



Tutorial Letter 202/2/2018
COMMERCIAL LAW 1A
CLA1501

Semester 2

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)

3 is **CORRECT**. The *Corpus Iuris Civilis* is a codification of Roman law. This is the primary source when our courts revert to Roman law to solve a legal problem.

1 is **INCORRECT**. The Constitution is not a source of Roman law.

2 is **INCORRECT**. Customary law is not a source of Roman law.

4 is **INCORRECT**. South African statutory law is not a source of Roman law.

QUESTION 2

(Chapter 2: Introduction to the Science of Law)

1 is **CORRECT**. If a person seizes property belonging to no-one, with the intention of becoming its owner, that person acquires the right of ownership over the property. Because the guitar had already been thrown away, no-one was the owner thereof when Mandla appropriated it. This method of acquiring ownership is called occupation, which is one of the two original methods of acquiring ownership.

2 is **INCORRECT**. A person can become the owner of property by means of prescription only by possessing it openly as the owner for an uninterrupted period of thirty years. Prescription is an original method of acquiring ownership.

3 is **INCORRECT**. The delivery of movable property is a *derivative* method of acquiring ownership, and not an original method of acquiring ownership.

4 is **INCORRECT**. The registration of immovable property, such as a farm, is a *derivative* method of acquiring ownership, and not an original method of acquiring ownership. Neither does registration apply to movable property, such as a guitar.

QUESTION 3**(Chapter 3: Law of Contract)**

4 is **CORRECT**. A contract is an agreement concluded with the serious intention of creating legally enforceable obligations.

1 is **INCORRECT**. A contract can be entered into by a minimum of two parties, but there is no limit to the maximum number of parties to a contract.

2 is **INCORRECT**. An agreement is not a particular type of contract, but it is an agreement which has the serious intention of creating legal obligations that gives rise to a contract. Not all agreements are concluded with this intention. Without this intention, an agreement is not a contract.

3 is **INCORRECT**. Legal obligations arise from contract, delict and various other causes, such as unjustified enrichment. A contract is therefore a source of legal obligations, whereas a mere agreement is not. Mere agreements do not create legal obligations.

QUESTION 4**(Chapter 3: Law of Contract: Introduction)**

4 is the **CORRECT** answer. It is **NOT** a requirement for the conclusion of a valid contract that the contract must be in writing, signed or dated. For example, a contract of sale is concluded when a newspaper is bought from a street vendor but such a contract is rarely signed. In those cases where the law does require a contract to be in writing, for example, contracts for the sale of land, or where the parties themselves agree that the contract must be in writing and signed, the contract will only be valid if it is in writing and if it is signed.

1 is an **INCORRECT** answer because this is a requirement for the conclusion of a valid contract. The contract must be permitted by law in order to be valid. It must be legally possible to perform in terms of the contract. The contract must therefore not be contrary to common law or statutory law.

2 is an **INCORRECT** answer because this is a requirement for the conclusion of a valid contract. Capacity to act refers to the capacity to perform juristic acts and to conclude valid contracts. Only natural persons have the capacity to act but in certain circumstances such capacity may be lacking or limited for some reason or another.

3 is an **INCORRECT** answer because this is a requirement for the conclusion of a valid contract. There must be consensus for the conclusion of a valid contract. The parties to a contract must reach consensus on the rights and duties flowing from their agreement before the contract will be legally valid and enforceable.

QUESTION 5**(Chapter 4: Consensus)**

2 is **CORRECT**. An offer falls away in three instances: when it is accepted, when it is withdrawn before acceptance, and when it is rejected. In this case the original offer was rejected and a counter-offer was made by Belinda and consequently Alet's offer fell away.

1 is **INCORRECT**. An offer falls away in three instances: when it is accepted, when it is withdrawn before acceptance, and when it is rejected. In this case the original offer was rejected and consequently fell away. The original offer can no longer be accepted after it was rejected and a counter-offer was made, as it has ceased to exist.

