



PROGRAMME : BAcc Accounting
MODULE : Commercial Law 100
CODE : CML1B01
DATE : 6 November 2020
Main Examination
DURATION : 2 Hours
TOTAL MARKS : 80

EXAMINER : DR. S. HUNEBERG; MRS S LAWRENSON
MODERATOR : PROF. J. CALITZ
NUMBER OF PAGES : (including this one)

INSTRUCTIONS:

1. Answer all the questions in this section on insurance law.
2. Write clearly and legibly.
3. Leave a line open between each answer (for example, between questions 1.1 and 1.2).
4. Ensure the correct use of grammar and spelling.
5. Please note that this is an online examination and all University rules apply.

Insurance Law**(10 marks)****Match the column: (5 marks)**

Match the question/statement in column A to the most accurate answer/description in column B:

Column A	Column B
Kenny ensures his insurer that he will keep his vehicle in a road worthy condition for the duration of his motor vehicle policy	Promissory Warranty
Sean fails to inform his life insurer that he has type 2 diabetes.	Non-disclosure
Lindiwe is involved in a motor vehicle collision with Ruben, which she caused. Lindiwe is currently insured with two separate insurers for the same risk. She wants to claim the full amount of damages from both insurers. Which principle in insurance prevents her from doing so?	Contribution
Dustin insures his Macbook Air which has a value of R17 000 for R10 000.	Under-insurance
Lavish Insurers Ltd takes out insurance with Q-Insurers in order to make good its claims for its clients.	Reinsurance
	Over-insurance
	Subrogation
	Affirmative Warranty

Multiple Choice:

1. Tina wants to take out motor vehicle insurance with Just-Insure Ltd. The insurer mentions that motor vehicle insurance falls under indemnity insurance and that it is different from non-indemnity insurance. Tina is slightly confused by this and requires the insurer to explain the difference between the two concepts. The following statements are correct with regard to the difference between the two concepts:
 - i. With non-indemnity insurance, principles such as contribution and subrogation are not applicable;
 - ii. With indemnity insurance, the insurable interest must exist at the time of the conclusion of the contract;
 - iii. With indemnity insurance, the insurer's liability is limited to the amount of damages actually incurred;

- iv. With non-indemnity insurance, the insurer's liability is based on agreement between the parties
 - v. With non-indemnity insurance, the insurable interest must exist at the time of the loss or damage
 - a) Only i, ii and iii are correct
 - b) Only ii, iii and iv are correct
 - c) Only i, iii and iv are correct
 - d) Only i, iii and v are correct
 - e) None of the above are correct
2. Karabo calls Just-Insure Ltd to take out household insurance for her home. The insurer asks Karabo multiple questions about the items in the home and the value thereof. Karabo answers the questions in good faith and as accurately as she can. With regard to the duty of disclosure by the insured, the following statements are incorrect:
- i. The insured is always under a continuing duty of good faith, even after the conclusion of the contract;
 - ii. The insured must disclose all material information which is in the insured's knowledge;
 - iii. The insured must answer all questions put to him truthfully;
 - iv. The insured does not need to disclose information which is material if it is not directly asked of him by the insurer;
 - v. The insured must disclose all information which would decrease the risk.
 - a) Only i, iv and v are incorrect
 - b) Only i, ii, iv and v are incorrect
 - c) Only iii, iv and v are incorrect
 - d) Only ii, iii and v are incorrect
 - e) Only i, iii and v are incorrect
3. In terms of warranties, the following statements are correct:
- i. A warranty is based on representations made by the insured at the pre-contractual stage and are then inserted into the contract as continuous terms;
 - ii. Breach of warranties do not allow the insurer to cancel the contract unless the representations made are material;
 - iii. Affirmative warranties take the form of the insured warranting that a certain factual situation will be maintained after the conclusion of the contract;
 - iv. An example of a promissory warranty is where the insured informs the insurer that he has never suffered from epileptic fits;
 - v. Warranties are specific to indemnity insurance.
 - a) Only i, iii and v are correct
 - b) Only ii, iv and v are correct
 - c) Only ii, iii and iv are correct
 - d) Only i and ii are correct

e) Only i, ii and v are correct

Fill in the missing word:

1. In terms of an average clause, the parties agree that the insured will become his own [] for the percentage of the damages of loss in respect of which he is under-insured.
2. Danny takes out motor vehicle insurance for his 2015 VW Polo Vivo with ABC Insurers Ltd as well as DEF Insurers Ltd at the same time for the same risks. This is known as [] insurance.

