



CLA101S

(497340)

October/November 2010

RCA101A RCA101D

(478041)

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COMMERCIAL LAW 1A (COMMERCIAL LAW 101)

Duration

2 Hours

80 Marks

EXAMINERS .

FIRST SECOND ADV ÉM MALEKA PROF TE MANAMELA

This paper consists of 15 pages plus instructions for the completion of a mark reading sheet.

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

ANSWER ALL THE QUESTIONS.

STUDENT NUMBER:	

INSTRUCTIONS:

- This paper consists of 40 multiple choice questions each counting 2 marks. The paper therefore counts out of 80 marks.
- The paper consists of 15 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.
- 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.
- 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
- 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.

Which ONE of the following sources will a South African lawyer consult on Roman-Dutch law?

- 1 the Law of the Twelve Tables
- 2 the Institutiones
- 3 the Corpus Iuris Civilis
- 4 Commentarius ad Pandectas

(2)

QUESTION 2

Constitutional supremacy means that ...

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

QUESTION 3

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

- 1 the Labour Court
- 2 the Constitutional Court
- 3 the Magistrate's Court
- 4 the Land Claims Court

(2)

QUESTION 4

Soon after the death of multimillionaire, Steven Woolf, a dispute arises regarding the validity and interpretation of his will.

Which ONE of the following courts may be approached?

- 1 the Constitutional Court
- 2 a High Court
- 3 the Supreme Court of Appeal
- 4 a magistrate's court

Gunther is a famous inventor of new environmentally friendly cars. He stands in his ultra-modern workshop admiring the revolutionary new electrically powered car that he invented for the company, Green Cars, who still owes him R5 000 000.

This sentence contains four legal objects, one from each of the four categories of Gunther's subjective rights.

The R5 000 000 owed to Gunther is an example of ...

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

(2)

QUESTION 6

The right to a patent is a/an ...

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

(2)

QUESTION 7

Thomas catches a wild pigeon with the intention of taming it and keeping it as a pet.

Which ONE of the following methods has Thomas used to acquire ownership of the wild pigeon?

- 1 a derivative method
- 2 prescription
- 3 occupation
- 4 possession

(2)

QUESTION 8

Susan buys Heloise's house and pays the full purchase price. Susan acquires ownership of the house on ...

- 1 conclusion of the contract of sale.
- 2 payment of the full purchase price.
- 3 occupation of the house.
- 4 registration of the transfer at a deed office.

Senzo makes a will in terms of which he leaves his house to his daughter, Sibongile. Sibongile may not sell the house as long as her mother, Lebo, is alive, since the will provides that Lebo is entitled to occupy the house until her death. In terms of the will Lebo thus has a limited right to enjoy and use the property.

Which ONE of the following limited rights does Lebo have in this instance?

- 1 a praedial servitude
- 2 possession
- 3 a usufruct
- 4 occupation (2)

QUESTION 10

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

- Lauren engages a professional caterer to provide food for a party to which ten guests have been invited. Thirty minutes after the agreed time, five guests phone Lauren and inform her that they will miss the appointment. Lauren wants to sue the guests for breach of contract.
- John, exceedingly drunk, undertakes in front of witnesses at Papa's Bar, to give one of his cars to Alex if Alex fixes his house's broken windows in exchange. Moments later John collapses in the street. The next morning he remembers nothing of his agreement with Alex
- The organizers of the Rhino 2008 Rally make an offer to pay Rex R20 000 if he can drive the 500 kilometres between Johannesburg and Bloemfontein in an hour. Rex accepts the offer.
- Peter and Andrew agree that Peter will hand R100 to Andrew and that Andrew will hand over his silver pen to Peter in full exchange. (2)

QUESTION 11

Which statement is INCORRECT?

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

Trevor and Angie arrange a surprise party for their friend, Tim, at an exclusive restaurant. In order to ensure Tim's presence at the party, Trevor arranges to pick up Tim at his flat for a game of tennis. Trevor arrives at the agreed time, but Tim is not there. The party is cancelled, but Trevor and Angie forfeit the booking fee they have paid They later find out that Tim could not keep his appointment with Trevor, since his car had broken down on his way home from work.

Which ONE of the following statements is CORRECT?

- 1 Trevor and Angie cannot recover the booking fee from Tim, because Tim and Trevor had not entered into a contractual agreement.
- 2 Trevor and Angie cannot recover the booking fee from Tim, because Tim cannot be blamed for the fact that his car had broken down.
- 3 Trevor and Angie cannot recover the booking fee from Tim, because Tim may resile from the contract owing to Trevor's misrepresentation as to the reason for their meeting.
- Trevor and Angie can recover the booking fee from Tim, because Tim has committed breach of contract by not meeting Trevor at the agreed time. (2)

QUESTION 13

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

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

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

QUESTION 14

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

In terms of the dispatch theory, a contract comes into being at the place where, and the time when ..

