Tutorial letter 202/1/2015

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 02.

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 distractors (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.


COMMENTARY ON COMPULSORY ASSIGNMENT 02

QUESTION 1
(Chapter 12: Transfer and Termination of Personal Rights)

2 is CORRECT. Mike delegated the work of building a wall around Andrew’ property to Ralph. Delegation is a specific form of novation whereby a new party is introduced either by a change of creditors or a change of debtors. The old obligation is extinguished and replaced by a new obligation.

1 is INCORRECT. Settlement did not take place. Settlement is an agreement by which parties settle a dispute between them about an actual or supposed obligation.

3 is INCORRECT. Set-off did not take place. Set-off is the extinguishing of debts owed reciprocally by two parties.

4 is INCORRECT. Cession did not take place. Cession involves the transfer of a right by agreement. This is not a means of terminating an obligation because the original obligation continues to exist. Neither does it create new obligations.

QUESTION 2
(Chapter 14: The Contract of Lease)

3 is CORRECT. The general rule is that the rent payable in terms of a contract of lease must sound in money. There is one exception to this rule. Where the rent consists of a share in the fruits of the object of the rent or the property let, the contract of lease is valid. Troy can validly lease his citrus farm to Brian in exchange for a certain portion of the produce produced each season.

1 is INCORRECT. The general rule is that the rent payable in terms of a contract of lease must sound in money. There is one exception to this rule. Where the rent consists of a share in the fruits of the object of the rent or the property let, the contract of lease is valid. Although the rent in this instance is not determinable as an amount of money, the contract is valid.

2 is INCORRECT. The fact that the contract of lease between Troy and Brian is a “long lease” which is not registered against the title deed of the property does not make the contract of lease invalid.
The Formalities in respect of Leases of Land Act 18 of 1969, only provides that long leases shall not be binding on a creditor or successor under onerous title (that is, someone who has given value for the property) of the lessor for longer than ten years, unless such lease is registered against the title deed of the property, or unless the creditor or successor had knowledge of such a contract of lease.

4 is INCORRECT. The contract of lease is not invalid because the lease period exceeds ten years. The Formalities in respect of Leases of Land Act 18 of 1969, only provides that long leases shall not be binding on a creditor or successor under onerous title (that is, someone who has given value for the property) of the lessor for longer than ten years, unless such lease is registered against the title deed of the property, or unless the creditor or successor had knowledge of such a contract of lease.

QUESTION 3
(Chapter 20: The Law of Agency)

4 is CORRECT. The mandator may only revoke the contract of mandate for a legally acceptable reason, otherwise the revocation may amount to breach of contract, for which the usual remedies will lie.

1 is INCORRECT. The contract of mandate is no longer a gratuitous undertaking by the mandatary to perform a task. The mandator must pay the mandatary the agreed remuneration.

2 is INCORRECT. Although the mandator is usually expected to compensate the mandatary for all expenses incurred in the execution of the mandate, the parties to a contract of mandate may agree that this duty will be excluded.

3 is INCORRECT. The contract of mandate will not terminate when the mandatary’s estate is sequestrated, but it will be terminated if the sequestration makes it impossible for the mandatary to perform the mandate.

QUESTION 4
(Chapter 23: Security)

1 is the CORRECT answer, because the statement is INCORRECT. To secure his debt to Paul, Paulus ceded to him (Paul) his claim against Ryan. This is known as cession in securitatem debiti. One of the consequences of cession is that once the cedent has ceded a claim to someone (the cessionary), he can no longer cede it to another person. As Paulus has already ceded his right against Ryan to Paul, he can no longer cede it to Evert.

2 is an INCORRECT answer, because the statement is CORRECT. While the cession to secure a debt (cession in securitatem debiti) is in existence, the cedent (here Paulus) has no claim against his own debtor (here Ryan).

3 is an INCORRECT answer, because the statement is CORRECT. Evert is the only surety. The benefit of division is only available where there are several sureties and the creditor attempts to recover from a single surety the entire debt which is due. Evert consequently does not have the benefit of division.

4 is an INCORRECT answer, because the statement is CORRECT. A surety who has settled the principal debt may demand from the creditor all the rights which the creditor may have against the principal debtor and co-sureties.
If Evert, the surety, settles the principal obligation by paying Paulus’s debt to Paul, the creditor, he may demand that Paul transfer to him all the rights which Paul enjoys against Paulus, the principal debtor. One of the rights which Paul enjoys in this instance is the security which he holds in the form of the right ceded to him to receive payment from Ryan if Paulus should fail to honour his obligations towards Paul. The possibility therefore exists that Evert could obtain a right to the money which Ryan owes to Paulus, if he settles the principal debt.

**QUESTION 5**  
*(Chapter 29: Consumer Protection)*

4 is **CORRECT**. In terms of section 1 of the Consumer Protection Act, a “transaction” is one undertaken in “the ordinary course of business”. Once-off or non-business transactions, that are not concluded in the ordinary course of business therefore do not qualify as “transactions” in terms of the Consumer Protection Act.

1 is INCORRECT. As the transaction between John and Peter was a once-off transaction, and not concluded in the ordinary course of business, it is not regulated by the Consumer Protection Act. Peter will not enjoy the protection of the Act, and will have to rely on the common law remedies if the *merx* is defective, as discussed in the chapter on the contract of sale.

2 is INCORRECT. As the transaction between John and Peter was a private and once-off transaction, and not concluded in the ordinary course of business, it is not regulated by the Consumer Protection Act. Peter will not enjoy the protection of the Act, and will have to rely on the common law remedies if the *merx* is defective, as discussed in the chapter on the contract of sale.

3 is INCORRECT. The reason why Peter will not enjoy the protection of the Consumer Protection Act, is that the transaction was a private and once-off transaction, and not concluded in the ordinary course of business, and consequently not regulated by the Consumer Protection Act. In any event, one cannot assume that Peter knew that the motorcycle was defective as the facts do not make this clear. Peter can only rely on the common law remedies at the disposal of the purchaser if the *merx* has a latent defect. If he was aware of the defect, which is not clear on the facts, he could not rely on them, as is discussed in the chapter on the contract of sale.

**TOTAL: [10]**

**THE LECTURERS**

**UNISA**