

**IMPORTANT INFORMATION! READ THIS TUTORIAL
LETTER FIRST! PRESCRIBED MATERIAL!
COMPULSORY ASSIGNMENTS! START IN TIME!!**

DEPARTMENT OF PRIVATE LAW

**LAW OF SALE AND LEASE
LPL4018**

Tutorial Letter 101/3/2010

SCHEME OF WORK, STUDY RESOURCES AND ASSIGNMENTS

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1 A WORD OF WELCOME

We are pleased to welcome you to this module and hope that you will find it both interesting and rewarding. We will do our best to make your studies of Law of Sale and Lease successful. You will be well on your way to success if you start studying early in the semester and resolve to do the assignments properly.

This tutorial letter contains important information about this module. We urge you to read it carefully and to keep it at hand when working through the study material, preparing the assignments, preparing for the examination and addressing questions to your lecturers.

In this tutorial letter, you will find the assignments for both semesters and instructions on the preparation and submission of the assignments.

This tutorial letter also provides all the information you need with regard to the prescribed study material and how to obtain it. Please study this information carefully and make sure that you obtain the prescribed material as soon as possible.

We have also included certain general and administrative information about this module. Please study this section of the tutorial letter carefully.

Right from the start we would like to point out that **you must** read **all the tutorial letters** you receive during the semester **immediately and carefully**, as they always contain important and, sometimes, urgent information.

We hope that you will enjoy this module and wish you all the best!

2 PURPOSE AND OUTCOMES OF THIS MODULE

2.1 PURPOSE

The purpose of this module is to equip students with knowledge and insight into the law of sale and lease.

2.2 OUTCOMES

A range of tasks in study guides and/or tutorial letters, assignments and examinations will show that students have achieved the following outcomes.

2.2.1 Outcome 1

Identify and understand the role of contracts of sale and lease in current South African law and everyday life.

Assessment criteria:

- Legal problems and issues relating to contracts of sale and lease are identified in real or simulated fact scenarios.
- Daily occurrences regarding contracts of sale and lease are interpreted and analysed.

2.2.2 Outcome 2

Demonstrate an understanding of the history and theoretical framework of, and the most pressing and prevalent issues regarding the law of sale and lease.

Assessment criteria:

- The historical roots and development of law of sale and lease are explained and integrated with regard to the existing legal position.
- Problems and issues relating to law of sale and lease are identified in real or simulated fact scenarios.
- Substantiated arguments, opinions and solutions are presented, based on research.
- The relevance and applicability of various legal sources and authorities in respect of identified problems relating to contracts of sale and lease are analysed and critically evaluated.
- Different points of view in respect of the law of sale and lease are discussed and evaluated.
- Areas in need of legal development or reform are recognised.
- Language use is consistent with the conventions in the discipline of law.

2.2.3 Outcome 3

Apply the principles regarding the law of sale and lease in practical situations and solve multi-dimensional legal problems associated with contracts of sale and lease.

Assessment criteria:

- Practical problems from case law and everyday examples are solved using appropriate research methods and applying the principles and rules relating to contracts of sale and lease.
- Responsible and expert advice on an appropriate course of action is given in respect of issues relating to the law of sale and lease.
- The relevance and applicability of various legal sources and authorities are analysed and critically evaluated in terms of identified problems relating to the law of sale and lease.
- The knowledge and skills students have acquired in other areas of the law such as the law of contracts and property law are integrated in discussing, analysing

- and applying the principles of the law of sale and lease.
- Substantiated responses are provided, based on acquired knowledge base.
- Responsible and expert advice is provided on an appropriate course of action.

2.2.4 Outcome 4

Conduct research.

Assessment criteria:

- Basic literature research skills are demonstrated.
- Source material is found to suit the needs of the particular area of research.
- Authorities are used appropriately to substantiate arguments and support solutions for problems relating to contracts of sale and lease.
- Legal sources are used critically and analytically within a contextual framework. Students act responsibly and ethically as researchers and scholars by, for example, referring appropriately to and acknowledge sources, and avoiding plagiarism.

3 COMMUNICATION WITH YOUR LECTURERS

The lecturers responsible for this module are as follows:

Prof TB Floyd (Module leader)
 Telephone number: 012 429-8449
 E-mail: floydtb@unisa.ac.za

Prof L Hawthorne
 Telephone number: 012 429-8364
 E-mail: hawthl@unisa.ac.za

Prof C-J Pretorius (second semester only)
 Telephone number: 012 429-8502
 E-mail: pretocj1@unisa.ac.za

All queries that are not of a purely administrative nature **but are about the contents of this module** should be directed to us. Please have your study material with you when you contact us.

- **Letters** should be sent to:

The Module Leader (LPL4018)
 Department of Private Law
 PO Box 392
 UNISA
 0003

Please note: Letters to lecturers may not be enclosed with or inserted into assignments.

- You may send us a **fax**. Our fax number is: 012 429-3393. Address faxes to: The Module leader (LPL4018).
- You may also **phone** us at the numbers given above. Phone calls made to us when we are not available will be forwarded to an answering machine.
- You are welcome to **visit** us to discuss any queries about or problems with the module. However, **please make an appointment beforehand**, otherwise you run the risk of the lecturer not being available to see you. Our offices are on the 6th floor of the **Cas van Vuuren Building**, Main Campus, Muckleneuk Ridge, Pretoria.
- Students who have access to the appropriate computer technology may contact the lecturers electronically via the *myUnisa* facility. The instructions for sending us an **e-mail** are as follows:
 - Go to *myUnisa* (see par 5.2.2 below).
 - Log in with your student number and password.
 - Select LPL4018 from the orange menu bar.
 - On the left-hand menu bar of the module page, select the “Course contact” option.
 - The next page is an automated e-mail page. The “From” and “E-mail address” fields are automatically completed.
 - Complete the “Message subject” field.
 - Type your message in the space provided for “Message”.
 - Click on the “Send Message” button.
 - Your message will reach the appropriate module mailbox.

