

CLA1501

(490965)

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COMMERCIAL LAW IA

Duration 2 Hours

80 Marks

EXAMINERS

FIRST

SECOND

MR M PHOSA

PROF TE MANAMELA

Closed book examination

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This paper consists of 14 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 14 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 statements regarding the application of the doctrine of *stare decisis* is **INCORRECT**?

- 1 A High Court is bound by its own decisions until they are overruled by a superior court
- 2 A High Court is bound by the decision of a court of concurrent status within its own area of jurisdiction
- 3 A High Court is not bound to follow the decision of a High Court belonging to a different area of jurisdiction
- 4 A High Court can, depending on how it is constituted, be bound by a decision of the Supreme Court of Appeal (2)

QUESTION 2

Which **ONE** of the following statements regarding the *Corpus Iuris Civilis* is **CORRECT**?

- 1 It is a codification of Roman-Dutch law
- 2 It is a codification of Roman law and English law
- 3 It is a codification of Roman law
- 4 It is a codification of English law (2)

QUESTION 3

Which **ONE** of the options below is the most important source of law in South Africa?

- 1 Customary law
- 2 Law journals
- 3 Foreign law
- 4 The Constitution of the Republic of South Africa, 1996 (2)

QUESTION 4

John bought a television-set from Paul for R1 500. Paul wants John to pay an extra R150 for the installation of the television-set but John refuses to pay the money as that was never part of the agreement. In order to get the installation fee from John, Paul has to prove that the installation fee is established by trade usage (customary law).

Which **ONE** of the options below is a **REQUIREMENT** for a trade usage to be recognised as a legal rule?

- 1 It must have existed for at least a year
- 2 It must be observed by some of the members of the community
- 3 Its contents must be certain but need not be clear
- 4 Its contents must be clear and certain (2)

[TURN OVER]

QUESTION 5

Koos, John and Modise establish a company under the name KJM (Pty) Ltd and appoint King as Chief Executive Officer and Prince as Chief Financial Officer

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

- 1 KJM (Pty) Ltd is a natural person which acquires rights and is subject to duties in its capacity as a company
- 2 KJM (Pty) Ltd is a juristic person which acquires rights and is subject to duties in its capacity as a company
- 3 King and Prince are juristic persons who acquire rights and are subject to duties in their capacity as a Chief Executive Officer and Chief Financial Officer respectively
- 4 Koos, John and Modise are the juristic persons who acquire rights and are subject to duties in their capacity as the owners (2)

QUESTION 6

Piet steals Moremi's laptop and puts it in a dustbin. Unaware that there is a laptop in the dustbin, Koketso takes the dustbin outside. Dikgang, a street kid, finds the laptop in the dustbin whilst searching for food. He takes the laptop and sells it to Lebo.

Which **ONE** of the following people has the right of ownership to the laptop?

- 1 Piet
- 2 Moremi
- 3 Dikgang
- 4 Lebo (2)

QUESTION 7

Which **ONE** of the following options has all the elements of a delict?

- 1 an act, unlawfulness, fault, causation, and damage or injury to personality
- 2 an act, unlawfulness, fault, causation and necessity
- 3 unlawfulness, fault, causation, necessity and damage or injury to personality
- 4 an act, unlawfulness, fault and causation (2)

[TURN OVER]

QUESTION 8

Lelo and Bobo are doing commercial law at the college. Bobo wants Lelo to help him with certain "Latin expressions" he does not understand. They agree to meet in the college library a day before their commercial law examination. Bobo arrives at the agreed time but Lelo does not show up. When Bobo calls Lelo on her cellphone to find out where she is, Lelo tells him that she is at home with a friend studying. Bobo fails the examination and puts the blame on Lelo for not honouring their appointment as most of the questions in the examination paper tested students' understanding of "Latin terms and expressions".

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

- 1 Bobo and Lelo have a legal obligation to meet in the college library as they have agreed
- 2 Bobo can sue Lelo for failing to perform as they have agreed
- 3 Bobo and Lelo's agreement does not create any legal obligations
- 4 Lelo is in breach of contract because their intention was to create legally enforceable obligations (2)

QUESTION 9

Which **ONE** of the following statements about the requirements for the conclusion of a valid contract is **INCORRECT**?

