CLA1503 (479720) May/June 2012

COMMERCIAL LAW 1C

Duration 2 Hours 80 Marks

EXAMINERS:
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SECOND PROF TE MANAMELA

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This paper consists of 13 pages plus instructions for the completion of a mark reading sheet.

Please complete the attendance register on the back page, tear off and hand to the invigilator.

ANSWER ALL THE QUESTIONS.

STUDENT NUMBER: ________________________

INSTRUCTIONS:

1. This paper consists of 40 multiple choice questions each counting 2 marks. The paper therefore counts out of 80 marks.
2. The paper consists of 13 pages in total. Please make sure that your paper contains all 40 questions and all the pages.
3. Please answer the questions on the mark reading sheet supplied.
4. Please write your student number on this paper as well as on the mark reading sheet.
5. You may use this paper to do your rough work on, but you are under an obligation to return this paper as well as the mark reading sheet at the end of the examination.
6. Should you fail to return the English and the Afrikaans versions of this paper as well as the mark reading sheet, your mark reading sheet will not be marked.
7. Make good use of the time. You have more than enough time to complete this paper. You have 120 minutes at your disposal to answer 40 questions; thus you have 3 minutes per question.
8. Good luck with the examination. We trust that you will be successful.

[TURN OVER]
QUESTION 1

Mahomed wants to buy Ali's vintage car, Jalopy 911. Mahomed offers to buy the car for R200 000. He makes the offer in a letter to Ali. After few days Mahomed receives a letter from Joe, Ali's brother and his authorised representative, in which he accepts the offer.

Which ONE of the following statements is CORRECT?

1. Joe cannot accept the offer which was addressed to Ali
2. Joe can accept the offer on behalf of Ali.
3. Joe can accept the offer even if Ali is not aware of the offer.
4. Joe can accept the offer at the request of Ali.  (2)

QUESTION 2

Mr and Mrs Senekal want to apply for a divorce.

Which of the following courts can they approach to have the matter heard?

1. the Supreme Court of Appeal
2. the Constitutional Court
3. the High Court  (2)

QUESTION 3

Contracts differ from other types of agreements

Which ONE of the following statements is CORRECT?

1. A contract cannot be entered into by more than two parties
2. An agreement is a particular type of contract
3. An agreement is a source of legal obligations.
4. A contract creates legally enforceable obligations.  (2)

QUESTION 4

Yvonne and Cephril arrange telephonically to meet at a coffee shop the next day at 10h00.

Which ONE of the following statements is CORRECT?

1. A contract arises as consensus exists
2. No contract arises as Yvonne and Cephril have no intention to be legally bound
3. A contract has come about as a common intention exists and it has been made known to the other party
4. No contract arises as nothing was put in writing  (2)
QUESTION 5

Which **ONE** of the following constitutes a **VALID OFFER**?

1. David advertises his car for sale in the local newspaper
2. Peter verbally offers to buy a farm belonging to Johnny for R500 000.
3. Sandy says she will pay a reward of R100 to anyone who finds her lost dog.
4. Dolly makes Johnny a written offer to buy his farm, but her letter is lost in the post.  

   (2)

QUESTION 6

Arno wishes to offer Ben Caloo a job. He asks his secretary to phone Ben so that he can talk to him. The secretary dials the wrong number. Ben Lewis answers the telephone. Arno, who is under the impression that he is talking to Ben Caloo, offers the job to Ben Lewis. Ben Lewis accepts the offer.

Which **ONE** of the following statements is **CORRECT**?

1. The contract between Arno and Ben Lewis is void owing to mistake
2. The contract between Arno and Ben Lewis is void owing to misrepresentation
3. Arno and Ben Lewis reached consensus and will be held bound to their declarations of intention.
4. The contract between Arno and Ben Lewis is valid since Arno made a mistake which is not material.

   (2)

QUESTION 7

Which **ONE** of the following statements regarding capacity to act is **CORRECT**?

1. An insolvent has limited capacity to act.
2. A person with prodigal tendencies has limited capacity to act
3. A minor over the age of seven years has limited capacity to act
4. A minor under the age of seven years has limited capacity to act

   (2)
QUESTION 8

Consider the following factors:

A  mental deficiency
B  the influence of alcohol or drugs
C  declaration as a prodigal by the High Court
D  marriage
E  sequestration

Which ONE of the following statements is CORRECT?

1  Factors A E have an influence on a natural person's legal capacity
2  Factors A E have an influence on a natural person's capacity to act
3  Factors A-E have no influence on a natural person's legal capacity or capacity to act.
4  Factors A-E have an influence on a natural person's legal capacity and capacity to act.  (2)

QUESTION 9

Which ONE of the following statements is CORRECT?

