

CLA1501

(472910)

May/June 2018

Commercial Law IA

Duration 2 Hours

80 Marks

EXAMINERS

FIRST

PROF C STOOP

SECOND

ADV S EBRAHIM

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 **14 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
- 8 Good luck with the examination!

SECTION A

Answer ALL SECTION A questions in your answer book:

QUESTION 1

1 1 Which **FIVE** matters cannot be taken to the Small Claims Court even if they involve amounts of R15 000 or less (5)

1 2 Indicate **FIVE** requirements for the conclusion of a valid and legally enforceable contract (5)

1 3 Indicate **FIVE** requirements for the offer and acceptance that will give rise to the formation of a valid contract. (5)

1 4 The primary purpose when creating contracts is their fulfilment or discharge by due and proper performance. Unfortunately, not all contracts end in this way. Where the intended result is not achieved, because of the fault of one of the contracting parties, the party commits breach of contract

Name **FIVE** different forms of breach of contract (5)
[20]

QUESTION 2

Fill in the missing words (write each answer down in your answer book):

- 2 1 _____ is a social science, it has to provide for the changing needs of a developing community and consequently is inseparably bound up with the community it has to serve (1)
- 2 2 The doctrine of _____ literally means “the decision stands” (1)
- 2 3 Ownership is protected primarily by granting the owner the remedy known as the _____ (1)
- 2 4 A right of _____ is a limited real right over the property of another, which confers on the holder of the right specific powers to use the property in a particular way (1)
- 2 5 _____ is the most important example of a personal servitude (1)
- 2 6 The traditional age of majority was _____ years (1)
- 2 7 _____ occurs where the guardian allows the minor to lead an economically independent existence. The consent must, however, appear from some act which shows the guardian’s consent (1)
- 2 8 The essential feature of a _____ contract is that one party undertakes to render performance to another if some uncertain future event, which is dependent on chance or luck, occurs (1)

2 9 In terms of the _____, once a contract has been reduced to writing or integrated into a single complete document, the written document is the only record of the agreement, and it is this document which has to be interpreted in order to determine the content of the contract

(1)

2 10 _____ as a form of breach of contract is understood as any behaviour by a party to a contract indicating that he or she may not honour the obligations under the contract

(1)
[10]

QUESTION 3

Match Column B with Column A for example: 3.1 a

3 1 Contracts for the alienation of land	a A contractual term whereby a contracting party accepts absolute responsibility for proper performance relating to the absence of defects in the warrantor's product or service
3 2 Contracts of suretyship	b A contractual term which renders the continued existence of the contract dependent on the occurrence (or non-occurrence) of a specified uncertain future event
3 3 <i>Essentialia</i>	c A contractual term which suspends the operation of the contractual obligations in terms of the contract until the condition has been fulfilled
3 4 <i>Naturalia</i>	d Where the contracting parties have special requirements, additional terms may be inserted into the contract
3 5 <i>Incidentalia</i>	e Terms which the law attaches to every contract of a particular class
3 6 Suspensive condition	f Those terms which are essential for the classification of a contract as belonging to a particular class or category of contract
3 7 Resolutive condition	g Is binding only if it is in writing and signed by, or on behalf of the surety
3 8 Warranty	h No contract for the alienation of land is valid unless it is contained in a contract of alienation signed by the parties to the contract
3 9 Modus	i A clause entitling a contracting party to cancel the contract summarily if the other party is in breach of contract
3 10 Cancellation clause	j A contractual term which burdens a contracting party's right to the performance made to him or her in terms of the contract

(10)

SECTION A: TOTAL [40]

SECTION B

QUESTION 1

Before a customary rule will be recognised as a legal rule, certain requirements have to be met. Which **ONE** of the following statements is **INCORRECT**?

- 1 It must be reasonable
 - 2 It must have existed for at least 3 months
 - 3 The contents of the customary rule must be certain and clear
 - 4 It must be generally recognised and observed by the community
- (2)

QUESTION 2

Which **ONE** of the following statements regarding praedial servitudes is **CORRECT**?