4 COMMUNICATION WITH THE UNIVERSITY ADMINISTRATION

Communication with the University

If you need to contact the University about matters not related to the content of this module, please consult the publication *Your Service Guide @ Unisa* which you received with your study material. This booklet contains information on how to contact the University (eg to whom you can write for different queries, important telephone and fax numbers, addresses and details of the times certain facilities are open).

Always have your student number at hand when you call the University.

Please note that all administrative enquiries should be directed to the **Unisa Contact Centre**. Enquiries will then be channeled to the respective departments. The details are as follows:

- Calls (RSA only) 0861 670 411
- International Calls +27 11 670 9000
- Fax number (RSA) 012 429 4150
- Fax number (international)+27 12 429 4150
- E-mail study-info@unisa.ac.za
- Online address <http://my.unisa.ac.za>

5 STUDENT SUPPORT SYSTEM

5.1 GENERAL

For information on the various student support systems and services available at Unisa (eg student counselling, tutorial classes and language support), please consult the publication *Your Service Guide @ Unisa* which you received with your study material.

5.2 CONTACT WITH FELLOW STUDENTS

5.2.1 Study groups

It is advisable to have contact with fellow students. One way to do this is to form study groups. The addresses of students in your area may be obtained from the following department:

Directorate: Student Administration and Registration
 PO Box 392
 UNISA
 0003

You may also contact the Unisa Contact Centre at 0861 670 411 (RSA only), or +27 11 670 9000 (international calls).

5.2.2 myUnisa

If you have access to a computer that is linked to the internet, you can quickly access resources and information at the University. The *myUnisa* learning management system is Unisa's online campus that will help you to communicate with your lecturers, with other students and with the administrative departments of Unisa – all through the computer and the internet.

To go to the *myUnisa* website, start at the main Unisa website, <http://www.unisa.ac.za>, and then click on the “Login to *myUnisa*” link on the right-hand side of the screen. This should take you to the *myUnisa* website. You can also go there directly by typing in <http://my.unisa.ac.za>.

Please consult the publication *Your Service Guide @ Unisa* which you received with your study material for more information on *myUnisa*.

6 STUDY MATERIAL

6.1 INVENTORY LETTER

Soon after your registration, a study package containing an inventory letter and study material will be posted/couriered to you. This inventory letter will also show items that are still outstanding. Also see the booklet entitled *Your Service Guide @ Unisa*.

When you receive the study package, please check the study material you received against the inventory letter. You should have received all the items listed in the inventory, unless there is a statement like “out of stock” or “not available”. If any item is missing, follow the instructions on the back of the inventory letter without delay.

Please note: Your lecturers cannot help you with missing study material. Please contact the Unisa Contact Centre at 0861 670 411 (RSA only), or +27 11 670 9000 (international calls) (also see par 4 above).

6.2 STUDY MATERIAL

The study material for this module consists of the following:

- three study guides
- tutorial letters (which you will receive during the semester)
- a number of prescribed cases contained in a reader (see par 6.2.5 below)

The Department of Despatch should supply you with the following study material for this module:

- three study guides
- tutorial letters 101 and 301 (at registration, and at least one further tutorial letter during the course of the semester)
- a reader containing the prescribed cases

6.2.1 Study guides

You will receive **three** study guides for this module. Study guide one deals with the law of lease, study guide two deals with the law of sale and study guide three deals with statutory aspects. You must study the study guides and tutorial letters very carefully.

6.2.2 Further tutorial letters

Apart from Tutorial Letters 101 and 301, you will also receive other tutorial letters during the semester. These tutorial letters will not necessarily be available at the time of registration. Tutorial letters will be despatched to students as soon as they are available.

Students who have access to the internet can view the study guide and tutorial letters for the modules for which they are registered on the University's online campus, *myUnisa*, at <http://my.unisa.ac.za>.

Tutorial letters are part of your study material for assignment and examination purposes. They are at least as important as the study guide itself. Read and reread each tutorial letter; keep it for reference purposes, and read it again later. Tutorial letters which contain additional study material must be regarded as part of your study material for study and examination purposes.

6.2.3 Prescribed textbooks

There is **no prescribed textbook** for this module.

6.2.4 Recommended books

There are **no recommended books** for this module.

6.2.5 Prescribed cases

It is **compulsory** that you study the cases listed below. You must study the cases contained in the reader in conjunction with the study guides. This will help you to gain greater insight into the relevant principles and their application.

For the purposes of assignments and examinations, a thorough knowledge of these cases is essential! You should also bear in mind that the cases discussed in your study guides, which do not appear in the list below, are also important and should not be ignored. They must be studied in the way that they appear in your study guide. Decisions by our courts are an important source of authority for the issues the court must decide on. When a case dealing with a certain aspect is discussed in the study guide, we

expect you to refer to such a case as authority for that specific aspect both in written assignments and in the examination, even if such a case is not one of your prescribed cases.

