

CLA101S (473767) October/November 2009
RCA101A (472132)
RCA101D (442446)

- **COMMERCIAL LAW 1A (COMMERCIAL LAW 101)**

Duration 2 Hours

80 Marks

EXAMINERS
FIRST
SECOND

MR PN STOOP
PROF RA KELBRICK

This paper consists of 14 pages plus instructions for the completion of a mark reading sheet.

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

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 14 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

Which **ONE** of the following statements regarding the application of the doctrine of stare decisis is **INCORRECT**?

- 1 A High Court is bound by its own decisions until they are overruled by a superior court.
- 2 A High Court is bound by the decision of a court of concurrent status within its own area of jurisdiction
- 3 A High Court can, depending on how it is constituted, be bound by a decision of the Supreme Court of Appeal
- 4 A High Court is not bound to follow the decision of a High Court belonging to a different area of jurisdiction (2)

QUESTION 2

Which court(s) has/have jurisdiction to decide whether one of the fundamental rights entrenched in the Constitution was violated in a particular case?

- 1 only the Constitutional Court
- 2 only a High Court
- 3 both the Constitutional Court and the Supreme Court of Appeal
- 4 both the Constitutional Court and a High Court
- 5 the Constitutional Court, the Supreme Court of Appeal, and a High Court (2)

QUESTION 3

Which **ONE** of the following legal systems is the basis of the South African legal system?

- 1 Dutch law
- 2 Roman law
- 3 English law
- 4 Roman-Dutch law (2)

QUESTION 4

Lucky is a regular blood donor. Each time before he donates blood, he has to sign a consent form. He knows that donating blood may lead to dizziness or fainting. One day, shortly after donating blood, Lucky faints, falls down a flight of stairs and breaks a very expensive statue at the base of the stairs. When he regains consciousness, Lucky realises that he has hurt his back in the fall.

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

- 1 The blood transfusion service may rely on voluntary assumption of risk as a ground of justification should Lucky claim compensation for his back injury
- 2 The blood transfusion service can rely on consent by the injured party should Lucky claim compensation for the discomfort he suffered while he was donating blood
- 3 Lucky can rely on necessity as a ground of justification if the owners of the building claim damages in respect of the broken statue
- 4 Lucky need not rely on any ground of justification if the owners of the building claim damages in respect of the broken statue (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 ownership
- 2 an intellectual property right
- 3 a personality right
- 4 a personal right (2)

QUESTION 6

Which **ONE** of the following is an original method of acquiring ownership?

- 1 delivery
- 2 registration
- 3 cession
- 4 prescription (2)

QUESTION 7

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 There must be consensus between the parties
- 4 The contract must be in writing, signed and dated
- 5 It must be physically possible to perform in terms of the contract (2)

[TURN OVER]

QUESTION 8

In which **ONE** of the following situations was a **VALID** contract concluded?

- 1 Peter purchases a new pair of running shoes for R600 on the official website of Nike. The shoes will be delivered at his flat in Pretoria.
- 2 Nicolas enters into an agreement with himself and undertakes that he will save R500 each month by paying R500 into his savings account on the first day of each month.
- 3 Sally organises her birthday party, to which she invites twenty guests. All the guests confirm that they will attend Sally's birthday party. The day before the party ten of the guests inform Sally that they will not attend the party because they prefer to attend a street party at the same time and date in Sandton.
- 4 Reeze undertakes to sell the moon and one star to Shana for R500. (2)

QUESTION 9

Richard makes an offer to buy Tumelo's motor car for R1 000. He gives Tumelo ten days to accept his offer. On the ninth day Tumelo informs Richard that he accepts the offer, but that he wants the amount of R1 200.

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

- 1 A contract came into existence between Richard and Tumelo with a purchase price of R1 200.
- 2 A contract came into existence between Richard and Tumelo with a purchase price of R1 000.
- 3 No contract came into existence between Richard and Tumelo as Tumelo made a counter-offer, which has not yet been accepted.
- 4 Richard's offer still stands. (2)

QUESTION 10

Sammy, a dealer in electrical goods, has numerous washing machines on display on his shop floor. A card is attached to each machine indicating its make, model and price. The card on a certain machine indicates that the price is R1 000, whereas it is actually R10 000. Anna sees the machine and takes it to the cashier. The cashier realises that the price is incorrect and refuses to accept the R1 000 tendered by Anna.