Consumer Protection

(5 marks)

Match the question/statement in column A to the most accurate answer/description in column B:

Column A	Column B
Barry owns an appliance store. Barry decides to advertise his products to the public in order to get more business. In the advertisement, Barry states that customers can buy 22 inch television sets at R4000 each. Barry does not actually have these television sets available at the time of advertising.	Bait marketing
Books-for-All send Wilhemena a few of their books by post and state that if she does not send the books back in one week, then she must pay for them.	Negative option marketing
Beds for Africa deliver a king size mattress to Jentley which he did not order.	Unsolicited goods
Ella is approached by a new cell phone company via email to purchase a new phone contract. She enters into the contract with the supplier after receiving the email from them. Two days later, she realises that she actually cannot afford the phone contract. She wants to cancel the contract with the supplier immediately.	Cooling-off right
Samson takes out a cellphone contract with 4-U Cellular (Pty) Ltd for a period of two years.	Fixed-term contract
	Right to safe, quality goods

	Right to information in a plain language
	Discriminatory marketing

Security

(10 marks)

Match the column: (5 marks)

Match the question/statement in column A to the most accurate answer/description in column B:

Column A	Column B
Marissha agrees to pay her son's loan from ABBA Bank Ltd if he cannot repay them as agreed	Suretyship
Kanye sees a neighbour's yacht sinking in the dock and immediately reacts with a few others and manages to save the yacht from sinking. Kanye acquires security over the yacht in the form of:	Salvage lien
Sydney wants to borrow R10 000 from her friend, Maureen. Maureen is only willing to lend her the money if Sydney provides her with her sapphire ring.	Pledge
Francis leases her flat in Melville to Thomas. Thomas does not pay his rent for two months. Francis has security for the rent in arrears in the form of:	Landlord's tacit hypothec
Vuyisile enters into a contract with Douglas in terms of which Douglas will build a house for Vuyisile and will be paid R100 000 for the work. Vuyisile does not pay Douglas for the work. Douglas acquires security over the house in terms of a:	Debtor-creditor lien
	Improvement Lien
	Mortgage
	Luxurious expenses

Multiple Choice – Security

1. Andile and Mavundla both agree to act as co-sureties for their sister, Zimasa's study loan with ABBA Bank Ltd. Zimasa also provides ABBA Bank Ltd with security in the form of a life insurance policy. Upon default by Zimasa of the

principal debt, Andile and Mavundla obtain certain rights as sureties. The following statement is not correct in the above set of facts:

- Andile and Mavundla may rely on the benefit of excussion and demand that the creditor first claim the amount from Zimasa;
- Andile may be held fully liable for the amount of the debt and does not have a claim against Mavundla;
- Mavundla may only be held liable for a pro-rata amount of the debt as co-surety;
- Mavundla and Andile may claim the amount paid by them from Zimasa;
- Mavundla and Andile may demand transfer and cession of the life insurance policy from the creditor.