Below follows a list of the prescribed cases:

- (1) *SA Wood Turning Mills (Pty) Ltd v Price Bros (Pty) Ltd* 1962 (4) SA 263 (T)
- (2) *Minister van Landbou-Tegniese Dienste v Scholtz* 1971 (3) SA 188 (A)
- (3) *Glaston House (Pty) Ltd v Inag (Pty) Ltd* 1977 (2) SA 846 (A)
- (4) *Dibley v Furter* 1951 (4) SA 73 (C)
- (5) *Phame (Pty) Ltd v Paizes* 1973 (3) SA 397 (A)
- (6) *Holmdene Brickworks (Pty) Ltd v Roberts Construction Co Ltd* 1977 (3) 670 (A)
- (7) *Kroonstad Westelike Boere-Ko-operatiewe Vereniging Bpk v Botha and Another* 1964 (3) SA 561 (A)
- (8) *Lammers and Lammers v Giovannoni* 1955 (3) SA 385 (A)
- (9) *York and Co (Pty) Ltd v Jones* 1962 (1) SA 65 (SR)
- (10) *Alpha Trust (Edms) Bpk v Van der Watt* 1975 (3) SA 734 (A)
- (11) *Kessoopersadh v Essop* 1970 (1) SA 265 (A)
- (12) *Poynton v Cran* 1910 AD 205
- (13) *Spies v Lombard* 1950 (3) SA 469 (A)
- (14) *Weilbach v Grobler* 1980 (3) SA 998 (OPA)
- (15) *Goldberg v Buytendag Boerdery Beleggings (Edms) Bpk* 1980 (4) SA 775 (A)
- (16) *De Jager v Sisana* 1930 AD 71
- (17) *Sishen Hotel (Edms) Bpk v Suid-Afrikaanse Yster- en Staal Industriële Korporasie Bpk* 1987 (2) 932 (A)
- (18) *Bayer South Africa (Pty) Ltd v Frost* 1991 (4) SA 559 (A)
- (19) *Van der Merwe v Meades* 1991 (2) SA 1 (A)
- (20) *Janse van Rensburg v Grieve Trust CC* 2000 (1) SA 1315 (C)
- (21) *Genac Properties JMB (Pty) Ltd v NBC Administrators CC (Previously NBC Administrators (Pty) Ltd* 1992 (1) SA 566 (A)

- (22) *Genna-Wae Properties (Pty) Ltd v Medio-Tronics (Natal) (Pty) Ltd* 1995 (2) SA 926 (A)
- (23) *Sweets from Heaven (Pty) Ltd v Ster Kinekor Films (Pty) Ltd* 1999 (1) SA 796 (W)
- (24) *Ndlovu v Ngcobo, Bekker and Another v Jika* 2003 1 SA 113 (SCA).

7 HOW THE ASSIGNMENT SYSTEM WORKS

7.1 ASSIGNMENTS AND LEARNING

Assignments are seen as part of the learning material for this module. As you do the assignment, study the reading texts, consult other resources, discuss the work with fellow students or do research, you are actively engaged in learning.

7.2 GENERAL REMARKS

PLEASE NOTE: Enquiries about assignments (e.g. whether or not the University has received your assignment or the date on which an assignment was returned to you) must be addressed to the Unisa Contact Centre at 0861 670 411 (RSA only), or +27 11 670 9000 (international calls) (also see par 4 above).

Assignments should be addressed to:

The Registrar
PO Box 392
UNISA
0003

You may submit written assignments and assignments done on mark-reading sheets either by post or electronically via *myUnisa*. Assignments may **not** be submitted by fax or e-mail.

For detailed information and requirements as far as assignments are concerned, see the brochure *Your Service Guide @ Unisa* which you received with your study material.

To submit an assignment via **myUnisa**:

- Go to *myUnisa*.
- Log in with your student number and password.
- Select the module from the orange bar.
- Click on assignments in the left-hand menu.
- Click on the assignment number you want to submit.
- Follow the instructions on the screen.

7.3 COMMENTARIES AND FEEDBACK ON ASSIGNMENTS

You will receive the correct answers to the multiple-choice assignment in a tutorial letter. For written assignments, markers will comment constructively on your work. However, commentaries on both assignments **will be sent to all students registered for this module** in a follow-up tutorial letter, and not only to those students who submitted the assignments.

As soon as you have received the commentaries, please check your answers. The assignments and the commentaries on these assignments constitute an important part of your learning and should help you to be better prepared for the next assignment and the examination.

7.4 SUBMISSION DATES

The closing dates for the submission of the assignments are:

- **First semester:**
 - **Assignment 01:** 23 February
 - **Assignment 02:** 26 March

- **Second semester:**
 - **Assignment 01:** 06 August
 - **Assignment 02:** 08 September

7.5 ASSESSMENT OF ASSIGNMENTS

Please note: Although students may work together when preparing assignments, each student must write and submit his or her own individual assignment. In other words, you must submit your own ideas in your own words, sometimes interspersing relevant short quotations that are properly referenced. It is unacceptable for students to submit identical assignments on the basis that they worked together. That is copying (a form of plagiarism) and none of these assignments will be marked. Furthermore, you may be penalised or subjected to disciplinary proceedings by the University.

8 HOW THE EXAMINATION SYSTEM WORKS

For general information and requirements as far as examinations are concerned, see the brochure *Your Service Guide @ Unisa* which you received with your study material.

8.1 EXAMINATION ADMISSION

Please note: In order to gain admission to the examination in LPL4018, students **must** submit assignment 01. **If you fail to submit this compulsory assignment before or on the due date, you will not gain admission to the examination! Assignment 01 contributes 10% towards your final mark for the module.**

Assignment 02 is **also compulsory** in the sense that, like assignment 01, it contributes 10% towards your final mark for the module. Failure to submit assignment 02 will not influence your examination admission, since it is only the submission of assignment 01 that will give you examination admission. **HOWEVER, SINCE ASSIGNMENT 02 COUNTS 10% TOWARDS YOUR FINAL MARK FOR THE MODULE, IT IS OF THE UTMOST IMPORTANCE THAT YOU SUBMIT IT.**

Both assignments 01 and 02 are therefore compulsory in the sense that they contribute towards your final mark. However, only assignment 01 affects your examination admission.

Note that it is **not required** that you **pass** assignment 01 (ie get at least 50% for it) in order to gain examination admission. Submission of the assignment is adequate in order to gain examination admission. However, since the mark you obtain for the assignments will contribute 20% towards your final mark for the module, it will be to your advantage to do well in the assignments.

