



<u>FACULTY</u>	: Law
<u>DEPARTMENT</u>	: Mercantile Law
<u>CAMPUS</u>	: APK
<u>MODULE</u>	: CML1B01 COMMERCIAL LAW 100
<u>SEMESTER</u>	: Second
<u>EXAM</u>	: SSA January 2020

<u>DATE</u>	: January 2020	<u>SESSION</u>	: TBC
<u>ASSESSOR(S)</u>	Dr S Huneberg : Mrs S Lawrenson		
<u>MODERATOR</u>	: Prof JC Calitz		
<u>DURATION</u>	: 2 HOURS	<u>MARKS</u>	: 80

NUMBER OF PAGES: 7 PAGES

INSTRUCTIONS:

1. Answer all questions in the **SCRIPT** provided.
2. Write legibly.
3. Number your answers carefully.
4. Leave a line open between each answer (for example, between questions 1.1 and 1.2).

SECTION A – SHORT QUESTIONS**QUESTION 1****[8]**

1.1 Choose the correct statement:

(1)

- i) Both a mortgage and a pledge are examples of personal security.
 - ii) A real security right can exist independently of a principal obligation or debt.
 - iii) Movable, immovable and incorporeal things that can be alienated and have an economic value, may serve as the object of real security.
 - iv) A real security right is a stronger form of security than a personal security right.
- a) Only (i) is correct.
 - b) Only (i) and (iii) are correct.
 - c) Only (i) and (iv) are correct.
 - d) Only (iii) and (iv) are correct.
 - e) All the above statements (i) to (iv) are correct.

Use the following set of facts to answer questions 1.2 and 1.3:

Pranith and Kensie are engaged. After the wedding, they plan on spending their honeymoon in Paris. The cost of the trip is however too expensive for the couple to afford, and Pranith approaches his father for a loan. Pranith's father is prepared to provide them with a loan, provided that they furnish him with some form of security.

1.2 Pranith agrees to allow his father to keep his motor vehicle as security up until such time that he has repaid the loan. This type of security is known as: (1)

- a) mortgage bond;
- b) pledge;
- c) special notarial bond;
- d) storage lien;
- e) surety.

1.3 Assume that instead of granting them a loan, Pranith's father suggests that they approach ABC Bank Ltd for a loan. Pranith's father agrees to repay the loan should the couple fail to do so themselves. This type of security is known as: (1)

- a) mortgage bond;
- b) pledge;
- c) special notarial bond;
- d) storage lien;
- e) surety.

1.4 When a person binds himself as surety and co-principal debtor a potentially problematic situation arises. Which of the following statements are correct: (1)

- i) The effect of such a suretyship is that the defences of excussion and splitting of debts are usually impliedly waived.
- ii) The surety is only liable after the principal debtor has been excused.
- iii) The surety is not liable with the principal debtor to the creditor when the principal debts becomes due and payable.
- iv) The creditor must claim against the surety before he can claim against the principal

debtor.

- a) Only (i) is correct.
- b) Only (i) and (iii) are correct.
- c) Only (ii) and (iii) are correct.
- d) Only (ii) and (iv) are correct.
- e) None of the above (i) to (iv) are correct.

1.5 Which of the following statements is/are correct: (1)

- a) Tacit hypothecs are a form of real security that are not dependent upon the consent of the debtor;
- b) Tacit hypothecs are a form of real security that are dependent on the upon the consent of the debtor;
- c) Property forming the subject of an instalment agreement as intended by the National Credit Act 34 of 2005 is not subject to the landlord's tacit hypothec;
- d) All of the above statements are correct;
- e) Only (a) and (c) are correct.

1.6 Simphiwe takes his motor vehicle to Felix's Car Repairs to repair the motor vehicle's brakes. What type of lien will Felix's Car Repairs have to ensure that Simphiwe will make the required payment? (1)

- a) Salvage;
- b) Storage;
- c) Improvement;
- d) Debtor/creditor;
- e) Hypothec.

1.7 A builder of a house has a lien over the house until he is fully remunerated in terms of the building contract. This type of lien is a(n) _____ lien. (1)

- a) salvage;
- b) storage;
- c) improvement;
- d) debtor/creditor;
- e) hypothec.

