

CLA1503

(488423)

October/November 2014

COMMERCIAL LAW IC

Duration 2 Hours

80 Marks

EXAMINERS :

FIRST .

MR MB MASUKU

SECOND .

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

[TURN OVER]

QUESTION 1

Which **ONE** of the following sources of the law has only persuasive authority in a South African court and is **NOT** viewed as an authoritative source?

- 1 Judgment of the Dutch courts before 1652
- 2 English law
- 3 Dutch legislation before 1652
- 4 Roman law (2)

QUESTION 2

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

- 1 The *ratio decidendi* consists of all the remarks and opinions by the judge giving the decision.
- 2 An *obiter dictum* can be persuasive for other courts.
- 3 *Obiter dictum* means the reason for the judgment.
- 4 The *ratio decidendi* of a minority judgement is binding on other courts. (2)

QUESTION 3

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.
- 2 an immaterial property right.
- 3 a personality right
- 4 a personal right (2)

QUESTION 4

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

- 1 Family law is concerned with the relationship between family members.
- 2 Family law 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)

[TURN OVER]

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

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

- 1 Lauren engages a professional caterer to provide food for a party to which ten guests have been invited. Thirty minutes after the agreed time, five guests phone Lauren and inform her that they will miss the appointment. Lauren wants to sue the guests for breach of contract.
- 2 John, exceedingly drunk, undertakes in front of witnesses at Papa's Bar, to give one of his cars to Alex if Alex fixes his house's broken windows in exchange. Moments later John collapses in the street. The next morning he remembers nothing of his agreement with Alex
- 3 The organizers of the Rhino 2008 Rally make an offer to pay Rex R20 000 if he can drive the 500 kilometres between Johannesburg and Bloemfontein in an hour Rex accepts the offer.
- 4 Peter and Andrew agree that Peter will give Andrew R100 and that Andrew will hand over his silver pen to Peter in full exchange. (2)

QUESTION 7

Peter studies for a B Com-degree at Unisa. While writing an examination he sees a beautiful girl, Maureen, at the examination hall and falls head over heels in love with her. He rushes to her, introduces himself and invites her to go to the movies with him. They agree to meet the next Friday at 6 o'clock in front of Sterkinekor. Peter arrives at Sterkinekor on the agreed time, but Maureen is not there. After he has waited for more than two hours, he decides to go home, and consults his Commercial Law textbook to see whether he can take legal action against Maureen for not honouring their appointment. Only later Peter learns that Maureen's car broke down on her way to Sterkinekor

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

Peter's appointment with Maureen was NOT a contract because

- 1 their appointment was not in writing and signed by them.
- 2 they did not have the intention to create legally enforceable obligations.
- 3 it was not physically possible for Maureen to honour their appointment.
- 4 it was not juridically possible for Maureen to honour their appointment. (2)

[TURN OVER]

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 **CORRECT**?

- 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. (2)

QUESTION 9

Yvonne and Cephriil 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 Cephriil 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 10

Peter has been an alcoholic for the past twenty years. His wife, Mandy, is worried as he sells all his possessions to buy liquor. Mandy applies for a court order to have him declared a prodigal and a curator appointed to administer his estate. The court declares Peter a prodigal and appoints Ms Zondi as his curator.

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

- 1 Once she is appointed, Ms Zondi must consent to contracts entered into by Peter.
- 2 Before Peter is declared a prodigal and a curator appointed, he will not have acting capacity to conclude a contract for the sale of his farm, while he is virtually unconscious after having drunk twelve glasses of whisky.
- 3 On the appointment of Ms Zondi, Peter loses his acting capacity.
- 4 When Peter is declared a prodigal and a curator is appointed, any contract concluded by Peter without assistance is voidable. (2)

[TURN OVER]

QUESTION 11

Musa and Lihle married out of community of property on 1 November 1999

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

- 1 Musa and Lihle have a joint estate
- 2 Musa and Lihle both lose their full capacity to act on marriage.
- 3 Musa and Lihle are jointly and severally liable to third parties for debts incurred for necessaries for the common household.
- 4 Lihle has to give her consent for the sale of a farm which belongs to Musa. (2)

QUESTION 12

Which ONE of the following agreements 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. A valid contract is concluded (2)

QUESTION 13

Mr Baldwin, a wealthy actor, marries his twenty-one year old personal trainer. In terms of their duly registered antenuptial contract, he appoints her as the sole heir to his fortune. On his death his children contest the validity of this undertaking in the antenuptial contract.