8.2 HOW WILL THIS WORK IN PRACTICE?

As was indicated above, the compulsory assignments (assignment 01 and assignment 02) count 20% of your final mark (the assignments make up your semester mark). The examination mark will count 80%. Therefore the mark out of 100 you obtain in the examination will be converted to become a mark out of 80. Thus your final mark for the module will be calculated by adding your semester mark to your adjusted examination mark.

8.3 THE REQUIRED SUBMINIMUM FOR YOUR EXAMINATION MARK

It is very important that you should note that a subminimum applies for your examination mark: **You need to obtain at least 40% in the examination before your semester mark will be taken into account for purposes of determining whether you pass, fail or qualify for a supplementary examination.** That means that a student who obtains at least 40% in the examination and who worked during the semester and consequently has a good semester mark, will have a great advantage above a student who has no semester mark or a bad semester mark. It also means that even if you get full marks (ie obtain 20 out of 20) for your compulsory assignments you will still fail the module if you earn less than 40% in the examination. You will not even be allowed to write a supplementary examination.

NB: It is your responsibility to contact the University (study-info@unisa.ac.za or telephonically at 0861 670 411) before the examination date to ensure that all assignments have been recorded against your name, that the marks awarded are correct and that examination admission has been obtained.

8.4 EXAMINATION PERIOD AND SUPPLEMENTARY EXAMINATIONS

This module is offered in a semester period of fifteen weeks. This means that if you are registered for the first semester, you will write the examination in May/June and the supplementary examination will be written in October/November of the same year. If you are registered for the second semester you will write the examination in October/November and the supplementary examination will be written in May/June of the following year.

Should you qualify to write a supplementary examination, you would have to obtain at least **50%** in the supplementary examination to pass the module. The reason for this is that the assignment mark is **not** taken into account in the case of a supplementary examination. In other words, only your examination mark is taken into account in the supplementary examination to determine whether you pass.

During the course of the semester, the Examination Section will provide you with information regarding the examination in general, examination venues, examination dates and examination times.

8.5 PREVIOUS EXAMINATION PAPERS

Aside from the example included in this tutorial letter, lecturers do not provide previous examination papers to students. The assignment questions, however, are examples of the types of question which you can expect in the examination.

8.6 Differences between assignments and the examination

Please take note of the following:

- (1) Assignments and the questions contained in the activities in the study guide are not meant to be spot questions.
- (2) During the examination you will have no recourse to the study material. Your assignments are done, however, while you have the study material in front of you. In the examination the emphasis therefore falls on your ready knowledge of the work.
- (3) Remember that a time limit applies in the examination. Plan the time to be spent on each question carefully, and do not spend more time on a question than is justified by the marks allotted to it.
- (4) It is important for you to realise that the examination is not set with the purpose of catching you out, but rather in order to test how well you have mastered the study material.
- (5) Written examination questions are assessed differently from assignment questions. **One mark is usually awarded in the examination for each correct fact in a direct question. The following mark rubric is an example of a typical mark rubric which will be used to assess a problem type question (which counts 10 marks) in the examination:**

Evaluation criteria	Not yet achieved	Partially achieved	Achieved
1. Identifying the problem and giving appropriate advice.	0	0.5-2.5	3
2. Discussing the relevant law applicable to the problem referring to the relevant case law (prescribed cases and cases discussed in Study Guide), writers and legislation.	0	0.5-4.5	5
3. Applying the law to the facts of the problem.	0	0.5-1.5	2

8.7 TUTORIAL LETTER WITH FURTHER INFORMATION ON THE EXAMINATION

To help you in your preparation for the examination, you will receive a tutorial letter that will explain the format of the examination paper and set out clearly what material you have to study for examination purposes.

9 ASSIGNMENTS

9.1 FIRST SEMESTER

9.1.1 Assignment 01

ASSIGNMENT 01 – FIRST SEMESTER

DUE DATE: 23 FEBRUARY

NO EXTENSION

COMPULSORY WRITTEN ASSIGNMENT

CONTRIBUTES 10% OF FINAL MARK

Instructions

- **This assignment should be submitted by all students registered for the FIRST SEMESTER.**
- Your answer may not exceed two typed or four handwritten pages and must comply with the requirements for assignments. For instructions on the submission of written assignments, please see *Your Services Guide @ Unisa*.
- **Keep the checklist and criteria of the mark rubric in mind** when doing this assignment, because you will be assessed according to the criteria in the mark rubric.

Checklist

Assessment criteria	Yes	No
Did you identify the legal problem involved?		
Did you identify and use the most appropriate legal sources and authorities to solve the problem?		
Did you analyse these sources and critically evaluate them in terms of the identified problem?		
Did you appropriately use the authorities to substantiate your arguments and to support your solution of the identified problem?		
Did you use language consistent with the conventions in the discipline of law?		
Was the advice you gave on an appropriate course of action in your answer responsible? In other words did your setting out of the law and application thereof to the facts support the advice you gave?		
Did you act responsibly and ethically as researcher and scholar, e.g. refer appropriately, acknowledge sources and avoid plagiarism?		
Did you keep to the length restriction?		

Mark rubric

Evaluation criteria	Not yet achieved	Partially achieved	Achieved
1. Identifying the problem.	0	0.5	1
2. Discussing the relevant law applicable to the problem referring to authorities, acknowledging sources and avoiding plagiarism.	0	0.5-1.5	2
3. Applying the law to the facts of the problem.	0	0.5-3.5	4
4. Giving appropriate advice.	0	0.5	1
5. Answer presented in an acceptable format: a. Language used consistent with the conventions in the discipline of law. b. Correct reference techniques used. c. Complied with the length restriction for the assignment.	0	0.5	1
6. Checklist filled in and attached to the assignment.	0	0.5	1

- After completion of the assignment **detach the checklist** at the end of this Tutorial Letter, complete it and attach it to the beginning of your assignment.
- Read Study Guide 3 (Statutory regulations regarding certain contracts of sale and lease) and answer the following questions:

P concludes a written agreement purchasing a motor vehicle from S motor dealer on 1 May. The agreement is concluded at P's place of work. The purchase price of the vehicle is R300 000 and is payable in 20 equal monthly instalments. The agreement also makes provision for P to pay interest to S in respect of the deferred purchase price. The motor vehicle is delivered to P by S on 2 May. P approaches you for legal advice on 4 May. P explains to you that although he can afford the vehicle he has changed his mind and no longer wishes to continue with the agreement. P also informs you that he paid the first instalment on 2 May and would like to claim back this instalment.

