Tutorial letter 201/1/2015

Commercial Law 1C
CLA1503

Semester 1

Department of Mercantile Law

IMPORTANT INFORMATION:
This tutorial letter contains important information about your assignment.
Dear Student

This tutorial letter contains the memorandum and commentary on Assignment 01.

The aim of this discussion is to draw your attention to certain important aspects of the questions which you may have overlooked. Read the comments carefully to make sure that you understand both why the particular answer is correct and why the distracters (the incorrect options) are incorrect. If you are still not sure after reading the commentary, go back to the original source in your prescribed textbook.


QUESTION 1
(Chapter 1: The South African Legal System)

3 is CORRECT. B, C and D are CORRECT. B is CORRECT, because although the codified legal systems of certain countries on the European continent are not authoritative sources of South African law, they do have persuasive authority. These countries are those whose legal systems also derive from Roman law. C is CORRECT, because in the absence of South African legislation or decided cases, works of the writers on Roman-Dutch law can be consulted. D is CORRECT because if none of the authoritative sources can cast any light on a legal problem, the courts will turn to decisions of other local courts, like those of Zimbabwe and Namibia and foreign courts. Remember that decisions of foreign courts only have persuasive and not authoritative value.

1 is INCORRECT. A is INCORRECT because there is no single recorded and comprehensive piece of legislation from which all law in South Africa derives.

2 is INCORRECT. Although B is CORRECT, A is INCORRECT. B is CORRECT, because although the codified legal systems of certain countries on the European continent are not authoritative sources of South African law, they do have persuasive authority. These countries are those whose legal systems also derive from Roman law. A is INCORRECT because there is no single recorded and comprehensive piece of legislation from which all law in South Africa derives.

4 is INCORRECT. Although C and D are CORRECT, B is also CORRECT. C is CORRECT, because in the absence of South African legislation or decided cases, works of the writers on Roman-Dutch law can be consulted. D is CORRECT because if none of the authoritative sources can cast any light on a legal problem, the courts will turn to decisions of other local courts, like those of Zimbabwe and Namibia and foreign courts. Remember that decisions of foreign courts only have persuasive and not authoritative value. B is also CORRECT, because although the codified legal systems of certain countries on the European continent are not authoritative sources of South African law, they do have persuasive authority. These countries are those whose legal systems also derive from Roman law.

5 is INCORRECT. Although C and D are CORRECT, A is INCORRECT. C is CORRECT, because in the absence of South African legislation or decided cases, works of the writers on Roman-Dutch law can be consulted. D is CORRECT because if none of the authoritative
sources can cast any light on a legal problem, the courts will turn to decisions of other local
courts, like those of Zimbabwe and Namibia and foreign courts. Remember that decisions of
foreign courts only have persuasive and not authoritative value. A is INCORRECT because
there is no single recorded and comprehensive piece of legislation from which all law in South
Africa derives.

**QUESTION 2**
(Chapter 3: Law of Contract: Introduction)

3 is CORRECT. All five requirements for a valid contract have been satisfied. Online contracting
can be done. The Electronic Communications and Transactions Act 25 of 2002 regulates
electronic contracts.

1 is INCORRECT, because the guests did not bind themselves in a contractual relationship with
Sally. At most their actions amounted only to a social appointment or agreement but there is no
enforceable contractual relationship. There was no serious intention on the part of the
contracting parties to be legally bound.

2 is INCORRECT. By definition a contract is an agreement between two or more people. One
cannot agree with oneself, unless he or she acts in a different capacity on each side of the
contract. There must be more than one person to a contract.

4 is INCORRECT. This agreement is not physically executable. Rights and duties must be
physically executable. Therefore, the requirements for a valid contract have not been satisfied.

**QUESTION 3**
(Chapter 6: Possibility of Performance)

2 is CORRECT. An agreement to commit a crime is contrary to public policy and therefore
legally unenforceable. Mr Assassin will therefore not be entitled to payment because the
agreement between him and Timothy is contrary to public policy.

1 is INCORRECT. Mr Assassin is not entitled to payment. This is not because performance
became impossible, but rather because the agreement between him and Timothy was contrary
to public policy.

3 is INCORRECT. Even if Polly had not died of natural causes and performance had not
become impossible due to this fact, Mr Assassin would still not be entitled to payment because
the agreement between him and Timothy was contrary to public policy.

4 is INCORRECT. Mr Assassin is not entitled to payment. This is not because the performance
was subject to this implied term, but because the agreement between him and Timothy was
contrary to public policy.

**QUESTION 4**
(Chapter 8: Terms of Contract)

2 is CORRECT. The obligation to build a child care centre is a modus which burdens the
contracting party. The contract is unconditional but if the Care for Kids Foundation fails to build
the child care centre they will have committed breach of contract and Lindiwe will be able to use
the ordinary contractual remedies.

1 is INCORRECT. Although the Care for kids Foundation has become the owner of the property
it is still obliged to build a child care centre. It cannot use the property for any other purpose.
3 is INCORRECT. The obligation to build a child care centre is a modus and not a condition. The obligation does not depend on an uncertain future event.

4 is INCORRECT. The term is not a supposition. A supposition renders the existence of the contract dependent on an event which has already taken place, or on a state of affairs which exists at the time of conclusion of the contract.

QUESTION 5
(Chapter 11: Remedies for Breach of Contract)

4 is CORRECT. The defense exceptio non adimpleti contractus is available to the Local Council if Bessy claims payment, since Bessy has not rendered complete performance.

1 is INCORRECT. The exceptio non adimpleti contractus is a defence, and therefore can never be used to institute action.

2 is INCORRECT. The contract in this instance is reciprocal, because the Local Council has to pay a specified amount and in turn is entitled to construction of the bridge. Bessy, in turn, must construct the bridge and will then be entitled to payment. Both parties thus incur both rights and obligations.

3 is INCORRECT. The Local Council will not necessarily have to pay the full contract price if it decides to use the defective performance, since the party who has suffered damages as a result of the other party’s breach of contract (in this instance positive malperformance) is also entitled to damages as a remedy.

TOTAL: [10]

THE LECTURERS

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