

CLA101S	(457672)	May/June 2009
CLA101A	(476677)	
CLC1M1C	(492508)	
RCA101A	(474712)	
RCA101D	(477843)	

COMMERCIAL LAW 1A (COMMERCIAL LAW 101)

Duration 2 Hours

80 Marks

EXAMINERS
FIRST
SECONDMR E HURTER
PROF TE MANAMELA

This paper consists of 16 pages plus instructions for the completion of a mark reading sheet.

This examination paper remains the property of the University of South Africa
and may not be removed from the examination room

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

ANSWER ALL THE QUESTIONS.

STUDENT NUMBER: _____

INSTRUCTIONS:

- 1 This paper consists of 40 multiple choice questions each counting 2 marks. The paper therefore counts out of 80 marks.
- 2 The paper consists of **16** 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.
- 5 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.
- 7 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.

[TURN OVER]

QUESTION 1

The citation of a case is the following

MAN TRUCK & BUS (SA) (PTY) LTD v DORBYL LTD t/a DORBYL TRANSPORT PRODUCTS AND BUSAF 2004 (5) SA 226 SCA
SUPREME COURT OF APPEAL

MPH11 DP ZULMAN JA PARLAM JA CLOETE JA and LEWIS JA

2004 February 17. March 25

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

- 1 The case was reported in the fifth part of the South African Law Reports of 2004
- 2 MAN TRUCK & BUS (SA) (PTY) LTD was the applicant and DORBYL LTD t/a DORBYL TRANSPORT PRODUCTS AND BUSAF the respondent
- 3 The case was heard by a full bench of five appellate judges
- 4 The seat of the Supreme Court of Appeal is Bloemfontein (2)

QUESTION 2

Which **ONE** of the following sources of the law has only persuasive authority in a South African court and is not viewed as an authoritative source?

- 1 English law
- 2 Judgments of the Dutch courts before 1652
- 3 Dutch legislation before 1652
- 4 Roman law (2)

QUESTION 3

Consider the following statements

- A The legal personality of a person is terminated for all purposes by his or her death
- B The legal personality of a person is terminated by his or her death except for purposes of the finalisation of his or her estate
- C The legal personality of a person comes into existence at conception, provided that he or she is subsequently born alive
- D The legal personality of a person comes into existence at birth

Which of the above statements are **CORRECT**?

- 1 A and C
- 2 A and D
- 3 B and C
- 4 B and D (2)

[TURN OVER]

QUESTION 4

Mpho occupied John's farm openly for an uninterrupted period of thirty years without John's permission. John now claims back the farm because he wants to farm on it. Mpho claims that he has become the owner.

Through which **ONE** of the following methods did Mpho acquire ownership?

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

QUESTION 5

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

- 1 Sally engages a professional seafood caterer to provide seafood for her birthday party to which twenty guests have been invited. All the guests confirm that they will attend Sally's birthday party. The day before the party ten of the guests inform Sally that they will not attend the party because they prefer to attend a street party on the same date in Sandton.
- 2 Nicolas enters into an agreement with himself and undertakes that he will save R500 each month by paying R500 into his savings account on the first day of each month.
- 3 Peter purchases a new pair of running shoes for R600 on the official website of Nike. The shoes will be delivered at his flat in Pretoria.
- 4 Reeze undertakes to sell the moon and one star to Shana for R500. (2)

QUESTION 6

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

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

QUESTION 7

Teddy and Sammy stroll into No-Value Supermarket looking for something to eat. While passing the bakery section they notice that the price sticker on one cake was printed crookedly and reads 95c instead of R21.95, like the stickers on all the other cakes. They take the cake to a till to pay for it. The cashier rings the amount as R21.95 to which they loudly object and an argument ensues between them and the cashier.

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

- 1 A contract did not come into existence between the parties because the price sticker on the cake did not constitute an offer, and without offer and acceptance there cannot be consensus.
- 2 The contract between the parties is void because the supermarket can expect the reasonable consumer to know that 95c is not a reasonable price for such a cake.
- 3 A contract came into existence between the parties, but it is voidable because the supermarket made a misrepresentation about the price of the cake.
- 4 A contract did come into existence between the parties because the supermarket made an offer to sell by attaching a price sticker to the cake which Teddy and Sammy accepted. (2)

QUESTION 8

Which **ONE** of the following statements constitutes a valid offer?