1 Advise P. (5)

2 Is the agreement a small, intermediate or large credit agreement? Discuss. (5)

Total [10]

9.1.2 Assignment 02

ASSIGNMENT 02 – FIRST SEMESTER**UNIQUE NUMBER: 158914****DUE DATE: 26 MARCH****NO EXTENSION****COMPULSORY MULTIPLE-CHOICE ASSIGNMENT****CONTRIBUTES 10% OF FINAL MARK**

- This assignment should be submitted by all students registered for the **FIRST SEMESTER**.
- Since this is a multiple-choice assignment, it must be completed on a **mark-reading sheet**.
- Please write the correct unique number for the appropriate module on the mark-reading sheet.

REMEMBER:

- Answer this assignment on the **mark-reading sheet**.
- **No assignment cover** must be sent with the mark-reading sheet.
- Unique assignment number: First semester **158914**

Read Study Guides 1 (Lease) and 2 (Sale) in conjunction with the prescribed cases and answer the following questions:

Question 1

In *SA Wood Turning Mills (Pty) Ltd v Price Bros (Pty) Ltd* 1962 (4) SA 263 (T) the court held that the contract was one of

- (1) *locatio conductio operis*.
- (2) *locatio conductio operarum*.
- (3) *quantum meruit*.
- (4) *emptio et venditio*.

(1)

Question 2

Which one of the following statements is **incorrect**?

- (1) A contractual discretion which confers on one party the right to reasonably determine the price is valid.
- (2) A tacit undertaking to pay a certain price is valid.
- (3) A contract of sale for a reasonable price can be valid in certain circumstances.
- (4) A contract of sale in which the price is to be determined by a third party is valid. (1)

Question 3

Which one of the following statements on section 2(1) of the Alienation of Land Act 68 of 1981 is **incorrect**?

- (1) Signing a deed of alienation with initials is a valid signature.
- (2) A street address is sufficient to identify the land in a deed of alienation.
- (3) A term which only contains information need not be in writing in a deed of alienation.
- (4) A principal can validly ratify a deed of alienation which was entered into by a person who did not have the necessary written authority when he signed the deed of alienation. (1)

Question 4

In *Glaston House (Pty) Ltd v Inag (Pty) Ltd* 1977 2 SA 846 (A) the plaintiff succeeded on the basis of

- (1) the Aedilitian remedies
- (2) the *actio empti*
- (3) breach of contract by way of positive malperformance
- (4) fraudulent misrepresentation. (1)

Question 5

A clause in a contract of sale excluding the seller from liability for eviction will not preclude a claim by the purchaser for

- (1) restitution
- (2) general damages
- (3) special damages
- (4) specific performance (1)

Question 6

In *Sweets From Heaven (Pty) Ltd v Ster Kinekor Films (Pty) Ltd* 1999 1 SA 796 (W) the court

- (1) extended the meaning of *commodus usus*
- (2) restricted the meaning of remission of rent.
- (3) overruled the decision in *Sishen Hotel (Edms Bpk) v Suid-Afrikaanse Yster en Staal Industriële Korporasie Bpk* 1987 2 SA 932 (A)
- (4) did not regard prevention of loss of profit to the lessee as an obligation implied by law on the lessor. (1)

Question 7

John leases a video camera from Peter for 21 December in order to video his daughter's 21st birthday celebrations. However, the video camera is defective and does not give a clear picture. Which form of breach of contract is Peter guilty of?

- (1) Positive malperformance
- (2) *Mora debitoris*
- (3) *Mora creditoris*
- (4) Prevention of performance. (1)

Question 8

Which one of the following statements is **incorrect**?

- (1) In *Kessoopersadh v Essop* 1970 (1) SA 265 (A) the court disapproved of the views expressed in *Alternators (SA) (Pty) Ltd v Boulanger* 1969 (3) SA 75 (T).
- (2) In *Poynton v Cran* 1910 AD 205 the court confirmed that the condition in which the thing is delivered must be in accordance with the provisions of the lease.
- (3) In *De Jager v Sisana* 1930 AD 71 the court held that the occupier did not acquire a real right.
- (4) In *Spies v Lombard* 1950 (3) SA 469 (A) the court held that the *Placaat* of Holland of September 1658 did not apply in South Africa. (1)

Question 9

Peter rents a farm from Michael and erects a security fence around the farm house without Michael's knowledge. Upon the expiration of the lease Peter will be entitled to

- (1) claim the expense of erecting the fence
- (2) claim the expense of erecting the fence and remain in occupation of the property until compensated
- (3) remove the fence
- (4) claim the amount by which the fence has increased the value of the property. (1)

Question 10

Simon leases a flat from Ezra for two years. After two years Simon remains in the flat and continues to pay the rent which Ezra accepts. This constitutes

- (1) a continuation of the original lease
- (2) a case of holding over
- (3) a case where no contract exists between the parties and which falls to be determined in terms of the law of unjustified enrichment
- (4) a new lease.

(1)
Total [10]

9.2 SECOND SEMESTER**9.2.1 Assignment 01****ASSIGNMENT 01 – SECOND SEMESTER****DUE DATE: 06 AUGUST****NO EXTENSION****COMPULSORY WRITTEN ASSIGNMENT****CONTRIBUTES 10% TO FINAL MARK****Instructions**

- **This assignment should be submitted by all students registered for the SECOND SEMESTER.**
- Your answer may not exceed two typed or four handwritten pages and must comply with the requirements for assignments. For instructions on the submission of written assignments, please see *Your Services Guide @ Unisa*.
- **Keep the checklist and criteria of the mark rubric in mind** when doing this assignment, because you will be assessed according to the criteria in the mark rubric.

