<table>
<thead>
<tr>
<th>Question No</th>
<th>Marks</th>
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</thead>
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<td></td>
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</table>

For use by examination invigilator

Subject

Number of paper

Date of examination

Examination centre

Total

Warning

1. A candidate who without authorisation takes into the examination venue any book, document or object which could assist him in the examination and does not hand over such material to the invigilator before the official commencement of the examination, will be guilty of infringing the University’s examination regulations and will be liable to punishment as determined by Council.

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3. No notes may be made on any part of the body such as the hands, or on any garment.

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CLA1503 (471140) October/November 2017

COMMERCIAL LAW I.C

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

ANSWER ALL THE QUESTIONS

STUDENT NUMBER ........................................

INSTRUCTIONS:

1. This is a closed book examination
2. This paper consists of 12 pages, make sure that your paper contains ALL the pages and ALL the questions
3. The paper is divided into the following 2 SECTIONS
   SECTION A consists of written questions. Your answers have to be completed in the space provided on the examination paper itself. SECTION A counts 40 marks.
   SECTION B consists of 20 multiple choice questions (2 marks each). The answers to the multiple choice questions have to be filled in on the mark-reading sheet provided to you. SECTION B counts 40 marks.
   THE EXAM PAPER COUNTS 80 MARKS.
4. At the end of the examination you have to hand in both the mark-reading sheet containing your answers to the multiple choice questions as well as this examination paper
5. Write your student number on this examination paper and on your mark-reading sheet
6. You have 120 minutes (2 hours) at your disposal to answer ALL the questions. Make good use of this time
SECTION A

QUESTION 1

Indicate which of the following statements below are either **TRUE** or **FALSE** by placing a cross in the correct block.

<table>
<thead>
<tr>
<th></th>
<th>TRUE</th>
<th>FALSE</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>The Bill of Rights, as contained in Chapter 2 of the Constitution of the Republic of South Africa, 1996 applies to all law and binds all three branches of government (the legislature, the executive and the judiciary)</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>According to South African law, spouses are married out of community of property unless they agree to the contrary</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>If ambiguity exists in the interpretation of the contract, that contract will usually be regarded as invalid</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Symbolic delivery takes place when the seller of a motor vehicle hands its keys to the purchaser</td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>In non-indemnity insurance the insurer undertakes to pay the insured or the beneficiary a fixed sum of money if the event insured against takes place</td>
<td></td>
</tr>
</tbody>
</table>

QUESTION 2

Match EACH of the statements below with ONE of the concepts/terms provided by writing the correct concept/term in the appropriate box below.

<table>
<thead>
<tr>
<th>CONCEPT/TERM</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Minor</td>
<td>Magistrate</td>
</tr>
<tr>
<td>Plaintiff</td>
<td>Judge</td>
</tr>
<tr>
<td>Clerk of the court</td>
<td>Insoient</td>
</tr>
<tr>
<td>Prodigal</td>
<td>Registrar</td>
</tr>
<tr>
<td></td>
<td>STATEMENT</td>
</tr>
<tr>
<td>---</td>
<td>---------------------------------------------------------------------------</td>
</tr>
<tr>
<td>(a)</td>
<td>The person bringing an action in a civil case</td>
</tr>
<tr>
<td>(b)</td>
<td>A person who habitually squanders his or her money recklessly and extravagantly</td>
</tr>
<tr>
<td>(c)</td>
<td>A person who hears and decides cases in the superior courts</td>
</tr>
<tr>
<td>(d)</td>
<td>The official who receives and issues legal documents or pleadings in a superior court</td>
</tr>
<tr>
<td>(e)</td>
<td>A debtor whose estate is under sequestration</td>
</tr>
</tbody>
</table>

**QUESTION 3**

In order to conclude a contract, there are basic requirements that the contract must meet.

Give **FIVE** basic requirements for the conclusion of a valid contract (5)

_____________________________________________________________________
_____________________________________________________________________
_____________________________________________________________________
_____________________________________________________________________
_____________________________________________________________________
_____________________________________________________________________
QUESTION 4

Read the following scenario and answer the questions that follow.