- 1 David advertises his car for sale in the local newspaper.
- 2 Peter verbally offers to buy a farm belonging to Johnny for R500 000.
- 3 Sandy says she will pay a reward of R100 to anyone who finds her lost dog.
- 4 Dolly makes Johnny a written offer to buy his farm but her letter is lost in the post. (2)

QUESTION 9

The right to claim performance from someone is a/an

- 1 real right
- 2 intellectual property right
- 3 personality right
- 4 personal right (2)

QUESTION 10

Frans holds a pistol to Thomas's head and threatens to kill him should he not sell his house to him (Frans) Thomas agrees and the contract of sale is signed by both parties

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

- 1 There is no consensus between Frans and Thomas
- 2 A valid contract was not concluded between Frans and Thomas because of the absence of consensus
- 3 The contract is void as a result of duress
- 4 The contract is voidable because Thomas signed it under duress (2)

QUESTION 11

John, a minor of seventeen years, has just finished a computer course and decides to start a business designing business cards and wedding invitations. His father, an estate agent, finds business premises for him in the local shopping mall. His mother buys a computer and furniture for the business.

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

- 1 John is not emancipated, since his parents did not expressly consent to his economic independence
- 2 John has been tacitly emancipated by his parents, since they allow him to lead an economically independent life
- 3 John's minority has been terminated, since his emancipation gave him the capacity to act
- 4 John may marry without his parents' consent since he has been emancipated (2)

QUESTION 12

Consider the following persons

- A a fourteen-year old boy
- B a seven year old girl
- C a six-year old boy
- D twenty one year old girl
- E a juristic person

Which of the above persons have **NO** capacity to perform juristic acts?

- 1 only A and B
- 2 only A, B and C
- 3 only B and D
- 4 only C and E (2)

QUESTION 13

Ralph, a minor over the age of seven inherits cattle worth R200 000 from his late grandmother. Because he lives in a flat with his guardian Abel, Ralph wants to sell the cattle and invest the money.

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

- 1 Ralph needs Abel's assistance to sell the cattle
 - 2 Ralph does not need Abel's assistance to sell the cattle
 - 3 Ralph needs Abel's assistance as well as the consent of the Master of the High Court to sell the cattle
 - 4 Ralph needs Abel's assistance as well as the consent of a Judge of a High Court to sell the cattle
- (2)

QUESTION 14

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

- 1 A minor loses his or her capacity to act once a marriage, to which he or she is a party, is dissolved by divorce
 - 2 A juristic person does not require the assistance of a natural person to conclude juristic acts
 - 3 An insolvent person may enter into a contract of marriage
 - 4 A spouse has the right to share in the accrual of the other spouse's estate in a marriage in community of property
- (2)

QUESTION 15

Ethan is seventeen years old and a full-time student. During the vacation, she concludes a contract of employment with Pablo, who operates a fast-food delivery service. Ethan's salary will be R3000 for the five-week vacation. After having worked for a week, Ethan asks Pablo for an advance of R1500 on her salary. Pablo lends the money to Ethan, who spends R800 on a pair of sunglasses as a twenty-first birthday present for her boyfriend, Bred. Ethan does not return to her job and uses the remaining R700 for a bus ticket to visit a friend in Durban. Ethan's father is furious when Pablo tells him what has happened. He would never have agreed to Ethan's taking a holiday job, as he feels that he provides her with enough money for her needs and that she should spend vacations with her family.

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

- 1 Pablo can enforce the contract against Ethan, because Ethan is an emancipated minor
 - 2 Pablo can enforce the contract against Ethan's father, because Ethan is still dependent on him
 - 3 Pablo can recover the sunglasses from Bred, and the value of the bus ticket from Ethan's father
 - 4 Pablo has no enforceable legal remedy
- (2)

QUESTION 16

Which **ONE** of the following contracts is **NOT** legally impossible in terms of the common law?

- 1 Anna lends money to Barry in order to divorce from his wife so that he can marry her
 - 2 Betty is angry because someone parked on her parking bay. She pays the car guard R10 to damage the wipers of the car
 - 3 Sam and Bridget are engaged. They include a clause in their antenuptial contract to the effect that Sam makes Bridget his heir
 - 4 Jeff and Joe decide to run a brothel and draw up an agreement on how they will divide the profits
- (2)

QUESTION 17

Harry sells unlicensed cycads illegally to Nicky. Nicky pays the agreed purchase price in cash. Harry subsequently refuses to deliver the cycads to Nicky.