Checklist

Assessment criteria	Yes	No
Did you identify the legal problem involved?		
Did you identify and use the most appropriate legal sources and authorities to solve the problem?		
Did you analyse these sources and critically evaluate them in terms of the identified problem?		
Did you appropriately use the authorities to substantiate your arguments and to support your solution of the identified problem?		
Did you use language consistent with the conventions in the discipline of law?		
Was the advice you gave on an appropriate course of action in your answer responsible? In other words did your setting out of the law and application thereof to the facts support the advice you gave?		
Did you act responsibly and ethically as researcher and scholar, e.g. refer appropriately, acknowledge sources and avoid plagiarism?		
Did you keep to the length restriction?		

Mark rubric

Evaluation criteria	Not yet achieved	Partially achieved	Achieved
1. Identifying the problem.	0	0.5	1
2. Discussing the relevant law applicable to the problem referring to authorities, acknowledging sources and avoiding plagiarism.	0	0.5-1.5	2
3. Applying the law to the facts of the problem.	0	0.5-3.5	4
4. Giving appropriate advice.	0	0.5	1
5. Answer presented in an acceptable format: <ul style="list-style-type: none"> a. Language used consistent with the conventions in the discipline of law. b. Correct reference techniques used. c. Complied with the length restriction for the assignment. 	0	0.5	1
6. Checklist filled in and attached to the assignment.	0	0.5	1

- After completion of the assignment **detach the checklist** at the end of this Tutorial Letter, complete it and attach it to the beginning of your assignment.
- Read Study Guide 3 (Statutory regulations regarding certain contracts of sale and lease) and answer the following questions:

P concludes a written agreement purchasing a motor vehicle from S motor dealer on 1 May. The agreement is concluded at S's business premises. The purchase price of the vehicle is R300 000 and is payable in 20 equal monthly instalments. The agreement also makes provision for P to pay interest to S in respect of the deferred purchase price. The motor vehicle is delivered to P by S on 2 May. P approaches you for legal advice on 4 May. P explains to you that although he can afford the vehicle he has changed his mind and no longer wishes to continue with the agreement. P also informs you that he paid the first instalment on 2 May and would like to claim back this instalment.

1 Advise P. (5)

2 What effect would a clause in the contract excluding the liability of S for any latent defects in the vehicle have? Discuss. (5)

Total [10]

9.2.2 Assignment 02

ASSIGNMENT 02 – SECOND SEMESTER

UNIQUE NUMBER: 362652

DUE DATE: 08 SEPTEMBER

NO EXTENSION

COMPULSORY MULTIPLE-CHOICE ASSIGNMENT

CONTRIBUTES 10% TO FINAL MARK

- **This assignment should be submitted by all students registered for the SECOND SEMESTER.**
- Since this is a multiple-choice assignment, it must be completed on a **mark-reading sheet**.
- Please write the correct unique number for the appropriate module on the mark-reading sheet.

REMEMBER:

- Answer this assignment on the **mark-reading sheet**.
- **No assignment cover** must be sent with the mark-reading sheet.
- Unique assignment number: Second semester **362652**

Read Study Guide 1 (Lease) and Study Guide 2 (Sale) in conjunction with the prescribed cases and answer the following questions:

Question 1

Which one of the following statements is **correct**?

- (1) A valid contract of sale is concluded only after the seller has delivered the thing sold to the purchaser.
- (2) In *SA Wood Turning Mills (Pty) Ltd v Price Bros (Pty) Ltd* 1962 (4) SA 263 (T) the court held that the contract was a *locatio conductio operis*.
- (3) An *emptio spei* is a contract of sale subject to a suspensive condition.
- (4) A contract of sale in which a dentist undertakes to make a set of dentures with the dentist's own material for a patient for R2000 is an *emptio rei speratae*. (1)

Question 2

Jack agrees with John to sell his house to John for an amount of R750 000, including agent's commission. Later the agreement is reduced to writing but the contract does not stipulate that the price includes agent's commission although it does state that agent's commission is payable by the purchaser. Jack now asserts that John must pay agent's commission in addition to the purchase price. What would the appropriate remedy for John be in the circumstances:

- (1) An action for breach of contract.
- (2) An action for declaring the contract void for material mistake.
- (3) An action based on misrepresentation.
- (4) A claim for rectification. (1)

Question 3

Which one of the following statements is **incorrect**?

- (1) A person need not be the owner of a thing to validly sell it.
- (2) The Aedilician actions are available where the thing sold suffered from a latent defect.
- (3) The seller's liability for damage to the thing sold after conclusion of the contract but before delivery is based in delict.
- (4) A registered servitude can interfere with the seller's duty to deliver the thing sold. (1)

Question 4

Van der Merwe v Meades 1991 (2) SA 1 (A) implies that where a sale agreement contains a *voetstoots* clause the seller:

- (1) will not be liable for breach of contract
- (2) may be absolved from liability for fraudulent misrepresentation by way of omission
- (3) may be absolved from liability for negligent misrepresentation by way of omission
- (4) will not be liable on the basis of a tacit warranty. (1)

Question 5

In *Minister van Landbou-Tegniese Dienste v Scholtz* 1971 (3) SA 188 (A) the purchaser based its claim against the seller on:

- (1) breach of an *ex lege* term
- (2) breach of a tacit warranty
- (3) the Aedilitian actions for latent defects
- (4) fraudulent misrepresentation. (1)

Question 6

Which one of the following statements is **incorrect**?