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

- 1 The undertaking is valid since parties about to be married may appoint each other as heir in an antenuptial contract.
- 2 The undertaking is invalid since it cannot be legally executed.
- 3 The undertaking is valid since it amounts to a valid donation between the living.
- 4 The undertaking is invalid since it is contrary to good morals. (2)

QUESTION 14

Harry sells unlicensed cycads illegally to Nigely. Nigely pays the agreed purchase price in cash. Harry subsequently refuses to deliver the cycads to Nigely.

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

- 1 Nigely can claim delivery of the cycads from Harry on the basis of the contract which arose between them.
- 2 Nigely can reclaim the purchase price from Harry on the ground of unjustified enrichment
- 3 The contract between Harry and Nigely is void due to legal impossibility.
- 4 Options (2) and (3) above are both correct (2)

[TURN OVER]

QUESTION 15

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

(2)

QUESTION 16

On her birthday Heidi receives an expensive ring as a gift from her Aunt Mabel. Four months later Aunt Mabel informs Heidi that she wants the ring back.

Which **ONE** of the following options represents the **CORRECT** legal position?

- 1 Aunt Mabel is not entitled to take the ring back, because a valid contract of donation was concluded.
- 2 Aunt Mabel is entitled to take back the ring, because the contract of donation should have been in writing and signed by Aunt Mabel.
- 3 Aunt Mabel can claim the ring from Heidi on the ground of unjustified enrichment.
- 4 Heidi is obliged to give back the ring, but she can claim damages from Aunt Mabel.

(2)

QUESTION 17

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 18

Moses undertakes to buy Xolile a new truck one month after Simon's death.

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)

[TURN OVER]

QUESTION 19

A contractual term that provides that the agreement may only be altered by means of a written amendment, is known as a/an.

- 1 rectification clause.
 - 2 rouwkoop clause.
 - 3 entrenchment clause.
 - 4 penalty clause
- (2)

QUESTION 20

The Kruger National Park enters into an agreement with Easy Thatch in terms of which Easy Thatch will thatch the roofs of three hundred newly built bungalows. Their contract stipulates that the bungalows must be ready before 15 September in time for the commencement of the European holiday season which starts on 1 October. Easy Thatch only finishes the work at the end of November and most of the new thatch roofs leak when it rains. The reason why the bungalows are not thatched by the agreed time is that Easy Thatch did not order enough grass in time and therefore spent weeks waiting for their suppliers to deliver enough grass.

Which form/s of breach of contract occurred in this set of facts?

- 1 prevention of performance by the debtor and *mora debitoris*
 - 2 *mora debitoris* and positive malperformance
 - 3 *mora creditoris* and positive malperformance
 - 4 only *mora debitoris*
- (2)

QUESTION 21

Tobias, who owns a shop that sells seafood, buys fresh fish from Saldanha Fisheries. Tobias and Saldanha Fisheries agree that Saldanha Fisheries will deliver the fish to Tobias's shop on 15 March. On that date, Tobias forgets that Saldanha Fisheries will deliver the fish, and closes his shop for the day in order to attend a funeral in a nearby town. When Saldanha Fisheries arrives at Tobias's shop with the fish, the doors are locked and there is nobody to receive the fish.

Which ONE of the following statements is CORRECT?

