

CLA1503

(474597)

May/June 2013

COMMERCIAL LAW 1C

Duration 2 Hours

80 Marks

EXAMINERS .
FIRST
SECONDMR MB MASUKU
PROF TE MANAMELA

Closed book examination

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This paper consists of 13 pages plus instructions for the completion of a mark reading sheet.

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 **13** 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.

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QUESTION 1

Which **ONE** of the following is binding on other courts in the hierarchy of courts?

- 1 the *ratio decidendi*
- 2 an *obiter dictum*
- 3 the *corpus iuris civilis*
- 4 none of the above

(2)

QUESTION 2

Which **ONE** of the following is **NOT** an authoritative source of South African law?

- 1 South African case law
- 2 *Corpus Iuris Civilis*
- 3 English case law
- 4 The Constitution of the Republic of South Africa, 1996

(2)

QUESTION 3

Hurricane Henriette hits the city of Cape Town. Rene and Henry are neighbours. The hurricane has blown the roof of Henry's house away in his absence. Rene, without the permission and knowledge of Henry quickly makes arrangements for Henry's property to be put in storage at the sum of R500, which Rene duly pays.

Which **ONE** of the following enrichment actions may Rene use to claim from Henry the R500 which she has paid?

- 1 General enrichment action
- 2 *Codictio indebiti*
- 3 *Negotiorum gestio*
- 4 *Condictioes*

(2)

QUESTION 4

Bison owes Charles money. They agree to have a fist-fight, and if Bison wins, Charles will free him from his debt. Bison injures Charles severely.

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

- 1 Bison did not commit a delict because Charles voluntarily consented to the risk of injury
- 2 Bison did not commit a delict because he acted in self-defence
- 3 Bison committed a delict because South African law regards assault as a crime.
- 4 Bison committed a delict because consent to serious bodily injury is contrary to good morals and therefore invalid.

(2)

QUESTION 5

Contracts differ from other types of agreements

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

- 1 A contract cannot be entered into by more than two parties.
- 2 An agreement is a particular type of contract
- 3 An agreement is a source of legal obligations.
- 4 A contract creates legally enforceable obligations (2)

QUESTION 6

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 Tshepo 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 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 (2)

QUESTION 7

Mr and Mrs Party invite 250 guests to the wedding reception of their daughter. They agree with Good Food Caterers that the cost of the reception will be calculated at R100 per guest. For that reason Mr and Mrs Party state expressly on the wedding invitation that no children are invited to the reception. No less than 20 children attend the reception. Good Food Caterers charge Mr and Mrs Party extra for the 20 additional guests.

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

- 1 Mr and Mrs Party may not claim the additional costs from the uninvited children, because, as minors, they are not liable for performance in terms of the contract, unless their parents or guardians ratify the contract.
- 2 Mr and Mrs Party may claim the additional costs from the parents or guardians of the children, because by bringing extra children to the reception contrary to the express statement in the offer (invitation) that children were not invited, they committed breach of contract.
- 3 Mr and Mrs Party may refuse to pay Good Food Caterers the additional amount for the uninvited children, since they made a mistake as to the number of guests who would attend the reception, and so did not agree to the additional expenses.
- 4 Mr and Mrs Party may not claim the additional costs from the parents or guardians of the (uninvited) children, since the invitation constitutes only a social arrangement and not a contract, and failure to

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abide by its conditions does not amount to breach of contract

(2)

QUESTION 8

Yvonne and Cephrl 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 Yvonne and Cephrl 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 9

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

- 1 An insolvent has unlimited capacity to act.
- 2 A person with prodigal tendencies has limited capacity to act
- 3 A minor over the age of seven years has limited capacity to act.
- 4 A minor under the age of seven years has limited capacity to act (2)

QUESTION 10

Lihle, a sixteen year old boy, inherited horses worth R90 000 from his late grandfather Lihle lives in a flat with his parents. He would therefore like to sell the horses and invest the money.

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

- 1 Lihle needs his parents' assistance to sell the horses because he is a minor
- 2 Lihle does not need his parents' assistance to sell the horses because he inherited them.
- 3 Lihle does not need his parents' assistance to sell the horses because he reached majority at the age of fourteen.
- 4 Lihle needs his parents' assistance to sell the horses because the value of the horses is more than R50 000. (2)

QUESTION 11

Joely is the plaintiff in a civil case. The advocate tells her that she doesn't have a good case. Joely decides to continue with her claim and to pay Mr Carim, the judge hearing her case, an amount of money in order to ensure success. She goes to his chambers, and hands him a suitcase full of American dollar notes. He promises that he will ensure that her claim succeeds.