1  The Children's Act 38 of 2005 provides that a person becomes a major when he or she reaches the age of seventeen
2  A minor obtains full capacity to act upon marriage.
3  A married minor loses the capacity to act if he or she should divorce before reaching the age of majority.  (2)

QUESTION 10

Which ONE of the following agreements is lawful?

1  A contract which is unreasonable or unjust
2  A contract which is against public policy
3  A contract which is contrary to good morals.
4  A contract which is contrary to a statute.  (2)
QUESTION 11

Which ONE of the following statements is CORRECT?

1. If Rashaad, who is deeply in love with Sharon, promises Margate's beach to her in a contract of donation, a valid contract does not come into existence because the objects of the donation is not capable of being privately owned.
2. Jeff and Joe decide to run a brothel and draw up an agreement on how they will divide the profits. A valid contract comes into existence.
3. If Joe bets Sandile R1000 that Bafana-Bafana will win the next Africa Nation's Soccer Cup, the contract between them is void, because it is a wagering contract.
4. If Rocher, the famous chef and owner of Capech Cafe, agrees with Joe, the buyer of the restaurant, that Rocher will never again open or work in a restaurant in South Africa, the contract will be enforceable, because it is a principle of South African law that parties have freedom to contract.

(2)

QUESTION 12

Which ONE of the following contracts between Mr Fox and Mrs Angel will be legally possible to perform?

1. Mr Fox undertakes to have all Mrs Angel’s speeding tickets quashed in return for her husband’s rugby tickets for the season.
2. Mr Fox accepts a wager from Mrs Angel in terms of which he undertakes to pay her R20 000 if the horse Dream Catcher wins the Durban July Cup.
3. Mr Fox agrees with Mrs Angel to murder her husband, who is having an affair with Miss Small, his secretary, for R 10 000.
4. Mr Fox sells 100 square kilometres of ocean just off Mossel Bay to Mrs Angel for R500 000 to be registered in terms of title deed no T/ 456 in the Cape Town Deeds office.

(2)

QUESTION 13

Thomas owes Ulrich R10 000 and he asks Roger to stand surety for his debt. Roger asks your advice. He says he is not certain whether:

A. if the suretyship contract is in writing, he is the only person who can sign it.
B. the suretyship contract must be in writing.
C. the suretyship contract can be concluded orally or in writing.
D. the surety or his agent can sign the suretyship contract.

Advise Roger on which of the above statements are CORRECT?

1. only A and C
2. only A and B
3. only B and D
4. only C and D

(2)
QUESTION 14

Which ONE of the following donations has to be in writing and signed by the donor?

1. Frans gives his eight-year-old nephew, Paul, a bicycle for his birthday.
2. John gives his wife Sue, to whom he is married out of community of property, a new motor vehicle.
3. Kate gives her mother a gift voucher to the value of R200.
4. Sipho undertakes to give his friend Thabo, a new bicycle in six months time.  \(2\)

QUESTION 15

Which ONE of the following statements regarding the signing of electronic transactions is CORRECT?

1. An electronic signature always performs the same legal function as a handwritten signature.
2. Where a signature is required by law, the typing of a name at the end of the document will be an acceptable signature.
3. A scanned handwritten signature qualifies as an electronic signature.
4. An advanced electronic signature results from an accredited process and allows the recipient to verify the date and time it was sent.  \(2\)

QUESTION 16

Choose ONE word from the options provided below to complete the following sentence CORRECTLY:

"... are terms which the law attaches to every contract of a particular class."

1. Essentialia
2. Naturalia
3. Incidentalia  \(2\)

QUESTION 17

Rudi and Charles agree that Rudi will transport five head of cattle to Brits for Charles, provided that Rudi can arrange to borrow Rian's truck for two days. The provision that Rudi must be able to borrow the truck for two days is known as a .

1. modus
2. resolutve time clause
3. warranty
4. suspensive condition \(2\)
QUESTION 18

Lindiwe donates a large property in Johannesburg to the Care for Kids Foundation, a charitable organisation. In terms of the contract of donation the Care for Kids Foundation is obliged to erect a child care centre on the premises. The Care for Kids Foundation feels, however, that the property is better suited to the construction of a Hospital for HIV/AIDS patients and proceeds with this...

Which ONE of the following statements is CORRECT?

