CLA1503 (475392) May/June 2016

COMMERICAL LAW IC

Duration 2 Hours

80 Marks

EXAMINERS
FIRST MR MP MAKAKABA
SECOND PROF TE MANAMELA

Closed book examination

This examination question paper remains the property of the University of South Africa and may not be removed from the examination venue

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
QUESTION 1

Which ONE of the following sources of the law has only persuasive authority in a South African court and is NOT viewed as an authoritative source?

1. English law
2. Judgments of the Dutch courts before 1652
3. Dutch legislation before 1652
4. Roman law

(2)

QUESTION 2

Which ONE of the following statements regarding the Corpus Iuris Civilis is CORRECT?

1. It is a codification of Roman-Dutch law
2. It is a codification of Roman law and English law
3. It is a codification of Roman law
4. It is a codification of English law

(2)

QUESTION 3

Which ONE of the following is the most important part of a judgment?

1. *Stare decisis*
2. *Obiter dictum*
3. Incidental remarks
4. *Ratio decidendi*

(2)

QUESTION 4

Bontle and Mandla establish a company under the name BM (Pty) Ltd and appoint Mpho as Chief Executive Officer and Makgosi as Chief Financial Officer.

Which ONE of the following statements is CORRECT?

1. BM (Pty) Ltd is a natural person which acquires rights and is subject to duties in its capacity as a company
2. BM (Pty) Ltd is a juristic person which acquires rights and is subject to duties in its capacity as a company
3. Mpho and Makgosi are juristic persons who acquire rights and are subject to duties in their capacity as a Chief Executive Officer and Chief Financial Officer respectively
4. Bontle and Mandla are the juristic persons who acquire rights and are subject to duties in their capacity as the owners.

(2)
QUESTION 5

Senzo is a famous inventor of new environmentally friendly trucks. He stands in his ultra-modern workshop admiring the revolutionary new electrically powered tractor that he designed for the company, Casper (Pty) Ltd, who still owes him R2 million.

This sentence contains four legal objects, one from each of the four categories of Senzo’s subjective rights. The R2 million owed to Senzo is an example of:

1 a real right
2 a personality right
3 a personal right
4 an immaterial property right

(2)

QUESTION 6

When does the legal capacity of a human being come into existence?

1 at his or her conception
2 at his or her birth
3 when he or she reaches the age of eighteen
4 when he or she concludes a marriage

(2)

QUESTION 7

Which ONE of the following statements about the requirements for the conclusion of a valid contract is INCORRECT?

1 The contract which is objectively impossible to perform will be valid if it is legally possible to perform
2 The parties to a contract must have capacity to act
3 The parties to a contract must make their intentions known to one another
4 The general rule is that no formalities are required for the formation of contracts

(2)

QUESTION 8

Gugu and Nonhlanhla entered into an oral contract. Gugu wanted a motorbike for her son and was under the impression that they had entered into a contract of sale for a motorbike. Nonhlanhla however was under the impression that a contract of lease for the motorbike had been concluded. Gugu approaches you for advice regarding the validity of the contract.

Which ONE of the following statements is CORRECT?

1 The contract is valid because both Gugu and Nonhlanhla had the intention to be contractually bound
The contract is void because there was no consensus between Gugu and Nonhlanhla
The contract is voidable because the parties can rectify the contract
The contract is valid in all material respects because there was offer and acceptance

QUESTION 9

Mpho and Molefe arrange telephonically to meet at a coffee shop at 10h00 the next day

Which ONE of the following statements is CORRECT?

A contract arises as consensus exists
No contract arises as Mpho and Molefe have no intention to be legally bound
A contract has come about as a common intention exists and it has been made known to the other party
No contract arises as nothing was put in writing

QUESTION 10

Morongwa’s motorbike was involved in an accident. She now wishes to rent a car. She concludes an oral agreement with Moreki in terms of which she will rent his car. However, Moreki is labouring under the impression that Morongwa is buying the car from him

Which ONE of the following statements is CORRECT?

A valid contract has come into existence between Morongwa and Moreki
The contract is void because the parties have not reached consensus on the nature of the contract
The parties have no intention to be contractually bound
There is no consensus with regard to the object of performance

QUESTION 11

Which ONE of the following persons has full capacity to perform juristic acts?