3 is **INCORRECT**. An offer falls away in three instances: when it is accepted, when it is withdrawn before acceptance, and when it is rejected. In addition to the substantive offer, an offeror can undertake to keep the substantive offer open for a specified period. If the offeree accepts this second, accessory, offer, an option comes into being. In this instance the offer consisted of only a substantive offer and was not accompanied by an option; the substantive offer was therefore not left open for a specified period of time. But even if the substantive offer had been accompanied by an option, both the option and the substantive offer would have ceased to exist if the substantive offer was rejected.

4 is **INCORRECT**. An offer falls away in three instances: when it is accepted, when it is withdrawn before acceptance, and when it is rejected. In this case the original offer was not revoked before acceptance but it was rejected by the offeree (Belinda).

QUESTION 6

(Chapter 5: Capacity to Perform Juristic Acts)

2 is the **CORRECT** answer, because Steven, as an unrehabilitated insolvent may not take up employment with a general dealer without the consent of his curator. Mandla is a general dealer. If the purchase of the van has a negative effect on the insolvent estate (which isn't clear from the facts provided) Steven will need the consent of his curator to enter into the contract of sale. Steven can therefore not conclude either of the contracts independently.

1 is an **INCORRECT** answer, because Gloria has capacity to conclude both the contracts. She obtained full capacity to act on marriage and because she is married out of community of property she does not need her spouse's consent to conclude contracts. This is true for both the contract of employment and the contract of sale.

3 is an **INCORRECT** answer, because Arthur has capacity to conclude both the contracts. A spouse married in community of property has full capacity to act as far as employment is concerned, and regarding their joint estate, both he and his wife have full capacity to act independently, although the consent of the other spouse is required in certain instances. The buying of a vehicle is not one of those instances, unless the car is bought on credit. (Note that in the case of most standard contracts you will find that space is provided for the consent of the other spouse in a marriage in community of property, to be on the safe side and to avoid the necessity of establishing which form of consent, if any, is required).

4 is an **INCORRECT** answer, because Themba does have full capacity to conclude both the contracts. He is clearly emancipated. He lives separately from his parents, he is economically independent and when they emigrated they left him behind, not from neglect but because of a conscious decision on their part that it would be best for him.

QUESTION 7

(Chapter 6: The Agreement must be Possible)

4 is **CORRECT**. Joel and Jack's agreement is contrary to good morals. An act is contrary to good morals if it is contrary to the community's perception of what is proper and decent and in accordance with the conscience of the community. Contracts which are aimed at promoting sexual misconduct are contrary to the South African community's perceptions of what is proper and decent.

1 is **INCORRECT**. Even though Joel and Jack have consensus, what they agreed upon is not legally possible as it is contrary to the community's perception of what is proper and decent and in accordance with the conscience of the community. The contract is contrary to good morals and legally impossible.

2 is **INCORRECT**. The fact that parties have capacity to conclude juristic acts does not mean that they may conclude contracts that are not permitted by law. The contract between Joel and Jack is contrary to common law because it is against good morals.

3 is **INCORRECT**. A contract is contrary to public policy if it is harmful to the interests of the public at large, for example agreements misusing or thwarting the administration of justice, agreements regarding crimes and delicts, agreements affecting the safety of the state, agreements restraining a person's freedom to participate in legal intercourse and agreements restraining a person's freedom to participate in commercial intercourse.

QUESTION 8

(Chapter 8: Terms of the Contract)

1 is **CORRECT**. This is an example of a resolutive condition. A condition is a contractual term which renders the operation and consequences of the contract dependent on the occurrence or non-occurrence of a specified *uncertain* future event, whereas a time clause is subject to a specified *certain* future event, either determined or ascertainable. Because it is uncertain whether Rose will ever buy a house, the contract between Rose and Sandra is dependent on the occurrence of a specified uncertain future event. The term is therefore a condition. A time clause or condition is resolutive if the obligations flowing from the contract will only have effect until the future event occurs: an uncertain event in the case of a condition; and a certain event in the case of a time clause. Because the contract of lease will only have effect until Rose buys her own house (if she ever does), and will terminate if she does, the condition is resolutive.