1.8 Which of the following expenses may be claimed in terms of a salvage lien? (1)

- a) Necessary expenses.
- b) Luxurious expenses.
- c) Useful expenses.
- d) Both (a) and (c) are correct.
- e) All of the above are correct.

QUESTION 2

[6]

Indicate whether the following statements are true or false, and give a brief reason for your answer.

2.1 Nonhlanhla, a primary school teacher, may be appointed as a business rescue practitioner. (2)

- 2.2 Desmond Mayfair, the auditor of No Money Problems Limited, may be appointed as that company's business rescue practitioner. (2)
- 2.3 The business rescue practitioner of Cash Cow CC, Azan Ismael, suffered a serious accident whilst rock climbing. Azan will be in a rehabilitation facility for over two months, as he needs physical therapy after fracturing his spine in three places. Azan may be removed from office. (2)
-

QUESTION 3**[8]**

- 3.1 The National Credit Act 34 of 2005 sets out a number of arrangements where parties are deemed not to be dealing at arm's length. List two examples of such arrangements. (2)
- 3.2 Name three rights of a consumer in terms of the National Credit Act 34 of 2005. (3)
- 3.3 What is the difference between cession, delegation and assignment? (3)
-

QUESTION 4**[10]**

The Basic Conditions of Employment Act 75 of 1997 sets minimum conditions of employment for unorganised and unprotected employees in certain labour sectors. Complete the below statements:

- 4.1 Ordinary hours of work are _____ hours per week if an employee works five days or less. (1)
- 4.2 If an employee works on a public holiday, the employee is entitled to remuneration at _____ times the normal rate. (1)
- 4.3 An employee is entitled to _____ weeks paid sick leave during every _____ months' service. (2)
- 4.4 An employer may not employ a child under the age of _____ years. (1)
- 4.5 An employee is entitled to _____ days consecutive paid leave per year after _____ months' service. (2)
- 4.6 The employer must pay the employee his remuneration within _____ days of the completion of the period paid for. (1)
- 4.7 An employee is entitled to _____ consecutive months unpaid maternity leave. (1)
- 4.8 Employees who work less than _____ hours a month are excluded from ordinary working hours. (1)
-

SUB-TOTAL: SECTION A**[32]**

SECTION B – LONG QUESTIONS**QUESTION 5****[5]**

One afternoon when driving home from work, Jenelle is involved in a motor vehicle accident. She informs her insurer, Easy Claims Insurance, about the accident and after assessing the damages they confirm that they will pay out as per the insurance agreement. Aggrieved by the inconvenience caused, Jenelle however feels that it would be just and fair to claim the full cost of repairing the damage to her car from both Easy Claims Insurance and from Sarah, the lady who did not heed the stop sign and drove into her motor vehicle. Explain to Jenelle how the principle of subrogation works and whether or not her claims against both Easy Claims Insurance and Sarah will succeed.

QUESTION 6**[8]**

Jabulani is a director of Riskybiz (Pty) Ltd. The company has been experiencing cash flow problems and Maxwell thinks that business rescue might be an appropriate procedure to help Riskybiz (Pty) Ltd restructure its affairs. Advise Jabulani regarding the following:

- 6.1 What is the aim of business rescue? (2)
 - 6.2 How can the company commence with business rescue proceedings? Your answer should also refer to when business rescue will take effect under these circumstances. (3)
 - 6.3 Jabulani is unsure of the impact that business rescue proceedings will have on him in his capacity as a director of the company. Briefly explain to Jabulani the position of the business rescue practitioner in relation to the directors of a company, as well as what will be expected of him as director during business rescue proceedings. (3)
-

QUESTION 7**[12]**

Thomas is a Psychology student at the University of Johannesburg. His parents live far away from campus and as such Thomas would like to rent a house in Parkhurst to be closer to campus. As he is a student the lessor is not certain whether Thomas will be able to meet the monthly rental payments, but Thomas assures him that his allowance will cover the rent. The lessor is still not convinced, but he agrees to lease the property to Thomas on condition that both Thomas' father (Jacob) and his uncle (Archie) bind themselves to pay any arrear rental in the event that Thomas fails to make payments.

