

Tutorial Letter 202/1/2018
COMMERCIAL LAW 1A
CLA1501

Semester 1

Department of Mercantile Law

This tutorial letter contains important information
about your module.

BARCODE

Dear Student

This tutorial letter contains the commentary on assignment 02.

The aim of this commentary is to draw your attention to certain important aspects of the questions which you may have overlooked. Read the commentary carefully to make sure that you understand both why the particular answer is correct and why the distractors (the incorrect options) are incorrect. If you are still not sure after reading the commentary, go back to the original source in your prescribed textbook.

NOTE: All references in brackets refer to your prescribed textbook, Schulze H *et al General Principles of Commercial Law* 8th ed (2015) Juta.

QUESTION 1

(Chapter 1: The South African Legal System, paragraphs 1.1.2, 1.1.3, 1.2.1.1 & 1.2.1.2)

4 is **CORRECT**. The Constitution is the supreme law of the Republic of South Africa. It applies to all law, and binds natural and juristic persons, the legislature, the executive and all other organs of the state.

1 is **INCORRECT**. English law is indeed a source of South African law, but not the supreme law of the country. When the Cape was ceded to Great Britain in 1814, the South African legal system then in operation, was influenced by English law.

2 is **INCORRECT**. Roman Dutch law is one of the sources of South African law, but not the supreme law of the country. Roman law was gradually received in the Netherlands and became mixed with the existing Dutch customary law, and Roman-Dutch law resulted from this process. Jan Van Riebeeck brought this Roman Dutch law to the Cape in 1652, when he established a settlement here.

3 is **INCORRECT**. Statutory law is also known as legislation. It is the most important source of law, enacted by parliament and provincial legislatures, and includes proclamations, regulations and by-laws enacted by subsidiary legislative bodies such as the State President, ministers and municipalities. But statutory law is not the supreme law of South Africa, as any legislation that is contrary to the provisions of the Constitution could be declared unconstitutional.

QUESTION 2

(Chapter 2: Introduction to the Science of Law)

1 is **CORRECT**. The law of contract is a division of private law. Private law regulates the relationships between persons or private individuals, and, on the other hand, public law regulates the relationships between the State and its subjects. The State can, however, in certain circumstances also act in a private law capacity.

2 is **INCORRECT**. Criminal law forms part of public law. The State prohibits certain actions as crimes. When a crime is committed, the State prosecutes the accused with the aim of punishing the person who committed the crime.

3 is **INCORRECT**. International law is not a division of private law. International law regulates the relationships between two or more states. International law forms part of public international law which is a division of public law.

4 is **INCORRECT**. Although it is difficult to categorise company law, it is usually considered to be part of mercantile law, which contains aspects of the law that relate to both private and public law. Company law is not considered to be part of private law.

QUESTION 3
(Chapter 3: Law of Contract)

3 is **CORRECT**. All five requirements for a valid contract have been satisfied. Online contracting can be done. The Electronic Communications and Transactions Act 25 of 2002 regulates electronic contracts.

1 is **INCORRECT**, because the guests did not bind themselves in a contractual relationship with Sally. At most their actions amounted only to a social appointment or agreement but there is no enforceable contractual relationship. There was no serious intention on the part of the contracting parties to be legally bound.

2 is **INCORRECT**. By definition a contract is an agreement between two or more people. One cannot agree with oneself, unless he or she acts in a different capacity on each side of the contract. There must be more than one person to a contract.

4 is **INCORRECT**. This agreement is not physically executable as the moon and the star cannot be privately owned or sold. Rights and duties must be physically executable. Therefore, the requirements for a valid contract have not been satisfied.

QUESTION 4
(Chapter 4: Consensus)

2 is **CORRECT**. The essence of the element of consensus is that each of the parties must seriously intend to bind themselves contractually, which means that they must intend to create legal rights and obligations. If Mary and Sinah arrange to meet at a coffee shop, they have no intention that their agreement should create legal rights and obligations.

1 is **INCORRECT**. Although consensus is the basis of every contract, the parties themselves must intend to become contractually bound.

3 is **INCORRECT**. Although consensus is the basis of every contract, the parties themselves must intend to become contractually bound.

4 is **INCORRECT**. Usually a contract does not need to be in writing to be binding on the parties, unless the law requires it to be in writing or the parties themselves have agreed that it must be in writing.

QUESTION 5
(Chapter 5: Capacity to Perform Juristic Acts)

3 is **CORRECT**. Spouses married out of community of property are obliged to make pro rata contributions in respect of necessities for the common household. They are also jointly and severally liable to third parties for all debts incurred by either spouse for necessities for the common household.

1 is **INCORRECT**. In marriages *in* community of property there is a joint estate which acquires the profits which arise during the marriage. In marriages *out* of community of property each party retains his or her own estate and if such a marriage was concluded after 1 December 1984 it is subject to the accrual system unless expressly excluded by the antenuptial contract.

2 is **INCORRECT**. Parties retain their capacity to act in respect of their own estates.

4 is **INCORRECT**. In a marriage *out* of community of property, each of the spouses retains his or her separate estate and has full capacity to act in respect of his or her own estate. Lihle does not have to give her consent to the sale of a farm belonging to Musa because the farm forms part of Musa's estate in respect of which he has full capacity to act.

QUESTION 6

(Chapter 6: The Agreement must be Possible)

1 is **CORRECT**. A contract does not come into existence if the rights and duties arising from the contract cannot be legally executed. Things that are not capable of being privately owned cannot be donated. Apart from this, it would also be physically impossible for Samuel to perform in terms of the contract.

