CLA1503  (478044)  October/November 2016

COMMERCIAL LAW IC

Duration 2 Hours  80 Marks

EXAMINERS
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SECOND PROF TE MANAMELA

Closed book examination

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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.
QUESTION 1

Constitutional supremacy means that

1. there may be no interference with judicial independence when a court applies the Constitution
2. Parliament is the highest legislative body and is entitled to make legislation without any interference
3. no right given by the Constitution may be limited
4. the Constitution is the highest law of the country and any law which is contrary to its provisions may be declared invalid (2)

QUESTION 2

Mr and Mrs Taukgale 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. Regional Magistrate’s Court
4. None of the above (2)

QUESTION 3

Which ONE of the following subdivisions of the law forms part of private law?

1. Criminal law
2. International law
3. Company law
4. Law of contract (2)

QUESTION 4

Which ONE of the elements of a delict is absent when the perpetrator has acted like a reasonable person?

1. An act
2. Unlawfulness
3. Fault
4. Damage or impairment of personality (2)
QUESTION 5

What is the right called that an artist has to his or her works which prevents others from imitating such works?

1. Intellectual property right
2. Personality right
3. Personal right
4. Ownership (2)

QUESTION 6

Which ONE of the following is NOT a requirement for the conclusion of a valid contract?

1. The contract must be permitted by law
2. Each party to the contract must have capacity to act
3. The contract must be in writing, signed and dated
4. There must be consensus between the parties (2)

QUESTION 7

Gontse helped Jan to move her furniture to his new house. Gontse was injured during the move due to Jan's negligence. Gontse's left leg was injured and she suffered both physical injuries and patrimonial damages. She claimed for her patrimonial damages from Jan. Jan offered to pay R2 500 in full and final settlement of Gontse's claim. Gontse refused and expressly stated that she would only accept an offer of R3 000. Jan refused to increase the offer.

Which ONE of the following statements is CORRECT?

1. The request made by Gontse is a counter offer. Therefore, the original offer falls away
2. Gontse can accept the original offer after her request for an increased offer was rejected.
3. Gontse's offer remains open for a specific period of time
4. Gontse cannot accept the original offer, because it was revoked (2)

QUESTION 8

Kgotso makes an offer to buy Mpho's motor car for R10 000. He gives Mpho ten days to accept his offer. On the ninth day, Mpho informs Kgotso that he accepts the offer, but that he wants an amount of R10 200.

Which ONE of the following statements is CORRECT?

1. A contract came into existence between Kgotso and Mpho with a purchase price of R10 200
2. No contract came into existence between Kgotso and Mpho as Mpho made a counter-offer, which has not yet been accepted
3. A contract came into existence between Kgotso and Mpho with a purchase price of R10 000.
4. Kgotso's offer still stands (2)
QUESTION 9

Mr Smith wishes to offer Karabo Kgorong a job. He asks his secretary to telephone Karabo so that he can talk to him. The secretary dials the wrong number Karabo Kobong answers the telephone. Mr Smith, who is under the impression that he is talking to Karabo Kgorong, offers the job to Karabo Kobong. Karabo Kobong accepts the offer.

Which ONE of the following statements is CORRECT?

1. The contract between Mr Smith and Karabo Kobong is void owing to misrepresentation
2. The contract between Mr Smith and Karabo Kobong is void owing to mistake
3. Mr Smith and Karabo Kobong reached consensus and will be bound in terms of their agreement
4. The contract between Mr Smith and Karabo Kobong is valid since Mr Smith made a mistake which is not material

(2)

QUESTION 10

Moremi holds a pistol to Koos’s head and threatens to kill him should he not sell his house to him (Moremi). Koos agrees and the contract of sale is signed by both parties.

Which ONE of the following statements is CORRECT?

1. The contract is void as a result of duress
2. There is no consensus between Moremi and Koos.
3. The contract is voidable because Koos signed it under duress
4. The contract is invalid due to duress.

(2)

QUESTION 11

Which ONE of the following statements is CORRECT?

1. Maria, a seven year old girl, inherits a very valuable diamond ring from her grandmother. Mr Morake, Maria’s father, sells the ring to Peter for R10 000, while its actual value is R70 000. Maria will never be able to remedy this detrimental contract.
2. Mr More agrees with his best friend Tatlhego, that his seventeen year old daughter, Montle, will marry Tatlhego. Montle refuses to marry Tatlhego, because she wants to study medicine at the Medical University of South Africa. The marriage nevertheless takes place without her consent, because arranged marriages are part of her culture. The marriage is valid.
3. George, a thirteen year old boy, undergoes an HIV test without his guardian’s consent. George is able to do so lawfully.
4. None of the above.