- (1) A thing which has not yet come into existence can be let.
- (2) *Commodus usus* includes the idea of profit where the lessee runs a business from the leased premises.
- (3) Remission of rent may be viewed as a specific application of supervening impossibility of performance.
- (4) In certain circumstances the lessor may be liable for consequential damages resulting from a defect in the thing let. (1)

Question 7

Jane rents a flat from Janet from 1 January to 31 December. However, before Jane can move in, Janet informs her that she needs the flat for her own purposes and that Jane must look elsewhere for accommodation. What form of breach has Janet committed?

- (1) Repudiation.
- (2) *Mora debitoris*.
- (3) *Mora creditoris*.
- (4) Prevention of performance. (1)

Question 8

Refer to the facts in question 7. Janet proceeds to let the same flat for the same period to Michael but for more rent. Which one of the following statements is **correct**?

- (1) Jane may only claim possible damages from Janet on the basis of breach of contract.
- (2) Jane has no legal remedy to prevent Michael from occupying the flat.
- (3) Jane has the expectation of acquiring a real right for occupation of the flat which she may enforce by way of an interdict.
- (4) Jane has a personal right against Janet for occupation of the flat which she may enforce by way of an interdict. (1)

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(b) John "buys" a dining room suite from Peter which Peter has to manufacture from John's wood. Do John and Peter conclude a contract of sale and if not, what type of contract do the parties conclude? Explain. (5)

Johannes "koop" 'n eetkamerstel van Petrus wat Petrus moet vervaardig uit Johannes se hout. Sluit Johannes en Petrus 'n koopkontrak en, indien nie, watter soort kontrak sluit die partye? Verduidelik. (5)

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QUESTION 5 \ VRAAG 5

P concludes a written agreement purchasing a motor vehicle from S motor dealer on 1 May 2008. The agreement is concluded at P's place of work. The purchase price of the vehicle is R300 000 and is payable in 20 equal monthly instalments. The agreement also makes provision for P to pay interest to S in respect of the deferred purchase price. The motor vehicle is delivered to P by S on 2 May 2008. P approaches you for legal advice on the 4th May 2008. P explains to you that although he can afford the vehicle he has changed his mind and no longer wishes to continue with the with the agreement. P also informs you that he paid the first instalment on the 2nd May 2008 and would like to claim back this instalment. Advise P in detail and also indicate if the agreement in question is a small, intermediate or large credit agreement. (10)

K sluit op op 1 Mei 2008 'n skriftelike koopkontrak met V 'n motorhandelaar waarin hy 'n motor koop. Die ooreenkoms word by K se werksplek gesluit. Die koopprys van die motor is R300 000 en is betaalbaar in 20 gelyke maandelikse paaieimente. Die ooreenkoms bepaal ook dat K rente ten opsigte van die uitgestelde koopprys aan V moet betaal. Die motor word op 2 Mei 2008 aan K gelewer. K nader u vir regsadvies op die 4de Mei 2008. K verduidelik dat alhoewel hy die motor kan beskostig het hy van besluit verander en nie meer met die kontrak will voortgaan nie. K stel u ook in kennis dat hy die eerste paaieiment op 2 Mei 2008 betaal het en dat hy graag hierdie paaieiment wil terug kry. Adviseer K volledig en sit ook uiteen of die ooreenkoms 'n klein, middelslag of groot kredietooreenkoms is. (10)

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- (b) where Peter delivers the video camera but the machine is defective and does not give a clear picture. (5)
waar Petrus die videokamera lewer, maar dit is beskadig en gee 'n slegte beeld. (5)

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- (c) it comes to John's knowledge that Peter has leased his camera to Jack for the same period. (5)
dit kom tot Petrus se kennis dat Johannes vir dieselfde periode sy kamera aan Jacobus verhuur het. (5)

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QUESTION 9 \ VRAAG 9

- (a) To what type of contract of lease does the *huur gaat voor koop* rule apply. (1)
Op watter tipe huurkontrak is die *huur gaat voor koop* reël van toepassing? (1)

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- (b) Would the *huur gaat voor koop* rule apply to the lease of a right to dig for gold? (1)
Sou die *huur gaat voor koop* reël van toepassing wees op die huur van 'n reg om vir goud te delf? (1)

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- (c) How is a real right established by a long term lease? (3)
Op watter manier word 'n saaklike reg deur 'n lang termyn huur gevestig? (3)

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[5]
[100]

11 AMENDMENTS TO THE STUDY MATERIAL

11.1 STUDY GUIDE 1: LEASE

- Change the second sentence under the ACTIVITY on page 18 of Study Guide 1 to read:

“John pays a deposit and as far as he is concerned, his holiday accommodation is secured.”

- Change the date in the second paragraph under 1 INTRODUCTION on page 64 of Study Guide 1 to (1658).
- The full reference of the case under 2 TO WHAT TYPE OF LEASES DO THE PLACAATS APPLY on page 64 of Study Guide 1 is “*Business Aviation Corporation (Pty) Ltd and Another v Rand Airport Holdings (Pty) Ltd* 2006 (6) SA 605 (SCA)”

11.2 STUDY GUIDE 2: SALE

- Insert the following under the third paragraph of 1 INTRODUCTION on 33:

“In *Gowar Investments (Pty) Ltd v Section 3 Dolphine Coast* 2007 3 SA 100 (SCA) the court held that a deed of alienation which does not refer to the purchaser’s right in this regard is voidable at the instance of the purchaser.”

11.3 STUDY GUIDE 3: THE STATUTORY REGULATION OF SALES AND LEASES ON CREDIT

- Replace Study Unit 17 in Study Guide 3 which did not print properly with the following:

“STUDY UNIT 17

MISCELLANEOUS MATTERS – sec 163 - 170

OVERVIEW

In this section you will learn about the application of the Act to pre-existing agreements

CONTENTS

- 17.1 Agents
- 17.2 Transitional arrangements
- 17.3 Application of the act to pre-existing agreements
- 17.4 The continued enforcement of repealed laws
- 17.5 Regulations

LEARNING OUTCOMES

Having studied the material for this study unit, you should be able to

- Know to which pre-existing agreements the Act is applicable
- Be aware of the fact that there are regulations which are applicable to the Act.

