

Tutorial Letter 201/2/2018

COMMERCIAL LAW 1A

CLA1501

Semester 2

Department of Mercantile Law

This tutorial letter contains important information
about your module.

BARCODE

Dear Student

This tutorial letter contains feedback on assignment 01.

The aim of this tutorial letter is to draw your attention to certain important aspects of the questions which you may have overlooked. Read the feedback carefully to make sure that you understand what is covered in the answers to the questions. If you are still not sure after reading the feedback, go back to the original source in your prescribed textbook.

NOTE: All references in brackets refer to your prescribed textbook, Schulze H *et al General Principles of Commercial Law* 8th ed (2015) Juta.

1 COMMENTARY ON ASSIGNMENT 01

QUESTION 1

(Chapter 1: The South African Legal System, paragraphs 1.6, 1.6.1 & 1.6.2)

The *ratio decidendi* is the most important part of the judgment. It is the “reason for the decision” or the conclusion reached by the judge after examining the material facts of the case. It is the *ratio decidendi* which is the subject of the *stare decisis* doctrine.

The *obiter dictum* is any statement by the judge that falls outside the *ratio decidendi* and is not binding on subsequent courts.

(4)

QUESTION 2

(Chapter 2: Introduction to the Science of Law, paragraph 2.2.4.1.1.2(a))

The two methods of acquiring an original right of ownership are:

(a) **Occupation.** This applies where one occupies or seizes the property belonging to no one with the intention of becoming its owner. Such person will then acquire the right of ownership.

(b) **Prescription.** This applies where a possessor may become the owner of the property by means of prescription if he or she has possessed the property openly as if he or she were the owner for an uninterrupted period of 30 years.

(5)

QUESTION 3

(Chapter 2: Introduction to the Science of Law, paragraph 2.1.2.1)(a) & (b)

A legal subject is a human being or entity subject to the law. The law recognises two categories of persons, namely natural persons and juristic persons. A natural person refers to a human being, while a juristic person refers to a legal subject other than a human being, for instance, a company, university or municipality.

(4)

QUESTION 4

(Chapter 2: Introduction to the Science of Law, paragraphs 2.1.2 & 2.1.2.2; and Chapter 4: Consensus, paragraphs 4.3.1 & 4.3.2)

- (a) (v). The dispatch theory applies where, for instance, Lerato who is in Johannesburg posts an offer to Lebo who is in Maputo. In this case communication is by post and therefore not as direct and immediate as communication by telephone since the parties are not in each other's presence. In this case, the contract will only be concluded in Maputo when Lebo posts her letter accepting Lerato's offer.
- (b) (i). A duty is the responsibility imposed by law that obliges or binds a person to render performance. Duty and right are seen as opposites.
- (c) (ii). The contract is concluded there and then in the case where the parties are in each other's presence. The ascertainment theory also applies to contracts concluded by telephone. Because of the immediacy of communication between the parties communicating over the telephone, they are regarded as being in each other's presence, even though they may be speaking to each other by satellite link-up from opposite ends of the earth, thousands of kilometres apart.
- (d) (iii). A right is any right that a legal subject has in respect of a legal object and which is protected by law. As stated above, duty and right may be seen as opposites.
- (e) (iv). A legal object is any entity that can be the object of a legal subject's claim to a right. Generally, property, intellectual property, aspects of personality and performances can be the objects of a legal subject's claim to a right.

(5)

QUESTION 5

(Chapter 5: Capacity to Perform Juristic Acts, paragraph 5.2.2.2)

There are several statutory exceptions to the general rule that a minor may only act with assistance from his or her guardian.

For instance, the Children's Act 38 of 2005 provides that a child over the age of twelve may consent to an HIV test, if he or she is of sufficient maturity and has the mental capacity to understand the benefits, risks, social and other implications of an HIV test. John has turned twelve already. Thus, John can lawfully undergo the test without his guardian's consent. (4)

QUESTION 6

(Chapter 4: Consensus, paragraph 4.2.4.1)

This does not constitute a valid offer. **(1)** The general rule is that an advertisement in itself does not constitute an offer but an invitation to do business. Any member of the public who reacts to Moloko's invitation is making an offer to Moloko to buy the advertised car. If Moloko accepts the offer, consensus is reached and a contract of sale arises. (3)

Total: [25]

We wish you all the best in your studies. Please contact us should you experience any problems relating to the contents of this module.

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