Moloko and Mamba enter into a contract of sale for the purchase of the farm land which Moloko has owned for ten years. A number of high profile events including Miss South Africa Beauty Pageant and Fill-up the Land Concert by a well-known Rap artist, AB Dony, were hosted on the farm land. However, Mamba is not aware of this. The contract for the purchase of the land is subject to Bruto Bank’s approval of Mamba’s mortgage bond application.

(a) Is Moloko the purchaser of the land? Motivate your answer. (2)

(b) Advise Moloko and Mamba about the formalities for the conclusion of a contract of the sale of land they need to comply with. (3)

(c) Name and describe the type of a contractual term (condition) on which the operation of the contractual obligations between Moloko and Mamba depends. (4)
QUESTION 5

Read the following scenario and answer the question that follows:

John sells his caravan to Peter in terms of an instalment sale agreement. After paying two instalments, Peter phones John one evening to inform him, that he (Peter) will not be able to pay any further instalments, as he has now bought an investment property at the coast.

Identify and discuss the type of breach of contract that Peter committed in this instance. (5)

QUESTION 6

Name any SIX rights which have been introduced by the Consumer Protection Act 66 of 2008. (6)
TOTAL FOR SECTION A: 40 MARKS
SECTION B

Answer all multiple choice questions using the MARK-READING SHEET provided to you.

QUESTION 1
Which ONE of the following South African courts is a lower court?

1. The High Court
2. The Magistrate's Court
3. The Supreme Court of Appeal
4. The Constitutional Court

(2)

QUESTION 2
Which ONE of the options provided below will complete the following sentence CORRECTLY?
The right to a patent is a/an

1. real right
2. intellectual property right
3. personality right
4. personal right

(2)

QUESTION 3
Which ONE of the following statements is INCORRECT?

1. Freedom to contract is considered to be one of the cornerstones of the modern law of contract
2. One is generally free to choose with whom and on what grounds to contract
3. A person may not conclude contracts which are unlawful or illegal
4. Freedom to contract may not be limited

(2)

QUESTION 4
Which ONE of the following constitutes a VALID OFFER?

1. Kobus advertises his car for sale in the local newspaper
2. Mr Smith verbally offers to buy a farm belonging to Tom for R1 3 million
3. Beauty makes Johnny a written offer to buy his farm, but her letter is lost in the post
4. Bontle says she will pay a reward of R150 to anyone who finds her lost cat

(2)
QUESTION 5

Manto is the plaintiff in a civil case. The advocate tells her that she does not have a good case. Manto decides to continue with her claim and to pay Mr Viljoen, the judge hearing her case, some money in order to ensure success. She goes to his chambers, and hands him a suitcase full of American dollar notes. Mr Viljoen promises that he will ensure that her claim succeeds. Mr Viljoen delivers judgment against Manto in favour of the defendant.

Which ONE of the following statements is CORRECT?

1. Manto will succeed with an action against Mr Viljoen to reclaim the money she paid him since he is in breach of contract.
2. Manto will not succeed with an action against Mr Viljoen to reclaim the money she paid him since her agreement with him is contrary to public policy and therefore legally impossible.
3. Manto will succeed with an action against Mr Viljoen to reclaim the money she paid him, because he has been unjustifiably enriched.
4. Manto will not succeed with an action against Mr Viljoen since they did not reach consensus on the amount.

(2)

QUESTION 6

Which ONE of the following contracts must be in writing and signed in order to be valid?

1. A contract where a wager is made.
2. A contract where a car is sold.
3. A contract where a house is leased.
4. A contract where a farm is sold.

(2)

QUESTION 7

Martha enters into an agreement with her friend Alina in terms of which Martha will use Alina’s house until she buys her own house.

This is an example of a

1. suspensive condition.
2. resolutive time clause.
3. suspensive time clause.
4. resolutive condition.

(2)

QUESTION 8

Koketso wants to purchase an apartment from James only if the beach is visible from the apartment. James is not sure if the beach is visible from the apartment. They agree that Koketso will purchase the apartment if the beach is visible from the apartment.

What is such a CONTRACTUAL TERM called?

1. a modus.
2. a warranty.
3. a supposition.
4. a condition.

(2)
QUESTION 9

Example 1
Paul agrees to repair Susan’s motorcycle. However, before Susan can do so, the motorcycle is burnt out owing to an electrical short-circuit. Susan was not aware of any defect in the electrical system of the motorcycle.