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

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

QUESTION 18

Which **ONE** of the following contracts will be void due to objective impossibility of performance?

- 1 Karel owns an antique furniture shop. He sells the only chair left of a very valuable set of chairs to Adam. Karel does not know that this specific chair does not belong to him, but to one of his employees who is restoring it during lunchtimes
 - 2 Lucky sells ten goats to Peter. Unknown to them, all ten of Lucky's goats had already died by the time the contract was concluded
 - 3 Andries sells Flower, a Jersey stud cow, to Gert. unknown to them that at the time of conclusion of the contract Flower had already died due to unknown causes
 - 4 Joss buys a car from Hendrik. Joss has to pay his outstanding water and electricity bill and cannot pay the purchase price
- (2)

QUESTION 19

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

- 1 The performance due in terms of a contract will be determined only if it is not divisible
- 2 The performance due in terms of a contract will be ascertainable if, at the time of concluding the contract the parties agree on a criterion or a formula to identify the performance or if they agree that a specified person will determine the performance
- 3 The performance due in terms of an alternative obligation is determined by describing a kind (genus) of commodity in terms of number, mass or measure
- 4 The performance due in terms of a generic obligation is determined by choosing the performance from a number of choices (2)

QUESTION 20

Thandi's only daughter Margaret, is getting engaged. Thandi expects many guests at the celebration. She agrees with Tim, the owner of a liquor store, that she will buy from him 100 bottles of the 1000 bottles of wine he has shown to her, as well as 100 350ml cans of orange juice.

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

- 1 The contractual obligation between Thandi and Tim is generic, since Thandi has a choice of performance from the 1000 bottles of wine that Tim has shown her.
- 2 The contractual obligation between Thandi and Tim is alternative, since Thandi has chosen to buy only 100 cans of juice from Tim.
- 3 Once Thandi has selected 100 bottles of wine, she is not allowed to reverse her choice even if she is dissatisfied with the wine.
- 4 Even though Tim has the obligation to deliver 100 cans of juice, he can rely on objective impossibility of performance if he is unable to deliver them. (2)

QUESTION 21

Which **ONE** of the following contracts must be in writing and signed in order to be valid?

- 1 A contract where a wager is made
- 2 A contract where a car is sold
- 3 A contract where land is sold
- 4 A contract where a house is leased (2)

QUESTION 22

Amod and Janet intend getting married out of community of property. They accordingly have an antenuptial contract drawn up. In terms of the antenuptial contract, Amod undertakes to donate a house worth at least R100 000 to Janet within a year after their marriage. Both parties duly sign the antenuptial contract, but their attorney forgets to have it registered within the time required by the Deeds Registries Act 47 of 1937. Two years after the wedding, Janet inherits money from her grandfather. Amod has not yet donated any house to her. Janet now wants to divorce Amod.

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

- 1 Janet can rely on the antenuptial contract to force Amod to comply with his undertaking regarding the donation of the house.
- 2 Janet cannot rely on the antenuptial contract to force Amod to comply with his undertaking regarding the donation of the house because it was not registered.
- 3 Amod can rely on the fact that the antenuptial contract was never registered, with the consequence that they are married in community of property and that he is therefore entitled to half of Janet's inheritance.
- 4 Amod's creditors cannot rely on the fact that the antenuptial contract was never registered, because they would not have known about it even if it had been registered. (2)

QUESTION 23

Abel and Jack agree that Jack will buy Abel's house for R150 000. Abel writes a contract of sale on the back of a cigarette box, and Abel and Jack then sign it.

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

- 1 A valid contract for the alienation of land was concluded since no formalities are required for the alienation of land.
- 2 A valid contract for the alienation of land was concluded since the contract was in writing and signed by the parties to it.
- 3 No valid contract for the alienation of land was concluded since the required formalities for the alienation of land were not complied with.
- 4 No valid contract for the alienation of land was concluded and the parties will have special enrichment actions against each other because of non-compliance with the prescribed formalities. (2)

QUESTION 24

Floors and Maans agree that Floors will buy Maans's car for R55 000. They further agree that Floors will pay a deposit of R20 000 and will pay the balance of the amount in seven instalments of R5 000 each over the next seven months. They fail to make any provision for the possibility that the car might contain a latent defect.

Which **ONE** of the following statements will complete the sentence below **CORRECTLY**?