- 1 the offeror becomes aware of the offeree's acceptance of the offer.
- 2 the offeree puts his or her acceptance in writing.
- 3 the offeror receives the acceptance.
- 4 the letter of acceptance is posted by the offeree.

(2)

In which ONE of the following situations did undue influence occur?

- Richard wants to buy a hair dryer for his wife. He takes a small box from the shelf and pays for it, thinking that it is a hair dryer, while the cashier knows that it is actually a steam iron.
- 2 Molefi wishes to buy Jan's farm. He asks Jan about the water supply to the farm and Jan assures him that it is good. Molefi buys the farm and later finds out that the water supply to the farm is in fact poor.
- Ralph finds an uncut diamond in his backyard. He does not know what it is and what it is worth. Sello, a business man, goes to Ralph and promises him a loaf of bread in exchange for the diamond. Ralph agrees because Sello tells him that it is just a worthless stone.
- Pat wants to sell his television set for R1 500. Teddy comes up to him and, holding a gun to his head, says, "Alf you don't sell me this television set for R200, I will kill you". Pat takes the R200 and hands over the television set to Teddy.

 (2)

QUESTION 16

Ben is a general dealer. He needs to appoint a sales person and to replace his delivery van with a bigger vehicle. If Ben finds a buyer for the van and a suitable sales person he will conclude two contracts: a contract of sale in respect of the old vehicle and a contract of employment with the suitable applicant.

Which ONE of the following persons does NOT have the full capacity to conclude both of the contracts with Ben?

- Emma, 20 years old, who has been married to Dan for the last two years. They are married out of community of property.
- Noel, whose estate was sequestrated after he lost a fortune in a shady business deal. Noel has not been rehabilitated yet.
- 3 Ace, who is married in community of property to Jane.
- 4 Andrew, 19 years old, whose parents left him behind when they emigrated to America because he had his own job and flat. (2)

Matthew, a fifty year old mentally ill person, enters into an agreement with Joseph, in terms of which Matthew sells his refrigerator to Joseph. Joseph pays Matthew R3 000 for the refrigerator, and they agree that Joseph will collect the refrigerator from Matthew's home during the course of the following day. When Joseph arrives at Matthew's home, Tommy, Matthew's son, refuses to allow Joseph to take the refrigerator in spite of the fact that Matthew is willing for him to do so.

Tommy informs Joseph that no valid contract was concluded because Matthew is mentally ill. Tommy also tells Joseph that the fact that Matthew is able to understand the nature and consequences of his conduct, is irrelevant.

Which ONE of the following statements is CORRECT?

- The contract between Matthew and Joseph is void because Matthew has no capacity to perform juristic act.
- The contract between Matthew and Joseph will only be valid if Matthew was assisted by a curator when the contract was concluded, since Matthew has limited capacity to perform juristic act.
- 3 The contract between Matthew and Joseph is valid and enforceable since Matthew is in the mental condition to understand and appreciate the consequences of his conduct.
- The contract between Matthew and Joseph is voidable, but if ratified by Matthews' curator, it will be valid and enforceable. (2)

QUESTION 18

Nolly, who is sixteen year old, works as a cook at Nice Restaurant. Nolly started to work as she wanted to supplement the R500 a month pocket money she receives from her parents. One Saturday evening just after she finishes her shift, Nolly borrows R1 000 from Pax, the owner of the restaurant. The next Saturday evening Nolly fails to show up for work and Pax finds out that Nolly no longer intends working at the restaurant.

Pax contacts Nolly and he demands his money back, but Nolly tells him that she cannot pay him back as she has given her new boyfriend a watch which she bought for R300 and has spent R200 on school textbooks. She tells Pax that with the rest of the money she bought a gold bracelet which she gave to her grandmother for her eightieth birthday. Pax approaches Nolly's father, Pat, but Pat refuses to discuss the matter with Pax. Pat informs Pax that he does not accept any liability for Nolly's debt and that he thinks Pax is crazy to lend a sixteen year old girl R1 000.

Which ONE of the following statements is CORRECT?

- 1 Pax may sue Nolly for unjustified enrichment for the amount of R1 000.
- 2 Pax may sue Nolly for unjustified enrichment for the amount of R200.
- 3 Pax may claim surrender of the watch and the gold bracelet or their value.
- 4 Pax may sue Pat for unjustified enrichment for the amount of R200.

In which ONE of the following instances can Rammy, who is 17 years old and not emancipated, conclude a valid contract WITHOUT his guardian's consent?

