



CLA101S

(457519)

May/June 2010

RCA101A

(478603)

RCA101D

(470246)

COMMERCIAL LAW 1A (COMMERCIAL LAW 101)

Duration

2 Hours

80 Marks

EXAMINERS .

FIRST SECOND PROF TE MANAMELA PROF ME MANAMELA

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

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ANSWER ALL	THE Q	UESTIONS	
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STUDENT NUMBER:			
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INSTRUCTIONS:

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

Which ONE of the following is the supreme law of South Africa?

- 1 English law
- 2 Roman Dutch law
- 3 statute law
- 4 the Constitution

(2)

QUESTION 3

Which ONE of the following officers is responsible for the issue of process, the enrolment of cases, the maintenance of records and the issuing of orders of the High Court?

- 1 the Clerk
- 2 the Registrar
- 3 the litigating parties themselves
- 4 the Sheriff

(2)

QUESTION 4

Which ONE of the following statements is CORRECT?

- 1 The ratio decidendi consists of all the remarks and opinions by the judge giving the decision
- 2 An obiter dictum can be persuasive for other courts
- 3 "Obiter dictum" means the reason for the judgment.
- 4 The ratio decidendi of a minority judgement is binding on other courts

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, which 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

Liam picks up a cellphone which someone else has thrown away, and keeps it for himself He becomes the owner of the cellphone

Through which ONE of the following original methods did Liam acquire ownership?

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

QUESTION 7

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)

Sandra consults Dr Visage, a plastic surgeon, about a face lift. She signs a consent form for the surgery. When she wakes up after the surgery, she realizes that the operation was a failure. She later learns that Dr Visage didn't perform the surgery himself, but that one of the nurses performed it on his behalf

Which ONE of the following statements is CORRECT?

- 1 Dr Visage did not commit a delict because he concluded a contract with Sandra in terms of which Sandra consented to the operation
- 2 Dr Visage did not commit a delict because Sandra consented to the operation and all the risks when she signed the consent form
- 3 Dr Visage committed a delict because he acted outside the limits of consent when he allowed the nurse to perform the surgery
- 4 Dr Visage committed a delict because consent to the risk of serious bodily injury (the operation) is contrary to good morals and therefore invalid (2)

QUESTION 9

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 party. 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 organisers 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 10

Stephen and Morris entered into an oral contract. Stephen was under the impression that they had entered into a contract of sale for a motor vehicle while Morris was under the impression that a contract of lease for the vehicle had been concluded. Stephen approaches you for advice regarding the validity of the contract.

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

- 1 The contract is valid because both Stephen and Morris had the intention to be contractually bound
- 2 The contract is void because there was no consensus between Stephen and Morris
- 3 The contract is voidable because the parties can rectify the contract
- 4 The contract is valid in all material respects because there was offer and acceptance (2)

Shaun studies for a B Com-degree at Unisa. While writing an examination he sees a beautiful girl, Sandy, at the examination hall and falls head over heels in love with her. He rushes to her, introduces himself and invites her to go to the movies with him. They agree to meet the next Friday at 6 o'clock in front of Sterland. Shaun arrives at Sterland on the agreed time, but Sandy is not there. After he has waited for more than two hours, he decides to go home, and consults his Commercial Law textbook to see whether he can take legal action against Sandy for not honouring their appointment. Only later Shaun learns that Sandy's car broke down on her way to Sterland.

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

Shaun's appointment with Sandy was NOT a contract because .

- their appointment was not in writing and signed by them
- 2 they did not have the intention to create legally enforceable obligations.
- 3 it was not physically possible for Sandy to honour their appointment.
- 4 It was not juridically possible for Sandy to honour their appointment (2)

QUESTION 12

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

QUESTION 13

Which ONE of the following statements is CORRECT?

- 1 Despite mistake about the contents of a contract consensus will still exist between the parties.
- A reasonable mistake about a material fact in the contents of a contract does not always render the contract void
- 3 A contract cannot be valid in the absence of consensus
- 4 Mistake about the motive or reason for concluding a contract affects the validity of the contract.

(2)

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, twenty 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
- Andrew, nineteen years old, whose parents left him behind when they immigrated to America because he had his own job and flat

 (2)

QUESTION 15

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)

Alice is seventeen years old and lives with her parents. She concludes a written contract in terms of which she buys a flat from Benni, a 35 year old man, for R80 000. She intends to use the money she received as a gift from her uncle to pay the purchase price

Which ONE of the following statements is CORRECT?

