

CLA1501

( 476630)

May/June 2017

## COMMERCIAL LAW IA

Duration 2 Hours

80 Marks

## EXAMINERS

FIRST

SECOND

MR M PHOSA  
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 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 totalling 40 marks **The paper therefore counts 80 marks.**
- 2 The paper consists of **11 pages** Make sure that your paper contains all the questions and all the pages
- 3 Answer the **multiple-choice questions** on the **mark reading sheet** provided to you
- 4 Write your student number on your mark reading sheet, answer book and this examination paper
- 5 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
- 6 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) The South African legal system, unlike Roman law, is not codified. Explain the meaning of this statement (2)
- (b) South African courts consist of lower and superior courts. List the various officers that are found in the superior courts (4)
- (c) Describe the specific method of acquisition of ownership of the property in each of the following instances
- (i) Macks buys a piece of land from his uncle, Percy, in order to build a house for his family (1)
  - (ii) Sibusiso goes to the veld to hunt rabbits which belong to no one. He catches three of the rabbits (1)
  - (iii) Mary has bought a car for her brother, Khathu, and intends to give it to him on his 40<sup>th</sup> birthday (1)
  - (iv) Fifty years ago, Musa occupied a piece of land adjacent to his house which he fenced in accidentally and subsequently cultivated (1)
- (d) Personal rights arise from obligations. Name the three sources which may give rise to obligations between legal subjects (3)
- (e) Mmachaka engages a professional seafood caterer to provide seafood for her 50<sup>th</sup> birthday party. She invites 30 guests, who all confirm that they will attend her birthday party. However, the day before the party, 15 of the guests inform Mmachaka that they will no longer attend the party because they prefer to attend a street party at the same time and on the same day in Sandton, Johannesburg, a walking distance from her upmarket house.
- Advise Mmachaka whether she can take any legal action against the 15 guests who failed to attend the birthday party for breach of contract (5)
- (f) Name two factors influencing a person's capacity to act (2)

**[20]****QUESTION 2**

- (a) Contracts are usually conducted through the process of offer and acceptance. Briefly set out the six requirements for a valid offer (6)
- (b) Musa and Chaka telephonically arrange to meet at Mzolisto's Restaurant. At the restaurant Musa offers to buy Chaka's car for R150 000 which Chaka accepts without any reservation. A week later, Chaka calls Musa to tell him how wonderful it is to do business with him. The delivery of the car and the payment of the purchase price take place at Morebene Shopping Centre, two days after the call.
- (i) When and where was the contract concluded between Musa and Chaka? (3)

- (ii) Is it possible for Musa to withdraw his letter of acceptance? (2)
  - (c) Masego takes her friends Juliet and Iris to a restaurant. When Masego wants to pay, she discovers that she does not have her purse with her. Juliet agrees to pay the bill, but she suspects that Masego will not repay her. Juliet therefore asks Iris if she will bind herself as surety for Masego's debt. Iris agrees by nodding her head.  
Is the agreement between Juliet and Iris valid? (4)
- [15]

**QUESTION 3**

Match column B with column A. For example: (a) – 3.1. Answer questions (a) – (e).

COLUMN A	COLUMN B
(a) <i>Ratio decidendi</i>	3.1 The capacity or competence to acquire and to bear rights and duties
(b) Tacit emancipation	3.2 A public sale where the price is neither set nor arrived at by negotiation, but is discovered through the process of competition and open bidding
(c) Legal capacity	3.3 The underlying reason for a court's ruling
(d) Auction	3.4 Any right that a legal subject has regarding a specific legal object and which is protected by law
(e) Right	3.5 This occurs where the guardian allows the minor to lead an economically separate and independent life. The guardian's consent may be given expressly or tacitly
	3.6 A remark in passing that was unnecessary for the decision of the case and is, therefore, not binding in subsequent court cases

(5)

**SECTION A: TOTAL [40]**

**TURN THE PAGE FOR SECTION B**

<b>SECTION B</b>
------------------

**QUESTION 1**

Which **ONE** of the following South African courts is a lower court?

- 1 the Labour Court
- 2 the Constitutional Court
- 3 the Magistrate's Court
- 4 the Land Claims Court (2)

**QUESTION 2**

Which **ONE** of the following statements regarding the application of the doctrine of *stare decisis* is **INCORRECT**?