- 1 Rammy takes out an insurance policy on his own life with Tacey.
- 2 Rammy rents a flat from Tacey.
- 3 Rammy buys a plot from Tacey for R95 000.
- 4 Rammy donates a motorcycle to Tacey.

(2)

QUESTION 20

Penny and Mike are married in community of property.

Which ONE of the following statements is CORRECT?

- If Penny's grandfather bequeathed his farm to Penny with the express condition that it is to be excluded from the joint estate, it is possible for Penny to retain the farm as specific separate property.
- Although Penny's grandfather bequeathed his farm to Penny with the express condition that it is to be excluded from the joint estate, it is impossible for Penny to retain the farm as specific separate property, because in a marriage in community of property there is only one common estate.
- If Penny's grandfather bequeathed his farm to Penny with the express condition that it is to be excluded from the joint estate, it will only be possible for Penny to retain the farm as specific separate property if Mike gives the required written consent. (2)

QUESTION 21

Joe owes Jack an amount of R60 000. Joe and Jack enter into an agreement in terms of which Jack will cancel 20% of the debt if Joe agrees to sponsor Jack's visit to the LA Lisa brothel.

- 1 Joe and Jack's contract is lawful because they have reached consensus.
- 2 Joe and Jack's contract is lawful because they both have capacity to enter into juristic acts.
- 3 Joe and Jack's contract is unlawful because their agreement is contrary to public policy.
- 4 Joe and Jack's contract is unlawful because their agreement is contrary to good morals. (2)

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

Contracts in restraint of trade are ...

- in principle invalid and unenforceable, because a person's freedom to compete in the employment market is restrained and it is therefore contrary to public policy.
- 2 in principle valid but unenforceable, because parties may conclude an agreement to this effect but a court will give precedence to public interest over contractual commitment if these interests are in conflict.
- in principle valid and enforceable, because the law permits the restraint of a person's freedom to trade if the parties freely conclude an agreement to this effect. (2)

QUESTION 23

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

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

QUESTION 24

- 1 The *incidentalia* are the additional terms which are included in a contract in order to provide for special requirements of the parties
- The *naturalia* of many contracts known to South African law are based mainly on ideas originating in Roman-Dutch law.
- The essentialia of a contract are the terms which the law attaches to every contract of a particular class (2)

Stanley makes a written offer to buy Fanie's house on condition that Stanley obtains a loan from Regular Bank for the amount of R500 000 within three weeks. Fanie accepts the offer by Stanley

Which ONE of the following statements is CORRECT?

- 1 No binding contractual relationship has come into being between the parties.
- 2 If Stanley does not obtain the loan within three weeks, the contractual obligations are terminated
- 3 The contractual obligations come into operation on acceptance of the offer by Fanie.
- Fanie can withdraw from the contract if, after a week, it appears that Stanley's chances of obtaining the loan are remote.

QUESTION 26

While at work, Dirk and Sunette agree that Sunette will purchase Dirk's old lounge curtains, provided that they are blue and not green. The curtains are at Dirk's house, but because he is colour blind, he is not sure what the colour is.

This contract contains a .

- 1 supposition
- 2 modus.
- 3 warranty.

4 condition. (2)

QUESTION 27

- 1 A rouwgeld clause is subject to the provisions of the Conventional Penalties Act.
- A cancellation clause makes provision for a party who is in breach of contract to lose his or her right to restitution
- A penalty in terms of a penalty clause is recoverable on the ground that the debtor has committed breach of contract, provided that the creditor proves that he or she has suffered damages.
- An entrenchment clause provides that the agreement may only be altered by means of written amendment. (2)

Amelia buys a Mercedes Benz from Investment Auto. One of the terms of the contract is that the colour of the car must be black.

This is a/an ...

- 1 suspensive condition.
- 2 express term.
- 3 resolutive condition.
- 4 supposition.

(2)

QUESTION 29

Thabo and Tshepo conclude a written contract of loan. When they initially discussed the contract, the idea was that the loan would be repayable only after three years. However, the written document expressly provides for immediate repayment of the loan if Thabo requests it. Assuming that Thabo will not invoke this term, Tshepo signs the contract. Two months later, Thabo calls up the loan with immediate effect.

Which ONE of the following statements reflects the CORRECT legal position?

- 1 Tshepo is entitled to apply for the rectification of the written contract.
- 2 Thabo has committed breach of contract by calling up the loan and Tshepo can claim damages.
- 3 Tshepo can rely on the oral agreement between herself and Thabo and can refuse to repay the loan immediately.
- The parol evidence rule prevents Tshepo from relying on the oral agreement and she is obliged to repay the loan immediately (2)

QUESTION 30

Penelope and Hugh conclude a written agreement for the sale of a three piece lounge suite. At a later stage Hugh discovers that he accidentally wrote "a four piece lounge suite".

