



**UNIVERSITY OF JOHANNESBURG**

**FACULTY OF LAW (AUCKLAND PARK CAMPUS)**

**SUBMISSION OF FINAL EXAMINATION PAPERS**

**November/December 2017**

MODULE NAME: Commercial Law 100

MODULE CODE: CMUB01

LECTURER (S): Mrs S. Lawrenson; Mr F Adams.

HEAD OF DEPARTMENT: Prof Sarel Du Toit.

EXIT MODULE: YES/ NO NO

FOR EXIT MODULES:  
EXTERNAL MODERATOR: N/A

EXTERNAL MODERATOR FORM ATTACHED: N/A

**INSTRUCTIONS:**

1. How many of the following items will be required per student?

Examination script (4 pages) \_\_\_\_\_

Scanner sheet \_\_\_\_\_

Other (please specify) \_\_\_\_\_

2. How many students are still attending lectures (with a view to the number of examination papers required)? N/A

**SIGNATURE OF LECTURER:**

**DATE:**

[Signature]  
8/2/2018.

**SIGNATURE AS HEAD OF  
DEPARTMENT  
(AS INTERNAL MODERATOR)**

**DATE:**

[Signature]  
8/2/2018

**FOR ADMINISTRATIVE PURPOSES:**

Noted: \_\_\_\_\_

Date: \_\_\_\_\_



**UNIVERSITY OF JOHANNESBURG  
KINGSWAY CAMPUS**

**FACULTY OF LAW**

**SPECIAL EXAMINATION JANUARY 2018**

**SUBJECT NAME:** COMMERCIAL LAW 100      **DURATION:** 120 minutes

**SUBJECT CODE:** CML1B01      **MARKS:** 80

**EXAMINERS:** Mr F Adams  
Mrs S Lawrenson

**MODERATOR:** Prof KE van der Linde

THIS PAPER RUNS TO FOUR (4) PAGES

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**GENERAL INSTRUCTIONS TO STUDENTS**

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).
  5. Do NOT make use of "SMS or WhatsApp speak".
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**SECTION A – SHORT QUESTIONS**

**QUESTION 1**

**[15]**

- 1.1 Explain the difference between wagering and insurance contracts. (3)
  - 1.2 Briefly discuss the accessory nature of contracts of security. (2)
  - 1.3 List five (5) fundamental consumer rights as provided for in terms of the Consumer Protection Act 68 of 2008. (5)
  - 1.5 Section 89 of the National Credit Act 34 of 2005 provides for five (5) instances when a credit agreement will be unlawful. List those five (5) instances. (5)
-

## QUESTION 2

[6]

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

- 2.1 Janice Jones, a primary school teacher, may be appointed as a business rescue practitioner. (2)
- 2.2 Zuki Mayfair, the auditor of Money Problems Limited, may be appointed as that company's business rescue practitioner. (2)
- 2.3 The business rescue practitioner of Cash Cow CC, David Pule, suffered a serious accident whilst rock climbing. David will be in a rehabilitation facility for over two months, as he needs physical therapy after fracturing his spine in three places. David may be removed from office. (2)

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## QUESTION 3

[8]

You are approached by James Naidoo who will be doing vacation work at the Master's office during the university holiday. He is aware that he will be dealing with insolvency related matters in the scope of his vacation employment. Advise James on the matters below.

- 3.1 Explain the two (2) types of voluntary liquidation. (5)
- 3.2 What are any three (3) duties of a liquidator? (3)

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## SUB-TOTAL: SECTION A

[29]

## SECTION B – LONG QUESTIONS

### QUESTION 4

[13]

Adele is a single mother and to earn additional income to pay for her daughter's dance classes, she applied for and was offered the job as a receptionist at a small beauty spa during weekday mornings. The manager of the beauty spa promised to provide Adele with a copy of her employment contract, but despite repeated requests by Adele she still has not received a copy of her employment contract. As such, Adele is unsure of the basic conditions of her employment with the beauty spa. A few months after starting to work at the beauty spa she asked if she could have one Friday morning off to watch her daughter dance in a school play. The manager told Adele that she doesn't qualify for any leave.