Mr Carim delivers judgement against Joely in favour of the defendant.

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

- 1 Joely will succeed with an action against Mr Carim to reclaim the money she paid him since he is in breach of contract
- 2 Joely will succeed with an action against Mr Carim to reclaim the money she paid him, because he has been unjustifiably enriched
- 3 Joely will not succeed with an action against Mr Carim to reclaim the money since her agreement with him is contrary to public policy and therefore legally impossible
- 4 Joely will not succeed with an action against Mr Carim since they did not reach consensus on the amount (2)

QUESTION 12

Victor places a bet with Derick, a bookmaker at the local totalisator, that the Springboks will win the rugby test against Australia. The Springboks wins the game, but Derick refuses to pay Victor his winnings. The bets at this totalisator are regulated by the National Gambling Act.

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

- 1 Victor has no enforceable right against Derick for his winnings, since at common law a wagering contract is mostly invalid
- 2 Victor has no contractual claim against Derick for his winnings, since their contract is contrary to good morals.
- 3 Victor has an enforceable right against Derick on the grounds of unjustified enrichment
- 4 Victor has an enforceable right against Derick for his winnings, since the contract is valid and lawful (2)

QUESTION 13

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

- 1 Formalities are required for the formation of all contracts
- 2 If parties prescribe formalities for their contract, compliance is optional.
- 3 Writing is a formality required for all contracts of sale
- 4 A contract of lease may be concluded without any formalities (2)

QUESTION 14

Tumi owes Peter R20 000 and he asks Rafa to stand surety for his debt. Rafa asks your advice. He says he is not certain whether

- A if the suretyship contract is in writing, he is the only person who can sign it
- B the suretyship contract must be in writing
- C the suretyship contract can be concluded orally or in writing
- D the surety or his agent can sign the suretyship contract

Advise Rafa on which of the above statements are **CORRECT**?

- 1 only A and C
- 2 only A and B
- 3 only B and D
- 4 only C and D

(2)

QUESTION 15

Floors and Maans agree that Floors will buy Maan's yacht 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 yacht might contain a latent defect.

A warranty against latent defects is an example of

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

(2)

QUESTION 16

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)

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QUESTION 17

Chris and Paul enter into a contract in terms of which Paul has to deliver a dozen bottles of export wine to Chris. Chris has already paid the purchase price. Paul 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 Paul committed?

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

QUESTION 18

The remedy of execution of the contract is the obvious remedy for breach of contract.

Which **ONE** of the following orders is an order for the execution of the contract?

- 1 an order for reduced performance
- 2 an order for increased performance
- 3 an order for positive malperformance (2)

QUESTION 19Example 1

Paul agrees to repair Susan's motorcycle. However, before Susan can do so, the motorcycle is burnt out owing to an electrical short circuit. Susan was not aware of any defect in the electrical system of the motorcycle.

Example 2

Trevor agrees to repair Mona's laptop. On the day before Mona must deliver the laptop to Trevor, Mona intentionally drops the laptop for the purpose of claiming insurance on the laptop.

Which **ONE** of the options below best describes the relationship between these two examples?

- 1 Example 1 is an instance of prevention of performance by the creditor, and example 2 is an instance of initial impossibility of performance
- 2 Example 2 is a case of repudiation and example 1 a case of negligence
- 3 Example 1 is a case of supervening impossibility of performance, and example 2 is an instance of prevention of performance
- 4 In Example 1, Susan will be held liable because she was negligent in not having the electrical system repaired and, in example 2, Mona will be held liable for her intentional destruction of the laptop (2)

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QUESTION 20

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 21

Consider the following requirements.

- A Agreement on the purchase price
- B Agreement regarding a warranty against latent defects
- C Agreement regarding the merx
- D Agreement that the merx be delivered

Which of the above are the essential characteristics of a contract of sale?

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

QUESTION 22

Onassis and Charlie agree that Onassis will buy Charlie's Bookshop at a price to be determined by Charlie

Which **ONE** of the following statements regarding the purchase price and the validity of the contract of sale between Onassis and Charlie is **CORRECT**?