Example 2
Trevor agrees to repair Mona’s laptop. A day before Mona must deliver the laptop to Trevor, Mona intentionally drops the laptop for the purpose of claiming insurance on the laptop.

Which ONE of the options below BEST DESCRIBES the relationship between these two examples?

1. Example 1 is an instance of prevention of performance by the creditor, and example 2 is an instance of initial impossibility of performance.
2. Example 1 is a case of supervening impossibility of performance, and example 2 is an instance of prevention of performance.
3. In Example 1, Susan will be held liable because she was negligent in not having the electrical system repaired and, in example 2, Mona will be held liable for her intentional destruction of the laptop.
4. Example 2 is a case of repudiation and example 1 a case of negligence. (2)

QUESTION 10

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

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 render defective performance.
4. orders a party to a contract to render the performance he or she undertook to render in that contract. (2)

QUESTION 11

Which ONE of the following will terminate an obligation?

1. subjective impossibility of performance
2. partial impossibility of performance
3. cession of the obligation
4. discharge/performance of the obligation. (2)
QUESTION 12

Alfred rebuilds a 'Mini' motor car. Due to the difficulty in obtaining a fanbelt for the car, he uses a nylon stocking instead. He then sells it 'as is' ('voetstoots') to Mphoreng, a student with no knowledge of cars. On Mphoreng's way home the stocking melts, and that causes a serious damage to the engine.

Which ONE of the following statements is CORRECT?

1. Mphoreng has a claim against Alfred because Alfred knew about the defect, and is therefore not able to rely on the 'as is' ('voetstoots') clause.
2. Mphoreng has a claim against Alfred, because an implied warranty against latent defects is read into every contract of sale, notwithstanding the inclusion of an 'as is' ('voetstoots') clause.
3. Mphoreng has no claim against Alfred because the warranty against latent defects was excluded by stating that the 'Mini' is sold 'as is' ('voetstoots').
4. Mphoreng has no claim against Alfred, because Alfred's concealment of the use of a nylon stocking does not amount to misrepresentation.

(2)

QUESTION 13

Gomolemo rents a house from Morwesi from where she plans to run her new advertising agency. A month after moving into the premises Gomolemo notices large diagonal cracks appearing on some of the walls in the reception area.

Which ONE of the following statements is CORRECT?

1. Gomolemo will only be liable for paying rent when the house is in a condition fit for the purpose for which it was leased.
2. As the lessee Gomolemo is responsible for having the walls repaired, because there was nothing wrong with the walls when she moved in.
3. Morwesi will not be liable for any damages Gomolemo might suffer, because he delivered the house in a condition fit for the purpose for which it was leased.
4. As the lessee Gomolemo has a right to the delivery and maintenance of the house in a condition which is reasonably fit for the purpose for which it was leased.

(2)

QUESTION 14

Which ONE of the following statements is CORRECT?

1. A contract of lease is automatically terminated by the death of the lessor or the lessee.
2. If a property already leased, is sublet, a contract arises between the original lessor and the sublessee.
3. The lessee who effected repairs on a defective object, has to prove, when claiming reduction of rent, that the repairs were effected after the lessor failed to respond to a demand to have them done.
4. The purchaser of property in respect of which a contract of lease is in existence, assumes any obligation owing by the lessor to the lessee, which arose prior to the date of sale.

(2)
QUESTION 15

On his way home from work, Romeo is involved in a collision. He reports the accident to his insurance company which informs him that he chooses to repair his car rather than to compensate him. He also has to pay R1 000 because he bears a proportion of the loss himself. The insurance company also informs him that he has no choice but to comply, as these terms were agreed to in the insurance contract he concluded with the company two years before.

Which ONE of the following statements reflects Romeo's legal position CORRECTLY?

1. Even if the parties to the insurance contract agreed, the insurance company may not legally oblige Romeo to have the car repaired instead of compensating him, nor have him pay a certain amount in order to bear a portion of the loss himself.
2. There is no principle in insurance law that allows the insurance company to have the insured pay a certain amount in order to bear a portion of the loss himself.
3. If the parties to an insurance contract agreed thereto, the insurance company may have the insured pay a certain amount in order to bear a portion of the loss himself and may reserve the right to have the risk-object repaired, instead of compensating the insured.
4. There is no principle in insurance law that allows the insurance company to reserve the right to decide to have the risk-object repaired, instead of compensating the insured. (2)

QUESTION 16

In which ONE of the following relationships is the authority of the agent NOT implied by law, but dependent on the consent of the principal?

