

Tutorial letter 201/2/2015

Commercial Law 1C

CLA1503

Semester 2

Department of Mercantile Law

IMPORTANT INFORMATION:

This tutorial letter contains important information
about your assignment.

BAR CODE

Dear Student

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

The aim of this commentary 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.

NOTE: All references in brackets refer to your prescribed textbook, *General Principles of Commercial Law 8th ed (2015) Juta* co-authored by Schulze H, Kelbrick R, Manamela T, Stoop P, Manamela E, Hurter E, Masuku B and Stoop C.

COMMENTARY ON COMPULSORY ASSIGNMENT 01

QUESTION 1

(Chapter 2: Introduction to South African Law)

1 is **CORRECT**. Nigel and Delia agreed that Delia would accept the painting as value for services rendered. Because both intend that the transfer of ownership will take place when the painting is delivered, ownership will pass from Nigel to Delia once Delia is in possession of the painting.

2 is **INCORRECT**. Even though Ron delivers the ball to David, thereby putting David in control and possession of the ball, ownership will not pass from Ron to David. Mere physical transfer of the object is not sufficient for ownership to pass. Both parties need to have the intention that ownership should pass. If either party lacks this intention, ownership does not pass. Ron did not have the intention that ownership should pass.

3 is **INCORRECT**. Right of ownership over immovable property cannot be acquired by means of delivery, because a farm, plot or house cannot be transferred physically. Instead of delivery, registration of the transfer at a Deeds Office is required for ownership to pass. Thus, if Ernie buys Loyiso's holiday home, Ernie acquires ownership of the holiday home only when it is registered in his name, even though he may already have paid Loyiso the full purchase price.

4 is **INCORRECT**. Even though Carmel entered into a contract of donation with the nursery school, ownership of the stationary will only pass once the teacher collects the books from Carmel's house thereby taking control and possession of the stationary.

QUESTION 2

(Chapter 3: Law of Contract: Introduction)

4 is **CORRECT**, because all the requirements for a valid contract are present. There has been an offer and acceptance and the price and the merx were agreed upon.

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

2 is **INCORRECT**, because John lacked capacity to enter into a valid contract because he was too intoxicated to appreciate the consequences of his actions.

3 is **INCORRECT**, because such an arrangement is in conflict with the traffic regulations. It is therefore illegal and void. Furthermore, performance is not physically possible. For this reason it is therefore also unenforceable.

QUESTION 3

(Chapter 4: Consensus)

2 is **CORRECT**. The misunderstanding between the parties regarding a material fact or legal rule relating to the proposed contract is a mistake which negates their common intention and the required consensus, and renders the contract void.

1 is **INCORRECT**. Although the intention to be contractually bound is one of the prerequisites for the conclusion of a valid contract, it is not the only requirement. The parties must also have a common intention regarding the obligations in terms of the contract, and there must be offer and acceptance. In this instance, the common intention is absent and the contract is void. Mary intended a contract of sale; whereas Susan was under the impression that a contract of lease was concluded.

3 is **INCORRECT**. Once the contract is void, there is nothing the parties can do to remedy the defects. Rectification can only take place when the written document does not reflect the true intention of the parties to a contract, for example where there is a typing error.

4 is **INCORRECT**. Although offer and acceptance are prerequisites for the conclusion of a valid contract, they are not the only requirements. The parties must also have a common intention regarding the obligations in terms of the contract, and the intention to be contractually bound. Here the parties did not have a common intention: Mary intended a contract of sale, whereas Susan was under the impression that a contract of lease was concluded.

QUESTION 4

(Chapter 5: Capacity to Perform Juristic Acts)

2 is the **CORRECT** answer, because Steven, as an unrehabilitated insolvent may not take up employment with a general dealer, Mandla, without the consent of his curator. If the purchase of the van has a negative effect on the insolvent estate (which isn't clear from the facts provided) Steven will need the consent of his curator to enter into the contract of sale. Steven can therefore not conclude either of the contracts independently.

1 is an **INCORRECT** answer, because Gloria has capacity to conclude the two contracts. She obtained full capacity to act on marriage and because she is married out of community of property she does not need her spouse's consent to conclude contracts. This is true for both the contract of employment and the contract of sale.

3 is an **INCORRECT** answer, because Arthur has capacity to conclude the two contracts. A spouse married in community of property has full capacity to act as far as employment is concerned, and regarding their joint estate, both he and his wife have full capacity to act independently, although the consent of the other spouse is required in certain instances. The buying of a vehicle is not one of those instances. (Note that in the case of most standard contracts you will find that space is provided for the consent of the other spouse in a marriage in community of property, to be on the safe side and to avoid the necessity of establishing which form of consent, if any, is required).

4 is an INCORRECT answer, because Themba does have full capacity to conclude both the contracts. He is clearly emancipated. He lives separately from his parents, he is economically independent and when they emigrated they left him behind, not from neglect but because of a conscious decision on their part that it would be best for him.

QUESTION 5

(Chapter 10: Breach of Contract) and Chapter 12

3 is **CORRECT**. Example 1 is a case of supervening impossibility of performance, while example 2 is an instance of prevention of performance. In Example 1, neither of the parties in this instance was aware of any defect in the electrical system of the motorcycle and as a result, both parties will be relieved from their respective obligations. In Example 2, Mona has made it impossible for Trevor to render performance. Since Mona is at fault in this instance, Trevor will be deemed to have rendered or discharged his obligations (i.e. fixing the laptop).

1 is INCORRECT. Example 1 is not prevention of performance by the creditor, since Susan has not culpably rendered the performance impossible, but is a case of supervening impossibility of performance. Example 2 is not initial impossibility of performance, but prevention of performance.

2 is INCORRECT. Example 1 is a case of supervening impossibility of performance, while example 2 is an instance of prevention of performance.

4 is INCORRECT. There is no indication of negligence on Susan's part in example 1, even though Mona intentionally destroys the computer in example 2, for which she could be held liable.

TOTAL: [10]

We wish you all the best in your studies. Please contact us should you experience any problems relating to the contents of this module.

THE LECTURERS

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