

CLA1503

(475770)

May/June 2014

COMMERCIAL LAW IC

Duration . 2 Hours

80 Marks

EXAMINERS ·

FIRST
SECONDMR MB MASUKU
PROF TE MANAMELA

Closed book examination.

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This paper consists of 12 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 12 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.

[TURN OVER]

QUESTION 1

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

In the business/commercial world customary law is also called

- 1 business usage.
- 2 commercial usage.
- 3 trade usage.
- 4 trade law. (2)

QUESTION 2

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

Aussenkehr Farms (Pty) Ltd v Trio Transport CC 2002 (11) SA 12 (SCA)

- 1 The case is reported in the South Asian Law Reports.
- 2 The case is reported on page 11 of the Law Reports
- 3 The case was heard in the Supreme Court of Appeal
- 4 The case was heard in the Supreme Court of Africa. (2)

QUESTION 3

A person who has paid a sum of money to another person in the mistaken belief that it was due, is entitled to recover the money from such other person by using the *condictio indebiti*.

Which **ONE** of the following statements is a requirement of the *condictio indebiti*?

- 1 Payment was made under a mistake that was unreasonable.
- 2 Payment was not made by way of a compromise.
- 3 Payment was made by way of a compromise.
- 4 Payment was not made under a mistake. (2)

QUESTION 4

The right to a patent is a/an ...

- 1 real right.
- 2 intellectual property right.
- 3 personality right.
- 4 personal right. (2)

QUESTION 5

Freedom to contract is a cornerstone of our law of contract. Which of the following statutes promote freedom to contract?

- 1 The Electronic Communications and Transactions Act 25 of 2002, and the National Gambling Act 7 of 2004
- 2 The Consumer Protection Act 68 of 2008 and the Promotion of Administrative Justice Act 3 of 2000
- 3 The Constitution of the Republic of South Africa, 1996, and the Promotion of Equality and the Prevention of Unfair Discrimination Act 4 of 2000
- 4 The Consumer Protection Act 68 of 2008 and the National Credit Act 34 of 2005. (2)

QUESTION 6

Which **ONE** of the following is **NOT** a requirement for the conclusion of a valid contract?

- 1 The contract must be permitted by law.
- 2 Each party to the contract must have capacity to act
- 3 There must be consensus between the parties.
- 4 The contract must be in writing, signed and dated. (2)

QUESTION 7

Molefe, an accountant working for ABC Consulting (Pty) Ltd, applies for a tender advertised by the Malegaba Thema Local Municipality. The tender involves the construction of a tar road and its maintenance for ten years. After submitting the application, Molefe calls his high-school classmate, Modiba, who also works for the municipality to discuss the prospects of him getting the tender. They agree to meet at Hamilton's Restaurant. On the day of the meeting Modiba phones Molefe to tell him that he will not be able to attend the meeting.

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

- 1 Molefe and Modiba had an intention to be contractually bound when they agreed to meet at Hamilton's Restaurant.
- 2 Molefe and Modiba are legally bound to meet at Hamilton's Restaurant as agreed.
- 3 Molefe and Modiba had no intention to be contractually bound when they agreed to meet at Hamilton's Restaurant.
- 4 Molefe will not be able to sue Modiba because Modiba tendered an apology for their meeting. (2)

QUESTION 8

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 of 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 void because there was no consensus between Mary and Susan.
- 3 The contract is voidable because the parties can rectify the contract.
- 4 The contract is valid in all material respects because there was offer and acceptance (2)

QUESTION 9

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

- 1 At an auction subject to reservation, the auctioneer is the offeror.
- 2 At an auction without reservation, the auctioneer must sell to the highest bidder.
- 3 If nothing is said about the auction in the advertisement of the 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

Which **ONE** of the following statements regarding capacity to act is **CORRECT**?

- 1 An insolvent has limited 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 11

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

- 1 Moloko, a 16-year-old girl
- 2 Rendani, a 17-year-old divorced mother
- 3 Tsakani, a 25-year-old woman who has been certified mentally deficient
- 4 Morebene (Pty) Ltd, a private company that has been duly incorporated and registered in accordance with the Companies Act 71 of 2008 (2)

QUESTION 12

Which contract is **NOT** legally impossible in terms of the common law?