Paseka, a 17-year-old divorced mother
Thabo, a 17-year-old girl
Ingrid, a 25-year-old woman who has been certified mentally deficient
S & G (Pty) Ltd, a private company that has been duly incorporated and registered in accordance with the Companies Act 71 of 2008
QUESTION 12
Which ONE of the following persons has limited capacity to perform juristic acts?

1. an unmarried adult who has been drinking heavily
2. a divorced woman of seventeen years old
3. a man who has been declared a prodigal by the court
4. a minor under the age of seven years

(2)

QUESTION 13
Kobus, a sixteen year old boy, inherited horses worth R90 000 from his late grandfather. Kobus lives in a flat with his parents. He would therefore like to sell the horses and invest the money.

Which ONE of the following statements is CORRECT?

1. Kobus does not need his parents’ assistance to sell the horses because he inherited them.
2. Kobus does not need his parents’ assistance to sell the horses because he reached majority at the age of fourteen
3. Kobus needs his parents’ assistance to sell the horses because the value of the horses is more than R50 000
4. Kobus needs his parents’ assistance to sell the horses because he is a minor

(2)

QUESTION 14
Which ONE of the following statements about “gambling” is CORRECT?

1. Gambling contracts are not enforceable in a court of law
2. It is illegal to engage in a gambling activity in South Africa
3. There are some gambling activities which are regulated by legislation in South Africa
4. All gambling contracts are regulated by common law

(2)

QUESTION 15
Tshepo is employed by a company manufacturing skin care products as a sales manager. In his contract of employment there is a clause that states that the employee agrees and undertakes that he shall not for a period of thirty-six months and within a 300 kilometre radius of the premises of the employer, after the termination of the employment contract, alone or jointly with any person carry on a business that manufactures skin care products or related products.

Which ONE of the following options represents the name of the clause included in Tshepo’s contract of employment?

1. Restraint of trade clause
2. Rouwkoop clause
General limitation clause
None of the above

QUESTION 16
Which ONE of the following statements is CORRECT?

1. Jeffrey and Joel decide to run a brothel and draw up an agreement on how they will divide the profits. A valid contract comes into existence.
2. If Samuel, who is deeply in love with Karabo, promises Margate 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.
3. If Joel bets Sandle R2000 that Zamba will win the next Africa Nation’s Soccer Cup, the contract between them is void, because it is a wagering contract.
4. If Roher, the famous chef and owner of Greenfields, agrees with Joel, the buyer of the restaurant, that Roher 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.

QUESTION 17
Which ONE of the following statements about consumer contracts is CORRECT?

1. A franchise agreement that is concluded orally is valid.
2. Where the Consumer Protection Act of 2008 requires the supplier to provide the consumer with a copy of the contract, an electronic copy of the contract will not suffice.
3. The National Credit Act of 2005 specifically prescribes that a credit agreement must be in writing in order to be valid.
4. In terms of the National Credit Act of 2005 the credit provider can provide the consumer with a copy of the agreement in a printable electronic form.

QUESTION 18
Which ONE of the following statements is INCORRECT?

1. Express terms are terms that are expressed in words.
2. For a trade usage to be implied as a term of a contract it will need to meet certain requirements.
3. Implied terms are terms expressed in words.
4. A tacit term is imported into a contract if it is reasonable and necessary for achieving the contract’s desired commercial effect.
QUESTION 19

Which ONE of the following statements regarding a condition is INCORRECT?

1. Conditions can be classified into various categories
2. An event that has already occurred at the time the contract is concluded cannot be a condition
3. An event must be specified and it can be certain or uncertain whether the event will indeed occur
4. A condition can be described as a contractual term which renders the operation and consequences of the contract dependent on the occurrence or non-occurrence of a specified uncertain future event

(2)

QUESTION 20

Mora creditoris is a form of breach of contract which can occur only where discharge of the debtor’s obligation involves a bilateral juristic act.

Which ONE of the following is NOT an element of mora creditoris?

1. The debtor should offer proper performance as specified in the contract and must call upon the creditor to co-operate
2. Performance outstanding to the creditor must be physically and legally capable of being discharged.
3. The creditor must fail to give his or her co-operation and thereby delay performance
4. The creditor must at least co-operate with the debtor so that performance can take place

(2)

QUESTION 21

In which ONE of the following examples has repudiation NOT taken place?