2 is **INCORRECT**. Since prostitution is contrary to good morals the agreement is legally impossible to perform and therefore invalid.

3 is **INCORRECT**. Wagering contracts are valid but unenforceable. This means that should Zambia indeed win the next Africa Cup and should Joel then refuse to honour the wager and pay the R2000, Sandile will not be able to enforce the contract in a court of law.

4 is **INCORRECT**. A contract with such unreasonable terms will undoubtedly be found to be against public policy because it is unreasonable and therefore, although not invalid on the face of it, it is nevertheless unenforceable.

QUESTION 7

(Chapter 6: The Agreement must be Possible)

1 is **CORRECT**. It must be physically possible, when the contract is concluded, to render the performance to which the parties commit themselves. No valid contract arises if it is objectively impossible to render the performance. At the time of the conclusion of the contract the flat was already destroyed. It is therefore physically impossible for Petrus to deliver the flat to Adrian. The contract of lease between Petrus and Adrian is void because of initial impossibility of performance.

2 is **INCORRECT**. Since the flat was already destroyed at conclusion of the contract of lease, no valid contract came into being. Adrian cannot claim alternative housing from Petrus.

3 is **INCORRECT**. Supervening impossibility of performance occurs when, after conclusion of the contract, performance becomes impossible. In this set of facts, performance was already impossible at the conclusion of the contract. Because it was objectively impossible to render the performance at the time of conclusion of the contract (as the flat was already destroyed), no valid contract arose.

4 is **INCORRECT**. Although it is true that the contract is void, it is due to objective impossibility of performance and not because of mistake. At the time of the conclusion of the contract the flat was already destroyed. It is therefore physically impossible for Petrus to deliver the flat to Adrian. The contract of lease between Petrus and Adrian is void because of initial impossibility of performance.

QUESTION 8

(Chapter 7: Formalities)

3 is **CORRECT**. In terms of the Alienation of Land Act 68 of 1981, in order for a contract of alienation of land to be valid it must be contained in a written contract of alienation which is signed by the parties to the contract or by their agents acting on their written instruction.

1 is **INCORRECT**. Although the legislature imposed certain requirements for the conclusion of certain types of contracts, a wagering contract does not need to be in writing and signed to be valid.

2 is **INCORRECT**. Although the legislature imposed certain requirements for the conclusion of certain types of contracts, the general rule is that no formalities are required for the formation of contracts. A contract where a car is sold does not need to be in writing and signed to be valid. The process whereby a car is registered with the licensing authorities must not be confused with the process whereby the car is sold.

4 is **INCORRECT**. Although the legislature imposed certain requirements for the conclusion of certain types of contracts, the general rule is that no formalities are required for the formation of contracts. A contract where a house is leased does not need to be in writing and signed to be valid.

QUESTION 9
(Chapter 7: Formalities)

3 is **CORRECT**. In terms of the General Law Amendment Act 50 of 1956 contracts of donation in terms of which performance is due in future must be in writing and signed in order to be valid. As performance is still due in this case, the contract needs to comply with formalities in that it must be in writing, signed by the donor or someone acting on his or her written authority, granted in the presence of two witnesses. The contract of donation between Kagiso and Thabo will not be enforceable if it is not in writing and signed by the donor (Kagiso) or someone acting on his behalf because performance is due in future.

1 is **INCORRECT**. In terms of the General Law Amendment Act 50 of 1956, a contract of donation under which performance is due in future is valid only if the terms thereof are contained in a written document which is signed either by the donor or by someone acting on his or her behalf. In this case no performance is due to Marius.

2 is **INCORRECT**. In terms of the General Law Amendment Act 50 of 1956, a contract of donation under which performance is due in future is valid only if the terms thereof are contained in a written document which is signed either by the donor or by someone acting on his or her behalf. In this case no performance is due to Barbara.

4 is **INCORRECT**. In terms of the General Law Amendment Act 50 of 1956, a contract of donation under which performance is due in future is valid only if the terms thereof are contained in a written document which is signed either by the donor or by someone acting on his or her behalf. In this case no performance is due to Cindy's mother.

QUESTION 10
(Chapter 8: Terms of the Contract)

4 is the **CORRECT** answer, because the statement is **INCORRECT**. A court will indeed impute a tacit term into a contract if both parties overlooked or failed to anticipate an event that later arises.

1 is an **INCORRECT** answer, because the statement is **CORRECT**. A court can infer trade usage as a tacit term or as an implied term. It will be inferred as a tacit term where the trade usage was known by both parties to the contract. It is inferred as an implied term if one party cannot prove that the other party was aware of the trade usage but the trade usage is so universal and notorious that the latter party can be presumed to have had knowledge of it.

2 is an **INCORRECT** answer, because the statement is **CORRECT**. A court can infer trade usage as a tacit or as an implied term. It will be inferred as a tacit term where the trade usage was known by both parties to the contract. It is inferred as an implied term if one party cannot prove that the other party was aware of the trade usage but the trade usage is so universal and notorious that the latter party can be presumed to have had knowledge of it.

3 is an **INCORRECT** answer, because the statement is **CORRECT**. Where parties to a contract had a mutual intention, but they did not expressly include that intention in their contract because it seemed too self-evident to include it as an express term, such term will form part of the contract as a tacit term.

Total: [20]

THE LECTURERS
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