- 4.1 Identify four (4) types of employees. (4)
- 4.2 In terms of the Basic Conditions of Employment Act 75 of 1997 how many days of leave is Adele entitled to? (1)
- 4.3 List the duties of an employee. (4)
- 4.4 Name any four (4) types of dismissal provided for in the Labour Relations Act 66 of 1995. (4)
-

### QUESTION 5

[6]

Nancy Drew has bought a brand-new BMW 1 series motor vehicle. She had to work and save for a long time to be in a position to afford this motor vehicle, and as a result she has decided to insure the motor vehicle with both PayOut Insurers and No Excess Insurers. One afternoon when leaving the gym, Nancy notices an unsightly deep scratch on the bumper of her motor vehicle, presumably caused by another driver when exiting the car park at the gym. Nancy is so upset at the sight of her motor vehicle that she decides to claim the full cost of repairing her motor vehicle from both PayOut Insurers and No Excess Insurers.

Explain the principles applicable when one insures the same risk object with different insurers and a loss is suffered in relation to that risk object. Also explain whether Nancy will be successful in her claims or not.

(6)

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### QUESTION 6

[9]

Dumisani, a student at the University of Johannesburg would like to rent a house in Parkhurst. As he is a student the lessor is not certain that Dumisani will be able to meet the monthly rental. Dumisani assures him that his allowance will cover the rent. The lessor agrees to lease the property to Dumisani on condition that both Dumisani's father (Tau) and uncle (Archie) bind themselves to pay any arrear rental in the event that Dumisani does not.

- 6.1 Identify and define the form of security between Tau and the lessor. (3)
- 6.2 List three (3) formalities that should be complied with before the agreement identified in question 6.1 above will be valid. (3)
- 6.3 With reference to your answer in 6.2 assume that the lessor claims the rental from Tau without ever claiming it from Dumisani. Identify and explain any defence/s that Tau could rely on. (3)

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### QUESTION 7

[11]

The directors of i-Orchard (Pty) Ltd (the company) foresee the reasonable likelihood that the company will, within the next six (6) months, be unable to pay its debts as they become due in the ordinary course of business, and will most likely reach a situation where its liabilities exceed its assets. The directors therefore elect to begin business rescue proceedings to try and save the financially distressed company. They register the relevant board resolution with the Companies and Intellectual Property Commission (CIPC) and commence business rescue proceedings. Various parties are affected by the company's decision. These parties approach you together as a collective seeking your legal advice. Johan, a successful businessman, lent the company R700 000 which the company failed to repay. He initiated proceedings against the company in the High Court (Gauteng Local Division, Johannesburg) to reclaim his money, and the court proceedings are almost finalised. Faatima worked for the company for the last five (5) years and she is concerned about the effect that business rescue will have on her employment contract. Mpho leases office space to the company and he is concerned about the effect of the business rescue proceedings on his agreement with the company. Thandi holds shares in the company and is unsure whether those shares will be taken away from her. Hlaudi is a director of the company and does not know what his position will be now that business rescue proceedings have commenced. Write a single legal memorandum to all the above mentioned persons wherein you explain their legal rights or the potential outcome of their respective situations, taking into consideration that the company has been placed under business rescue. (Your answer must apply any relevant law to the facts). (8)

Marks will be awarded for spelling, language and presentation of your memorandum. (3)

### QUESTION 8

[12]

