

**Department of Mercantile Law  
CLA1501**

**COMMERCIAL LAW 1A**

Duration: 72 Hours

80 Marks

Examiners: Adv. N Hlongwane and Adv. S Ebrahim

---

Special Examination – 2018

**ANSWER ALL THE QUESTIONS.**

**INSTRUCTIONS:**

1. This paper is divided into **2 SECTIONS**. **SECTION A** consists of **written questions** and counts 40 marks. **SECTION B** consists of **20 multiple-choice questions (MCQs)** which count 2 marks totalling 40 marks. **The paper therefore counts 80 marks.**
2. With regards to **MCQs**, you are required to choose the right option and provide a motivation therefore. You will be awarded one mark for choosing the right option. In addition, you must motivate your option in order to obtain another mark. Thus, each question will carry two marks. For obvious reasons, a wrong option will be awarded zero and the motivation thereof will not even matter.
3. The paper consists of 12 pages in total. Please make sure that you have received all the pages with all the questions.
4. Please use your assignment pads or any blank sheets to answer the questions. You can also open a word document and answer the questions thereon. **Make sure that you write your name and student number clearly.** Answers, whether hand-written or typed, will be accepted. You must not use a mark-reading sheet for MCQs.
5. You have more than enough time to complete this paper. So, make good use of your time.
6. Good luck with the examination. We trust that you will be successful.

## SECTION A

### QUESTION 1

Consider the case reference below and answer the following questions:

*Laugh It Off Promotions CC v SAB International (Finance) BV t/a Sabmark International 2006*  
(1) SA 144 (CC)

- (a) In which court was this case heard? (1)
  - (b) Where is it reported? (1)
  - (c) Who is the appellant? (1)
- (3)**

### QUESTION 2

- (a) The South African legal system, unlike Roman law, is not codified. Explain the meaning of this statement. (2)
  - (b) South African courts consist of lower and superior courts. List the various officers that are found in the superior courts. (4)
  - (c) Describe the specific method of acquisition of ownership of the property in each of the following instances:
    - (i) Macks buys a piece of land from his uncle, Percy, in order to build a house for his family. (1)
    - (ii) Sibusiso goes to the veld to hunt rabbits which belong to no one. He catches three of the rabbits. (1)
    - (iii) Mary has bought a car for her brother, Khathu, and intends to give it to him on his 40<sup>th</sup> birthday. (1)
    - (iv) Fifty years ago, Musa occupied a piece of land adjacent to his house which he fenced in accidentally and subsequently cultivated. (1)
- (10)**

### QUESTION 3

Match each Roman letter in Column B with the correct alphabet in Column A: (4)

COLUMN A	COLUMN B
(a) real rights	i. performance
(b) intellectual property rights	ii. farm
(c) personality rights	iii. trade mark
(d) personal rights	iv. physical integrity

### QUESTION 4

Indicate whether the following statement is **TRUE** or **FALSE**. Give reasons for your answer.

Freedom to contract may not be limited. (3)

### QUESTION 5

Match column B with column A. For example: (a) – 3.1. (5)

COLUMN A	COLUMN B
(a) <i>Ratio decidendi</i>	<b>3.1.</b> The capacity to perform juristic acts, to participate in legal transactions and to conclude valid contracts.
(b) Tacit emancipation	<b>3.2.</b> The power of a person to choose how to have his or her properties distributed upon his or her death.
(c) Legal capacity	<b>3.3.</b> The underlying reason for a court's ruling.
(d) Auction	<b>3.4.</b> Any right that a legal subject has regarding a specific legal object and which is protected by law.
(e) Right	<b>3.5.</b> This occurs where the guardian allows the minor to lead an economically separate and independent life. The guardian's consent may be given expressly or tacitly.
	<b>3.6.</b> A remark in passing that was unnecessary for the decision of the case and is, therefore, not binding in subsequent court cases.
	<b>3.7.</b> A public sale where the price is neither set nor arrived at by negotiation, but is discovered through the process of competition and open bidding.

	<b>3.8.</b> The capacity or competence to acquire and to bear rights and duties.
--	--

### QUESTION 6

Contracts are usually conducted through the process of offer and acceptance. Briefly set out **FIVE** requirements for a valid offer. (5)

### QUESTION 7

Consider the following scenarios and explain whether there is consensus between the parties.