- 1 The parties to a contract must make their intentions known to one another
- 2 The parties to a contract must have capacity to act
- 3 The contract which is objectively impossible to perform will be valid if it is legally possible to perform
- 4 The general rule is that no formalities are required for the formation of contracts (2)

QUESTION 10

Which **ONE** of the following statements about electronic transactions is **INCORRECT**?

- 1 Trade that is conducted by using electronic means is referred to as e-commerce
- 2 The Electronic Communications and Transactions Act 25 of 2002 applies to wills and alienation of land
- 3 The Electronic Communications and Transactions Act of 2002 promotes legal certainty for electronic transactions
- 4 An agreement that is concluded partly or wholly by means of data messages has legal force (2)

[TURN OVER]

QUESTION 11

Mr Tender is planning a big party to celebrate his 50th birthday. He invites local politicians and businessmen. Mr Money, his long-time friend, accepts the invitation and even confirms his attendance in writing. However, he changes his mind and pulls out on the eve of the party. Mr Tender, who has, over the years, awarded tenders to Mr Money, was expecting him to pay for some of the costs of the party and to give him an expensive birthday present. The party is cancelled as a result of Mr Money's withdrawal, and Mr Tender forfeits the deposit he had already paid for the venue. Mr Tender is furious and wants to sue Mr Money for financial losses he has suffered. It later transpires that Mr Money pulled out of the party because he had received death threats from Mr Tender's rivals.

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

- 1 Mr Tender cannot recover the deposit from Mr Money because the parties have not concluded a legally binding contract
- 2 Mr Tender cannot recover the deposit from Mr Money because Mr Money received death threats from his rivals
- 3 Mr Tender can recover the deposit from Mr Money because Mr Money has committed breach of contract by pulling out of the party
- 4 Mr Tender can successfully sue Mr Money for the birthday present (2)

QUESTION 12

Tina normally shops for groceries at a supermarket close to her home. On Saturday she went to the supermarket to buy certain items. After picking up the items and filling up the trolley, Tina proceeded to the till point to make payment.

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

- 1 A contract is concluded when Tina picks up the items from the shelf
- 2 A contract is concluded when Tina pays for her shopping
- 3 A contract is concluded when the cashier at the till point takes Tina's items
- 4 A contract is concluded when Tina puts the selected items in her trolley (2)

QUESTION 13

Arnold owns a car dealership in Pretoria. He has put up several boards around his business advertising the sale of an Audi A4 at a price lower than at a rival dealership in Johannesburg. The boards detail all the car specifications and the low price.

COMPLETE the following sentence. The boards are

- 1 an invitation to make an offer
- 2 a contractual offer
- 3 an option
- 4 a completed contract (2)

[TURN OVER]

QUESTION 14

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

- 1 A minor, who has become a major by virtue of marriage, will lose his or her capacity to act should the marriage be dissolved by divorce
- 2 A juristic person requires the assistance of a natural person to conclude juristic acts
- 3 An insolvent person is disqualified from entering into a contract of marriage in community of property because he cannot be trusted with the joint estate
- 4 A spouse married out of community of property requires his or her spouse's consent in order to enter into certain transactions relating to their joint estate (2)

QUESTION 15

Pule, who is 17 years old, has inherited livestock from his grandfather. He currently stays in Johannesburg with his uncle, Kabi, and does not wish to return to the village before he could finish his studies. Pule wants to sell the livestock and invest an estimated R200 000 profit so that he can stop being economically dependent on his father who owns a huge farm in their rural village.

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

- 1 Pule requires the court's assistance to sell the livestock because he is a minor
- 2 Pule does not need his parents' assistance to sell the livestock because he inherited it
- 3 Pule does not require assistance from any person to sell the livestock because he has already been emancipated
- 4 Pule requires the assistance of his parents to sell the livestock because he is a minor (2)

QUESTION 16

Piet, an 11 year-old boy, enters into an agreement with Arabi, a top local trader, in terms of which he will buy a very expensive bicycle. Piet purchases the state-of-the-art bicycle on credit and pays a hefty deposit in order to get delivery thereof from Arabi. He normally only uses the bicycle during the summer school holidays. Piet gets involved in an accident with a speeding motor vehicle while cycling down a busy street. The bicycle is destroyed and reduced to scrap material.