- 1 Tobias committed breach of contract in the form of *mora debitoris*.
 - 2 Tobias committed breach of contract in the form of *mora creditoris*.
 - 3 Tobias committed breach of contract in the form of repudiation of the contract.
 - 4 Tobias committed breach of contract in the form of prevention of performance by the creditor.
- (2)

[TURN OVER]

QUESTION 22

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 23

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

- 1 An order for specific performance is a court order which commands a contracting party to render the performance he or she has undertaken to render.
 - 2 Cancellation of a contract is a normal remedy which is always available to contracting parties.
 - 3 Compensation for pain and suffering can be claimed on the basis of contract where it is the direct result of the breach of contract.
 - 4 Damages calculated according to the creditor's negative interest places him or her in the same patrimonial position in which he or she would have been had proper and timeous performance taken place.
- (2)

QUESTION 24

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**?

- 1 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 he has saved by not having to perform.
 - 4 Sipho can claim only in respect of expenses he has already incurred.
- (2)

[TURN OVER]

QUESTION 25

Jabu buys a motor vehicle from Sharks General Motors on hire purchase. Jabu must repay the price and interest in instalments, over a period of 56 months. Jabu obtains a loan from Freedom Bank to finance the transaction. Freedom Bank pays Sharks General Motors the cash price of the vehicle and Sharks General Motors transfer their rights to the hire purchase agreement to Freedom Bank. Consequently Jabu must pay the purchase price, and interest, to Freedom Bank.

Which **ONE** of the following legal instruments was implemented in the above set of facts?

- 1 delegation
- 2 settlement
- 3 cession
- 4 merger

(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

Consider the following statements:

- A consensus regarding the date and time of delivery
- B consensus regarding the merx
- C consensus regarding the intention to pass ownership
- D consensus regarding the purchase price

Which of the above are the *essentialia* of a contract of sale?

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

(2)

[TURN OVER]

QUESTION 28

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

- 1 Movables are transferred by way of registration in the name of the purchaser at the Deeds Office.
- 2 A purchaser who wants to institute a claim because of a latent defect in the merx must prove that he or she was unaware of the defect when the contract was concluded.
- 3 The risk of accidental damage to the merx passes from the seller to the purchaser after the purchaser has become the owner.
- 4 The seller can transfer ownership of the merx to the purchaser even if he or she is not the owner of the merx. (2)

QUESTION 29

Menzi and Roger enter into an agreement that Menzi will make use of Roger's store to sell stationery.

Which **ONE** of the following terms may the parties include in their contract of lease?

- 1 Menzi may use Roger's store and Menzi need not pay any rent as they are friends.
- 2 Menzi may use Roger's store for any other purpose as long as he keeps the store in good condition.
- 3 Menzi may use Roger's store permanently because Roger does not intend using it for business again.
- 4 Menzi may pay Roger twenty percent of the profit he makes from the store every month as rent. (2)

QUESTION 30

The lessee is obliged to pay rent for as long as he or she has the use and enjoyment of the leased property. If the lessee is deprived of the use and enjoyment of the property, he or she can claim a reduction of rent.

In which **ONE** of the following circumstances can the lessee **NOT** claim a reduction of rent?

- 1 The property is not delivered in the condition in which it was when agreement was reached
- 2 The property is not maintained properly.
- 3 The lessor, or a third party with a better title, interferes with the lessee's use and enjoyment of the property.
- 4 A third party with no legal right to the property disturbs the lessor in his or her use and enjoyment of the property. (2)

QUESTION 31

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

- 1 payment of a premium by the insured
- 2 payment of an amount of money by the insurer
- 3 uncertainty whether the event upon which payment by the insurer is made dependent, will ever occur
- 4 the existence of an insurable interest (2)

[TURN OVER]

QUESTION 32

Which **ONE** of the following statements regarding the insured's duty to disclose is **CORRECT**?

- 1 Before the conclusion of the contract the insured must disclose to the insurer all relevant material facts of which he or she is aware.
- 2 If the insured does not comply with the duty to disclose, the contract will be void.
- 3 The insurer can only dispute the contract if the insured makes a positive misrepresentation.
- 4 The insured must disclose to the insurer all facts that he or she considers material. (2)

QUESTION 33

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

The person on whose behalf a juristic act is performed is called

- 1 a mandatary
- 2 a mandator.
- 3 a principal.
- 4 a representative. (2)

QUESTION 34

Olive imports olive oil to South Africa. Olive authorises Jack to buy olive oil on her behalf. The first time Jack goes overseas to purchase olive oil, he notices that dates are very cheap and realises that Olive could make a large profit by selling them in South Africa. He buys a shipload of dates on behalf of Olive.