- (a) Mpho, the seller, tells the purchaser that he is buying a 2014 model car, while it is in fact a 2000 model. (2)
- (b) A popular surgeon, Makatu, convinces his patient, a very sick Lesiba, shortly before Lesiba undergoes a knee operation, to sell his exotic car cheaply to him. (2)  
(4)

### QUESTION 8

Indicate whether the following statement is **TRUE** or **FALSE**. Give reasons for your answer.

A minor under the age of seven years has limited capacity to act. (3)

### QUESTION 9

Explain whether the following contract will be legally possible to perform.

Arthur accepts a wager from Chommie in terms of which he undertakes to pay her R50 000 if the horse Supasta wins the Durban July horse race. (3)

**SECTION A: TOTAL [40]**

## SECTION B

### QUESTION 1

Which **ONE** of the following donations has to be in writing and signed by the donor?

- 1 Aaron gives his 18-year-old niece, Mary, a BMW car for her birthday.
- 2 John gives his wife Betty, to whom he is married out of community of property, a brand-new car.
- 3 Kamo undertakes to give his friend Lebo, a new BMW car in six months' time.
- 4 Tshidi gives her mother a gift voucher to the value of R 3 000. (2)

### QUESTION 2

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 3

Donald undertakes to buy James a new car one month after Samson's death has occurred.

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

- 1 The moment for performance cannot be determined since it is uncertain when Samson will die.

- 2 A contractual relationship between Donald and James 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)

#### QUESTION 4

Matome wants to purchase a stand from Tapiwa. They agree that Matome will purchase the stand if the beach is visible from the stand. Tapiwa is not sure whether the beach is visible from the stand.

What is such a contractual term called?

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

#### QUESTION 5

Mampuru and Makhado conclude a contract of sale in terms of which Plot 200 is sold to Makhado for R800 000. Mampuru's secretary types the agreement the following day and erroneously indicates the price as R80 000. Mampuru and Makhado sign the agreement without checking it.

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

- 1 Because the agreement is in writing, the parol evidence rule will exclude evidence regarding an oral agreement concluded prior to the written agreement.
- 2 Because oral contracts of sale for the alienation of land are not valid, the parties will be bound to the price of R80 000.
- 3 The written contract is void because of mistake. Evidence of the oral contract will be admissible in terms of the general principles involved in the interpretation of contracts.
- 4 The written contract may be rectified. The parol evidence rule will not exclude evidence of the parties' true intention, where the written contract does not reflect this. (2)

## QUESTION 6

Thuli and Sally conclude a contract in terms of which Thuli will do the interior decorating of Sally's holiday flat. The contract price of R25 000 includes the work and materials. Before Thuli can start with the project, the flat is completely destroyed by fire as a result of Sally's negligence.

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

- 1 Thuli cannot claim anything from Sally, since the contract has been terminated.
- 2 Thuli can claim the full contract sum of R25 000 from Sally as damages.
- 3 Thuli can claim R25 000 from Sally, less the amount she has saved by not having to perform.
- 4 Thuli can claim only in respect of expenses she has already incurred. (2)

## QUESTION 7

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

- 1 An agreement in terms of which a creditor and debtor agree that the former will discharge the latter from his or her contractual obligations is called release.
- 2 Release is often accompanied by an intention to donate on the part of the debtor.
- 3 A mere offer of release by the creditor to the debtor is sufficient to constitute release.
- 4 An offer of release can only be done orally or in writing. (2)

## QUESTION 8

Tshepo wins a gift voucher from Shine Car Fixtures. In terms of the voucher, she is entitled to a free carwash. Since she does not own a car, she cedes her right to the carwash to her friend Mpho.

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

- 1 An agreement between Tshepo and Shine Car Fixtures in terms of which a new obligation is created between Shine Car Fixtures and Mpho, is a cession of rights.
- 2 An agreement between Tshepo and Mpho in terms of which Mpho becomes entitled to performance by Shine Car Fixtures, is a cession of rights.