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

- 1 Piet will be able to sue Arabi and secure the return of any monies already paid since the contract is void
- 2 Arabi will only be able to sue Piet's guardian to recover the balance owed if the bicycle was a necessity for Piet
- 3 Arabi will be able to recover any unpaid balance even if the bike was used for pleasure
- 4 Piet committed breach of contract and Arabi can claim specific performance in terms of the contract (2)

[TURN OVER]

QUESTION 17

Which **ONE** of the following agreements is lawful?

- 1 A contract which is unreasonable or unjust
- 2 A contract which is against public policy
- 3 A contract which is contrary to good morals
- 4 A contract which is contrary to a statute (2)

QUESTION 18

David is employed by a company manufacturing skin care products as a sales manager. In his contract of employment there is a clause that states that the employee agrees and undertakes that he shall not for a period of twenty-four months and within a 200 kilometre radius of the premises of the employer, after the termination of the employment contract, alone or jointly with any person, carry on a business that manufactures skin care products or related products.

Which **ONE** of the following options represents the name of the clause included in David's contract of employment?

- 1 Rouwkoop clause
- 2 Restraint of trade clause
- 3 General limitation clause
- 4 None of the above (2)

QUESTION 19

Which **ONE** of the following statements about "gambling" is **CORRECT**?

- 1 Gambling contracts are not enforceable in a court of law
- 2 It is illegal to engage in a gambling activity in South Africa
- 3 There are some gambling activities which are regulated by legislation in South Africa
- 4 All gambling contracts are regulated by common law (2)

QUESTION 20

Which **ONE** of the following statements about the conclusion of a valid contract is **CORRECT**?

- 1 The general rule is that formalities are required for each and every contract to be valid
- 2 The general rule is that no formalities are required for the formation of contracts
- 3 Parties to a contract are required by law to put the contract in writing
- 4 Parties to a contract may not choose to have certain aspects of the contract in writing while other matters are agreed upon orally (2)

[TURN OVER]

QUESTION 21

Which **ONE** of the following statements about contracts which require formalities is **CORRECT**?

- 1 A contract of alienation of land is valid if signed by parties' agents acting on their written instructions
- 2 A contract of suretyship must only be signed by the surety himself or herself to be valid
- 3 A contract of donation under which performance is due in future can be concluded orally
- 4 A consumer contract has to be signed by the consumer to be valid (2)

QUESTION 22

Which **ONE** of the following statements about the formalities of a contract is **CORRECT**?

- 1 If a written agreement was merely intended to serve as proof of the terms of an oral agreement, the oral agreement becomes binding immediately even before those terms are put in writing
- 2 If parties to a contract negotiate the contents of the contract orally, the final agreement must also be oral/verbal
- 3 If an oral agreement precedes the written agreement then it means the parties intended reduction to writing to be a mere proof of their oral agreement
- 4 If parties agree that the contract must be in writing, it can be assumed that the written document is only intended to serve as proof of the oral contract (2)

QUESTION 23

A "term" is a provision in a contract It obliges a party to act in a specific manner or not to perform a specific act There are various ways in which terms can be included in contracts

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

- 1 Express terms are terms that are expressed in words
- 2 Implied terms are terms expressed in words
- 3 For a trade usage to be implied as a term of a contract it will need to meet certain requirements
- 4 A tacit term is imported into a contract if it is reasonable and necessary for achieving the contract's desired commercial effect (2)

[TURN OVER]

QUESTION 24

A condition is a particular kind of term and does not include all the terms generally found in contracts

Which **ONE** of the following statements regarding a condition is **INCORRECT**?

- 1 Conditions can be classified into various categories
- 2 An event that has already occurred at the time the contract is concluded cannot be a condition
- 3 An event must be specified and it can be certain or uncertain whether the event will indeed occur
- 4 A condition can be described as a contractual term which renders the operation and consequences of the contract dependent on the occurrence or non-occurrence of a specified uncertain future event (2)

QUESTION 25

Which **ONE** of the following statements regarding the time clause is **INCORRECT**?

