



CLA1503

(482006)

October/November 2013

COMMERCIAL LAW 1C

Duration 2 Hours 80 Marks

EXAMINERS

FIRST SECOND MR 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:

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

Which ONE of the following sources of law will a South African lawyer consult on Roman law?

- the Constitution of the Republic of South Africa, 1996
- 2 Customary Law
- 3 the Corpus Iuris Civilis
- 4 South African Statute Law

(2)

QUESTION 2

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

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

QUESTION 3

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 4

In which **ONE** of the following circumstances did ownership indeed pass from one party to the other?

- Nigel hands the Mona Lisa painting he inherited from his father to Dr Delia after Dr Delia agreed to accept the painting in lieu of payment of R100 000 for medical services rendered
- 2 Ron delivers his new rugby ball to David under the impression that he is lending it to David, and David receives it thinking it is a present
- Loyiso hands the keys to his holiday home to Ernie who already paid Loyiso the full purchase price of R900 000 a day before
- Carmel donates hundred packets of stationary to the Kiddies Cornei Nursery School and tells the teacher that she may collect the books from her house at any time convenient to her (2)

Jane, a famous inventor, sits on her farm admiring her revolutionary invention for which the company, Revolutionary Technologies, still owes her R2 000 000 This sentence contains four legal objects, one from each of the four categories of subjective rights that Jane possesses

Jane's well-earned reputation as a famous and respected inventor is an example of

- 1 a real right
- a personality right
- 3 an immaterial property right
- 4 a personal right.

(2)

QUESTION 6

Jaco's isolated shop is plundered periodically and the only reasonable way of protecting his property is by setting up a gun inside the shop with a conspicuous sign warning of the presence of the gun. If a thief is injured or killed by the gun, Jaco will **NOT** be liable because his actions will have been justified

This is an example of

- 1 voluntary assumption of risk
- 2 necessity
- 3 self defence
- 4 consent by the injured party

(2)

QUESTION 7

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

- 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 time and date in Sandton.
- Nicolas enters into a 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
- 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)

(2)

QUESTION 8

Thabo wants to buy Ramokgadi's car Thabo and Ramokgadi agree that Thabo may take the car, but Ramokgadi is under the impression that Thabo is only hiring the car from him

Which ONE of the following statements is CORRECT⁹

- 1 A contract came into existence between Thabo and Ramokgadi
- 2 There is no consensus with regard to the object of performance
- 3 The parties have no intention to be contractually bound
- 4 The parties have not reached consensus on the nature of the contract

QUESTION 9

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

- 1 At an auction subject to reservation, the auctioneer is the offeror
- At an auction without reservation, the auctioneer must sell to the highest bidder
- If no conditions are mentioned in the advertisement of an auction it is presumed that the auction is held without reservation
- 4 Auctions of immovable property are always held subject to reservation (2)

QUESTION 10

Prof Radebe parks his car in front of a shopping mall. After having done his shopping, he cannot find his car. Under the impression that it has been stolen, he buys a second-hand car from Mlungisi. An hour after he has concluded the contract of sale with Mlungisi, the police inform him that his car has not been stolen but was parked a few parking spaces from where he thought he had parked it

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

- The contract between Prof Radebe and Mlungisi is void because Prof Radebe made a mistake of fact
- The contract between Prof Radebe and Mlungisi is voidable because Prof Radebe made the misrepresentation that his car had been stolen
- The contract between Prof Radebe and Mlungisi is valid because mistake in motive has no influence on consensus
- 4 The contract between Prof Radebe and Mlungisi is valid because Prof Radebe made an innocent misrepresentation (2)

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

- 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
- 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 12

In which **ONE** of the following instances can I hami, who is seventeen years old and not emancipated, conclude a valid contract **WITHOUT** his guardian's consent?

- Tham: buys a plot from Tracey for R95 000
- 2 Thami rents a flat from Tracey
- Thami obtains a learner's driver's licence at Amanzimtoti testing station
- 4 I hami donates a motorcycle to Tracey

(2)

QUESTION 13

Which **ONE** of the following agreements is valid and enforceable?