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

- 1 Anna accepted Sammy's offer with the intention of being legally bound to it on the terms as set out on the card.
- 2 By displaying the machine on the shop floor, Sammy invited Anna to make an offer to purchase the machine.
- 3 Sammy made an offer to Anna with the intention that he would be legally bound by the mere acceptance thereof by Anna.
- 4 By offering the R1 000 Anna made it clear that she unconditionally accepted Sammy's offer. (2)

[TURN OVER]

QUESTION 11

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

- 1 At an auction subject to reservation the auctioneer is the offeror
- 2 At an auction without reservation the auctioneer must sell to the highest bidder
- 3 If nothing is said about the auction in the advertisement of the auction it is presumed that the auction is held without reservation
- 4 Auctions of immovable property are always held subject to reservation (2)

QUESTION 12

Prof Radebe parks his car in front of a shopping mall. After having done his shopping, he cannot find his car. Under the impression that it has been stolen, he buys a second-hand car from Mlungisi. An hour after he has concluded the contract of sale with Mlungisi, the police inform Prof Radebe that his car has not been stolen but was parked a few parking spaces from where he thought he had parked it.

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

- 1 The contract between Prof Radebe and Mlungisi is void because Prof Radebe made a mistake of fact
- 2 The contract between Prof Radebe and Mlungisi is voidable because Prof Radebe made a misrepresentation that his car had been stolen
- 3 The contract between Prof Radebe and Mlungisi is valid because Prof Radebe made an innocent misrepresentation
- 4 The contract between Prof Radebe and Mlungisi is valid because mistake in motive has no influence on consensus (2)

QUESTION 13

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 14

Vic and Tahira married out of community of property on 1 November 1999.

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

- 1 Vic and Tahira have a joint estate
- 2 Vic and Tahira are jointly and severally liable to third parties for debts incurred for necessities for the common household
- 3 Vic and Tahira both lose their full capacity to act on marriage
- 4 Tahira has to give her consent for the sale of a farm which belongs to Vic (2)

QUESTION 15

Percy wants to sell his old computer for R3 000. Ally, a sixteen year old boy, wants to buy it. He tells Percy that he is twenty three years old and may therefore conclude the contract of sale without his parents' assistance. Percy and Ally agree that Ally will pay a deposit and that he will pay the balance in instalments. Ally's parents reduce his pocket money and as a result Ally is unable to pay the instalments as agreed.

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

- 1 Ally is not liable to pay the purchase price of the computer as the contract is not enforceable against him as he is a minor
- 2 Ally is not liable to pay the purchase price of the computer as Percy should have ascertained the true facts before concluding the contract
- 3 Ally is liable to pay the purchase price of the computer as he is an emancipated minor
- 4 Ally is liable to pay the purchase price of the computer as he fraudulently posed as a major

(2)

QUESTION 16

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

- 1 The parties to an illegal agreement do not have any enforceable rights or obligations arising from the illegal agreement
- 2 A party who suffered damage as a result of an illegal agreement cannot rely on the contract in order to claim compensation
- 3 The party who is entitled to performance in terms of an illegal agreement cannot rely on the contractual obligation to enforce his right
- 4 An illegal agreement is valid until one of the parties decides to set it aside

(2)

QUESTION 17

Joey is the plaintiff in a civil case. The advocate tells her that she doesn't have a good case. Joey decides to continue with her claim and to pay Mr Dishonest, the judge hearing her case, an amount of money in order to ensure success. She goes to his chambers and hands him a suitcase full of American dollar bills. Mr Dishonest promises that he will ensure that her claim succeeds.

Mr Dishonest delivers judgment against Joey in favour of the defendant.

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

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

(2)

[TURN OVER]

QUESTION 18

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

- 1 If Rashaad who is deeply in love with Sharon, promises Margate Beach to her in a contract of donation, a valid contract does not come into existence because the object 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 R1 000 that Bafana-Bafana will win the next Africa Nations Soccer Cup the contract between them is void because it is a wagering contract
 - 4 If Rocher, the master chef and owner of Capeech Café 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 19

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

- 1 Formalities are required for the formation of all contracts
 - 2 If parties prescribe formalities for their contract, compliance is optional
 - 3 Writing is a formality required for all contracts of sale
 - 4 A contract of lease may be concluded without any formalities
- (2)

QUESTION 20

Alan wants to sell land to Brian

Which **ONE** of the following statements regarding the contract for the alienation of land is **INCORRECT**?

