

CLA1501

(476818)

October/November 2017

COMMERCIAL LAW IA

Duration 2 Hours

80 Marks

EXAMINERS

FIRST

SECOND

ADV N HLONGWANE

PROF TE MANAMELA

Closed book examination

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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 is a closed book examination
- 2 This paper is divided into **2 SECTIONS SECTION A** consists of **written questions** and counts 40 marks **SECTION B** consists of **20 multiple-choice questions** which count 2 marks each, totalling 40 marks **The paper therefore counts 80 marks.**
- 3 The paper consists of **11 pages** Make sure that your paper contains all the questions and all the pages
- 4 Answer the **multiple-choice questions** on the **mark-reading sheet** provided to you
- 5 Write your student number on your mark-reading sheet, answer book and this examination paper
- 6 You may use this paper and your answering book to do your rough work on, but you are under an **obligation** to return this paper as well as the mark-reading sheet and your answer book at the end of the examination
- 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 all the questions

SECTION A**QUESTION 1**

- (a) Name and briefly discuss the TWO methods through which an original right of ownership may be established (5)
- (b) Mention and discuss FIVE circumstances under which an offer may fall away (10)
- (c) Joe borrows R10 000 from Nick. They agree that Joe will repay the money in five instalments over the following five months. At the end of the first month Joe gives Nick R2 000 but refuses to pay any of the other instalments
- (i) Indicate the period of prescription in respect of this debt (1)
- (ii) List only FIVE ways in which a personal right may be terminated (5)
- (d) Briefly explain the following
- (i) Legal capacity (2)
- (ii) Capacity to act (2)
- (e) Sandy and John conclude a contract of sale of a home theatre system for R5 000. They agree that John will pay a deposit of R2 000 and instalments of R500 at the end of each month until the full amount has been paid. Two months after the conclusion of the contract John and Sandy marry in community of property.
- Briefly explain in which way was John's debt to Sandy extinguished? (5)

[30]**QUESTION 2**

Indicate whether the following statements are **TRUE** or **FALSE**. Give reasons for your answers in each case.

- (a) The Constitution sets out guidelines for interpreting statutes (3)
- (b) A minor under the age of seven years has limited capacity to act (3)

[6]

QUESTION 3

Match column B with column A. For example: (a) – 3 1 Answer questions (a) – (d).

COLUMN A	COLUMN B
(a) Personality Right	3 1 Servitude on land
(b) Intellectual Property Right	3 2 Dignity
(c) Personal Right	3 3 Invention
(d) Real Right	3 4 Contract

(4)

SECTION A: TOTAL [40]**TURN THE PAGE FOR SECTION B**

SECTION B

QUESTION 1

Which **ONE** of the following legal systems is the basis of the South African legal system?

- 1 Roman-Dutch law
- 2 Roman law
- 3 English law
- 4 Dutch law (2)

QUESTION 2

Consider the following statements

- A The Supreme Court of Appeal in Bloemfontein is a court of appeal for all matters which fall within the jurisdiction of the High Court
- B A case relating to the interpretation of a will may be heard by a magistrate's court.
- C High Courts may not hear any constitutional matters that arise in their geographical areas of jurisdiction
- D The Constitutional Court has the final say in all matters relating to the interpretation, protection and enforcement of the provisions of the Constitution

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

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

QUESTION 3

Tanya buys Joe's house and pays the full purchase price. Tanya acquires ownership of the house on

- 1 conclusion of the contract of sale
- 2 payment of the full purchase price

- 3 registration of the transfer at a deed office
- 4 occupation of the house (2)

QUESTION 4

Pat wishes to grant Hlomla a usufruct to live in Pat's house. The parties are not sure of the law regarding usufruct.

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

- 1 Hlomla would have the right to let the house if he had to move to another province
- 2 Hlomla is entitled to demolish one wing of the house and install a swimming pool in that area
- 3 Hlomla is not allowed to sell his usufruct to Riaan
- 4 Pat can grant Hlomla a usufruct to last until Hlomla graduates from university in four years' time (2)

QUESTION 5

Mary and Susan entered into an oral contract. Mary wanted a motorbike for her son and was under the impression that they had entered into a contract of sale for a motorbike. Susan however was under the impression that a contract of lease for the motorbike had been concluded. Mary approaches you for advice regarding the validity of the contract.

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

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

QUESTION 6

Thami and Sabelo arrange telephonically to meet at a coffee shop at 10h00 the next day

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

- 1 A contract arises as consensus exists
- 2 No contract arises as Thami and Sabelo have no intention to be legally bound
- 3 A contract has come about as a common intention exists and it has been made known to the other party
- 4 No contract arises as nothing was put in writing (2)

QUESTION 7

At an auction of vintage motor cars the conditions of sale expressly provide that the auction is held subject to reservation. Kgomotso makes a bid of R30 000 on a vehicle of which the reserve price is R50 000

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

- 1 Kgomotso made a valid offer which the auctioneer is obliged to accept because it was the highest bid
- 2 Kgomotso made a valid offer which the auctioneer can accept or reject regardless of whether it is the highest bid
- 3 A valid contract came into existence when Kgomotso accepted the auctioneer's offer
- 4 Kgomotso's bid of R30 000 constitutes acceptance of the offer which the auctioneer made to accept the highest bid (2)

QUESTION 8

In which **ONE** of the following situations does consensus **NOT** exist?