1. Director and company
2. Curator and insane person
3. Estate agent and seller
4. Guardian and minor (2)

QUESTION 17

Which ONE of the following requirements is a basic requirement (essentiaal) of a partnership?

1. mutual mandate
2. the obligation to share in the net loss
3. the expectation to share in the net profit
4. the proportion in which the assets are divided upon dissolution (2)

QUESTION 18

Which ONE of the following statements regarding a co-operative society is CORRECT?

1. Membership of a co-operative society is limited to twenty
2. Shares issued by a co-operative society are freely transferable
3. A co-operative society is a voluntary association which developed from the law of companies
4. A co-operative society promotes the business of its members and acts as their agent in the marketing of their products (2)
QUESTION 19

Which ONE of the following statements is CORRECT?

1. Some liens arise by operation of law and others through agreement
2. In respect of useful expenses, a party to a contract can only obtain a debtor and creditor lien
3. In respect of luxurious expenses, a party to a contract can only obtain an enrichment lien
4. If the person claiming the lien loses possession of the object of the lien, he or she automatically loses the lien  (2)

QUESTION 20

With the assistance of his mother, Marie, Peter, a nine year old boy, buys a motorcycle. Which ONE of the following statements is CORRECT in terms of the Consumer Protection Act?

1. The contract of sale for the motorcycle is null and void, because in spite of the fact that his mother assisted him, Peter is a minor
2. The contract of sale for the motorcycle is null and void, because as a minor Peter is regarded as mentally unfit
3. The contract of sale for the motorcycle is valid, because as Peter was assisted by his mother, it is irrelevant that he personally lacked the capacity to act
4. The contract of sale for the motorcycle is valid, because although Peter did not have the capacity to act, he used his own savings to buy the motorcycle  (2)

TOTAL FOR SECTION B: 40 MARKS

TOTAL: 80 MARKS

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MARK READING SHEET INSTRUCTIONS

Your mark reading sheet is marked by computer and should therefore be filled in thoroughly and correctly.

USE ONLY AN HB PENCIL TO COMPLETE YOUR MARK READING SHEET

PLEASE DO NOT FOLD OR DAMAGE YOUR MARK READING SHEET

Consult the illustration of a mark reading sheet on the reverse of this page and follow the instructions step by step when working on your sheet.

Instruction numbers 1 to 10 refer to spaces on your mark reading sheet which you should fill in as follows:

1. Write your paper code in these eight squares, for instance:
   
   P S Y 1 0 0 - X

2. The paper number pertains only to first-level courses consisting of two papers.
   
   WRITE 0 1 for the first paper and 0 2 for the second. If only one paper, then leave blank.

3. Fill in your initials and surname.

4. Fill in the date of the examination.

5. Fill in the name of the examination centre.

6. WRITE the digits of your student number HORIZONTALLY (from left to right). Begin by filling in the first digit of your student number in the first square on the left, then fill in the other digits, each one in a separate square.

7. In each vertical column mark the digit that corresponds to the digit in your student number as follows [-].

8. WRITE your unique paper number HORIZONTALLY.
   
   NB Your unique paper number appears at the top of your examination paper and consists only of digits (e.g. 403326).

9. In each vertical column mark the digit that corresponds to the digit number in your unique paper number as follows [-].

10. Question numbers 1 to 140 indicate corresponding question numbers in your examination paper. The five spaces with digits 1 to 5 next to each question number indicate an alternative answer to each question. The spaces of which the number correspond to the answer you have chosen for each question and should be marked as follows [-].

   For official use by the invigilator. Do not fill in any information here.
This is to certify that I have read the rules governing the examinations as set out on the inside cover of this examination answer book and in the examination instructions. That the information supplied by me in this answer book is correct and valid. I undertake to adhere to the procedures, rules and regulations of the University of South Africa as published in the official brochures.

Signature of candidate

ID Number

Signature of invigilator

NOTE: Not a valid document if not completed by the Invigilator.