- 1 Betty lends money to Daniel, in order to divorce from his wife and so that he can marry her.
- 2 Betty is angry because someone parked on her parking bay. She pays the car guard R10 to *damage* the wipers of the car.
- 3 Sam and Birgit are engaged. They include a clause in their antenuptial contract to the effect that Sam makes Birgit his heir.
- 4 Jeffrey and Joel decide to run a brothel and draw up an agreement on how they will divide the profits. (2)

QUESTION 13

John and Thabo agree to open a brothel and they name it "Pink Brothel".

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

- 1 John and Thabo's agreement is legally possible.
- 2 Even though John and Thabo's agreement is against good morals, it is not necessary to consider good morals when determining the validity of a contract.
- 3 The agreement is not valid because John and Thabo did not satisfy the formalities for the conclusion of a contract of this nature
- 4 John and Thabo's agreement is illegal as it is against good morals. (2)

QUESTION 14

Jean and his grandmother agreed that in her will, his grandmother would leave him (Jean) her cottage in Dullstroom, Mpumalanga.

Which **ONE** of the following statements regarding the agreement between Jean and his grandmother is **CORRECT**?

- 1 It is a valid contract, since both parties agreed
- 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 the grandmother's freedom to participate in legal intercourse is restrained. (2)

QUESTION 15

In her free time, Angelina assists with administrative duties at a school for blind children. In few months' time her investment policy will be paid out. Angelina agrees with the school that she will donate R100 000 to the school when the policy is eventually paid out.

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

- 1 No formalities are required for concluding a valid contract of donation
- 2 Formalities for contracts of donation in which performance is due in the future are prescribed by the General Law Amendment Act 50 of 1956.
- 3 A contract of donation for which performance is only due in the future can be concluded in writing or orally.
- 4 A contract of donation must be signed by the donor or someone on his or her behalf (2)

QUESTION 16

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 17

Alfred wants to buy a car for an amount of R420 000 from Reliable Motors. They agree that the colour of the car will be red. No other terms regarding the car are discussed. After Alfred takes delivery of the car he discovers that something is seriously wrong with the engine.

Which **ONE** of the following statements regarding the faulty engine is **CORRECT**?

- 1 The contract that Alfred and Reliable Motors concluded will not be valid as all the *essentialia* of a contract of sale are not present.
- 2 The *essentialia* of a contract of sale will enable Alfred to claim damages for the faulty engine.
- 3 The *naturalia* of a contract of sale will enable Alfred to claim damages for the faulty engine.
- 4 The *incidentalialia* of a contract of sale will enable Alfred to claim damages for the faulty engine. (2)

QUESTION 18

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

- 1 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 *incidentalialia* are the additional terms which are included in a contract in order to provide for special requirements of the parties (2)

QUESTION 19

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

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

QUESTION 20

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)

QUESTION 21

In terms of a written agreement, Brian purchased a flat from Leon for R700 000. Brian paid an amount of R200 000 as deposit. The balance of the purchase price was to be covered by a loan from the bank payable on registration. Owing to fault on Leon's part, the transfer of the house into Brian's name was delayed. Brian sent a letter to Leon demanding that transfer be effected within two months, and he would then pay the balance of the purchase price. Brian also stated in the letter that he would rescind from the contract and demand repayment of the deposit and claim damages if Leon failed to co-operate.

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

- 1 Brian is entitled to claim transfer of the flat into his name.
- 2 Brian is not entitled to send a letter of demand to Leon, because Brian has not paid the agreed purchase price for the house in full.
- 3 Because Brian is in *mora*, Leon will be released from his obligation to perform unless his non-performance is intentional or due to his own gross negligence.
- 4 Because Leon is in *mora*, Brian is released from his obligation to perform even if his non-performance is intentional or due to his own gross negligence. (2)

QUESTION 22

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 malperformance
- 2 default by the creditor
- 3 default by the debtor
- 4 prevention of performance (2)

QUESTION 23

Floodwaters Local Council contracts with Bessy for the construction of a bridge for R5 million. The bridge must have four lanes: two for vehicle traffic, one for pedestrians and one for trains. When finished, the bridge has only two lanes for vehicle traffic. The Local Council finds out that it will cost another R3 million to add the lanes for pedestrians and trains. The Local Council refuses to pay Bessy any money.