- Gary and Dan enter into a wagering contract in terms of which Gary will pay Dan R1 000 if Dan's baby. Mizzie, wins a baby crawling race
- Jackie, a prosecutor in the Magistrates Court, enters into an agreement with Craig not to prosecute him for shoplifting, provided Craig accompanies her to her sister's wedding
- Markus sells twenty wild buffaloes to Kenny, a nature conservationist, for an amount of R50 0000 each. Only after the conclusion of the agreement Kenny realises that the buffaloes are not in captivity, but that they roam Markus's farm freely. Kenny is only able to catch one buffalo as the others migrated two months before
- Carlo is an Internet web site designer. He enters into an agreement with RSM, an auditing firm, in terms of which he will design a web site for RSM. The agreement restrains Carlo from designing web sites for other auditors for a period of two months.

QUESTION 14

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
- only those contracts where legislation prescribes formalities
- 4 only those contracts where formalities are prescribed by legislation or the contracting parties

(2)

Which **ONE** of the following statements regarding the signing of electronic transactions is **CORRECT**?

- An electronic signature always performs the same legal function as a handwritten signature
- Where a signature is required by law the typing of a name at the end of the document will be an acceptable signature
- 3 A scanned handwritten signature qualifies as an electronic signature
- An advanced electronic signature results from an accredited process and allows the recipient to verify the date and time it was sent (2)

QUESTION 16

Stephan and Daniel conclude a contract of lease in terms of which Stephan will lease his farm, Apple Tree Farm, to Daniel until Daniel's death. This term is an example of a

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

QUESTION 17

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

- The *essentialia* of a contract are the terms which the law attaches to every contract of a particular class
- 2 The *naturalia* of many contracts known to South African law are based mainly on ideas originating in Roman-Dutch law
- 3 The *incidentalia* are the additional terms which are included in a contract in order to provide for special requirements of the parties (2)

QUESTION 18

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

Rick contracts with Mast Makers, 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 Makers it becomes apparent to Rick that the masts have not been made to the specifications as set out in the contract, and cannot be used for the yachts he is building.

Which type of breach of contract has Mast Makers committed?

- 1 positive malpei formance
- 2 default by the creditor
- default by the debtor
- 4 prevention of performance

(2)

QUESTION 20

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

- 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
- Although repudiation is a form of breach of contract, it does not necessarily entitle the innocent party to cancel the contract
- 4 Repudiation is not a form of breach of contract

(2)

QUESTION 21

Jackson and Mike enter into a contract in terms of which Jackson undertakes to supply and install certain equipment for refrigeration purposes in a fishing vessel owned by Mike. 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 Jackson. Mike cancels the contract and tenders to return certain items supplied by Jackson in their present condition. Mike 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**?

- Mike 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 Jackson
- Mike does not have to tender return of all the equipment before he can claim the money he paid to lackson because it was not Mike's fault that part of the equipment was lost at sea
- Mike 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
- Since restitution is still possible, Mike is not entitled to cancel the contract, but can only claim a reduction in the price of the equipment (2)

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
- an order for positive malperformance

(2)

QUESTION 23

Sipho and Willy conclude a contract in terms of which Sipho will do the interior decorating of Willy's holiday flat. The contract price of R15 000 includes the work and materials. Before Sipho can start with the project, the flat is completely destroyed by fire as a result of Willy's negligence.

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

- Sipho cannot claim anything from Willy, since the contract has been terminated
- 2 Sipho can claim the full contract sum of R15 000 from Willy as damages
- 3 Sipho can claim R15 000 from Willy, less the amount she has saved by not having to perform
- 4 Sipho can claim only in respect of expenses she has already incurred

(2)

QUESTION 24

Craig borrows Grabe's horse in order to compete in a race. Craig wins the race and decides to become a professional jockey. Without returning the horse to Grabe, he offers to buy it from him for R10 000. Grabe accepts the offer and Craig pays him there and then

Which ONE of the following forms of delivery has taken place?