The term dealing with the deposit and instalments is an example of

- 1 an essentialia of the contract
- 2 an incidentale of the contract
- 3 a naturale of the contract
- 4 an implied term of the contract

(2)

QUESTION 25

Carl donates his computer to Lend-a-Book Library in a written contract of donation. Carl and the librarian agree that Carl will only deliver the computer on 31 December, as Carl first needs to complete a project on the computer.

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

- 1 Carl may refuse to deliver the computer to Lend-a-Book Library if he changes his mind about donating it to the library.
- 2 Carl may refuse to deliver the computer to Lend-a-Book Library if he has not completed his project by the end of the year.
- 3 Lend-a-Book Library may demand delivery of the computer from Carl at any time as the computer has already been donated to the library.
- 4 Lend-a-Book Library may demand delivery of the computer from Carl on 31 December as the contract will only be enforceable on this date.

(2)

QUESTION 26

Rudi and Charles agree that Rudi will transport five head of cattle to Brits for Charles, provided that Rudi can arrange to borrow Rian's truck for two days

Which **ONE** of the following terms will complete the sentence below **CORRECTLY**?

The proviso that Rudi must be able to borrow the truck for two days is known as a

- 1 modus
- 2 resolutive time clause
- 3 warranty
- 4 suspensive condition

(2)

QUESTION 27

Lindiwe donates a large property in Johannesburg to the Care for Kids Foundation, a charitable organisation. In terms of the contract of donation the Care for Kids Foundation is obliged to erect a child care centre on the premises. The Care for Kids Foundation feels, however, that the property is better suited for the construction of a Hospital for HIV/AIDS patients. The Care for Kids Foundation proceeds by building a HIV/AIDS hospital.

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

- 1 The Care for Kids Foundation has become the owner of the property and is free to use the property for any purpose
- 2 The Care for Kids Foundation Charity has committed breach of contract because it has not complied with the modus
- 3 The Care for Kids Foundation has committed breach of contract because it has not complied with the suspensive condition
- 4 The Care for Kids Foundation has committed breach of contract because it has not complied with the supposition under which the donation was made

(2)

QUESTION 28

Lebogang and Mpho conclude a contract of sale in terms of which Plot 234 is sold to Mpho for R100 000. Lebogang's secretary types the written agreement the following day and erroneously indicates the price as R10 000. Lebogang and Mpho sign the agreement without checking it.

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

- 1 Because the agreement is in writing, the parol evidence rule will exclude evidence regarding an oral agreement concluded prior to the written agreement.
- 2 Because oral contracts of sale for the alienation of land are not valid, the parties will be bound to the price of R10 000.
- 3 The written contract is void because of mistake. Evidence of the oral contract will be admissible in terms of the general principles involved in the interpretation of contracts.
- 4 The written contract may be rectified. The parol evidence rule will not exclude evidence of the parties' true intention where the written contract does not reflect this. (2)

QUESTION 29

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

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

- 1 Hugh will have to deliver a four piece suite because the mistake occurred as a result of his negligence.
- 2 Hugh will have to deliver a four piece suite because the parol evidence rule precludes him from relying on the intended contract.
- 3 Hugh can apply for the rectification of the contract.
- 4 The contract between the parties is void because of uncertainty. (2)

QUESTION 30

Ken and Roger enter into an agreement in terms of which Ken agrees to deliver borehole equipment to Roger by train. The agreement provides for delivery to Roger at Carletonville, by 15 April. On its way to Carletonville the train is delayed as a result of a serious accident between two other trains. Hence the equipment is delivered to Roger only on 17 April.

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

- 1 Ken is in breach of contract, because he has not performed by the date specified in the contract
- 2 Roger can hold Ken liable for breach of contract since it is Ken's own fault that he sent the borehole equipment by train
- 3 If Ken warrants delivery by 15 April he will be in breach of contract, even though his late performance is due to circumstances beyond his control
- 4 Since Roger did not give Ken a reasonable time within which to perform after the accident Ken is not in breach of contract (2)

QUESTION 31

Which **ONE** of the following forms of breach of contract **CANNOT** be committed by a creditor?

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

QUESTION 32

Milo contracts with Mast Masters, who undertake to manufacture the masts for yachts he has to build. The specifications for construction of the masts are clearly described in the contract. After receiving the masts from Mast Masters it becomes apparent to Milo that the masts have not been made to the specifications as set out in the contract, and that they cannot be used for the yachts he is building.

Which **ONE** of the following forms of breach of contract has Mast Masters committed?