2. The following statement regarding a pledge is incorrect:

- a) Delivery is a prerequisite for the creation of a pledge
- b) Parties may however agree that item may be sold on default without obtaining a court order
- c) Pledgee is required to take proper care of the pledged object while it is in his possession
- d) Parties may agree that if pledgor defaults, pledgee may simply retain the asset as the owner thereof.
- e) Pledgee may claim from the pledgor the necessary expenses incurred for the maintenance of the item

3. The following statement regarding a mortgage is incorrect:

- a) It comes about in terms of agreement between the mortgagor and the creditor
- b) Security only takes effect upon registration of the mortgage bond in the Deeds Office
- c) *Parate executie* is always invalid in the case of a mortgage
- d) Mortgagee takes possession of mortgaged property
- e) *Lex commissoria* always invalid in the case of a mortgage

Fill in the missing word:

1. If a person is in possession of a thing belonging to another and has incurred expenses with regard to that thing by having spent money or labour on it, he has the right to retain the thing in his possession until remunerated according to their agreement. This is known as a []
2. If a person is in possession of a thing belonging to another has incurred expenses with regard to that thing by having spent money or labour on it, he has the right to retain the thing in his possession until reimbursed for his actual expenditure or labour and there is no agreement between the parties. This is known as an [].

National Credit Act

(5 marks)

Fill in the missing word:

1. Credit-For-All (Pty) Ltd provide a loan to Jason of R40 000 without checking Jason's creditworthiness. They did not conduct a proper assessment of Jason and his ability to repay the loan. This is known as [] credit.
2. Frederick enters into an instalment transaction with Y-Bank Ltd for an amount of R300 000. This falls in the category of a [] credit agreement.

True or false:

1. Kyle wants to return the goods which are the subject of a credit agreement to the credit provider as he can no longer afford to pay for the goods. As soon as Kyle is in default, he may not surrender the goods to the credit provider.
2. Consumers have the right to be granted credit.
3. A credit provider may unilaterally increase the credit limit of a consumer if the contract contains a standard provision to do so.

Long Question –CPA and NCA

(10 marks)

Zinhle is a newly appointed chartered accountant at one of the largest accounting and auditing firms in the country. She decides that she is going to purchase a new Mercedes Benz C-Class to celebrate her new job appointment. One day whilst doing her grocery shopping at her local shopping centre, Mercedes Benz have a promotional stand in the centre advertising and selling their vehicles. She approaches the stand and decides there and then to purchase the vehicle. The salesman arranges finance for Zinhle through Best Bank Ltd for an amount of R 400 000 in order for her to purchase the vehicle. Best Bank Ltd will grant her the loan and she will have to repay the loan over 48 months at an interest rate of 10,5%. The contract is then concluded at the shopping centre with Mercedes Benz and Best Bank Ltd.

1. Explain whether the Consumer Protection Act and the National Credit Act are applicable to these transactions. (3)
2. Zinhle does not know which category the credit agreement with Best Bank Ltd falls within. Explain to Zinhle with reference to her credit agreement. (2)
3. After 3 days of purchasing the vehicle from Mercedes Benz, Zinhle decides that she no longer wants the vehicle and does not want to commit to a credit agreement for 4 years with Best Bank Ltd. She has heard that she has a cooling-off right in respect of both the CPA and the NCA. Explain to Zinhle whether she may exercise her cooling-off rights in respect of both transactions (your answer should identify the differences between both cooling-off rights). (5)

LEASE AGREEMENTS

Match the column:

Match the question/statement in column A to the most accurate answer/description in column B:

	A: Question/statement	B: Answers/description
1.	Mariah and Jeremiah entered into a lease agreement in terms whereof Mariah rents a two-bedroom flat from Jeremiah. Mariah decides to rent the second bedroom to Kennedy. With reference to the relationship between Mariah and Kennedy, Mariah is the:	sub-lessor
2.	Mary-Jane has always dreamt of traveling the world. She has recently inherited some money, and she decides to make her dream a reality. She rents an apartment from Thembekile, and their lease agreement will still be in force for ten more months. Mary-Jane wants to start her adventure as soon as possible, and she arranges with her sister to move into the apartment. Mary-Jane will continue to pay the rent even though her sister will live there. This transfer by Mary-Jane is known as:	cession
3.	Nomatemba has always dreamt of traveling the world. She has recently inherited some money, and she decides to make her dream a reality. She rents an apartment from Tom, and their lease agreement will still be in force for ten more months. Nomatemba wants to start her adventure as soon as possible, and she arranges with her sister to move into the apartment. Nomatemba's sister will also be responsible to pay the rent. This transfer by Nomatemba is known as:	assignment
4.	Nosipho rents a flat from Michael. After the expiry of the lease agreement, Nospiho remains in occupation of the property. The remedies available to Michael are:	specific performance and damages (if suffered)
5.	Jabu rents an apartment from Preneil. The period of the lease is from 1 April 2020 to 31 March 2021. On 15 March 2021 Preneil inspects the apartment and is appalled at the state of disrepair that it is in. What is Preneil entitled to do?	Preneil may institute an action for damages on 1 April 2021 if the apartment is still in such a state of disrepair.