- I actual delivery
- delivery with the short hand
- 3 symbolic delivery
- 4 delivery with the long hand

(2)

QUESTION 25

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**?

- The agreement constitutes 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
- The agreement does not constitute a valid contract of sale, because the price may not be unilaterally determined by only one party
- 3 The agreement does not constitute a valid contract of sale, because the purchase price is not determined or determinable
- 4 The agreement constitutes a valid contract of sale, because the purchase price is determinable (2)

[TURN OVER]

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

The fact that a contract of sale is *perfecta* means that

- the purchaser acquires ownership of the *merx*
- 2 the seller and the purchaser are released from their respective obligations
- 3 the risk of accidental damage to, or loss of the merx passes to the purchaser
- 4 If the merx is accidentally damaged or lost before delivery takes place, the seller bears the loss

(2)

(2)

QUESTION 27

Which ONE of the following agreements meets the requirements for a valid contract of lease?

- 1 Taffy will make use of Ralph's garage when Ralph's car is not in the garage
- 2 Taffy may, if he wishes, demolish Ralph's garage and build a new one to his liking
- In return for using Ralph's garage, Laffy will transport Ralph's child to school
- 4 Taffy may only make use of Ralph's garage door to advertise his business (2)

QUESTION 28

It is the end of the year 2012, and Judith must vacate the flat which he has been renting from Richmond Estate for the past two years in terms of a lease agreement. The kitchen has been destroyed by fire. The damage was caused by an electric fault in Judith's fridge which she knew about, but ignored. Richmond Estate wants Judith to repair the flat.

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

- 1 Richmond Estate is entitled to have Judith's movable property situated in the flat attached in terms of the landloid's hypothec
- 2 Judith is obliged to make good the damage
- 3 The damage must be repaired by Richmond Estate as the lessor
- 4 Judith may effect the repairs and claim the cost thereof from Richmond Estate

QUESTION 29

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)

Nota insures her car, valued at R40 000 for R40 000 with insurer Abbi, for R30 000 with insurer Yuba and for R20 000 with insurer Lulu. The car is involved in a collision caused by Pete's negligence and the damage to Nota's car is valued at R20 000.

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

- Nola may claim R20 000 from Abbi, R20 000 from Yuba and R20 000 from Lulu in other words a total of R60 000
- Nola may choose from which insurer she will claim R20 000. That insurer will then have the right of subrogation against the other insurers
- Nola may claim R20 000 from one of the insurers as well as R20 000 from Pete
- 4 Nola may recover her total loss pro rata from each of the insurers concerned (2)

QUESTION 31

The insured has a duty of good faith towards the insurer

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

- 1 The duty of good faith in insurance contracts includes the duty of the insured to pay the premium agreed upon
- The duty of good faith requires that the insured refrain from giving the insurer false information regarding material facts
- I he duty of good faith includes the disclosure of all material facts the insured might be aware of before the conclusion of the contract, if asked for that information
- The insured's duty of good faith assists the insurer in assessing the potential risk insured against and to determine an appropriate premium (2)

QUESTION 32

Which **ONE** of the following is **NOT** a requirement for estoppel?

- 1 I he third party must have acted to his or her detriment on the basis of the representation
- The third party must have known that the agent was not authorised to conclude juristic acts
- The principal must have represented to the third party that the agent had authority to act on his or her behalf
- The representation must have been of such a nature that it could reasonably have been expected that the third party would be misled (2)

(2)

QUESTION 33

Abe, acting as the agent for Carol, concludes a written contract of sale with Simangaliso. In terms of the contract of sale. Carol agrees to buy Simangaliso's house for R120 000.

