
2 Joel and Jack’s contract is lawful because they both have capacity to enter into juristic acts.
3 Joel and Jack’s contract is unlawful because their agreement is contrary to public policy.
4 Joel and Jack’s contract is unlawful because their agreement is contrary to good morals.
QUESTION 4

Marcel is very excited. He has just heard that he has won a new Jeep. He phones Ryan and tells him the good news. Marcel offers to give his old Jeep to Ryan, who gladly accepts the offer. They agree that Marcel will deliver the old Jeep to Ryan once he has received his new Jeep.

Which ONE of the following statements regarding the validity of the agreement between Marcel and Ryan is CORRECT?

1. A valid contract has been concluded.
2. The agreement between them is not a contract, because no price has been specified.
3. A valid contract will only arise once Marcel has received his new Jeep.
4. The agreement is void, because it is not contained in a written document.

QUESTION 5

Themba and Kwena conclude a contract of sale for the property 25 Meerhof Gardens, which belongs to Kwena. Their contract stipulates that Themba must pay an amount of R50 000 as deposit on the purchase price within two days of Kwena’s acceptance of the offer. The money must be paid into Kwena’s bank account, and Kwena must provide Themba with the name of his bank, the account number and the branch code. Four days after Kwena has accepted Themba’s offer, Kwena still has not provided the required information to Themba.

Which ONE of the following statements is CORRECT?

1. Themba has committed breach of contract in the form of **mora debitoris**, as he has not paid the deposit.
2. Kwena has committed breach of contract in the form of **mora creditoris**, as he has neglected to give his co-operation to enable Themba to fulfill his obligation with regard to the deposit.
3. As Themba spent the R50 000 before he received the necessary information from Kwena, supervening impossibility of performance has occurred, and their contract is terminated.
4. Kwena is entitled to cancel the contract if he has given Themba notice of intention to cancel the contract and a reasonable time to comply with his obligation to pay the deposit.

Total: [10]
QUESTION 1

Floodwaters Local Council contracts with Bessy for the construction of a bridge for R5 million. The bridge must have four lanes: two for vehicle traffic, one for pedestrians and one for trains. When finished, the bridge has only two lanes for vehicle traffic. The Local Council finds out that it will cost another R3 million to add the lanes for pedestrians and trains. The Local Council refuses to pay Bessy any money.

Which ONE of the following statements is CORRECT?

1. Bessy may use the *exceptio non adimpleti contractus* to institute action for payment.
2. The *exceptio non adimpleti contractus* does not apply to this case, because the contract is not reciprocal.
3. The Local Council will have to pay Bessy the agreed R5 million if it decides to use the defective bridge.
4. The Local Council could raise the *exceptio non adimpleti contractus* when Bessy claims payment.

QUESTION 2

Danie wants to enter into a contract of sale with Henco for the sale of his motorbike to Henco for R20 000.

On which of the following essential characteristics or *essentialia* must Danie and Henco agree before the contract can be described and treated as a contract of sale?

1. The purchase price and the delivery of the merx
2. The purchase price and the merx.
3. The rights and duties of the purchaser and seller.
4. The transfer of ownership and the passing of the risk.

QUESTION 3

Mr Baloyi, a representative of an insurance company and a complete stranger to Mrs Khumalo, phones her and offers her a free household insurance at his insurance business. Mrs Khumalo accepts the offer and a contract is entered into.

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 the 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 the 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.
QUESTION 4

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. a pledge
3. a notarial bond
4. a lien

QUESTION 5

Sarah approaches Blue Bank to open a new savings account.

Which **ONE** of the following is **NOT** an obligation imposed by FICA on Blue Bank with regard to the opening a new savings account for Sarah?

1. to identify its clients
2. to identify clients who have been blacklisted in the past
3. to keep records of transactions
4. to train employees to comply with the FICA provisions

**Total: [10]**

We hope that you will enjoy this module and we wish you success with your studies.

THE LECTURERS

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