Tutorial letter 202/2/2015

Commercial Law 1C
CLA1503

Semester 2

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 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 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 13: The Contract of Sale)

1 is the **CORRECT** answer because 200 loaves of bread will not qualify as an acceptable purchase price. In a contract of sale, the purchase price must be an amount of money. If Johann delivers 200 loaves to Zinkwazi Mills in exchange for the 20 bags of corn it will be a contract of exchange and not a contract of sale.

2 is an **INCORRECT** answer because R4 000 qualifies as an acceptable purchase price. The parties to a contract of sale may agree on an amount for the purchase price. Zinkwazi Mills may therefore agree to deliver the 20 bags of corn to Johann against payment of R4000.

3 is an **INCORRECT** answer because an amount specified by a third person qualifies as an acceptable purchase price. The parties to a contract of sale may agree that a specified third person will determine the price. Zinkwazi Mills may therefore agree to deliver the 20 bags of corn to Johann against payment of a price to be determined by Luke, a financial adviser.

4 is an **INCORRECT** answer because R25 per bag of flour qualifies as an acceptable purchase price. The parties to a contract of sale may stipulate a price per unit. Johann may agree to buy the 20 bags of corn from Zinkwazi Mills for R25 per bag.

#### QUESTION 2
(Chapter 15: The Contract of Insurance)

3 is **CORRECT**. This is an example of indemnity insurance. In indemnity insurance the insurer makes good the damage which the insured suffered through the occurrence of the event insured against. When Sam’s flat burnt down it was worth R240 000 and therefore Sam’s loss is R240 000 and that is the amount he may claim from the insurer.

1 is **INCORRECT**. In indemnity insurance the value of the claim is not determined by the price paid for the risk-object, but by its value at the date and place of the loss. Sam bought the flat for R200 000, but when it burnt down it was worth R240 000 and therefore his loss was R240 000 (amount to be claimed) and not R200 000.
2 is INCORRECT. At the time of sale the flat was worth R230 000, but when it burnt down its value had increased to R240 000. Provided Sam can prove that the flat was worth R240 000 at time of the loss, he can recover that amount from the insurer.

The present value of the object is considered, irrespective of whether its value has appreciated or depreciated since the conclusion of the insurance contract.

4 is INCORRECT. Nothing prevented Sam from insuring his flat for an amount of R250 000 to secure full compensation in the event of loss of the flat (over-insurance). However, since this is an instance of indemnity insurance, Sam may not recover more than the total value of his loss, which is R240 000.

**QUESTION 3**
(Chapter 21: Forms of Business Enterprise)

1 is CORRECT. The *actio pro socio* is a general partnership action and can be used to force a partner to deliver a contribution he or she has undertaken to deliver, for example, to enforce specific compliance with the partnership agreement, or to claim dissolution of the partnership.

2 is INCORRECT. Unless otherwise provided in the partnership agreement, the net profit is divided in the same ratio as the partners' respective contributions. For example Sophy who has contributed more money than the other two partners, will get a bigger share of the profit.

3 is INCORRECT. Unless otherwise agreed each partner is entitled to participate in the management of the partnership and to perform management functions on its behalf. This is not determined by the contribution each partner made to the partnership.

4 is INCORRECT. Partnership assets may be used by a partner as a co-owner provided they are used to further the aims of the partnership. However, a partner may only use partnership property for his or her own purposes if the consent of co-partners has been obtained, or if the partner’s limited use of the property will not conflict with the interests of the partnership.

**QUESTION 4**
(Chapter 23: Security)

2 is CORRECT. Marvin has a lien in respect of the valuation but not in respect of the repairs. The person claiming the lien (here Marvin) must possess the property which is the object of the lien. If possession is lost, the lien automatically lapses. If possession of the property is recovered the lien does not usually revive. It does, however, revive as soon as effective control is recovered, if the physical control of the object of the lien was lost as a result of force, fraud, or any other unlawful action. It can also be revived after it has been lost, provided that the control of the object was lost in terms of an agreement and was afterwards regained in terms of the same agreement. Marvin lost control of the ring when he returned it after repairing it. He lost control through his own mistake, not through any unlawful action. He therefore lost his lien in respect of the repairs, and although he regained possession this occurred in terms of a different contract and the lien in respect of the repairs is not revived. In respect of the valuation Marvin does have a lien. The contract to evaluate the ring is a different contract, and Marvin has a lien in respect of the valuation as the ring is in his possession.