- The contract between Alice and Benni is void, because it was concluded without the consent of her guardian and the Master of the High Court
- The contract between Alice and Benni is void, because it was concluded without the consent of the High Court
- 3 The contract between Alice and Benni is not enforceable against Alice, because it was concluded without the consent of her guardian
- 4 The contract between Alice and Benni is void, because Alice does not have the capacity to act.

(2)

QUESTION 17

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

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

- 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)

QUESTION 18

Ted and Robyn are engaged. They included in their antenuptial contract a clause to the effect that Ted makes Robyn his heir

Which ONE of the following statements regarding the agreement between Ted and Robyn is CORRECT?

- 1 It is a valid contract
- 2 It is an unenforceable agreement since it is prohibited by legislation
- 3 This agreement constitutes a contract that is physically impossible
- 4 It is an agreement in terms of which Ted's freedom to participate in legal intercourse is restrained

(2)

QUESTION 19

Gretchen works at the local Traffic Department Gretchen sells driver's licences to the public illegally. Nick pays the agreed purchase price of R500 in cash to Gretchen Subsequently Gretchen refuses to deliver a driver's licence to Nick

Which ONE of the following statements is CORRECT?

- 1 Nick can claim delivery of the driver's licence from Gretchen on the basis of the contract which arose between them
- 2 Nick can reclaim the purchase price from Gretchen on the ground of unjustified enrichment
- 3 The contract between Gretchen and Nick is void due to legal impossibility
- 4 Options (2) and (3) above are both correct

QUESTION 20

Which ONE of the following statements is CORRECT?

- 1 Ken, an ardent believer in freedom of conscience, movement and speech may agree with Tom to erect a facility to teach safe sex and to allow primary school pupils to practise it.
- 2 Lourens, who sells sugar cane at R20 a bale and who has delivered to Donovan only three of the fifteen bales that he ordered from him, may demand payment for the three bales.
- 3 Paul buys an aeroplane from Inge and pays in cash. At first Inge only needs to deliver the wings of the aeroplane to Paul.
- Sheila, who is desperate for money to start a supermarket business, may sell an area of ten square kilometres of the Atlantic Ocean to a developer to promote tourism. (2)

QUESTION 21

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

Compliance with formalities is a requirement for the validity of

- 1 all contracts
- 2 all written contracts
- 3 only those contracts where legislation prescribes formalities.
- 4 only those contracts where formalities are prescribed by legislation or the contracting parties. (2)

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

Which ONE of the following statements regarding the validity of the agreement between Stella and Judith is CORRECT?

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

(2)

QUESTION 23

Neil and Kate decide to start a retail business together. They have already discussed and reached agreement on the duties of each of them and the division of the profits. They decide that Kate will write down everything on which they reached agreement and provide each of them with a copy of the contract. However, just as Kate starts writing, Neil changes his mind about the contract and informs Kate that he no longer wants to be involved in the business.

Which ONE of the following statements regarding the validity of the agreement between Neil and Kate is CORRECT?

- 1 A valid contract has come into existence and Neil is bound to it.
- 2 A valid contract has not yet come into existence and Neil is still entitled to withdraw
- 3 A valid contract has not yet come into existence, but nevertheless Neil cannot withdraw at this stage
- A valid contract will not have been concluded if the intention of the parties was that they would only be bound by the written document, and not merely the oral agreement (2)

QUESTION 24

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. (2)

Clarence wants to purchase a stand from June only if the beach is visible from the stand. June is not sure whether the beach is visible from the stand. They agree that Clarence will purchase the stand if the beach is visible from the stand.

What is such a contractual term called?

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

QUESTION 26

Priscilla and Daphne enter into an agreement. In terms of this agreement, Priscilla undertakes to design and plant a new garden for Daphne by no later than 31 October 2009. A penalty clause is added to the contract in terms of which Priscilla must pay Daphne an amount of R100 for each day that the garden make-over exceeds the agreed date of completion. Priscilla is twenty days late and only completes Daphne's garden on 20 November 2009.

Which ONE of the following statements is CORRECT?

- Daphne can claim R2 000 from Priscilla in terms of the penalty clause as well as damages in the amount of R500 since she was unable to use the garden for a garden party on 10 November, because the garden had not been completed.
- The penalty clause is invalid in terms of the Conventional Penalties Act 15 of 1962, because it can cause serious injustice as the penalty is recoverable merely on the ground of Priscilla's breach of contract and as the extent of the penalty is predetermined
- 3 Since the garden was not ready for use before 20 November 2009, Daphne has a choice of enforcing the penalty clause or of claiming damages in the amount of R2 500 that she suffered by having had to rent another venue for the garden party she had scheduled for 10 November, because Priscilla did not finish the garden on time
- 4 If Daphne can prove that Priscilla breached the contract by not completing the gardening operations by 31 October 2009, she can hold Priscilla liable for payment of the penalty of R2 000 (2)

QUESTION 27

When will a court apply the guideline of interpreting a contractual clause against the interest of the party who formulated that clause?