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

- 1 Hugh will have to deliver a four piece suite because the mistake occurred as a result of his negligence.
- Hugh will have to deliver a four piece suite because the parol evidence rule precludes him from relying on the intended agreement.
- 3 Hugh can apply for the rectification of the agreement.
- 4 The contract between the parties is void for uncertainty.

Ted and Marshall enter into a contract in terms of which Marshall has to deliver a dozen bottles of export wine to Ted. Ted has already paid the purchase price. Marshall now indicates that he does not intend to perform in terms of the contract.

Which ONE of the following types of breach of contract has Marshall committed?

- 1 repudiation
- 2 mora debitoris
- 3 positive malperformance
- 4 prevention of performance (2)

QUESTION 32

Which ONE of the following statements is CORRECT?

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

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

QUESTION 33

Which ONE of the following statements is CORRECT?

When a debtor does something he or she may NOT do in terms of the agreement, we have breach of contract in the form of .

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

Which ONE of the following statements is CORRECT?

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

QUESTION 35

Which ONE of the following statements is CORRECT?

- The right of cancellation can be exercised by the innocent party at any time after his or her having become aware of the other party's breach of a contract.
- 2 The right of cancellation lapses if the innocent party takes an unreasonably long time to exercise that right
- 3 The right of cancellation may be exercised by mere cancellation even if the other party is not informed of the innocent party's action.
- The right of cancellation also allows the innocent party to give the other party the opportunity of rectifying his or her defective performance (2)

QUESTION 36

Tebogo and Peter conclude a contract in terms of which Tebogo will do the interior decorating of Peter's holiday flat. The contract price of R15 000 includes the work and materials. Before Tebogo can start with the project, the flat is completely destroyed by fire as a result of Peter's negligence

- 1 Tebogo cannot claim anything from Peter, since the contract has been terminated
- 2 Tebogo can claim the full contract sum of R15 000 from Peter as damages.
- 3 Tebogo can claim R15 000 from Peter, less the amount she has saved by not having to perform
- 4 Tebogo can claim only in respect of expenses she has already incurred. (2)

Connie wins a gift voucher from Shine Car Fixtures. In terms of the voucher, she is entitled to a free carwash. Since she does not own a car, she cedes her right to the carwash to her friend Barry.

Which ONE of the following statements is CORRECT?

- An agreement between Connie and Shine Car Fixtures in terms of which a new obligation is created between Shine Car Fixtures and Barry, is a cession of rights.
- 2 An agreement between Connie and Barry in terms of which Barry becomes entitled to performance by Shine Car Fixtures, is a cession of rights.
- An agreement between Connie and Barry in terms of which a new obligation is created between Shine Car Fixtures and Barry, is a cession of rights.
- 4 An agreement between Shine Car Fixtures and Barry in terms of which a new obligation is created between Shine Car Fixtures and Barry, is a cession of rights.
- An agreement between Shine Car Fixtures and Barry in terms of which Barry becomes entitled to the performance of Shine Car Fixtures, is a cession rights. (2)

QUESTION 38

Which ONE of the following statements regarding novation is CORRECT?

- 1 Novation does not extinguish the original obligation between the parties.
- 2 If the novation is void for whatever reason the old obligation is also void.
- 3 The effect of novation is to extinguish the original debt and therefore to extinguish accessory obligations.
- 4 A valid novation will take place even though the initial obligation was invalid. (2)

QUESTION 39

Ike owes Vera R20 000 which she lent him two months ago.

- 1 If Ike and Vera get married in community of property Ike's debt will automatically terminate.
- 2 Nothing except an amount of R20 000 from Ike to Vera will qualify as payment of his debt.
- 3 If Len owes Ike R25 000, Ike may cede his claim against Len to Vera to the amount of R20 000.
- 4 Vera may refuse to accept payment of Ike's debt if not tendered by Ike himself. (2)

The period of prescription in respect of a debt arising from a bill of exchange or other negotiable instrument, is usually ...

- 1 three years.
- 2 four years.
- 3 five years
- 4 six years. (2)

TOTAL: 80

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EXAMINATION MARK READING SHEET



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PART 1 (GENERAL/ALGEMEEN) DEEL 1

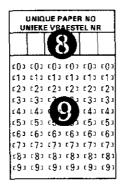
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IMPORTANT

- 1 USE ONLY AN HB PENCIL TO COMPLETE THIS SHEET
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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 • to • refer to spaces on your mark reading sheet which you should fill in as follows

Write your paper code in these eight squares, for instance

P	S	\mathbf{V}	1	0	n	Y
				U_		4 %

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
	_					

- Fill in your initials and surname
- Fill in the date of the examination
- Fill in the name of the examination centre
- 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
- In each vertical column mark the digit that corresponds to the digit in your student number as follows

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