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

- 1 There is a valid contract of sale between Abe and Simangaliso
- 2 There is a valid contract of sale between Carol and Abe
- 3 There is no valid contract of sale because one person cannot conclude a contract for the sale of land on behalf of another
- 4 There is a valid contract of sale between Carol and Simangaliso

QUESTION 34

In which **ONE** of the following relationships is the authority of the agent **NOT** implied by law, but dependent on the consent of the principal?

- l estate agent and seller
- 2 guardian and minor
- 3 director and company
- 4 curator and insane person (2)

QUESTION 35

Edwin runs a cash loan business. He is married to Cathy who is an attorney. Cathy assists him with the collection of debts due to him. He employs ten people in his business.

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

- 1 Edwin runs his business as a sole proprietorship
- 2 Edwin and Cathy are partners running a business as a sole proprietorship
- Fdwin is not personally liable for the debts and liabilities of the business (2)

QUESTION 36

Which ONE of the following statements regarding a co-operative society is CORRECT?

- A co-operative society promotes the business of its members and acts as their agent in the marketing of their products
- 2 Membership of a co-operative society is limited to twenty
- 3 Shares issued by a co-operative society are freely transferable
- 4 A co-operative society is a voluntary association which developed from the law of companies

(2)

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

- 1 A contract of surety-ship will be void if it is not signed by or on behalf of the principal debtor
- A contract of suretyship will be void if it is not signed by or on behalf of the surety
- 3 A contract of suretyship may only be terminated in writing
- A surety may rely on the personal defences which may be at the disposal of the principal debtor

(2)

QUESTION 38

Jacques runs a courier business. He owns one truck which he uses every day to deliver parcels. Jacques wants to borrow R500 000 from Boss Bank in order to buy another truck. Boss Bank requires security for the loan to ensure that Jacques will repay the loan. Jacques only has the truck to offer as security for the loan, but he can't render courier services without the truck.

Which ONE of the following forms of security should Jacques use to secure the loan?

- 1 a mortgage bond
- 2 plcdge
- 3 a lien
- 4 a notarial bond (2)

QUESTION 39

Sarah approaches Blue Bank to open a new savings account

Which **ONE** of the following is **NOT** an obligation imposed by FICA on Blue Bank with regard to the opening of a new savings account for Sarah?

- 1 to identify its clients
- 2 to identify clients who have been blacklisted in the past
- 3 to keep records of transactions
- 4 to train employees to comply with the FICA provisions (2)

Themba Stores sends an electronic brochure to Sam advertising their new football kits. Sam is interested in one of the football kits and orders it from Themba Stores. The football kit is delivered to Sam but Sam is not happy with the quality of the kit.

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

- The contract of the sale of the football kit is null and void, because in terms of the Consumer Protection Act, Sam's right to privacy was infringed when the brochure was send to him electronically
- The contract of sale of the football kit is not null and void, because Sam did not waive his right to restrict the unwanted direct marketing of products
- In terms of the Consumer Protection Act, Sam has a cooling-off period of ten business days in the case of a contract concluded as a result of direct marketing, during which to cancel the contract, but Sam could be subject to a penalty should he return the football kit
- In terms of the Consumer Protection Act, a consumer has a cooling-off period of five business days after a contract of sale is concluded by direct marketing during which the consumer (Sam) can rescind the contract without being subject to a penalty (2)

TOTAAL: [80]

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EXAMINATION MARK READING SHEET



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PART 1 (GENERAL/ALGEMEEN) DEEL 1

STUDY UNIT & 9 PSY100 X STUDIE-EENHEID by PSY100 X

PAPER NUMBER VRAESTELNOMMER

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DATE OF EXAMINATION DATUM VAN EKSAMEN

EXAMINATION CENTRE (E.G. PRETORIA) EKSAMENŞENTRUM (BV. PRETORIA)

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For use by examination invigilator Vir gebruik deur eksamenopsiener

IMPORTANT

- 1 USE ONLY AN HB PENCIL TO COMPLETE THIS SHEET
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- 3 CHECK THAT YOUR INITIALS AND SURNAME HAS BEEN FILLED IN CORRECTLY
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