- 1 The contract is a valid contract of sale, because it is not an essential requirement for a contract of sale that the purchase price must be determined or determinable
- 2 The contract is not a valid contract of sale, because the price is not determinable and for a valid contract of sale the price may not be unilaterally determined by only one party
- 3 The contract is not a valid contract of sale, because the purchase price is determined or determinable
- 4 The contract is a valid contract of sale, because the purchase price is determinable (2)

QUESTION 23

Daniel steals a bakkie from Bryce. He then sells it to Hassib for R50 000 because it has engine problems. He does not disclose the problems to Hassib. A month later, Bryce claims the bakkie from Hassib. Hassib is unhappy about Bryce's claim and wants to claim the purchase price back from Daniel.

On which **ONE** of the following grounds should Hassib rely in order to succeed with the action empty against Daniel?

- 1 defective performance
- 2 misrepresentation
- 3 manufacturer's liability
- 4 breach of warranty against eviction (2)

QUESTION 24

Which **ONE** of the following contracts of sale is perfecta?

- 1 Max buys a dog from Prince and Max may choose any one of Prince's five dogs
- 2 Max buys Prince's flock of sheep at R800 a sheep
- 3 Max agrees with Prince to buy his flat provided Max obtains a loan from the bank
- 4 Max agrees with Prince to buy his Volkswagen car for R150 000, which amount will be paid over a period of twelve months (2)

QUESTION 25

Mable and Pepe agree orally that Mable will lease her vineyards to Pepe on condition that Pepe will annually give 10 percent of the grapes produced by him to Mable, as rent.

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

- 1 No contract of lease will come into being, because the amount of the rent is not certain or ascertainable
- 2 No contract of lease will come into being, because the rent must sound in money that is the lessee must compensate the lessor with money
- 3 No contract of lease will come into being if it is agreed that Pepe's stay on the farm is permanent
- 4 No contract of lease will come into being, because the agreement relates to immovable property and is not embodied in a written document (2)

QUESTION 26

Fani decides to lease one of his tobacco farms to Mark.

Which **ONE** of the following terms may **NOT** be included in the contract of lease?

- 1 Mark may rent the farm for 20 years
- 2 Fani gives Mark free use of the farm
- 3 Mark has to give Fani 30 percent of the yield of the harvest as compensation (2)

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QUESTION 27

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

- 1 No formalities are required for the conclusion of a valid contract of lease
- 2 A long lease can be described as a lease which has been entered into for a period of not less than five years
- 3 The Rental Housing Act 50 of 1999 is aimed at the protection of lessors against exploitation and victimisation by lessees
- 4 The Formalities in respect of Leases of Land Act 18 of 1969 provides that a long lease must be registered (2)

QUESTION 28

Sabelo, a rich young entrepreneur, leases his penthouse in Cape Town to Azania. Azania fails to pay Sabelo the rent for two months. Sabelo acquires what is known as the landlord's hypothec.

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

- 1 The landlord's hypothec is a tacit hypothec and arises automatically and immediately when Azania falls in arrears with her rent
- 2 The hypothec is of no force and effect until Sabelo makes an attachment of goods.
- 3 The landlord's hypothec extends not only to Azania's movables on the leased premises, but also to her other movables, irrespective of where they are kept
- 4 The hypothec is operative only when and for as long as the rent is in arrears (2)

QUESTION 29

Which **ONE** of the following is **NOT** an essentialia of the insurance contract?

- 1 an insurable interest
- 2 payment of the premium
- 3 a particular uncertain future event upon which the insurer's obligation to pay depends
- 4 an undertaking by the insurer to pay a sum of money or its equivalent (2)

QUESTION 30

Sam buys a flat for R200 000. It is a bargain since the flat is worth R230 000 at the time of the sale. Sam suspects that the value of the flat may increase in future and insures it for R250 000. During the currency of the insurance the flat burns down. The flat is worth R240 000 at the time of the accident.

Which **ONE** of the following amounts may Sam claim from the insurer?

- 1 R200 000
- 2 R230 000
- 3 R240 000
- 4 R250 000 (2)

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QUESTION 31

Jog buys a car which is valued at R55 000. He insures his car with Happiness Insurance Company for R45 000. Jog is involved in an accident and the car is damaged beyond repair. Jog wants the insurance company to compensate him for the loss he suffered.

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

- 1 Jog's claim for R55 000 will succeed
- 2 Jog's claim for R45 000 will succeed
- 3 Jog will not succeed with a claim because the insured amount was lower than the value of the car
- 4 Jog will not succeed with a claim as a result of misrepresentation because he did not insure the car for its actual value (2)

QUESTION 32

Which **ONE** of the following is a method of establishing representative capacity?