- 1 A contract for the alienation of land must be in writing
 - 2 Alan may telephonically authorise his agent Charles to sign the contract for the alienation of land on his (Alan's) behalf
 - 3 The contract for the alienation of land between Alan and Brian will be deemed valid even if the requirements of the Alienation of Land Act 68 of 1981 were not met if both parties have performed in full
 - 4 If Charles signs the contract for the alienation of land on behalf of Alan without Alan's written instructions Alan cannot enforce the contract
- (2)

QUESTION 21

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 Siphon undertakes to give his friend Thabo a new bicycle in six months time
 - 4 Kate gives her mother a gift voucher to the value of R200
- (2)

[TURN OVER]

QUESTION 22

Before their wedding Musa and his fiancée, Lisa, agree on the following financial arrangements which are included in their antenuptial contract

- A that Musa's house at 20 Borokong Street, Randburg will be the family home of the couple
- B that the said house will be registered in Lisa's name
- C that Musa will stand surety for the loan Lisa needs to buy a new car,
- D that the marriage will be out of community of property
- E that Musa will attend to the typing, signing and registration of all the documents relating to the antenuptial contract

After the wedding none of the antenuptial contract documents have been typed, signed or registered

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

- 1 Lisa is solely liable for the purchase price of her car
- 2 Musa and Lisa will not be bound by the terms of their antenuptial contract because Musa forgot to type and register it
- 3 Lisa is the legal owner of the family home (2)

QUESTION 23

While they are at work Xaba and Yoyo agree that Yoyo will purchase Xaba's old attache case provided it is brown and not black. At the time of the conclusion of the agreement, the attache case is at Xaba's home and he can't recall the colour. This is an example of a

- 1 condition
- 2 supposition
- 3 modus
- 4 warranty (2)

QUESTION 24

A contractual term that provides that the agreement may only be altered by means of a written amendment, is known as a/an

- 1 rectification clause
- 2 rouwkoop clause
- 3 entrenchment clause
- 4 penalty clause (2)

QUESTION 25

Stephan and Daniel conclude a contract of lease in terms of which Stephan will lease his farm, Apple Tree farm to Daniel until Daniel's death. This term is an example of a

- 1 suspensive time clause
- 2 resolutive time clause
- 3 suspensive condition
- 4 resolutive condition (2)

QUESTION 26

Floors and Maans agree that Floors will buy Maans's yacht for R55 000. They further agree that Floors will pay a deposit of R20 000 and will pay the balance of the amount in seven instalments of R5 000 each over the next seven months. They fail to make any provision for the possibility that the yacht might contain a latent defect.

A warranty against latent defects is an example of

- 1 an *essentiale* of the contract
- 2 an *incidentale* of the contract
- 3 a *naturale* of the contract
- 4 an implied term of the contract (2)

QUESTION 27

Which **ONE** of the following is **NOT** a guideline for the interpretation of contracts?

- 1 Words that carry a technical meaning will be interpreted in accordance with their specific use
- 2 Normally all words will have their ordinary grammatical meaning
- 3 If ambiguity exists, the contract will usually be regarded as invalid
- 4 Where the parties express themselves on a particular matter but omit some detail, common-law rules will regulate that aspect (2)

QUESTION 28

Which **ONE** of the following statements regarding the parol evidence rule is **CORRECT**?

The parol evidence rule

- 1 operates in respect of evidence which aims to prove that a contract is void
- 2 does not exclude evidence of agreements reached after conclusion of the written contract
- 3 operates in the case of all contracts
- 4 is also called the integration rule because both written and unwritten terms of the contract are integrated when the contract is interpreted (2)

QUESTION 29

The law recognises that in appropriate circumstances, a written contract may be rectified

In which **ONE** of the following circumstances is rectification permissible?

- 1 if the parties can prove their true intention and that the contract does not accurately reflect their intention
- 2 if the parties can prove their true intention as well as the fact that when the contract was concluded they agreed that the integration rule would not apply
- 3 if the parties can prove their true intention and that rectification of the contract will not be to the detriment of any third party (2)

QUESTION 30

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 2008 in time for the commencement of the European holiday season which starts on 1 October. Easy Thatch only finishes the work at the end of November 2008 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 thatching grass in time and therefore spent weeks waiting for their suppliers to deliver enough thatching 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 31

Example 1

Roger agrees to repair Johan's truck. Before Roger can do so, however, the truck is burnt out owing to an electrical short circuit. Johan was not aware of any defect in the electrical system of the truck.