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

- 1 Bessy may use the *exceptio non adimpleti contractus* to institute action for payment.
- 2 The *exceptio non adimpleti contractus* does not apply to this case, because the contract is not reciprocal.
- 3 The Local Council will have to pay Bessy the agreed R5 million if it decides to use the defective bridge.
- 4 The Local Council could raise the *exceptio non adimpleti contractus* when Bessy claims payment. (2)

QUESTION 24

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

- 1 an order for specific performance
- 2 claim for damages
- 3 cancellation of the contract
- 4 an order for increased performance (2)

QUESTION 25

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

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

QUESTION 26

Which ONE of the following is a consequence of cession?

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

QUESTION 27

Sipho owns a house situated in Mabopane Block B. He sells the house to Moreki

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

- 1 Moreki will acquire ownership of the house after concluding a written contract of sale with Sipho
- 2 Moreki will acquire ownership of the house when Sipho gives him the keys to the house.
- 3 Moreki will acquire ownership of the house as soon as transfer of the house has been registered at the Deeds Office.
- 4 Moreki will acquire ownership of the house as soon as transfer of the house has been registered at the Commissioner of Oaths' office. (2)

QUESTION 28

George buys a tractor from Matsaya for an amount of R10 000. George offers to sell the tractor to Lebo for an amount of R11 000. Lebo pays the amount in cash and takes delivery of the tractor. George and Lebo are unaware of the fact that Matsaya stole the tractor from John. Two months later, Lebo receives a phone call from John who claims the tractor from Lebo.

Which ONE of the following actions can John institute to claim the tractor back from Lebo?

- 1 *actio quanti minoris*
- 2 *rei vindicatio*
- 3 *actio empti*
- 4 *actio redhibitoria* (2)

QUESTION 29

Ester goes to Crossings Café to buy a tin of tuna. After taking the money, Alfred, the shop owner, takes the tuna from the shelf behind him and gives it to Ester.

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

- 1 delivery with the short hand
- 2 delivery with the long hand
- 3 symbolic delivery
- 4 actual delivery (2)

QUESTION 30

Jack leases his apartment at the Blue Lagoon in Fourways to Sihle. They agree that Sihle may not cede his rights to the apartment in terms of the lease agreement to anyone.

In which **ONE** of the following statements has cession taken place?

- 1 Sihle transfers his rights to the apartment to Sabelo.
- 2 Sihle leases two rooms of the apartment to Sabelo.
- 3 Sihle agrees with Sabelo to take over the lease of the apartment.
- 4 Sihle transfers his rights to the apartment to Sabelo while Jack is not aware of the transfer. (2)

QUESTION 31

Arthur wishes to let one of his farms to his son, Ace. Ace intends making substantial improvements to the farm

Which **ONE** of the following terms **MAY** be included in the contract of lease?

- 1 A term which gives Ace the permanent use and enjoyment of the farm.
- 2 A term stipulating that Ace is not obliged to pay any rent
- 3 A term stipulating that Ace will pay his father a determined share of the yield of the mealie harvest as rent.
- 4 A term which denies Arthur the right to prescribe to Ace what he may do on the farm. (2)

QUESTION 32

Which **ONE** of the following statements describes the duties of a lessor?

- 1 The lessor must conclude a new contract with the lessee upon the expiry of their existing lease agreement
- 2 The lessor must pay rent, take care of the thing let and must restore the thing let on termination of the lease
- 3 The lessor must deliver the thing let to the lessee, maintain the thing let in a proper condition and ensure the lessee's undisturbed use and enjoyment of the thing let.
- 4 The lessor must exercise his or her tacit hypothec when the lessee falls into arrears with his or her rent. (2)

QUESTION 33

John buys a car from Themba. John phones Tiffany at Burbank Insurers to insure his new car.

Which **ONE** of the following parties will have an insurable interest in the car?

- 1 Burbank Insurers
- 2 John
- 3 Themba
- 4 Tiffany (2)

[TURN OVER]

QUESTION 34

The *essentialia* of a contract are those characteristics which distinguish it from other types of contracts.

Which **ONE** of the following is an *essentialia* of the insurance contract?

- 1 an undertaking by the insured to pay a premium.
- 2 an undertaking by the insured to recover compensation only once.
- 3 an undertaking by the insured not to insure the same risk object with other insurers.
- 4 an undertaking by the insured to give correct answers in the application form. (2)

QUESTION 35

Abe, acting as 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. (2)

QUESTION 36

Which **ONE** of the following statements regarding business rescue is **CORRECT**?