- 1 A time clause is different from a condition in the sense that the time clause is brought into operation by the reaching of certain and determined or ascertainable time which has been agreed upon
- 2 The contract is subject to a resolutive time clause if the duty to perform is postponed until a determined or ascertainable moment has arrived
- 3 Peter agrees to work for Johnny for a period of three years, whereafter he would like to start his own business
- 4 Sophia sells her old computer to Gloria on 12 April. They further agree that Sophia will deliver the computer only on 20 June when she gets her new computer (2)

QUESTION 26

While at work, Tau and Palesa agree that Palesa will purchase Tau's old lounge curtains, provided that they are blue and not green. The curtains are at Tau's house, but because he is colour-blind, he is not sure what the colour is.

This contract contains a

- 1 supposition
- 2 modus
- 3 warranty
- 4 condition (2)

[TURN OVER]

QUESTION 27

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

- 1 The terms of the contract can be incorporated orally
- 2 The person who signs the written agreement will not have any defence available to him or her where the validity of the contract is in question
- 3 In the case of unsigned documents, no evidence may be allowed to prove that the document is a true reflection of the contractual terms
- 4 Click-wrap agreements are also generally known as "ticket cases" (2)

QUESTION 28

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

- 1 It is accepted that parties to a contract normally use words in their technical meaning
- 2 The use of surrounding circumstances in determining the meaning of the words used in a contract is prohibited by the parol evidence rule
- 3 When interpreting the contract, the intention of the parties can be determined by considering previous negotiations between the parties
- 4 If there is any uncertainty with regard to a word or phrase used in a contract the courts sometimes interpret such clause in favour of the party who drafted the contract (2)

QUESTION 29

Which **ONE** of the following options will **COMPLETE** the sentence below **CORRECTLY**?
Rectification of a contract is permissible if the parties who apply for it can prove that

- 1 the written contract does not accurately reflect their true intention
- 2 they have failed to comply with a formal statutory requirement
- 3 one or both parties to the contract forgot to sign the contract where signing is required by the law
- 4 their contract was reduced to writing (2)

[TURN OVER]

QUESTION 30

Seth and Pharrell enter into an agreement in terms of which Seth agrees to deliver borehole equipment to Pharrell by train. The agreement provides for delivery to Pharrell in Randfontein, not later than 15 January. On its way to Randfontein the train is delayed as a result of a serious accident between two other trains, hence the equipment is delivered to Pharrell only on 17 January.

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

- 1 Seth is in breach of contract because he has not performed by the date specified in the contract
- 2 If Seth warrants delivery by 15 January, he will be in breach of contract even though his late performance is due to circumstances beyond his control
- 3 Since Pharrell did not give Seth a reasonable time within which to perform after the accident, Seth is not in breach of contract
- 4 Pharrell can hold Seth liable for breach of contract since it is Seth's own fault that he sent the borehole equipment by train (2)

QUESTION 31

In which **ONE** of the following examples has **REPUDIATION NOT** taken place?

- 1 Dumelo (an employee) and Jeffrey (the employer) agree that after termination of their employment contract, Dumelo will not start the same business as Jeffrey for a period of one year. Eight months after the termination of their employment relationship Dumelo starts a similar business just across the street.
- 2 Dumelo tells Jeffrey that the discussion between them did not result in a contract as they were merely talking.
- 3 Dumelo tries to rescind a contract based on duress when, in fact, no duress ever occurred.
- 4 Dumelo and Jeffrey agree that Dumelo will build a house for Jeffrey and they also agree that Dumelo will use his money to buy the necessary building materials. A few days later Dumelo informs Jeffrey that he is waiting for Jeffrey to buy the materials in order for him to start with the work as agreed. He denies that they ever agreed that he (Dumelo) would buy the material. (2)

QUESTION 32

Which **ONE** of the following options will terminate contractual obligations?

- 1 supervening impossibility of performance where the debtor is in *mora*
- 2 supervening impossibility of performance where the creditor is in *mora*
- 3 initial impossibility of performance
- 4 prevention of performance (2)

[TURN OVER]

QUESTION 33

Where a contract does not specify a particular date or time for performance, the debtor is placed in mora by a letter of demand stating a reasonable time within which performance should take place

Which **ONE** of the following factors will **NOT** be taken into account when the courts determine the reasonableness of the time given to the debtor to perform (in a letter of demand)?