Example 2

Thomas agrees to repair Ann's computer. On the day before Ann must deliver the computer to Thomas, Ann intentionally drops the computer for the purpose of claiming insurance on it.

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 2 is a case of repudiation and example 1 a case of negligence.
- 3 Example 1 is a case of supervening impossibility of performance, and example 2 is an instance of prevention of performance.
- 4 In Example 1, Johan will be held liable because he was negligent in not having the electrical system repaired and, in example 2, Ann will be held liable for her intentional destruction of the computer. (2)

QUESTION 32

Neil and Grant are members of a close corporation known as Fireflies 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 five kilometres of the premises of Fireflies CC for a period of one year after resignation. Neil resigns as a member of Fireflies CC and immediately opens another shop selling fireplaces just around the corner from Fireflies CC.

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

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

QUESTION 33

Alexander, a farmer, has his tractor repaired by Bertus. He informs Bertus that he wants his tractor in perfect working order for the forthcoming harvesting season. However, Alexander does not inform Bertus that he also uses the tractor to operate a pump for pumping water out of a small gold mine on the farm. As a result of Bertus's bad workmanship, the tractor breaks down after a month. Although Alexander immediately returns the tractor to Bertus to rectify his bad workmanship, Bertus only repairs it a month later. By this time, part of Alexander's crop worth R8 000 (still not harvested) has rotted in the fields. Alexander's mine has also been flooded and, as a result thereof, Alexander has to spend R10 000 to repair the damage to the mine. Alexander is unable to hire or borrow another tractor.

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

- 1 Alexander can recover all the damages that he has actually suffered from Bertus since the tractor broke as a result of Bertus's bad workmanship
- 2 Even if Bertus did not in fact foresee the damage to the harvest in the abovementioned set of facts, he will still be liable if this damage can be regarded as foreseeable
- 3 Alexander can claim the R8 000 damage to his harvest from Bertus as well as the R10 000 in respect of the gold mine, even if Bertus could not have foreseen the damage to the gold mine
- 4 If Alexander could have prevented the damage to his harvest and gold mine, he would still be able to claim from Bertus either the R8 000 damages to his harvest or the R10 000 damages to the gold mine (2)

QUESTION 34

Deon and Rory enter into an agreement in terms of which Deon 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, Rory pays the purchase price of the motors to Deon. 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 Rory is entitled to cancel the contract and hold Deon liable for damages suffered by him as a result of Deon's breach of contract
- 2 Rory 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
- 3 Because the agreement does not contain a *lex commissoria* (cancellation clause), Rory is not entitled to cancel the contract on the ground of Deon's breach of contract
- 4 If Rory elects to cancel the contract, he need not return the motors because he has suffered damages as a result of Deon's breach of contract (2)

QUESTION 35

Which **ONE** of the following is an instance under which a contract can be cancelled for breach of contract in the form of mora debitoris?

- 1 if the contract contains a cancellation clause
- 2 failure to send a notice of intention to cancel the contract
- 3 failure to perform by the stipulated date where the time of performance is not of the essence
- 4 timely but defective performance (2)

QUESTION 36

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 37

When a creditor is a minor

- 1 prescription will not start running
- 2 the completion of prescription is delayed
- 3 prescription is interrupted
- 4 prescription will run against his or her legal guardian (2)

QUESTION 38

Ian orders a "battleship" cake for his son's third birthday party from Dobsie. Ian agrees to pay R500 for the cake and Dobsie agrees to deliver the cake at Ian's house at 9h00 on the day of the party.

Which **ONE** of the following circumstances is an example of supervening impossibility of performance which terminates the obligations arising from the contract?

- 1 Dobsie oversleeps and only delivers the cake at 11h00, one hour after the start of the birthday party
- 2 Dobsie does not possess the necessary skill to decorate party cakes and the cake resembles a log
- 3 Dobsie drives at a very high speed to Ian's house and the cake is destroyed in an accident
- 4 Dobsie's kitchen is destroyed in a fire caused by lightning and she cannot bake the cake (2)

QUESTION 39

Edie buys a car from Zondi for the amount of R30 000. However, Edie only pays Zondi R22 000 as Zondi owes Edie R8 000 arising from a debt that existed prior to the sale of the car.

Which ONE of the following forms of termination of personal rights took place?

- 1 prescription
- 2 set-off
- 3 merger
- 4 discharge (2)

QUESTION 40

Which ONE of the following will terminate an obligation?

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

TOTAL: 80