- 1 The purpose of business rescue is to facilitate the rehabilitation of a company that is insolvent.
- 2 Business rescue can only be initiated by a court order.
- 3 A business practitioner will be appointed to assist the directors with the management and control of the company during the business rescue period
- 4 During the business rescue period there will be a general moratorium on legal proceedings and the enforcement of judgments against the company. (2)

QUESTION 37

Which **ONE** of the following will be the last word(s) in the name of a private company?

- 1 NPC
- 2 SOC Ltd
- 3 Proprietary (Limited)
- 4 Limited (2)

QUESTION 38

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

A contract of suretyship is a type of ...

- 1 real security
- 2 hypothec
- 3 lien
- 4 personal security (2)

QUESTION 39

Which **ONE** of the following statements regarding the Consumer Protection Act 68 of 2008 is **INCORRECT**?

- 1 The Act promotes and advances the social and economic welfare of consumers in South Africa and introduces eight fundamental consumer rights
- 2 The Act spells out the rights of consumers and codifies our common law in relation to consumer rights.
- 3 The Act provides for a cooling-off right where a franchisor and franchisee have entered into an agreement.
- 4 The Act introduces a cooling-off period for sales contracts concluded by direct marketing. (2)

QUESTION 40

Which **ONE** of the following "transactions" is **NOT** regulated by the Consumer Protection Act?

- 1 a transaction between two or more persons for the supply of goods or services
- 2 a collective agreement regulated by the Labour Relations Act 66 of 1995
- 3 services performed for the direct or indirect benefit of another
- 4 the lease of a house (2)

TOTAL: [80]

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
- MARK LIKE THIS 
- CHECK THAT YOUR INITIALS AND SURNAME HAS BEEN FILLED IN CORRECTLY
- ENTER YOUR STUDENT NUMBER FROM LEFT TO RIGHT
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- CHECK THAT ONLY ONE ANSWER PER QUESTION HAS BEEN MARKED
- DO NOT FOLD

BELANGRIK

- GEBRUIK SLEGS N HB-POTLOOD OM HIERDIE BLAD TE VOLTOOL
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PART 2 (ANSWERS/ANTWOORDE) DEEL 2

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93	c1	c2	c3	c4	c5
94	c1	c2	c3	c4	c5
95	c1	c2	c3	c4	c5
96	c1	c2	c3	c4	c5
97	c1	c2	c3	c4	c5
98	c1	c2	c3	c4	c5
99	c1	c2	c3	c4	c5
100	c1	c2	c3	c4	c5
101	c1	c2	c3	c4	c5
102	c1	c2	c3	c4	c5
103	c1	c2	c3	c4	c5
104	c1	c2	c3	c4	c5
105	c1	c2	c3	c4	c5
106	c1	c2	c3	c4	c5
107	c1	c2	c3	c4	c5
108	c1	c2	c3	c4	c5
109	c1	c2	c3	c4	c5
110	c1	c2	c3	c4	c5
111	c1	c2	c3	c4	c5
112	c1	c2	c3	c4	c5
113	c1	c2	c3	c4	c5
114	c1	c2	c3	c4	c5
115	c1	c2	c3	c4	c5
116	c1	c2	c3	c4	c5
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118	c1	c2	c3	c4	c5
119	c1	c2	c3	c4	c5
120	c1	c2	c3	c4	c5
121	c1	c2	c3	c4	c5
122	c1	c2	c3	c4	c5
123	c1	c2	c3	c4	c5
124	c1	c2	c3	c4	c5
125	c1	c2	c3	c4	c5
126	c1	c2	c3	c4	c5
127	c1	c2	c3	c4	c5
128	c1	c2	c3	c4	c5
129	c1	c2	c3	c4	c5
130	c1	c2	c3	c4	c5
131	c1	c2	c3	c4	c5
132	c1	c2	c3	c4	c5
133	c1	c2	c3	c4	c5
134	c1	c2	c3	c4	c5
135	c1	c2	c3	c4	c5
136	c1	c2	c3	c4	c5
137	c1	c2	c3	c4	c5
138	c1	c2	c3	c4	c5
139	c1	c2	c3	c4	c5
140	c1	c2	c3	c4	c5

Specimen only