- 1 default by the debtor
- 2 default by the creditor
- 3 positive malperformance
- 4 prevention of performance (2)

QUESTION 33

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

- 1 Repudiation is a form of breach of contract which always entitles the innocent party to cancel the contract
- 2 Repudiation is a form of breach of contract which never entitles the innocent party to cancel the contract
- 3 Repudiation is a form of breach of contract, although it does not necessarily entitle the innocent party to cancel the contract
- 4 Repudiation is not a form of breach of contract (2)

QUESTION 34

Floodwaters Local Council contracts with Quintin for the construction of a bridge for R5 million. The bridge must have four lanes: two for vehicle traffic, one for pedestrians and one for trains. When finished, the bridge has only two lanes for vehicle traffic. The Local Council finds out that it will cost another R3 million to add the lanes for pedestrians and trains. The Local Council refuses to pay Quintin any money.

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

- 1 Quintin may use the *exceptio non adimpleti contractus* to institute action for payment
- 2 The *exceptio non adimpleti contractus* does not apply to this case, because the contract is not reciprocal
- 3 The Local Council will have to pay Quintin the agreed R5 million if it decides to use the defective bridge
- 4 The Local Council could raise the *exceptio non adimpleti contractus* when Quintin claims payment (2)

QUESTION 35

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

- 1 A *lex commissoria* is a cancellation clause
- 2 A *lex commissoria* is a *naturale* of a contract
- 3 A *lex commissoria* cannot be included in a contract by agreement
- 4 A *lex commissoria* will be available only if the breach of contract is material (2)

QUESTION 36

Thabo undertakes to paint Mpho's house on 3 October. On that day, Thabo does not arrive. On 15 October Mpho hears that Thabo is on holiday until 1 February of the following year and on his return intends to move to another city.

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

- 1 Because Thabo is in mora ex persona Mpho may claim damages from him
- 2 The contract has become void because of supervening impossibility of performance
- 3 Thabo is not released from his obligation to perform, because he has prevented his own performance
- 4 Mpho may reasonably conclude that Thabo no longer intends to paint the house, and is consequently entitled to the remedies for breach of contract (2)

QUESTION 37

Sam and Benny enter into a contract in terms of which Sam undertakes to supply and install certain equipment for refrigeration purposes in a fishing vessel owned by Benny. The equipment is guaranteed against defective workmanship and material for a period of twelve months. Three weeks after the installation of the equipment the equipment malfunctions and cannot be repaired by Sam. Benny cancels the contract and tenders to return certain items supplied by Sam in their present condition. Benny is unable to tender the return of the balance of the materials because these were lost at sea when the vessel sank during a storm.

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

- 1 Benny is not entitled to cancel the contract and claim back the money that he paid for the equipment because he is unable to return all the equipment to Sam
- 2 Benny does not have to tender return of all the equipment before he can claim the money he paid to Sam because it was not Benny's fault that part of the equipment was lost at sea
- 3 Benny is entitled to cancel the contract and claim back part of the money that he paid for the equipment in proportion to the part of the equipment that he is able to return
- 4 Since restitution is still possible Benny is not entitled to cancel the contract, but can only claim a reduction in the price of the equipment (2)

QUESTION 38

Which **ONE** of the following statements is a consequence of cession?

- 1 The right forms part of the patrimony of the cessionary and of the cedent
- 2 The cessionary receives the claim without the disadvantages attached to it
- 3 The claim is transferred to the cessionary in its entirety together with benefits such as interest
- 4 Both the cessionary and the cedent have the right to collect the debt (2)

[TURN OVER]

QUESTION 39

Caleb owes Don R20 000 in respect of several debts. Caleb pays Don an amount of R10 000 but does not stipulate which debt/s he is actually paying.

Which **ONE** of the following principles will apply in this case?

- 1 Capital is paid before interest
- 2 Due debts are paid before debts which have not yet fallen due
- 3 Onerous debts do not have preference over non-onerous debts
- 4 Old debts do not have preference over new debts (2)

QUESTION 40

Ellis undertakes to build a wall around Barnes' property. However, Ellis realises that he has too much work and persuades Basil to take over the job. Ellis, Barnes, and Basil now agree to this arrangement.

Which **ONE** of the following terms will complete the sentence below **CORRECTLY**?

Ellis' obligation is extinguished because of

- 1 settlement
- 2 delegation
- 3 set-off
- 4 cession (2)

TOTAL: 80