\*Email format omitted

25 November 2017

Dear Commercial Law 100 student

I understand that you are well versed in the general issues surrounding the South African legal landscape. I write to you at a time of great stress. On 25 November 2015 I concluded and entered into a lease agreement with Jacob Gigaba. The lease was entered into in respect of a commercial pecan nut farm situated in Vredefort. The rental payable in terms of the lease agreement was R40 000 a month. The agreement was concluded for a period of eight (8) years and none of the rights and duties nor the consequences that apply by virtue of the common law were changed or amended. Two (2) years after the conclusion of the lease agreement Jacob decided that he would like to sell the farm. I objected to the sale on the basis that we had a lease agreement in place that rightfully still entitled me to stay on the premises for another six (6) years. I have also put a lot of my own funds into building additional structures such as a sun deck next to the swimming pool, as well as the construction of a new irrigation system. Jacob assured me that he would repay me for these expenses. After deciding to sell the farm, Jacob told me that he did not care about the lease agreement or any money that he may or may not owe me, and that as owner he maintained the right to sell the property at any time. At the time of writing this email I am two (2) months in arrears with the rental payments. The farm was sold three (3) weeks ago to Nkosazana Sisulu. I met Nkosazana on several occasions when she came to view the farm before the sale was concluded. Today she sent me a letter informing me that I had 72 hours to vacate the farm.

Kind regards,

Cyril Mantashe.

Write an email to Cyril in which you fully explain any right that he may have to hold the new owner bound to the lease agreement. Your email should include answers to the following, which should be addressed in a single email to Cyril:

- 8.1 What common law principle applicable to lease agreements, if any, may Cyril rely on when there is a transfer of title? (1)
- 8.2 Do the circumstances entitle Cyril to make use of this common law principle and if so, why? (6)
- 8.3 What rights do Nkosazana and Cyril have respectively regarding the possibility to reclaim outstanding obligations (i.e. the costs for the irrigation system and the unpaid rental)? (2)

Marks will be awarded for spelling, language and presentation of your email. (3)

**SUB-TOTAL: SECTION B**

**[51]**

**GRAND TOTAL**

**[80]**



**UNIVERSITY OF JOHANNESBURG  
KINGSWAY CAMPUS**

**FACULTY OF LAW**

**SPECIAL EXAMINATION JANUARY 2018  
MEMORANDUM**

**SUBJECT NAME:** COMMERCIAL LAW 100      **DURATION:** 120 minutes  
**SUBJECT CODE:** CML1B01      **MARKS:** 80  
**EXAMINERS:** Mr F Adams  
Mrs S Lawrenson  
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  5. Do NOT make use of "SMS or WhatsApp speak".
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**SECTION A – SHORT QUESTIONS**

**QUESTION 1**

**[15]**

- 1.1 Explain the difference between wagering and insurance contracts. (3)
- A wagering contract is unenforceable in court (1)
  - In wagering contracts, the parties choose an arbitrary event on the occurrence of which one party wins and the other loses. (1)
  - An insurance contract does not itself create the risk of loss (1)
  - The purpose of an insurance contract is to protect a person's estate (1) while that of a wager is to increase the estate (1)
- [Any three of the above]**
- 1.2 Briefly discuss the accessory nature of contracts of security. (2)
- Personal and real security are dependent upon the existence of a principal debt or obligation. (1)
  - Security only exists for as long as the principal debt exists. (1)

- 1.3 List five (5) fundamental consumer rights as provided for in terms of the Consumer Protection Act 68 of 2008. (5)
- The right to fair and responsible marketing
  - The right to disclosure and information
  - The consumer's right to choose
  - The consumer's right to privacy
  - The right of equality in the consumer market
  - The right to fair and honest dealing;
  - The right to fair, just and reasonable terms and conditions
  - The right to fair value, good quality and safety
- [Any five of the above] (5)**
- 1.4 Section 89 of the National Credit Act 34 of 2005 provides for five (5) instances when a credit agreement will be unlawful. List those five (5) instances. (5)
- consumer is a minor, mentally unfit, or subject to a debt administration order, and the administrator has not consented to the agreement; (1)
  - the agreement results from negative option marketing; (1)
  - the CP was not registered; (1)
  - the CP was ordered to stop offering credit by notice from the NCR or the provincial regulator; (1) or
  - the agreement was formed by prohibited use of split documentation, such that the unlawful provisions are set out in a separate agreement. (1)

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## QUESTION 2

[6]