(2)
QUESTION 12

Which **ONE** of the following could have an influence on a natural person’s legal capacity?

1. Mental deficiency
2. Being under the influence of alcohol or drugs
3. Having been declared a prodigal by the High Court
4. None of the above  (2)

QUESTION 13

After ten years in a business partnership, which sells tyres, Martin wants to terminate Martin and Samson’s business partnership. Since Martin’s business partner, Samson, will be entitled to half the assets of the partnership at the time of the termination, he concludes a contract with a professional killer, Madlaya, in terms of which he will pay Madlaya the amount of R100 000 to kill Samson. The next day Samson dies of natural causes.

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

1. Madlaya is entitled to payment in terms of the contract because performance has become impossible
2. Madlaya is **not** entitled to payment in terms of the contract because performance has become impossible
3. Madlaya is **not** entitled to payment because the agreement between him and Martin is contrary to public policy.
4. Madlaya is **not** entitled to payment because it is an implied term of the contract that Samson must be killed by Madlaya, not die of natural causes  (2)

QUESTION 14

Prince undertakes to deliver his Rally mountain bike to Mafikeng. The contract further provides that Prince may, at his sole discretion, deliver another mountain bike of similar quality.

This is a(n)

1. facultative obligation
2. generic obligation
3. alternative obligation.
4. invalid contract  (2)

QUESTION 15

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

1. A contract where a house is leased
2. A contract where a wager is made
3. A contract where a car is sold
4. A contract where land is sold  (2)
QUESTION 16

Mphoreng takes her friends Sarah and Queen to a restaurant. When Mphoreng wants to pay, she discovers that she does not have her purse with her. Sarah agrees to pay the bill, but she suspects that Mphoreng will not repay her. Sarah therefore asks Queen if she will bind herself as surety for Mphoreng’s debt. Queen agrees by nodding her head.

Which **ONE** of the following statements regarding the validity of the agreement between Queen and Sarah is **CORRECT**?

1. The agreement is void because formalities have not been complied with.
2. The agreement is void due to a lack of consensus.
3. The agreement is void because it is contrary to good morals.
4. A valid contract has been concluded.  

(2)

QUESTION 17

More agreements are concluded electronically than previously. The Electronic Communications and Transactions Act 25 of 2002 provides that data messages (electronic messages) are recognised as writing if the document is accessible for future use, except in respect of specific transactions concluded under specific Acts.

Under which **ONE** of the following Acts will electronic messages be recognised as writing?

1. National Credit Act 34 of 2005
3. National Stamp Duties Act 77 of 1968
4. National Wills Act 7 of 1953  

(2)

QUESTION 18

Mr King donates his computer to Give-a-Book Library in a written contract of donation. Mr King and the librarian agree that Mr King will only deliver the computer on 18 November, as Mr King first needs to complete a project on the computer.

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

1. Give-a-Book Library may demand delivery of the computer from Mr King on 18 November as the contract will only be enforceable on this date.
2. Give-a-Book Library may demand delivery of the computer from Mr King at any time as the computer has already been donated to the library.
3. Mr King may refuse to deliver the computer to Give-a-Book Library if he changes his mind about donating it to the library.
4. Mr King may refuse to deliver the computer to Give-a-Book Library if he has not completed his project by the end of the year.  

(2)
QUESTION 19

Hosea wants to purchase an apartment from Morake only if the beach is visible from the apartment. Musa is not sure whether the beach is visible from the apartment. They agree that Hosea 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 20

Ben, Joshua and Kobus are members of a close corporation known as BJK Firefire CC, a business which sells fireplaces. The association agreement contains a restraint of trade clause which regulates the situation should one of them resign as a member of the close corporation. The restraint of trade clause provides that in such a case, neither of the members will carry on the business of selling fireplaces within seven kilometers of the premises of BJK Firefire CC for a period of one year after resignation. Ben resigns as a member of BJK Firefire CC and immediately opens another shop selling fireplaces just around the corner from BJK Firefire CC.

Which ONE of the following statements is CORRECT?

1. Ben's behavior amounts to repudiation, because it indicates that he does not intend honouring his obligations in terms of the association agreement.
2. Ben is not in breach of contract, because he has resigned as member of BJK Firefire CC and in doing so is no longer bound to the terms of the association agreement.
3. Although Ben is in breach of contract, Joshua and Kobus cannot enforce the restraint clause unless they can prove that it is reasonable.
4. Unless Ben can show that the restraint clause is contrary to public policy, his contravention of the restraint clause will constitute breach of contract and the restraint clause will be enforceable.