1. Dumelo (an employee) and Jeffrey (the employer) agree that after termination of their employment contract, Dumelo will not start the same business as Jeffrey for a period of one year. Eight months after the termination of their employment relationship Dumelo starts a similar business just across the street
2. Dumelo tells Jeffrey that the discussion between them did not result in a contract as they were merely talking
3. Dumelo tries to rescind a contract based on duress when, in fact, no duress ever occurred
4. Dumelo and Jeffrey agree that Dumelo will build a house for Jeffrey and they also agree that Dumelo will use his money to buy the necessary building materials. A few days later Dumelo informs Jeffrey that he is waiting for Jeffrey to buy the materials in order for him to start with the work as agreed. He denies that they ever agreed that he (Dumelo) would buy the material

(2)
QUESTION 22

Sipho contracts with Sizwe Solar Solutions (Pty) Ltd, which undertakes to manufacture solar geysers for houses he has to build. The specifications for manufacturing of the solar geysers are clearly described in the contract. After receiving the solar geysers from Sizwe Solar Solutions (Pty) Ltd it becomes apparent to Sipho that the solar geysers have not been made to the specifications as set out in the contract, and cannot be used for the houses he is building.

Which type of breach of contract has Sizwe Solar Solutions (Pty) Ltd committed?

1. default by the creditor
2. positive malperformance
3. default by the debtor
4. prevention of performance

(2)

QUESTION 23

Which ONE of the following options is NOT a ground upon which a court will refuse an order for specific performance?

1. Where the defendant would be unreasonably harshly affected
2. Where the order would comprise an injustice
3. Where the order would be inequitable under all the circumstances
4. Where the defendant refuses to render specific performance

(2)

QUESTION 24

Sam and Willy conclude a contract in terms of which Sam will do the interior decorating of Willy’s holiday flat. The contract price of R25 000 includes the work and materials. Before Sam can start with the project, the flat is completely destroyed by fire as a result of Willy’s negligence.

Which ONE of the following statements is CORRECT?

1. Sam cannot claim anything from Willy, since the contract has been terminated
2. Sam can claim the full contract sum of R25 000 from Willy as damages
3. Sam can claim R25 000 from Willy, less the amount she has saved by not having to perform
4. Sam can claim only in respect of expenses she has already incurred

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

(2)

QUESTION 26

Consider the following statements:

A. Johan agrees in writing to deliver his farm “Dooring” to Alistair in exchange for Alistair’s farm “Berger”
B. Johan agrees in writing to deliver his farm “Dooring” to Julius against payment of R1, 8 million
C. Johan agrees in writing to deliver a game farm to Jope for free
D. Johan agrees in writing to deliver his farm “Dooring” to Eddie against payment of a price to be determined by Brand’s Bank

In which of the above statements were valid contracts of sale concluded?

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

(2)

QUESTION 27

Which ONE of the following statements about a voetstoots clause is CORRECT?

1. The inclusion of a voetstoots clause in a contract of sale will make the contract invalid
2. A voetstoots clause is the opposite of an “as is” clause and must not be included in a contract of sale
3. A voetstoots clause is a clause in a contract used to exclude the warranty against latent defects
4. The inclusion of a voetstoots clause in a contract of sale implies that the article is sold brand new

(2)
QUESTION 28

Which ONE of the options below will serve as security in respect of unpaid rent?

1. the lessor's tacit hypothec
2. the lessor's claim for damages
3. the lessor's right to physically seize the lessee's goods
4. the lessor's right to cancel the contract of lease

(2)

QUESTION 29

Which ONE of the following statements regarding the Extension of Security of Tenure Act 62 of 1997 is CORRECT?

1. There should always be a lease agreement in existence between the occupiers and owners of the land in order for the Extension of Security of Tenure Act 62 of 1997 to apply
2. The High Court will have exclusive jurisdiction over matters relating to the Extension of Security of Tenure Act 62 of 1997.
3. The Extension of Security of Tenure Act 62 of 1997 will apply to all types of land
4. The Extension of Security of Tenure Act 62 of 1997 provides that the owner of the land must, after termination of the right of residence, give the occupier at least two months' written notice of intention to obtain an order for eviction

(2)

QUESTION 30

Which ONE of the following statements regarding the "huur gaat voor koop" doctrine is INCORRECT?