- 1 Praedial servitudes confer on a person in his or her capacity as owner of an adjacent property, a limited right to the property of another
 - 2 Praedial servitudes confer on the holder in his or her personal capacity, the right of use and enjoyment of property of which another is the owner
 - 3 Praedial servitudes confer on the holder, in his or her capacity as owner of an adjacent property, a limited right to the property of another
 - 4 None of the above statements is correct
- (2)

QUESTION 3

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

- 1 In terms of South African law, a minor or child under the age of seven years has limited capacity to act
 - 2 In terms of South African law, a minor or child over the age of seven years does not have an independent intellect and can therefore not exercise an independent will.
 - 3 In terms of South African law, a minor or child over the age of seven years, has no capacity to act
 - 4 In terms of South African law, a minor or child over the age of seven years, has an independent intellect and can therefore exercise an independent will
- (2)

QUESTION 4

Kylie and Dudu conclude a contract in which Kylie sells a small part of the beach in front of her beach-house in Umhlanga to Dudu for R135 000. This contract is an example of _____ Choose the **CORRECT** answer

- 1 A contract which cannot be legally executed
- 2 A contract contrary to the common law
- 3 A contract contrary to public policy
- 4 A contract contrary to statutory law

(2)

QUESTION 5

“Click-wrapped” agreements are specifically provided for in the _____. Choose the **CORRECT** answer

- 1 Consumer Protection Act 68 of 2008
- 2 National Credit Act 34 of 2005
- 3 Administration of Internet Transactions Act 22 of 2001
- 4 Electronic Communications and Transactions Act 25 of 2002

(2)

QUESTION 6

Which **ONE** of the following statements is **NOT** an element of *mora creditoris*?

- 1 The performance must be dischargeable
- 2 The debtor must tender performance
- 3 Performance must be delayed
- 4 The creditor must fail to give his or her co-operation and thereby delay performance

(2)

QUESTION 7

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

- 1 Wendy, a seven year old girl, inherits a very valuable diamond ring from her grandmother Peter, Wendy's father, sells the ring to Sandy for R20 000, while its actual value is R90 000 Wendy will never be able to remedy this detrimental contract
- 2 Mr John agrees with his best friend, Mr Zwane, that his seventeen year old daughter, Beauty, will marry Mr Zwane Beauty refuses to marry Mr Zwane, because she wants to study medicine at the Medical University of South Africa The marriage nevertheless takes place without her consent, because arranged marriages are part of her culture The marriage is valid
- 3 John, a thirteen year old boy, undergoes an HIV test without his guardian's consent John is able to do so lawfully
- 4 None of the above statements is correct

(2)

QUESTION 8

Ted and Robyn are engaged They included a clause in their ante-nuptial contract to the effect that Ted shall make Robyn his heir

Which **ONE** of the following statements regarding the agreement between Ted and Robyn is **CORRECT**?

- 1 It is a valid contract
- 2 It is an unenforceable agreement since it is prohibited by legislation.
- 3 This agreement constitutes a contract that is physically impossible
- 4 It is an agreement in terms of which Ted's freedom to participate in legal intercourse is restrained

(2)

QUESTION 9

Itumeleng is very excited as he has just heard that he has won a new Landrover. He phones Shadrack and tells him the good news. Itumeleng offers to give his old Landrover to Shadrack, who gladly accepts the offer. They agree that Itumeleng will deliver the old Landrover to Shadrack once he has received his new Landrover.

Which **ONE** of the following statements regarding the validity of the agreement between Itumeleng and Shadrack is **CORRECT**?

- 1 A valid contract has been concluded
 - 2 The agreement between them is not a contract, because no price has been specified
 - 3 A valid contract will only arise once Itumeleng has received his new Landrover
 - 4 The agreement is void, because it is not contained in a written document
- (2)

QUESTION 10

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 11

Which **ONE** of the following is **NOT** a guideline for the interpretation of contracts?

- 1 Words that carry a technical meaning will be interpreted in accordance with their specific use
- 2 Normally all words will have their ordinary grammatical meaning
- 3 If ambiguity exists, the contract will usually be regarded as invalid
- 4 Where the parties express themselves on a particular matter but omit some detail, common law rules will regulate that aspect

(2)

QUESTION 12

Themba and Kwena conclude a contract of sale for property 25 Meerhof Gardens, which belongs to Kwena. Their contract stipulates that Themba must pay an amount of R50 000 as deposit on the purchase price within two days of Kwena's acceptance of the offer. The money must be paid into Kwena's bank account, and Kwena must provide Themba with the name of his bank, the account number and the branch code. Four days after Kwena has accepted Themba's offer, Kwena still has not provided the required information to Themba.