- 3 An agreement between Shine Car Fixtures and Mpho in terms of which a new obligation is created between Shine Car Fixtures and Mpho, is a cession of rights.
- 4 An agreement between Tshepo and Mpho in terms of which a new obligation is created between Shine Car Fixtures and Mpho, is a cession of rights. (2)

### QUESTION 9

An obligation can be terminated by...

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

### QUESTION 10

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 the 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 prevention of performance
- 4 only *mora debitoris* (2)

### QUESTION 11

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 affected 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 12

The legal remedies at the disposal of the innocent party when breach of contract is committed fall into three major categories. Two of these categories are (a) execution of the contract and (b) cancellation of the contract.

Which **ONE** of the following is the third major category of remedies available?

- 1 prohibitory interdicts
- 2 restitution
- 3 damages
4. None of the above (2)

### QUESTION 13

The period of prescription in respect of a debt arising from a bill of exchange or other negotiable instrument, is usually ...

- 1 three years
- 2 four years
- 3 five years
- 4 six years (2)

### QUESTION 14

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

- 1 Novation does not extinguish the original obligation between the parties.
- 2 If the novation is void for whatever reason the old obligation is also void.
- 3 A valid novation will take place even though the initial obligation was invalid.

- 4 The effect of novation is to extinguish the original debt and therefore to extinguish accessory obligations. (2)

### QUESTION 15

The law recognises that, in appropriate circumstances, a written contract may be rectified.

In which **ONE** of the following circumstances is rectification permissible?

- 1 if the parties can prove their true intention and that the contract does not accurately reflect their intention
- 2 if the parties can prove their true intention as well as the fact that when the contract was concluded, they agreed that the integration rule would not apply
- 3 if the parties can prove their true intention and that rectification of the contract will not be to the detriment of any third party
- 4 None of the above (2)

### QUESTION 16

Donny sells his car to Stuart and his library of rare books to Chris. It is an express term of his contract with Stuart that the car must be delivered by 6 June. The contract between Donny and Chris does not stipulate any date for the delivery of the books to Chris. Donny does not deliver the car to Stuart or the books to Chris.

Which **ONE** of the following statements is **CORRECT** in respect of the legal steps that may be taken against Donny?

- 1 Stuart and Chris may, in principle, claim delivery of the car and the books respectively.
- 2 Stuart cannot claim delivery of the car but can only cancel the contract.
- 3 Chris is immediately entitled to cancel the contract for the sale of the books.
- 4 Stuart cannot apply for an interdict to prevent Donny from selling the car to Edward at a higher price. (2)

### QUESTION 17

Which **ONE** of the following statements regarding the *exceptio non adimpleti contractus* is **CORRECT**?

The *exceptio non adimpleti contractus*...

- 1 prevents a party from doing something that is contrary to the terms of the contract.
- 2 allows a party to a contract to withhold performance until the other contracting party has performed in terms of the contract.
- 3 orders a party to a contract to do what he or she undertook to do in that contract.
- 4 orders a party to render a reduced performance. (2)

### QUESTION 18

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

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

Mike's obligation is extinguished because of...

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

### QUESTION 19

Kwena and Richard negotiated the sale of a house. Kwena represented to Richard that the house had a sound foundation and that there was no danger of the walls starting to crack. They both signed the contract and two days later, after a heavy thunderstorm, three walls cracked as a result of the house having been built on clay.

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

- 1 Richard does not have any remedies against Kwena since he signed the contract of sale.
- 2 The contract between Kwena and Richard is voidable on grounds of misrepresentation.
- 3 The agreement between Kwena and Richard is void on grounds of misrepresentation.
- 4 No contract came into existence because the parties did not reach consensus. (2)

### QUESTION 20

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

Contracts in restraint of trade are...

- 1 in principle invalid and unenforceable, because a person's freedom to compete in the employment market is restrained and it is therefore contrary to public policy.
- 2 in principle valid but unenforceable, because parties may conclude an agreement to this effect but a court will give precedence to public interest over contractual commitment if these interests are in conflict.
- 3 in principle valid and enforceable, because the law permits the restraint of a person's freedom to trade if the parties freely conclude an agreement to this effect.
- 4 in principle invalid but enforceable, because the law does not want to unnecessarily restrain a person's freedom to trade. (2)

**SECTION B: TOTAL[40]**  
**TOTAL: [80]**