1 is INCORRECT. Marvin does not have a lien in respect of the repairs, but does have a lien in respect of the valuation. The person claiming the lien (here Marvin) must possess the property which is the object of the lien. In respect of the valuation Marvin does have a lien, as he has physical control of the ring still in his possession. In respect of the repairs Marvin does not have a lien. If possession of the physical object of the lien is lost, the lien automatically lapses, and if possession of the property is recovered, the lien does not usually revive.
It does, however, revive as soon as effective control is recovered, if the physical control of the object of the lien was lost as a result of force, fraud, or any other unlawful action.

It can also be revived after it has been lost, provided that the control was lost in terms of an agreement and was regained afterwards in terms of the same agreement. Marvin’s lien lapsed when he lost control of the ring when he returned it after repairing it. As he lost control through his own mistake, and not through any unlawful action, the lien is not revived. And although he regained possession, this occurred in terms of a different contract, regarding the valuation of the ring and his lien in respect of the repairs is not revived.

3 is INCORRECT. Marvin has a lien only in respect of the valuation, and not in respect of the repairs. Two different contracts are at issue here, one regarding the repairs and the other regarding the valuation. The person claiming the lien (here Marvin) must possess the property which is the object of the lien. If possession is lost, the lien automatically lapses. If possession of the property is recovered the lien does not usually revive. It does, however, revive as soon as effective control is recovered, if the physical control of the object of the lien was lost as a result of force, fraud, or any other unlawful action. It can also be revived after it has been lost, provided that the control was lost in terms of an agreement and was regained afterwards in terms of the same agreement. Marvin lost control of the ring when he returned it after repairing it. He lost control through his own mistake, not through any unlawful action. He therefore lost his lien in respect of the repairs, and although he regained possession this occurred in terms of a different contract and the lien in respect of the repairs is not revived. The contract to valuate the ring is a different contract, and Marvin has a lien in respect of the valuation, as he has physical control of the ring.

4 is INCORRECT. Marvin does have a lien in respect of the valuation as he has physical control of the ring. The person claiming the lien (here Marvin) must possess the property which is the object of the lien. In respect of the repairs Marvin does not have a lien. If possession of the physical object of the lien is lost, the lien automatically lapses, and if possession of the property is recovered, the lien does not usually revive. It does, however, revive as soon as effective control is recovered, if the physical control of the object of the lien was lost as a result of force, fraud, or any other unlawful action. It can also be revived after it has been lost, provided that the control was lost in terms of an agreement and was regained afterwards in terms of the same agreement. Marvin’s lien lapsed when he lost control of the ring when he returned it after repairing it. As he lost control through his own mistake, and not through any unlawful action, the lien is not revived. And although he regained possession, this occurred in terms of a different contract regarding the valuation of the ring, and his lien in respect of the repairs is not revived.

QUESTION 5
(Chapter 29: Consumer Protection)

3 is CORRECT. This additional requirement constitutes bundling, as John has to enter into an additional agreement to buy the blue cellphone.

1 is INCORRECT. In this set of facts there is no clear indication whether the convenience of buying the blue cellphone memory card with the blue cellphone will outweigh John’s right to choose from whom he would prefer to buy the memory card. If this convenience was indeed clear, it would constitute a defence against bundling: it would still be bundling, but not prohibited.

2 is INCORRECT. In this set of facts there is no clear indication whether buying both the blue cellphone memory card and blue cellphone together would be to John’s economic benefit. If such an economic benefit was clear, it would constitute a defence against bundling: it would still be bundling, but not prohibited.
4 is INCORRECT. Although the blue cellphone and blue cellphone memory card are offered at individual prices they are not offered separately, and to constitute a defence against bundling it is required that the goods should be offered both separately and at individual prices. However, the conduct will still be considered as bundling, although it may be justified by a defence that both items are also sold separately and at individual prices. The conduct is still bundling though not prohibited.

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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