(2)

QUESTION 21

Which ONE of the following statements about repudiation is CORRECT?

1. Repudiation is a form of breach of contract which always entitles the innocent party to cancel the contract.
2. Repudiation is a form of breach of contract, but it does not necessarily entitle the innocent party to cancel the contract.
3. Repudiation is a form of breach of contract which never entitles the innocent party to cancel the contract.
4. Repudiation is not a form of breach of contract.

(2)
QUESTION 22

The remedy of execution of the contract is the obvious remedy for breach of contract.

Which ONE of the following orders is an order for the execution of the contract?

1. An order for increased performance
2. An order for reduced performance
3. An order for payment of damages
4. None of the above (2)

QUESTION 23

Matome undertakes to paint Freddy’s house on 3 October. On that day, Matome does not arrive. On 15 October Freddy hears that Matome is on holiday until 1 February of the following year and that he on his return intends to move to another city.

Which ONE of the following statements is CORRECT?

1. The contract has become void because of supervening impossibility of performance
2. Because Matome is in mora ex persona, Freddy may claim damages from him
3. Freddy may reasonably conclude that Matome no longer intends to paint the house, and is consequently entitled to the remedies for breach of contract
4. Matome is released from his obligation to perform, because he has prevented his own performance (2)

QUESTION 24

Trevor and Phuti enter into an agreement in terms of which Trevor undertakes to manufacture electrical motors for use in the manufacturing of washing machines at an agreed price, and according to certain specifications. On delivery of the motors to him, Phuti pays the purchase price of the motors to Trevor. However, all the motors are materially defective in that they do not comply with the specifications and are therefore completely useless for application in the manufacturing of washing machines.

Which ONE of the following statements is CORRECT?

1. Because the agreement does not contain a lex commissoria (cancellation clause), Phuti is not entitled to cancel the contract on the ground of Trevor’s breach of contract
2. Phuti is entitled to cancel the contract and hold Trevor liable for damages suffered by him as a result of Trevor’s breach of contract
3. Phuti is not entitled to cancel the contract since the defect is not of such a serious nature that he cannot reasonably be expected to abide by the contract
4. If Phuti elects to cancel the contract, he need not return the motors, because he has suffered damage as a result of Trevor’s breach of contract (2)
QUESTION 25

Tebogo owes Ntleko R 30 000 in respect of several debts. Tebogo pays Ntleko an amount of R10 000, but does not stipulate which debt/s he is actually paying.

Which ONE of the following principles will apply in this case?

1. Capital is paid before interest
2. Due debts are paid before debts which have not yet fallen due
3. Onerous debts do not have preference over non-onerous debts
4. Old debts do not have preference over new debts

(2)

QUESTION 26

Tshepiso undertakes to build a wall around Andrew’s property. However, Tshepiso realises that he has too much work and persuades Thabo to take over the job. Tshepiso, Thabang, and Thabo now agree to this arrangement.

Which ONE of the following terms will complete the sentence below CORRECTLY?

Tshepiso’s obligation is extinguished because of

1. delegation
2. settlement
3. set-off
4. cession

(2)

QUESTION 27

Consider the following requirements:

A. Agreement on the purchase price
B. Agreement regarding a warranty against latent defects
C. Agreement regarding the mere
D. Agreement that the mere be delivered

Which of the above are the essential characteristics of a contract of sale?

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

(2)
QUESTION 28
Morwadi goes to Bundas Café to buy a tin of tuna. After taking the money, Mr Mabunda, the shop owner, takes the tuna from the shelf behind him and gives it to Morwadi.

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

1. Symbolic delivery
2. Actual delivery
3. Delivery with the short hand
4. Delivery with the long hand

(2)

QUESTION 29

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

1. The lessor must pay rent, take care of the thing let and must restore the thing let on termination of the lease
2. The lessor must conclude a new contract with the lessee upon the expiry of their existing lease agreement
3. The lessor must exercise his or her tacit hypothece when the lessee falls into arrears with his or her rent
4. 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

(2)

QUESTION 30

Ntando rents a house from Tiro for R4 500 per month. The roof of the main bedroom starts to leak when it rains. Ntando is now obliged to sleep in another bedroom.

Which ONE of the following statements is CORRECT?