- 1 The agent expressly authorises the principal
- 2 The principal repudiates the transaction after it was concluded
- 3 The principal culpably creates the false impression that the agent has the authority to act on his or her behalf
- 4 The agent acts for an undisclosed principal (2)

QUESTION 33

The authority of an agent can be terminated in different ways.

In which **ONE** of the following instances will Max still possess authority after the occurrence of the event mentioned?

- 1 Max is authorised to act on behalf of his employer. His employment is terminated for misconduct.
- 2 Joy authorises Max to use her tuck shop only until the end of 2007. The year 2007 has come to an end.
- 3 Max is the guardian of George, a twelve year old boy. George celebrates his thirteenth birthday.
- 4 The house which Max was authorised to sell is destroyed by fire. (2)

QUESTION 34

A group of twenty two auditors meet to consider forming a partnership. They meet to agree on the contribution each one of them will make to the partnership. Some of the partners want the partnership to deal only with audits and others want it to deal only with tax matters.

Which **ONE** of the following issues needs to be addressed before the requirements for a partnership will be satisfied?

- 1 The parties need to reduce the number of prospective partners to less than twenty
- 2 The parties need to put the agreement in writing
- 3 The parties must stipulate the amount each member must contribute

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- 4 The parties must determine a common objective (2)

QUESTION 35

Consider the following characteristics of a certain type of business enterprise

- it is not a separate legal person,
- no restriction is placed on the length of time it may exist, and
- it can be in either a public or private form

Which **ONE** of the following forms of business enterprise has all the above characteristics?

- 1 the company
- 2 the co-operative society
- 3 the business trust
- 4 the close corporation (2)

QUESTION 36

Gordon and Greg want to start a business and have to decide which form of business enterprise to adopt. They feel that the chosen enterprise should have the following characteristics:

- it should have the benefit of limited liability
- legal and natural persons should be eligible for membership
- the number of its beneficiaries should not be limited

Which **ONE** of the following forms of business enterprise would best suit their needs?

- 1 a partnership
- 2 a business trust
- 3 a close corporation
- 4 a private company (2)

QUESTION 37

Paulus owes money to Paul. The full amount of the debt is secured by a suretyship contract in which Evert is the surety, and also by a cession to Paul of Paulus's right to receive payment from Ryan.

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

- 1 Paulus may cede to Evert his right to receive payment from Ryan
- 2 Paulus is not entitled to sue Ryan for the money he owes him in order to pay Paul.
- 3 Evert is not entitled to the benefit of division if Paul attempts to recover the entire debt from him.
- 4 Evert may possibly obtain a right to the money which Ryan owes to Paulus if he settles the entire debt (2)

QUESTION 38

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

- 1 The surety may not rely on defects in the liability of the principal debtor, such as misrepresentation, in order to avoid liability
- 2 The surety may not rely on personal defences, such as minority, which may be at the disposal of the principal debtor
- 3 The surety's obligation is enforceable if the principal debtor has not defaulted in the performance of the principal obligation
- 4 A creditor may enforce a surety's obligation for a debt of a certain or uncertain amount. (2)

QUESTION 39

Which **ONE** of the following is an objective of the Financial Intelligence Centre Act (FICA)?

- 1 to identify "Know-Your-Customer" (KYC) obligations
- 2 to implement nationally recognised KYC standards
- 3 to impose specific KYC standard obligations which require knowledge of the net worth of a client's assets
- 4 to impose specific KYC standard obligations on banks (2)

QUESTION 40

With the assistance of his father, Larry, John, a nine year old boy, buys a motorcycle

Which **ONE** of the following statements is **CORRECT** in terms of the Consumer Protection Act?

- 1 The contract of sale for the motorcycle is null and void, because in spite of the fact that his father assisted him, John is a minor
- 2 The contract of sale for the motorcycle is null and void, because as a minor John is regarded as mentally unfit
- 3 The contract of sale for the motorcycle is valid, because although John did not have the capacity to act, he used his own savings to buy the motorcycle
- 4 The contract of sale for the motorcycle is valid, because as John was assisted by his father, it is irrelevant that he personally lacked the capacity to act (2)

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INITIALS AND SURNAME
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PART 2 (ANSWERS/ANTWOORDE) DEEL 2

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Specimen only