- 1 Romeo, the seller, tells the purchaser that he is buying a 2016 model car, while it is in fact a 2014 model
- 2 Romeo, the seller, does not know whether the purchaser is Jonathan Lee or his brother Johnny Lee
- 3 Surgeon Mbatha convinces his patient, a very sick Menzi, shortly before Menzi is to undergo an operation, to sell his car cheaply to him

- 4 Romeo persuades Bheki at gun point to sell him his 2009 model Enzo car for R5000, although it is worth R50 000 (2)

QUESTION 9

Lesiba and Dorothy married out of community of property on 1 November 1999

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

- 1 Lesiba and Dorothy have a joint estate
- 2 Lesiba and Dorothy both lose their full capacity to act on marriage
- 3 Lesiba and Dorothy are jointly and severally liable to third parties for debts incurred for necessities for the common household
- 4 Dorothy has to give her consent for the sale of a farm which belongs to Lesiba (2)

QUESTION 10

Which **ONE** of the following agreements is lawful?

- 1 A contract which is unreasonable or unjust
- 2 A contract which is against public policy
- 3 A contract which is contrary to good morals
- 4 A contract which is contrary to a statute (2)

QUESTION 11

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

Compliance with formalities is a requirement for the validity of

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

QUESTION 12

Moses undertakes to buy Xolile a new truck one month after Simon's death has occurred

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

- 1 The moment for performance cannot be determined since it is uncertain when Simon will die
- 2 A contractual relationship between Moses and Xolile arises and neither of them may rescind the contract
- 3 This is an example of a resolutive time clause since the contractual obligation only has effect until the occurrence of a certain event
- 4 This is an example of a suspensive condition since the contractual obligations are suspended until the condition is fulfilled (2)

QUESTION 13

Kagiso and Thabo agree that Kagiso will transport five head of cattle to Zuurbekom for Thabo, provided that Kagiso can arrange to borrow Lesego's truck for two days. The proviso that Kagiso must be able to borrow the truck for two days is known as a

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

QUESTION 14

A term in a contract which allows a party to retain the performance of the other party when the contract is cancelled due to breach of contract, is known as a

- 1 forfeiture clause
- 2 rouwgeld clause
- 3 penalty clause
- 4 condition (2)

QUESTION 15

Bongi and Mpho conclude a written contract for the sale of a three-piece cutlery set. At a later stage, Mpho discovers that he accidentally wrote, "a four-piece cutlery set"

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

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

QUESTION 16

Ricky and Ross enter into a contract in terms of which Ross has to deliver a dozen bottles of export wine to Ricky. Ricky has already paid the purchase price. Ross now indicates that he does not intend to perform in terms of the contract.

Which **ONE** of the following types of breach of contract has Ross committed?

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

QUESTION 17

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

A debtor commits breach of contract in the form of default (*mora debitoris*) if he or she

- 1 has tendered defective or improper performance
- 2 has delayed performance

- 3 has rendered performance impossible
- 4 has indicated that performance will not take place as arranged (2)

QUESTION 18

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

- 1 Compensation for pain and suffering can be claimed on the basis of contract where it is the direct result of the breach of contract
- 2 Cancellation of a contract is a normal remedy which is always available to contracting parties
- 3 An order for specific performance is a court order which commands a contracting party to render the performance he or she has undertaken to render
- 4 Damages calculated according to the creditor's negative interest places him or her in the same patrimonial position in which he or she would have been had proper and timeous performance taken place (2)

QUESTION 19

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

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

QUESTION 20

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

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

SECTION B: TOTAL [40]

TOTAL: [80]

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PART 1 (GENERAL/ALGEMEEN) DEEL 1

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INITIALS AND SURNAME
VOORLETTERS EN VAN

DATE OF EXAMINATION
DATUM VAN EKSAMEN

EXAMINATION CENTRE (E.G. PRETORIA)
EKSAMENSENTRUM (BY PRETORIA)

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For use by examination invigilator
Vir gebruik deur eksamenopsiener

IMPORTANT

- USE ONLY AN HB PENCIL TO COMPLETE THIS SHEET
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- CHECK THAT THE UNIQUE NUMBER HAS BEEN FILLED IN CORRECTLY
- CHECK THAT ONLY ONE ANSWER PER QUESTION HAS BEEN MARKED
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- GEbruik slegs n HB potlood om hierdie blad te voltooi
- Merk as volg →
- Kontroleer dat u voorletters en van reg ingevul is
- Vul u studentenommer van links na regs in
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- Maak seker dat net een alternatief per vraag gemerk is
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PART 2 (ANSWERS/ANTWOORDE) DEEL 2

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- ② The paper number pertains only to first-level courses consisting of two papers

WRITE

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 for the first paper and

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 for the second. If only one paper, then leave blank

- ③ Fill in your initials and surname
- ④ Fill in the date of the examination
- ⑤ Fill in the name of the examination centre
- ⑥ WRITE the digits of your student number HORIZONTALLY (from left to right). Begin by filling in the first digit of your student number in the first square on the left, then fill in the other digits, each one in a separate square
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NB Your unique paper number appears at the top of your examination paper and consists only of digits (e.g. 403326)
- ⑨ In each vertical column mark the digit that corresponds to the digit number in your unique paper number as follows [-]
- ⑩ Question numbers 1 to 140 indicate corresponding question numbers in your examination paper. The five spaces with digits 1 to 5 next to each question number indicate an alternative answer to each question. The spaces of which the number correspond to the answer you have chosen for each question and should be marked as follows [-]
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