- 1 Whenever the clause appears to the court to be unfair
- 2 Only when the clause appears in a standard-form contract
- 3 Only when the clause is ambiguous or vague
- 4 The court will never apply such a guideline (2)

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 29

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

- 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
- Where the parties express themselves on a particular matter but omit some detail, common-law rules will regulate that aspect (2)

QUESTION 30

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

Leon, who owns a shop that sells seafood, buys fresh fish from Seasong Fisheries Leon and Seasong Fisheries agree that Seasong Fisheries will deliver the fish to Leon's shop on 16 April. On that date, Leon forgets that Seasong Fisheries will deliver the fish, and closes his shop for the day in order to attend a funeral in a nearby town. When Seasong arrives at Leon's shop with the fish, the doors are locked and there is nobody to receive the fish.

Which ONE of the following statements is CORRECT?

- 1 Leon committed breach of contract in the form of *mora debitoris*
- 2 Leon committed breach of contract in the form of *mora creditoris*.
- 3 Leon committed breach of contract in the form of repudiation of the contract.
- 4 Leon committed breach of contract in the form of prevention of performance by the debtor
- 5 Leon committed breach of contract in the form of prevention of performance by the creditor (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 agreed

QUESTION 33

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)

QUESTION 34

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

- 1 an order for specific performance
- 2 default of the debtor
- 3 cancellation of the contract
- 4 an order for increased performance

(2)

In which **ONE** of the following instances will damages be claimed according to the innocent party's positive interest?

- 1 misrepresentation
- 2 breach of contract
- 3 duress
- 4 undue influence (2)

QUESTION 36

The Maroon Baboon is a television character that is extremely popular with young children Janet, who owns a toy shop, orders fifty Maroon Baboon outfits from Fantasy Clothing at R50 per suit. The parties agree that the suits will be delivered on 15 November. Janet plans to sell the suits at R120 per suit. At least one hundred customers express interest in buying suits for their children as Christmas gifts, but Janet cannot supply them as the suits are only delivered on 15 January. The reason for the late delivery is that Fantasy Clothing took on more orders than they could cope with By this time Edmund the Weasel has replaced the Maroon Baboon as television's favourite children's character and the market for Maroon Baboon suits has diminished considerably

Which ONE of the following statements is CORRECT?

- Fantasy Clothing committed breach of contract in the form of *mora debitoris* and Janet has a choice between cancelling the contract or enforcing it.
- 2 Fantasy Clothing committed breach of contract in the form of *mora creditoris* and Janet can cancel the contract because timely performance was of the essence in this contract
- 3 Fantasy Clothing is in mora ex persona by not performing by 15 November
- 4 If Janet enforces the contract she may claim damages from Fantasy Clothing in the amount of her negative interest. (2)

QUESTION 37

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 A valid novation will take place even though the initial obligation was invalid.
- The effect of novation is to extinguish the original debt and therefore to extinguish accessory obligations. (2)

Leo borrows R20 000 from Belinda They agree that Leo will repay the money in two instalments over the following two months. At the end of the first month Leo gives Belinda R5 000 and during the second month he pays her only R4 000. Belinda approaches Leo about the outstanding amount but Leo insists that he owed Belinda only R9 000 and not R20 000. They eventually reach agreement that Leo will pay her R10 000.

This is an illustration of .

- 1 release
- 2 novation.
- 3 settlement
- 4 delegation. (2)

QUESTION 39

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)

QUESTION 40

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

- If Baxter borrows R4 000 from Edgar on 1 December and they agree that Baxter will pay the money back on 30 December, prescription regarding the debt begins to run on 1 December
- 2 Baxter may cede a third of what Enos owes him to Barney without Enos's consent.
- Baxter owes Power Bank a total of R200 000 in respect of various transactions. He deposits an amount of R50 000 with the bank, but fails to stipulate how the payment must be allocated. The bank is obliged to apply the whole sum towards the reduction of Baxter's obligations in respect of the capital on his home loan.
- Baxter (Pty) Ltd's debt of R40 000 in favour of the Big Construction Co (Pty) Ltd is extinguished when the two companies merge (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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ı	32	r12 r22 r32 r42 r52		(1) (2) (3) (4) (5)		(1) (2) (3) (4) (5)	137	(1) (2) (3) (4) (5)	ŀ
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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	Y	1 1	0	0	-	$ \mathbf{X} $
	_						

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