2 is **INCORRECT**. Although the contract between Rose and Sandra is subject to a condition, the condition is resolutive and not suspensive. A suspensive condition is a contractual term which suspends the operation of the contractual obligations until the condition has been fulfilled. The operation of the contract between Rose and Sandra is not suspended until a condition is fulfilled, but becomes operative immediately. It will however terminate when the condition is fulfilled and is therefore a resolutive condition.

3 is **INCORRECT**. This contract is not subject to a time clause, but to a (resolutive) condition. A time clause is a contractual term which renders the operation and consequences of the contract dependent on the occurrence of a *certain* future event, either determined or ascertainable, whereas a condition is subject to the occurrence or non-occurrence of a specified *uncertain* future event. Because it is uncertain whether Rose will ever buy a house, the contract between Rose and Sandra is dependent on the occurrence of a specified *uncertain* future event. The term is therefore a condition. A time clause or condition is resolutive if the obligations flowing from the contract will only have effect until the future event occurs: an uncertain event in the case of a condition; and a certain event in the case of a time clause. Because the contract of lease will only have effect until Rose buys her own house, and will terminate if she does, the condition is resolutive.

4 is **INCORRECT**. This contract is not subject to a time clause, but to a (resolutive) condition. A time clause is a contractual term which renders the operation and consequences of the contract dependent on the occurrence of a *certain* future event, either determined or ascertainable, whereas a condition is subject to the occurrence or non-occurrence of a specified *uncertain* future event. Because it is uncertain whether Rose will ever buy a house, the contract between Rose and Sandra is dependent on the occurrence of a specified *uncertain* future event. The term is therefore a condition. Furthermore, the condition in this case is resolutive and not suspensive. A time clause or condition is suspensive if the performance in terms of the contract is only claimable when the future event occurs: an uncertain event in the case of a condition; and a certain event in the case of a time clause. A time clause or condition is resolutive if the

obligations flowing from the contract will only have effect until the future event occurs, an uncertain event in the case of a condition, and a certain event in the case of a time clause. Because the contract of lease will only have effect until Rose buys her own house (if she ever does), and will terminate if she does, the condition is resolutive.

QUESTION 9

(Chapter 9: Interpretation of Contracts)

3 is **CORRECT**. If uncertainty or ambiguity remains with regard to a clause or term, the court will sometimes interpret the clause against the interest of the party responsible for drafting it.

1 is **INCORRECT**. The general rule in interpreting contracts is essentially to determine the intention of the parties. One of the guidelines in determining the parties' intention is the presumption that parties intend their agreement to be valid and enforceable. Therefore, applying this presumption the court will not readily intervene whenever a clause appears to be unfair.

2 is **INCORRECT**. In principle the courts do not distinguish between contracts concluded in writing, orally or by conduct. The same principles of interpretation are applied to all contracts including standard form contracts regardless of the manner of conclusion.

4 is **INCORRECT**. A court may apply the guideline of interpreting a contractual term against the interest of the party who formulated a clause that is ambiguous or vague.

QUESTION 10

(Chapter 8: Transfer and Termination of Personal Rights)

2 is **CORRECT**. Barry's obligation to Michael was terminated by set-off. Set-off is the extinguishing of debts owed reciprocally by two parties. The full requirements for set-off are met since the debts are similar in nature, liquidated, claimable and exists between the same persons.

1 is **INCORRECT**. Barry's obligation was not terminated through the passage of time (prescription). A party to the contract may be released from his/her obligations through the passage of time. The underlying idea of prescription is to create legal certainty and to make certain claims or obligations unenforceable after a certain period.

3 is **INCORRECT**. Barry's obligation was not terminated by merger. Merger takes place when a person becomes both creditor and debtor in respect of the same obligation. Since one cannot owe something to oneself, the debt is extinguished, for example, where the lessee buys the leased property.

4 is **INCORRECT**. Barry's obligation was not terminated by discharge. Performance of the obligation undertaken is called discharge and it is the natural way in which a contractual relationship is terminated. The contract is extinguished by fulfilment of the obligation.

Total: [20]

THE LECTURERS

UNISA