1. The purchaser is bound by the lease that exists in respect of the property at the time of alienation
2. The tenant is bound by the lease that exists in respect of the property at the time of alienation
3. All rental which was in arrear and which was owed by the tenant to the previous owner (the seller), at the time of alienation, accrues to the new owner (purchaser)
4. The purchaser will not be bound by the doctrine if the tenant neglects to pay the rent

(2)

QUESTION 31

Mr Leeto, a representative of an insurance company and a complete stranger to Mrs Van Tonder, phones her and tells her that she can take out free household insurance at his insurance business.

Which ONE of the following statements is CORRECT regarding this contract?

1. An insurance contract has been concluded because there is an undertaking by Mr Leeto to compensate the Mrs Van Tonder for patrimonial loss.
2. An insurance contract has not been concluded because it is unknown if Mrs Van Tonder's household contents will be damaged or stolen in future.
3. An insurance contract has been concluded because it is the intention of Mrs Van Tonder and Mr Leeto to protect Mrs Van Tonder's estate against risks.

4. An insurance contract has not been concluded because Mrs Van Tonder did not undertake to pay a premium to Mr Leeto.

(2)

QUESTION 32

Sarah insures her motor vehicle, valued at R40,000, for R40,000 with insurer Abbi, for R30,000 with insurer Yuba and for R20,000 with insurer Lulu. R20,000 damage is caused to the motor vehicle in a collision caused by Peter's negligence.

Which ONE of the following statements is CORRECT?

1. Sarah may claim R 20 000 from Abbi, R 20 000 from Yuba and R 20 000 from Lulu. In other words a total of R 60 000.

2. Sarah may choose from which insurer she will claim R 20 000. That insurer will then have the right of subrogation against the other insurers.

3. Sarah may claim R 20 000 from one of the insurers as well as R 20 000 from Peter.

4. Sarah may recover her total loss pro rata from each of the insurers concerned.

(2)

QUESTION 33

Which ONE of the following is NOT a requirement for estoppel?

1. The third party must have acted to his or her detriment on the basis of the representation.

2. The third party must have known that the agent was not authorised to conclude juristic acts.

3. The principal must have represented to the third party that the agent had authority to act on his or her behalf.

4. The representation must have been of such a nature that it could reasonably have been expected that the third party would be mislead.

(2)

QUESTION 34

Which ONE of the following statements is CORRECT?

1. Ratification can be express or tacit.

2. Ratification is a bilateral juristic act.

3. Ratification operates retroactively from the moment the agreement concerned was concluded between the agent and the principal.

4. There is no need for the person who ratifies to have knowledge of the particular juristic act which is being ratified.

(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 is NOT a requirement for the creation of a business trust?

1. The trust assets and trust beneficiaries must be readily ascertainable.
2. It must be possible to define the object of the trust with reasonable certainty
3. The founder of the trust must have the serious intention of creating a trust
4. The object of the trust must be to protect and preserve the trust assets

(2)

QUESTION 37

Which ONE of the following is a form of personal security?

1. Pledge
2. Mortgage bond
3. Suretyship
4. Lien

(2)

QUESTION 38

Which of the following liens is/are enrichment liens?

1. only salvage liens
2. only improvement liens
3. both salvage liens and improvement liens
4. both improvement liens and debtor and creditor liens

(2)
QUESTION 39

In terms of the Consumer Protection Act 68 of 2008 a consumer has certain rights to disclosure and information.

Which ONE of the following rights is NOT included in this right of a consumer?

1. the right to fair and honest dealings
2. the right to the record of a sale
3. the right to information in plain and understandable language
4. the right to disclosure in the case of reconditioned and grey-market goods

(2)

QUESTION 40

Which ONE of the following is NOT an "accountable institution" in terms of the Financial Intelligence Centre Act, which could potentially be used for money laundering purposes?

1. Attorneys
2. Banks
3. Owners of fast food restaurants
4. Members of the Stock Exchange (JSE)

(2)
PART 1 (GENERAL/ALGEMEEN)-DEEL 1

1. STUDENT NUMBER: [Student Number]
2. DATE OF EXAMINATION: [Date of Examination]
3. EXAMINATION CENTRE: [Examination Centre]
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5. FOR USE BY EXAMINATION INVIGILATOR

PART 2 (ANSWERS/ANTWORDE)-DEEL 2

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