1. The Care for Kids Foundation has become the owner of the property and is free to use the property for any purpose.
2. The Care for Kids Foundation Charity has committed breach of contract because it has not complied with the modus.
3. The Care for Kids Foundation has committed breach of contract because it has not complied with the suspensive condition.
4. The Care for Kids Foundation has committed breach of contract because it has not complied with the supposition under which the donation was made.  

(2)

QUESTION 19

The Kruger National Park enters into an agreement with Easy Thatch in terms of which Easy Thatch will thatch the roofs of three hundred newly built bungalows. Their contract stipulates that the bungalows must be ready before 15 September 2011 in time for the commencement of the European holiday season which starts on 1 October. Easy Thatch only finishes the work on 1 November 2011 and most of the new thatch roofs leak when it rains. The reason why the bungalows are not thatched by the agreed time is that Easy Thatch did not order enough grass in time and therefore spent weeks waiting for their suppliers to deliver enough grass.

Which form/s of breach of contract occurred in this set of facts?

1. prevention of performance by the debtor and mora debitoris.
2. mora debitoris and positive malperformance.
3. mora creditoris and positive malperformance.
4. only mora debitoris.  

(2)

QUESTION 20

Which ONE of the following statements is CORRECT?

A debtor commits breach of contract in the form of default (mora debitoris) if he or she...

1. has tendered defective or improper performance.
2. has rendered performance impossible.
3. has delayed performance.
4. has indicated that performance will not take place as arranged.  

(2)
QUESTION 21

Which ONE of the following statements is CORRECT?

When a party to a contract indicates that he or she does NOT intend to perform in terms of the contract, we have breach of contract in the form of:

1. mora debitoris
2. repudiation.
3. positive malperformance
4. prevention of performance

(2)

QUESTION 22

Which ONE of the following statements is CORRECT?

1. An order for specific performance is a court order which commands a contracting party to render the performance he or she has undertaken to render.
2. Cancellation of a contract is a normal remedy which is always available to contracting parties.
3. Compensation for pain and suffering can be claimed on the basis of a contract where it is the direct result of the breach of contract.
4. Damages calculated according to the creditor's negative interest place him or her in the same patrimonial position in which he or she would have been had proper and timeous performance taken place.

(2)

QUESTION 23

An order for specific performance is a court order which .

1. prevents a party from doing something that is contrary to the terms of the contract.
2. allows a party to a contract to withhold his or her performance until the other contracting party has performed in terms of the contract.
3. orders a party to a contract to render the performance he or she undertook to render in that contract.
4. orders a party to render defective performance.

(2)

QUESTION 24

Which ONE of the following statements regarding the exceptio non adimpleti contractus is CORRECT?

The exceptio non adimpleti contractus

1. prevents a party from doing something that is contrary to the terms of the contract.
2. allows a party to a contract to withhold performance until the other contracting party has performed in terms of the contract.
3. orders a party to a contract to do what he or she undertook to do in that contract.
4. orders a party to render a reduced performance.

(2)
QUESTION 25

Which ONE of the following is a consequence of cession?

1. The right forms part of the patrimony of the cessionary and of the cedent
2. The cessionary receives the claim without the disadvantages attached to it
3. The claim is transferred to the cessionary in its entirety together with benefits such as interest.
4. Both the cessionary and the cedent have the right to collect the debt. (2)

QUESTION 26

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. (2)

QUESTION 27

Consider the following statements:

A. Frank agrees in writing to deliver his farm "Black Soil" to Timothy in exchange for Timothy's farm "Brown Soil"
B. Frank agrees in writing to deliver his farm "Black Soil" to Timothy against payment of R1.5 million
C. Frank agrees in writing to deliver a game farm to Timothy against payment of R1, 5 million
D. Frank agrees in writing to deliver his farm "Black Soil" to Timothy against payment of a price to be determined by the Farmer's Bank.

In which of the above statements were VALID CONTRACTS OF SALE concluded?

1. only A and B
2. only A and C
3. only A and D
4. only B and C
5. only B and D (2)
QUESTION 28

Elliot borrows Michael's bicycle in order to compete in a race. Elliot wins the race and decides to become a professional cyclist. Without returning the bicycle to Michael, he offers to buy it from him for R3 000. Michael accepts the offer and Elliot pays him there and then.

Which ONE of the following forms of delivery has taken place?

1. actual delivery
2. delivery with the short hand
3. symbolic delivery
4. delivery with the long hand
5. constitutum possessorium

(2)

QUESTION 29

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 a contract of lease between Roelf and Jason because they have agreed about the rent to be paid by Roelf.
3. There is no contract of lease between Roelf and Jason because they did not agree about the date of payment of the rent

(2)

QUESTION 30

Which ONE of the following statements describes the duties of the lessor?