Additional/alternative unmatched answers to also be provided in column B:

sub-lessee	rescission and damages (if suffered)	Preniel may institute an action for damages on 15 March 2021 when he becomes aware of the state that the apartment is in.
------------	---	---

Multiple choice:

1. A tacit hypothec is applicable to the following:
 - i) Any movable assets brought onto the leased property;
 - ii) All movable assets of the sub-lessee brought onto the leased property, in the instance where the property has been sub-let;
 - iii) All movable assets of third parties brought onto the leased property;
 - iv) Any movable assets brought onto the leased property for as long as the rent payment is outstanding.
 - a. Only option (i) is correct.
 - b. Options (i) and (iv) are correct.
 - c. Options (i) and (iii) are correct.
 - d. All of the above are correct.
 - e. None of the above are correct.
2. The Rental Housing Act is only applicable to:
 - a. commercial leases.
 - b. residential leases.
 - c. commercial leases with a rent amount exceeding R50 000 per month.
 - d. residential leases with a rent amount exceeding R5 000 per month.
3. Nelly rents a two-bedroom flat from Obakeng. She does not use the second bedroom, and as her sister is moving to Johannesburg, Nelly considers sub-letting the second bedroom to her. Nelly has read through the lease agreement that she and Obakeng entered into, but there is no mention of sub-letting. Choose the correct statement:
 - i) Nelly will need to contact Obakeng to discuss the sub-letting with him before she can sub-let to her sister;
 - ii) Nelly does not need to obtain Obakeng's permission to sub-let to her sister;
 - iii) If Nelly had leased land from Obakeng in order to provide grazing to her cows, she would need to contact Obakeng to discuss the sub-letting with him before she can sub-let to her sister;
 - iv) As a new contract between the lessor and sub-lessee is created upon a sub-lease, the lessor's consent would always be required and as such Nelly would require Obakeng's consent.

- Fill in the missing word:

- ## LABOUR LAW

1. Match the question/statement in column A to the most accurate answer/description in column B:

	A: Question/statement	B: Answers/description
1.	Jane is employed as a delivery lady by Pretty Flowers CC. One morning when making a delivery, Jane is involved in a motor vehicle accident. The other motor vehicle that was involved in the accident sustained severe damage, and Jane is concerned that she will have to pay for the damage out of her own pocket. The applicable legal principle is:	Vicarious liability
2.	Employee in terms of the Labour Relations Act	Moshesh who has applied for a job opportunity at The Daily Sun, and who has also been for an interview
3.	Rorisang has just been offered a position at Soul Stationers CC. In finalising his employment contract, the manager insists that Rorisang will only be entitled to 1.5 times the normal rate if he works on a public holiday.	Basic Conditions of Employment Act

	Rorisang may rely on the _____ in this regard.	
4.	Francis is employed as a mechanic at Motors For All. Motors For All is not open over weekends or public holidays. However, before the Easter weekend many people want to have their motor vehicles serviced, and Motors For All has received a great amount of bookings. At a staff meeting the manager asks the employees if there are any volunteers who would be willing to work on Human Rights Day, 21 March. If Francis is willing to work on that public holiday, he will be remunerated as such:	Twice the normal rate
5.	Sharon is employed as a shop assistant at Forward Fashions, which is situated in Protea Mall. Forward Fashions is required to keep to mall hours, and Protea Mall is always open on a public holiday. If Sharon works on Women's Day on 9 August, she will be remunerated as such:	Normal rate