17.1 Agents

The credit provider may not enter into a credit agreement unless it is solicited, completed, and concluded by it directly, by an employee of the credit provider, or by an agent of the credit provider.

The credit provider must ensure that all of its employees and/or agents involved with credit agreements are adequately trained in relation to the Act. The credit provider must also maintain a register of all of its agents who act in transactions, which fall within the ambit of the Act. The credit provider is also responsible for acts and omissions of its agents and employees, which contravene the Act.

17.2 Transitional arrangements for the National Credit Act – Scheduel 3

The Act contains certain transitional provisions. In terms of the Act a credit provider or credit bureau must make application to be registered within 40 (forty) days after the coming into force of the Act. From that time the requirement that a credit provider or credit bureau be registered is temporarily satisfied until the NCR has made a final decision.

The requirements relating to the Register of Credit Agreements are delayed until the NCR has established the Register and the Minister has received advice from an independent auditor that the NCR has established reasonable and effective means to receive and compile information to be reported to it in terms of the Act.

17.3 The Application of the Act to Pre-Existing Agreements – sec 4

Subject to certain reservations, the Act applies to credit agreements made before the effective date if those credit agreements would have fallen within the application of the Act if the Act had been in effect when the agreement was made. The effective date is the date on which the specific provision of the Act comes into operation.

The provisions of the Act relating to:

- (a) the interpretation, purpose and application of the Act;
- (b) consumer credit institutions;
- (c) consumer credit industry regulation;
- (d) the confidentiality of credit receivers;
- (e) the role of credit bureaux, the removal of debt adjustment and the right to access to information by credit receivers;
- (f) disclosure required to credit receivers;
- (g) the alteration of credit agreements;
- (h) the termination of credit agreements;
- (i) the collection, repayment, surrender and debt enforcement;
- (j) the dispute settlement mechanisms;
- (k) the enforcement of credit agreements; and
- (l) the general provisions of the Act

apply fully to pre-existing credit agreements from the effective date, with the exception of (c) which does not apply to pre-existing incidental credit agreements.

The section relating to over-indebtedness and reckless credit apply to pre-existing credit agreements only to the extent that they concern over-indebtedness.

The section relating to consumer rights and supplementary requirements and documents relating to unlawful agreements and provisions, applies to pre-existing credit agreements only with respect to actions or omissions that occur on or after the effective date.

The requirements relating to the National Register of Credit Agreements apply to pre-existing credit agreements only after the date declared by the Minister.

The sections relating to unlawful credit agreements and unlawful provisions of credit agreements apply to pre-existing credit agreements only to the extent that the common law, national or provincial legislation applied, to similar effect, to such an agreement or provision as at that date the agreement was made.

The sections relating to the form of credit agreements and the statements of account apply only to pre-existing credit agreements to the extent the credit provider is required to provide the consumer within 6 (six) months of the effective date with a statement that meets the requirements of the Act with respect to pre-agreement disclosure, and a document which meets the requirements relating to forms of credit agreement. In addition, the credit provider is required to introduce a form of periodic statement that meets the requirements of the Act.

The provisions relating to credit marketing, pre-arrangement disclosure, the liability for lost cards, the obligations of pawn brokers, and the consumer's right to rescind the contract do not apply to pre-existing credit agreements, subject certain exceptions.

The NCR may, if he is satisfied that the credit provider is making best efforts in good faith to comply with all or part of the transitional arrangements, extend the time within which the credit provider must comply with the obligations contained in the transitional arrangements or enter into a compliance agreement with the credit provider establishing a plan or schedule for meeting the requirements of the transitional arrangements.

For the purposes of the transitional arrangements a change after the effective date to any credit agreement which was made before the effective date constitutes the making of a new credit agreement unless that change was in relation to an interest rate under a variable rate agreement or the interest rate or credit limit under a credit facility.

17.4 The Continued Enforcement of Repealed Laws

Despite the repeal of the previous Acts, for the period of 3 (three) years after the effective date and in respect of a matter that occurred during the period of 3 (three) years immediately before the effective date, the NCR may exercise any power of the Minister in terms of such previous Act to investigate and prosecute any breaches of that Act as if it were proceeding with a complaint in terms of the Act. The Tribunal may make any order that it is authorised to make in terms of the Act that could have been made in the circumstances by a court under any previous Act as if it were proceeding with a complaint in terms of the Act.

17.5 Regulations

On the effective date and for a period of 60 (sixty) business days after the effective date, the Minister may make any Regulation contemplated in the Act without meeting the procedural requirements set out in the Act, provided the Minister has published such proposed Regulations in the Gazette, allowing for a period of at least 30 (thirty) business days for comment.

To date three sets of regulations have been published.”

We hope that you enjoy this module and we wish you success with your studies.

PROF TB FLOYD
PROF L HAWTHORNE
PROF C-J PRETORIUS (SECOND SEMESTER)

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Checklist

Assessment criteria	Yes	No
Did you identify the legal problem involved?		
Did you identify and use the most appropriate legal sources and authorities to solve the problem?		
Did you analyse these sources and critically evaluate them in terms of the identified problem?		
Did you appropriately use the authorities to substantiate your arguments and to support your solution of the identified problem?		
Did you use language consistent with the conventions in the discipline of law?		
Was the advice you gave on an appropriate course of action in your answer responsible? In other words did your setting out of the law and application thereof to the facts support the advice you gave?		
Did you act responsibly and ethically as researcher and scholar, e.g. refer appropriately, acknowledge sources and avoid plagiarism?		
Did you keep to the length restriction?		