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

- 1 Themba has committed breach of contract in the form of *mora debitoris*, as he has not paid the deposit
- 2 Kwena has committed breach of contract in the form of *mora creditoris*, as he has neglected to give his co-operation to enable Themba to fulfil his obligation with regard to the deposit
- 3 As Themba spent the R50 000 before he received the necessary information from Kwena, supervening impossibility of performance has occurred, and their contract is terminated
- 4 Kwena is entitled to cancel the contract if he has given Themba notice of intention to cancel the contract and a reasonable time to comply with his obligation to pay the deposit

(2)

QUESTION 13

An order for specific performance is a court order which

- 1 prevents a party from doing something that is contrary to the terms of the contract
- 2 allows a party to a contract to withhold his or her performance until the other contracting party has performed in terms of the contract
- 3 orders a party to a contract to render the performance he or she undertook to render in that contract
- 4 orders a party to render defective performance

(2)

QUESTION 14

Reyansh wins a gift voucher from Shine Car Fixtures. In terms of the voucher, he is entitled to a free carwash. Since he does not own a car, he cedes his right to the free carwash to his friend Sahil.

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

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

(2)

QUESTION 15

The transfer of the right from the cedent to the cessionary has several consequences. Which **ONE** of the following statements regarding the consequences of cession is **CORRECT**?

- 1 The right forms part of the patrimony of the cedent and not that of the cessionary
- 2 The cessionary alone has the right to collect the debt
- 3 Once the cedent has ceded his or her claim to one person, the cedent can still cede it to another person
- 4 The claim is transmitted to the cessionary without all the benefits and privileges such as security or interest

(2)

QUESTION 16

Which **ONE** of the following statements concerning transfer and termination of personal rights is **CORRECT**?

- 1 Release or 'waiver' as it is often called is an agreement between the creditor and the debtor in terms of which the old obligation between them is extinguished and a new obligation is created in its place
- 2 Novation is an agreement between the creditor and the debtor in terms of which the creditor releases the debtor from his or her contractual obligations
- 3 Delegation takes place when a person becomes both creditor and debtor in respect of the same obligation
- 4 Settlement also called "compromise" is an agreement by which the parties settle a dispute between them about an actual or supposed obligation

(2)

QUESTION 17

Which **ONE** of the following statements regarding the periods of prescription of debts is **CORRECT**?

- 1 The period of prescription of a debt secured by mortgage bond is 10 years
- 2 The period of prescription of a judgment debt is 15 years
- 3 The period of prescription of a debt in respect of any taxation imposed or levied by or under any law is 30 years
- 4 The period of prescription of a debt owed to the State in respect of any share of the profits, royalties or any similar consideration payable in respect of the right to mine minerals or other substances is 25 years

(2)

QUESTION 18

Which **ONE** of the following statements regarding execution of the contract is **CORRECT**?

- 1 An order for specific performance is an order where the court will order a contracting party to render a reduced performance
- 2 An order for reduced performance is an order where the court will order a contracting party to render the performance he or she has undertaken to render
- 3 An order for specific performance can be granted where performance is no longer possible
- 4 An order for specific performance will not be made or enforced against a person whose estate has been sequestrated

(2)

QUESTION 19

Which **ONE** of the following statements is **NOT** one of the requirements that the plaintiff must prove before the court will grant an order for reduced performance?

- 1 The defendant is using the defective performance
- 2 The circumstances are such that it would be equitable for the court to exercise its discretion in favour of the granting of such an order
- 3 What the reduced contract price should be, that is, the contract price less the amount required to bring the performance up to the required standard
- 4 The defendant is not using the defective performance

(2)

QUESTION 20

Which **ONE** of the following statements regarding the consequences of cancellation of a contract is **CORRECT**?

- 1 The general rule is that if either one or both of the parties have performed, whatever has been performed by the other party must be returned to him or her (restitution)
- 2 A court may not dispense with restitution even if it considers it just and equitable to do so
- 3 If restitution has become impossible, the party who is cancelling the contract is not relieved of the duty to return the performance which has been received
- 4 Where it is impossible for the guilty party to return the innocent party's performance, the innocent party has to return the guilty party's performance

(2)

SECTION B: TOTAL [40]
EXAM PAPER TOTAL: [80]