- 1 A High Court, irrespective of whether it is a full bench or not, is bound by the decisions of the Supreme Court of Appeal
- 2 One High Court is not bound to follow the decisions of a High Court in another area of jurisdiction.
- 3 Within the area of jurisdiction of one High Court, a full bench is bound by an earlier decision of the full bench of the same Court
- 4 If there are conflicting judgments of different High Courts, a magistrate's court can follow any decision it deems to be correct (2)

**QUESTION 3**

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

- 1 The law of family is concerned with the relationship between family members
- 2 The law of family is concerned with the relationship between parents and children
- 3 The law of personality is concerned with a person's right to his or her reputation
- 4 The law of personality is concerned with a person's right to privacy (2)

**QUESTION 4**

Alfred makes a will in terms of which he leaves his house to his son, Michael. Michael may not sell the house as long as his mother, Martha, is alive, since the will provides that Martha is entitled to occupy the house until her death. In terms of the will Martha has a limited right to enjoy and use the property.

Which **ONE** of the following limited rights does Martha have in this instance?

- 1 a praedial servitude
- 2 possession
- 3 a usufruct
- 4 occupation

(2)

**QUESTION 5**

Which **ONE** of the following statements regarding the estate of a deceased person is **CORRECT**?

- 1 A deceased estate consists of all the assets and liabilities belonging to the deceased
- 2 The debts of the deceased person are binding on the estate and the executor personally
- 3 The executor, together with the deceased person, can sue and be sued with regard to matters of the estate
- 4 Where the deceased left a valid will, the estate passes according to the rules of intestate succession

(2)

**QUESTION 6**

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

- 1 A reasonable mistake about a material fact in the contents of a contract does not always render the contract void
- 2 Despite mistake about the contents of a contract, consensus will still exist between the parties
- 3 A contract cannot be valid in the absence of consensus
- 4 Mistake about the motive or reason for concluding a contract affects the validity of the contract

(2)

**QUESTION 7**

Kwena and Richard negotiated the sale of a house. Kwena represented to Richard that the house had a sound foundation and that there was no danger of the walls starting to crack. They both signed the contract and two days later, after a heavy thunderstorm, three walls cracked as a result of the house having been built on clay.

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

- 1 Richard does not have any remedies against Kwena since he signed the contract of sale
- 2 The contract between Kwena and Richard is voidable on grounds of misrepresentation
- 3 The agreement between Kwena and Richard is void on grounds of misrepresentation
- 4 No contract came into existence because the parties did not reach consensus (2)

**QUESTION 8**

Which **ONE** of the following persons has limited capacity to perform juristic acts?

- 1 a man who has been declared a prodigal by the court
- 2 an unmarried adult who has been drinking heavily
- 3 a divorced woman who is seventeen years old
- 4 a minor under the age of seven years (2)

**QUESTION 9**

Consider the following persons

- A a fourteen-year old boy
- B a seven year old girl
- C a six-year old boy
- D a eighteen 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 A, B and C
- 3 only B and D
- 4 only C and E

(2)

**QUESTION 10**

Jane, a sixteen year old woman, marries Dan, a seventeen year old man, on 30 January 2016. They both attain majority as a result of having concluded this valid marriage. Jane discovers that Dan is an alcoholic and has withdrawn all the savings from their joint account to buy liquor. She files for divorce in the High Court in Johannesburg. On 15 September 2016 the High Court issues a decree of divorce.

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

- 1 After the divorce both parties revert to being minors
- 2 After the divorce both parties remain majors
- 3 After the divorce only Dan will remain a major
- 4 None of the above

(2)

**QUESTION 11**

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

Contracts in restraint of trade are

- 1 in principle invalid and unenforceable, because a person's freedom to compete in the employment market is restrained and it is therefore contrary to public policy
- 2 in principle valid but unenforceable, because parties may conclude an agreement to this effect but a court will give precedence to public interest over contractual commitment if these interests are in conflict
- 3 in principle valid and enforceable, because the law permits the restraint of a person's freedom to trade if the parties freely conclude an agreement to this effect
- 4 in principle invalid but enforceable, because the law does not want to unnecessarily restrain a person's freedom to trade

(2)

**QUESTION 12**

Which **ONE** of the following donations has to be in writing and signed by the donor?

- 1 Aaron gives his 18-year-old niece, Mary, a BMW car for her birthday
- 2 John gives his wife Betty, to whom he is married out of community of property, a brand-new car
- 3 Kamo undertakes to give his friend Lebo, a new BMW car in six months' time
- 4 Tshidi gives her mother a gift voucher to the value of R 3 000 (2)

**QUESTION 13**

Under certain circumstances an electronic signature can legally fulfil the same function as a traditional handwritten signature

Which **ONE** of the following statements regarding the form of an electronic signature is **INCORRECT**?