Additional/alternative unmatched answers to also be provided in column B:

<i>Huur gaat voor koop</i>	Nancy as independent contractor who performs work for Sewing Girls CC as a seamstress	National Minimum Wage Act
----------------------------	---	---------------------------

Multiple choice:

1. Moses used to be in the employ of Woodworks, but was recently dismissed. When he arrived at the office one morning there was a note on his desk to inform him that due to his substandard performance, Woodworks had been forced to "let him go". Moses is of the opinion that Woodworks are in the wrong and that his dismissal is unfair. Choose the correct statement in relation to Moses's dismissal:
 - i) Dismissal is unfair if it does not comply with procedural fairness;
 - ii) Dismissal is unfair if it does not comply with substantive fairness;
 - iii) Moses has been automatically unfairly dismissed;
 - iv) Moses has been unfairly dismissed.
 - a. Only option (i) is correct.
 - b. Options (i) and (ii) are correct.
 - c. Options (i), (ii) and (iv) are correct.
 - d. Options (i), (ii) and (iii) are correct.

- Fill in the missing word:

1. Printers-for-UCC terminates Mary's employment contract one week after she discloses her pregnancy. Printers-for-U CC avers that it does not seek to employ any pregnant employees. This dismissal is an example of an [].
2. JPM Windows Limited dismisses Joseph, one of its employees, without conducting disciplinary hearing. This is an example of an [].

INSOLVENCY LAW

Match the column:

Match the question/statement in column A to the most accurate answer/description in column B:

	A: Question/statement	B: Answers/description
1.	Sally Spendthrift has many creditors to pay, and she is unable to do so given her current salary. She considers voluntarily surrendering her estate.	Sequestration
2.	Money Problems Limited has been unable to pay its creditors, and the shareholders of the company are of the opinion that the company should be wound-up. The shareholders enter into a resolution to this effect.	Liquidation
3.	The balance sheet of Cash CC indicates liabilities amounting to R 50 000, and assets amounting to R 100 000. Of the assets, R 80 000 is contained as fixed assets in the form of immovable property. In terms of a facility agreement with Abba Bank, Cash CC needs to repay R 70 000 to the bank tomorrow.	Commercial insolvency
4.	No Cash Limited's chief financial officer is concerned at the state of the company's balance sheet. Its liabilities clearly exceeds its assets.	Factual insolvency
5.	A contract that an unrehabilitated insolvent may enter into without assistance from the trustee.	Contract of employment to work as an engineer at an oil refinery

Additional/alternative unmatched answers to also be provided in column B:

Business rescue	Financial distress	Contract of insurance in order to insure his motor vehicle
-----------------	--------------------	--

Essay question with Business Rescue:

You are approached by Desmond Dube, a director and shareholder of No Money Worries Limited (the company). The company has been experiencing financial trouble for quite some time, and the board of the company has realised that drastic measures need to be taken in this regard. The board of the company as well as its shareholders, are adamant that the company cannot cease to exist and needs to continue trading.

Desmond has taken it upon himself, on behalf of the board of the company, to find out some more information as to the options at their disposal.

Advise Desmond as to the options available to the company, and the practical implications thereof. You are further also expected to draw a conclusion as to which procedure will be the most suitable to the company.

(10)

BUSINESS RESCUE

True / False:

1. A company may only be placed under business rescue once it is insolvent.
2. Companies are the only entity that may be placed under business rescue.
3. When a company is placed under business rescue, the business rescue practitioner is appointed to take over control of the company. The directors of the company remain, but must follow the instructions of the business rescue practitioner.

Fill in the missing word:

1. As to the financial position that a company finds itself in; a company may only be placed under business rescue if the company is [].
2. When a company is under business rescue, its creditors are not entitled to institute any legal proceedings against it. This is referred to as a [].