- 1 the intention of the parties
- 2 the parties' economic rights only
- 3 the period specified in the letter of demand for performance and the period that has lapsed
- 4 accompanying difficulties and delays, as actually contemplated by the parties at the conclusion of the contract (2)

QUESTION 34

Which **ONE** of the following options is **NOT** a ground upon which a court will refuse an order for specific performance?

- 1 Where the defendant would be unreasonably harshly affected
- 2 Where the order would comprise an injustice
- 3 Where the order would be inequitable under all the circumstances
- 4 Where the defendant refuses to render specific performance (2)

QUESTION 35

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

- 1 The general rule is that if either one or both of the parties have performed, whatever has been performed must not be returned
- 2 If restitution has become impossible, the party who is cancelling the contract is not relieved of the duty to return the performance which has been received, even if the impossibility is not due to his or her fault
- 3 If it is impossible for the guilty party to return the innocent party's performance, the innocent party must nevertheless return the guilty party's performance
- 4 A court may, in certain circumstances, dispense with restitution if the court considers it equitable to do so, irrespective of the innocent party's ability to make restitution (2)

[TURN OVER]

QUESTION 36

Steven undertakes to deliver 200 litres of fresh milk at Deon's premises at 10 00 on 20 February. Steven arrives to deliver the milk but finds the premises locked. It transpires that Deon failed to make arrangements to receive the milk on that day. Deon has thus breached the contract through *mora creditoris*.

Based on this scenario, with regard to the duty to mitigate damages, which **ONE** of the following statements is **CORRECT**?

- 1 Steven will be able to recover his loss by attempting another delivery at a later stage.
- 2 If Steven leaves the fresh milk outside the premises in the sun and it turns sour, he will nevertheless be able to recover the cost of replacing the milk even though he had not taken reasonable steps to limit his loss.
- 3 If Steven takes the milk back and stores to deliver it some other time, he will not be able to claim the extra costs of delivery and storage as damages.
- 4 The onus is on Steven to prove that he could have limited his loss by taking reasonable steps. (2)

QUESTION 37

Which **ONE** of the following statements is a consequence of cession?

- 1 The cessionary does not have the right to collect the debt.
- 2 The cessionary can no longer cede his or her right to any person.
- 3 The cedent can no longer cede his or her right to another person.
- 4 The cessionary only receives advantages attached to the right but not disadvantages. (2)

QUESTION 38

Terrence undertakes to build a wall around Robert's property. However, Terrence realises that he has too much work and persuades Chad to take over the job. Terrence, Robert, and Chad now agree to this arrangement.

Which **ONE** of the following terms will **COMPLETE** the sentence below **CORRECTLY**?

Terrence's obligation is extinguished because of

- 1 delegation
- 2 settlement
- 3 set-off
- 4 cession (2)

[TURN OVER]

QUESTION 39

Liam orders a "Ferrari car" cake for his son's third birthday party from Charity. Liam agrees to pay R700 for the cake and Charity agrees to deliver the cake at Liam's house at 9h00 on the day of the party.

Which **ONE** of the following circumstances is an example of supervening impossibility of performance which terminates the obligations arising from the contract?

- 1 Charity oversleeps and only delivers the cake at 11 00, one hour after the start of the birthday party
- 2 Charity's kitchen is destroyed in a fire caused by lightning and she cannot bake the cake
- 3 Charity drives at a very high speed to Liam's house and the cake is destroyed in an accident
- 4 Charity does not possess the necessary skill to decorate party cakes and the cake resembles a BMW car (2)

QUESTION 40

Vuyo owes Bonang R20 000 which she lent him two months ago.

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

- 1 Bonang may refuse to accept payment of Vuyo's debt if not tendered by Vuyo himself
- 2 Nothing except an amount of R20 000 from Vuyo to Bonang will qualify as payment of his debt
- 3 If Vuyo and Bonang get married in community of property Vuyo's debt will automatically terminate
- 4 If Gabriel owes Vuyo R25 000, Vuyo may cede his claim against Gabriel to Bonang to the amount of R20 000 (2)

TOTAL: 80