- 7.1 Identify and define the form of security between Jacob and the lessor. (3)
 - 7.2 List the formalities that should be complied with before the agreement identified in **question 7.1** above will be valid. (5)
 - 7.3 With reference to your answer in **question 7.2** assume that the lessor claims the rental from Jacob without ever claiming it from Thomas. Identify and explain any defence/s that Jacob could rely on. (4)
-

QUESTION 8**[11]**

Sheethal Govender worked long hard hours in 2018 and at the beginning of 2019 she was of the opinion that a good long holiday was in order. As Sheethal did not have sufficient savings to afford such a holiday, she approached XYZ Bank for a personal loan. XYZ Bank granted such a personal loan to Sheethal, and Sheethal went on a two-week boat cruise holiday around the Caribbean in February 2019. As per the repayment schedule of the personal loan in question, Sheethal was to make monthly repayments, starting in March 2019. After making two repayments, and with six repayments still outstanding, Sheethal ceased to repay the personal loan.

XYZ Bank has sent Sheethal a letter of demand regarding the outstanding payments, and has threatened legal action against her. The manager of XYZ Bank's credit control division, Samson Moloi, is unsure as to what legal action XYZ Bank may take in this regard, and contacts you for advice. Write a letter to Samson in which you explain and provide advice on the following matters. Questions 8.1 to 8.4 are to be addressed in a single letter to Samson.

- 8.1 Samson is of the opinion that the failure by Sheethal to repay her personal loan is based on the fact that Sheethal is insolvent. What process provided for by the Insolvency Act 24 of 1936 is at XYZ Bank's disposal? Your answer should also include a brief description of the process in question. (2)
- 8.2 Advise Samson of any three acts of insolvency that a creditor may potentially rely on when making use of the process in **question 8.1**. (3)
- 8.3 What must XYZ Bank prove in its court documents in order for the court to grant the requisite order? (4)

Marks will be given for spelling, language and presentation of your letter. (2)

Your answer should not exceed one (1) page.

QUESTION 9**[12]**

When collecting post from his post box on the 23rd of July, Vaughn Williams discovers that a brand-new PlayStation 4 has been delivered to him. The delivery came from Gaming Guys Pty (Ltd) and was addressed to Grant Smith. On the 30th of July, Vaughn receives a call from Gaming Guys (Pty) Ltd informing him of the error. By the 3rd of August the goods have still not been returned to Gaming Guys (Pty) Ltd or collected by them. On that same day Vaughn makes a call to the manager of Gaming Guys (Pty) Ltd informing him that the PlayStation 4 is still with him.

The manager at Gaming Guys (Pty) Ltd informs Vaughn that he must return the PlayStation 4 via registered post at his own expense or they will hold him liable for the cost of the goods. Vaughn informs the manager of his daily schedule and suggests that Gaming Guys (Pty) Ltd collect the PlayStation 4 when he is at home.

Draft a legal memorandum in which you advise Vaughn in relation to the following:

PLEASE NOTE – when a question contains an assumption that assumption is only applicable to the particular question unless the context indicates otherwise.

- 9.1 In terms of the Consumer Protection Act 68 of 2008, as what type of “goods” would the PlayStation 4 be considered? Motivate your answer with reference to an example of these type of “goods”. (3)
- 9.2 Assume for this question only that when the PlayStation 4 was delivered it contained a cover letter stating that an agreement is concluded unless the consumer informs Gaming Guys (Pty) Ltd otherwise within seven days. What fundamental consumer right is being infringed upon and what are the consequences of such an agreement? Briefly motivate your answer. (4)
- 9.3 Assume for this question only that Gaming Guys (Pty) Ltd begins to harass Vaughn by sending him numerous promotional SMS messages on a daily basis regarding their PlayStation game specials in an attempt to pressure and coerce Vaughn into purchasing games. What fundamental consumer right is being infringed upon by Gaming Guys (Pty) Ltd and what does this right entail? (3)

Marks will be given for spelling, language and presentation of your memorandum. (2)

SUB-TOTAL: SECTION B	[48]
GRAND TOTAL	[80]