1. Ntando is entitled to refuse to pay the rent
2. If Tiro refuses to repair the roof, Ntando is entitled to have the roof repaired and to claim a reduction of the rent on the grounds of such reparation
3. The defect is not material and Tiro is therefore not obliged to have the roof repaired
4. Tiro is entitled to maintenance of the house in a fit condition and Ntando is therefore obliged to have the roof repaired

(2)
QUESTION 31

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. The purchaser will not be bound by the doctrine if the tenant neglects to pay the rent
4. All rent 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) **(2)**

QUESTION 32

Pret leases his house to Gomolemo. Pret and Buang agree that their contract of lease will come to an end when Pret's son, Daniel, comes back from the UK.

A year after conclusion of the agreement, Daniel comes back from the UK.

Which **ONE** of the following forms of termination of lease will take place?

1. The lease agreement will be terminated by notice because the contract is for an indefinite period
2. The lease agreement will not be terminated by notice because the parties did not mention in their contract that the contract will be terminated by notice
3. The lease agreement will not be terminated by effluxion of time because it was not known when the event will take place
4. The lease agreement will be terminated by effluxion of time because its existence depends on the occurrence of a specified event **(2)**

QUESTION 33

Phil is mandated by Joe to find and buy him a 2015 Ford Ranger Wildtrak with low mileage. Phil finds and buys such a vehicle, but decides to buy the trailer, with which it was offered for sale, as well.

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

1. Phil can claim the expenses incurred in buying the trailer, from Joe
2. Phil can claim remuneration for the trailer from Joe
3. Phil can claim remuneration for the sourcing and the buying of the Ford Ranger from Joe
4. Phil cannot claim anything from Joe because he did what he was not supposed to do, that is buying the trailer in addition to the Ford Ranger **(2)**
QUESTION 34

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 misled.  

(2)

QUESTION 35

Jopie, Mosidi, and Muvhango want to start a business. They agree that Jopie and Mosidi will each contribute R40 000, while Muvhango will contribute R50 000. They want to operate their business in the form of a partnership, but are not sure about their duties and rights as partners.

Which ONE of the following statements regarding the rights and duties of partners is CORRECT?

1. Each partner is entitled to share equally in the profits of the partnership.
2. Each partner is entitled to participate in the management of the partnership in proportion to the contribution he or she made to the partnership.
3. The partners may use the assets of the partnership for personal aims.
4. If one of the partners fails to deliver his or her contribution to the partnership, the other partners may use the actio pro socio to force him or her to deliver such contribution.

(2)

QUESTION 36

Which ONE of the following is a natural consequence (a naturale) of a partnership contract?

1. The expectation to share in the net profit.
2. The partnership should be formed in the common interest of the partners.
3. The main object of the partnership must be to make profit.
4. In the absence of a provision to the contrary, losses are shared in the same proportion as profits.

(2)

QUESTION 37

Which ONE of the following statements regarding the contract of suretyship is INCORRECT?

1. The surety cannot be liable for more than the principal debt.
2. A valid contract of suretyship may be concluded orally or in writing.
3. More than one person may render themselves liable for the same principal debt.
4. The contract of suretyship is automatically terminated when the principal obligation is terminated.

(2)
QUESTION 38

Which ONE of the following forms of real security must be registered to exist?

1. A hypothec
2. A pledge
3. A mortgage bond
4. A lien

(2)

QUESTION 39

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

1. Universities
2. Attorneys
3. Banks
4. Members of the Stock Exchange (JSE)

(2)

QUESTION 40

Mohammad & Ahmed Stores sends an electronic brochure to Sunnyboy advertising their new football kits. Sunnyboy is interested in one of the football kits and orders it from Mohammad & Ahmed Stores. The football kit is delivered to Sunnyboy but Sunnyboy is not happy with the quality.

Which ONE of the following statements is CORRECT in terms of the Consumer Protection Act?

1. In terms of the Consumer Protection Act, Sunnyboy has a cooling-off period of five business days after a contract of sale is concluded by direct marketing during which Sunnyboy can rescind the contract without being subject to a penalty.
2. The contract of the sale for the football kit is null and void, because in terms of the Consumer Protection Act, Sunnyboy’s right to privacy was infringed when the brochure was sent to him electronically.
3. The contract of sale for the football kit is not null and void, because Sunnyboy did not waive his right to restrict the unwanted direct marketing of products.
4. In terms of the Consumer Protection Act, Sunnyboy has a cooling-off period of ten business days in the case of a contract concluded as result of direct marketing, during which to cancel the contract, but Sunnyboy could be subject to a penalty should he return the football kit.

(2)

TOTAL: [80]
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.