- 1 An electronic signature can be a typed name at the end of a document
- 2 An electronic signature can be a scanned handwritten signature
- 3 An electronic signature can be the use of complex identification technology if it is intended to act as a signature
- 4 An electronic signature can be a handwritten signature at the end of a document (2)

**QUESTION 14**

Donald undertakes to buy James a new car one month after Samson'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 Samson will die.
- 2 A contractual relationship between Donald and James 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 15**

Matome wants to purchase a stand from Tapiwa. They agree that Matome will purchase the stand if the beach is visible from the stand. Tapiwa is not sure whether the beach is visible from the stand.

What is such a contractual term called?

- 1 a warranty
- 2 a condition
- 3 a modus
- 4 a supposition (2)

**QUESTION 16**

Mampuru and Makhado conclude a contract of sale in terms of which Plot 200 is sold to Makhado for R800 000. Mampuru's secretary types the agreement the following day and erroneously indicates the price as R80 000. Mampuru and Makhado 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 R80 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 17**

Thuli and Sally conclude a contract in terms of which Thuli will do the interior decorating of Sally's holiday flat. The contract price of R25 000 includes the work and materials. Before Thuli can start with the project, the flat is completely destroyed by fire as a result of Sally's negligence.

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

- 1 Thuli cannot claim anything from Sally, since the contract has been terminated
- 2 Thuli can claim the full contract sum of R25 000 from Sally as damages
- 3 Thuli can claim R25 000 from Sally, less the amount she has saved by not having to perform
- 4 Thuli can claim only in respect of expenses she has already incurred (2)

**QUESTION 18**

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

- 1 An agreement in terms of which a creditor and debtor agree that the former will discharge the latter from his or her contractual obligations is called release
- 2 Release is often accompanied by an intention to donate on the part of the debtor
- 3 A mere offer of release by the creditor to the debtor is sufficient to constitute release
- 4 An offer of release can only be done orally or in writing (2)

**QUESTION 19**

Tshepo wins a gift voucher from Shine Car Fixtures. In terms of the voucher, she is entitled to a free carwash. Since she does not own a car, she cedes her right to the carwash to her friend Mpho.

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

- 1 An agreement between Tshepo and Shine Car Fixtures in terms of which a new obligation is created between Shine Car Fixtures and Mpho, is a cession of rights
- 2 An agreement between Tshepo and Mpho in terms of which Mpho becomes entitled to performance by Shine Car Fixtures, is a cession of rights
- 3 An agreement between Shine Car Fixtures and Mpho in terms of which a new obligation is created between Shine Car Fixtures and Mpho, is a cession of rights.

- 4 An agreement between Tshupo and Mpho in terms of which a new obligation is created between Shine Car Fixtures and Mpho, is a cession of rights (2)

**QUESTION 20**

An obligation can be terminated by

- 1 prevention of performance
- 2 supervening impossibility of performance
- 3 supervening impossibility of performance where the debtor is in *mora*
- 4 initial impossibility of performance (2)

**SECTION B: TOTAL [40]**

**TOTAL: [80]**

**PART 1 (GENERAL/ALGEMEEN) DEEL 1**

STUDY UNIT (E.G. PSY100-X)  
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INITIALS AND SURNAME  
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For use by examination invigilator  
Vir gebruik deur eksamenopsiener

**IMPORTANT**

- 1 USE ONLY AN HB PENCIL TO COMPLETE THIS SHEET
- 2 MARK LIKE THIS
- 3 CHECK THAT YOUR INITIALS AND SURNAME HAS BEEN FILLED IN CORRECTLY
- 4 ENTER YOUR STUDENT NUMBER FROM LEFT TO RIGHT
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- 7 CHECK THAT ONLY ONE ANSWER PER QUESTION HAS BEEN MARKED
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**BELANGRIK**

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- 5 KONTROLEER DAT U DIE KORREKTE STUDENTENOMMER VERSTREK HET
- 6 KONTROLEER DAT DIE UNIEKE NOMMER REG INGEVUL IS
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**PART 2 (ANSWERS/ANTWOORDE) DEEL 2**

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Specimen only

## MARK READING SHEET INSTRUCTIONS

Your mark reading sheet is marked by computer and should therefore be filled in thoroughly and correctly

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*PLEASE DO NOT FOLD OR DAMAGE YOUR MARK READING SHEET*

Consult the illustration of a mark reading sheet on the reverse of this page and follow the instructions step by step when working on your sheet

Instruction numbers ① to ⑩ refer to spaces on your mark reading sheet which you should fill in as follows

- ① Write your paper code in these eight squares, for instance

P	S	Y	1	0	0	-	X
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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
- ⑦ In each vertical column mark the digit that corresponds to the digit in your student number as follows [-]
- ⑧ WRITE your unique paper number HORIZONTALLY  
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 [-]
- ◆ For official use by the invigilator. Do not fill in any information here