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

- 1 Olive will not be liable for payment of the purchase price of the dates, since Jack acted outside the scope of his authority when he bought them.
- 2 Olive will be liable for payment of the purchase price of the dates, since she falsely created the impression that Jack had authority to act on her behalf
- 3 Jack will be personally liable for payment of the purchase price of the dates, because he (Jack) *falsely created the impression that he had the necessary authority to buy them.*
- 4 Olive will be liable for payment of the purchase price of the dates, but she will have a right of recourse against Jack for the payment of the purchase price (2)

[TURN OVER]

QUESTION 35

Three friends Danie, Carl and Franz enter into a partnership. They each contribute R20 000 towards the business. The agreement is not in writing, but they agree to buy horses, and sell them at auctions and to share the profits. One day Franz buys a boat in order to sell it in the hope of increasing their profit. After hearing what Franz had done, Danie decides he does not want to be part of the partnership anymore. Nevertheless Carl and Franz agree that they will continue with the partnership.

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

- 1 Danie's decision to leave does not terminate the partnership as the remaining partners have decided to continue with the business.
- 2 Franz's action does not bind the partnership because the activity does not fall within the sphere of the partnership business.
- 3 The agreement entered into by the three parties is not a partnership agreement because it is not in writing. (2)

QUESTION 36

Which **ONE** of the following does **NOT** occur in the liquidation of a partnership?

- 1 the realisation of the assets of the partnership
- 2 the distribution of the assets or liabilities among partners
- 3 the payment of debts of the partnership
- 4 the sequestration of partners' estates (2)

QUESTION 37

Koos, a farmer who farms on his uncle's farm, owns one tractor which he uses every day. Koos wants to borrow R400 000 from Yank Bank in order to buy some dairy cows. Yank Bank requires security for the loan in order to ensure that Koos will repay the loan. Koos only has the tractor to offer as security for the loan, but he can't work on the farm without the tractor.

Which **ONE** of the following forms of security will be the best way for Koos to secure his obligations under the loan?

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

[TURN OVER]

QUESTION 38

Moss borrowed R100 000 from Chris. Nomzamo is "surety and co-principal debtor" and Sikhu is surety for Moss's debt to Chris. Moss's estate is sequestrated and Chris claims the R100 000 from Nomzamo in terms of the contract of suretyship.

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

- 1 Nomzamo can raise the defence of excussion and compel Chris to first recover as much as possible of the debt from Moss's estate.
- 2 Nomzamo can raise the defence of division and demand that Chris divide his claim between Nomzamo and Sikhu.
- 3 Chris may claim the entire R100 000 directly from Nomzamo.
- 4 Since Moss's estate has been sequestrated, Chris has no remedy. (2)

QUESTION 39

In terms of the Consumer Protection Act, a supplier may not as a condition for entering into a transaction require that a consumer must purchase goods or service from the supplier or a designated third party or enter into an additional agreement for the supply of these goods or services.

Which **ONE** of the following is **NOT** a defence against bundling in terms of section 13 of the Consumer Protection Act?

- 1 The convenience of bundled goods outweighs the limitation of the consumer's right to choose suppliers.
- 2 Bundling is beneficial for the increase of the sales of stores that sell goods.
- 3 Bundling is to the economic benefit of the consumer.
- 4 The bundled goods are offered separately and at individual prices. (2)

QUESTION 40

Which **ONE** of the following bodies is responsible for promoting the resolution of disputes between consumers and suppliers?

- 1 The National Prosecution Authority
- 2 The High Court of South Africa
- 3 The Consumer Commission
- 4 The Consumer Tribunal (2)

TOTAAL: [80]

PART 1 (GENERAL/ALGEMEEN) DEEL 1

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PART 2 (ANSWERS/ANTWOORDE) DEEL 2

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107 (1) (2) (3) (4) (5)

Specimen only