1. The lessor must conclude a new contract with the lessee upon the expiry of their existing lease agreement.
2. The lessor must pay rent, take care of the thing let and must restore the thing let on termination of the lease.
3. The lessor must deliver the thing let to the lessee, maintain the thing let in a proper condition and ensure the lessee’s undisturbed use and enjoyment of the thing let.
4. The lessor must exercise his or her tacit hypothec when the lessee falls into arrears with his or her rent

(2)
QUESTION 31

In the case of non indemnity insurance . .

1 the insurer undertakes to pay the insured or the beneficiary a fixed sum of money if the event insured against takes place.
2 the insurer undertakes to make good any damage which the insured may suffer
3 the insurer undertakes to pay a fixed sum of money at the expiry of a fixed period.
4 the existence of an insurable interest is not required. (2)

QUESTION 32

A month after he applied for discharge from the Police Force as a result of depression, Tutu took out a life and disability policy with Giant Life Insurance. When Tutu completed the proposal form he answered no to the question whether he had suffered from depression at any stage in his life. Tutu now wants to claim in terms of the policy.

Which ONE of the following statements is INCORRECT?

1 Giant Life Insurance may refuse to pay the claim because of Tutu's misrepresentation.
2 Giant Life Insurance may terminate the contract because of non-disclosure by Tutu
3 The policy is void because the misrepresentation was likely to have affected the assessment of risk
4 This life insurance policy is voidable because of the breach of the duty of good faith by Tutu (2)

QUESTION 33

Which ONE of the options provided below will complete the following sentence CORRECTLY?

Where an agent contracts on behalf of a principal, the law of agency provides that a legal relationship comes into being between ..

1 the representative and the third party
2 the principal and the third party.
3 the principal and the representative (2)

QUESTION 34

Which ONE of the following statements is CORRECT?

1 A sub agent may be authorised to perform a juristic act for the principal.
2 An agent may never be given the power to delegate by the principal
3 In the case of delegation it is not important whether performance of an act by an agent requires a particular skill or expertise. (2)
QUESTION 35

A group of twenty two auditors meet to consider forming a partnership. They meet to agree on the contribution each one of them will make to the partnership. Some of the partners want the partnership to deal only with audits and others want it to deal only with tax matters.

Which ONE of the following issues needs to be addressed before the requirements for a partnership will be satisfied?

1. The parties need to reduce the number of prospective partners to less than twenty
2. The parties need to put the agreement in writing.
3. The parties must stipulate the amount each member must contribute.
4. The parties must determine a common objective

(2)

QUESTION 36

Which ONE of the following statements is CORRECT?

1. The object of a business trust is the protection and preservation of the trust assets
2. The duration of the business trust is determined by the lifetime of the founder of the trust
3. The beneficiaries of a business trust need not be ascertainable
4. There is no restriction on the number of persons who may be beneficiaries of a business trust

(2)

QUESTION 37

John, a farmer who farms on his uncle's farm, owns one tractor which he uses every day. John wants to borrow R100 000 from GRABBY Bank in order to buy some dairy cows. GRABBY Bank requires security for the loan in order to ensure that John will repay the loan. John 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 John to secure his obligations under the loan?

1. a mortgage bond
2. pledge
3. a notarial bond
4. a lien

(2)

QUESTION 38

Which ONE of the following statements is CORRECT?

1. The pledgee does not obtain a real right by delivery of the pledged object.
2. Constitutum possessorium is a valid means of delivery in the case of a pledge.
3. The pledgee retains real security even if possession of the pledged object is lost.
4. Even without delivery of the pledged object the pledge may be valid as between the pledgor and the pledgee.

(2)
QUESTION 39

Which ONE of the following "transactions" is NOT regulated by the Consumer Protection Act?

1 a transaction between two or more persons for the supply of goods or services
2 a transaction for the supply of goods or services to the State
3 services performed for the direct or indirect benefit of another
4 the lease of a house (2)

QUESTION 40

Which ONE of the following is NOT a defence against bundling in terms of section 13 of the Consumer Protection Act?

1 The convenience of bundled goods outweighs the limitation of the consumer's right to choose suppliers.
2 Bundling is beneficial for the increase of the sales of stores that sell goods.
3 Bundling is to the economic benefit of the consumer.
4 The bundled goods are offered separately and at individual prices. (2)

TOTAAL: [80]
PART 2 (ANSWERS/ANTWOORDE) DEEL 2

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