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

- 2.1 Janice Jones, a primary school teacher, may be appointed as a business rescue practitioner. (2)
- False (1)
  - A business rescue practitioner should be a member in good standing of a legal, accounting or business management profession accredited by the CIPC (1)
- 2.2 Zuki Mayfair, the auditor of Money Problems Limited, may be appointed as that company's business rescue practitioner. (2)
- False (1)
  - A business rescue practitioner may not have an existing relationship with the company that impacts upon his integrity, impartiality and objectivity (1)
- 2.3 The business rescue practitioner of Cash Cow CC, David Pule, suffered a serious accident whilst rock climbing. David will be in a rehabilitation facility for over two months, as he needs physical therapy after fracturing his spine in three places. David may be removed from office. (2)
- True (1)
  - A business rescue practitioner may be removed from office when he/she is incapacitated and unable to perform functions of his/her office and unlikely to regain capacity within a reasonable time (1)
-

### QUESTION 3

[8]

You are approached by James Naidoo who will be doing vacation work at the Master's office during the university holiday. He is aware that he will be dealing with insolvency related matters in the scope of his vacation employment. Advise James on the matters below.

- 3.1 Explain the two (2) types of voluntary liquidation. (5)
- May be initiated by members (1) or creditors (1)
  - Solvent liquidation: (1)
  - Members winding-up: no creditors (1) or comp/CC has given security that all creditors will be paid in 12 months. (1)
  - Member's voluntary winding-up is not available where the comp/CC cannot pay its debts. (1)
  - Insolvent liquidation: (1)
  - Creditor's voluntary winding-up: creditors had a say in the process. (1)
  - Voluntary winding-up commences when the resolution is properly registered at the Registrar of Companies or Close Corporations. (1)
- [Any five of the above.]
- 3.2 What are any three (3) duties of a liquidator? (3)
- Take control of the assets (1)
  - Recover debts due to the company / cc (1)
  - Realise assets (1)
  - Distribute proceeds among the creditors, and if there is a surplus, the members. (1)
  - Report to the creditor and Master on various matters. (1)
- [Any three of the above.]

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**SUB-TOTAL: SECTION A**

**[29]**

### SECTION B – LONG QUESTIONS

#### QUESTION 4

[13]

Adele is a single mother and to earn additional income to pay for her daughter's dance classes, she applied for and was offered the job as a receptionist at a small beauty spa during weekday mornings. The manager of the beauty spa promised to provide Adele with a copy of her employment contract, but despite repeated requests by Adele she still has not received a copy of her employment contract. As such, Adele is unsure of the basic conditions of her employment with the beauty spa. A few months after starting to work at the beauty spa she asked if she could have one Friday morning off to watch her daughter dance in a school play. The manager told Adele that she doesn't qualify for any leave.

- 4.1 Identify four (4) types of employees. (4)
- Temporary employee
  - Permanent employee
  - Part-time and full-time employee
  - Probationary employee
  - Senior managerial employee
  - Atypical workers
- [Any four of the above]



- 4.2 In terms of the Basic Conditions of Employment Act 75 of 1997 how many days of leave is Adele entitled to? (1)
- Minimum of 21 consecutive days paid vacation leave per annum (1)
- 4.3 List the duties of an employee. (4)
- To enter and remain in service (1)
  - To work competently and without negligence (1)
  - To obey all reasonable and lawful commands (1)
  - To act in good faith (1)
- 4.4 Name any four (4) types of dismissal provided for in the Labour Relations Act 66 of 1995. (4)
- Termination with or without notice (1)
  - Failure to renew a fixed-term contract of employment (1)
  - Termination due to pregnancy (1)
  - Selective re-employment (1)
  - Constructive dismissal (1)
  - Termination because of less favourable conditions of work after a transfer of business (1)
- [Any four of the above]**
- 

## QUESTION 5

[6]

Nancy Drew has bought a brand-new BMW 1 series motor vehicle. She had to work and save for a long time to be in a position to afford this motor vehicle, and as a result she has decided to insure the motor vehicle with both PayOut Insurers and No Excess Insurers. One afternoon when leaving the gym, Nancy notices an unsightly deep scratch on the bumper of her motor vehicle, presumably caused by another driver when exiting the car park at the gym. Nancy is so upset at the sight of her motor vehicle that she decides to claim the full cost of repairing her motor vehicle from both PayOut Insurers and No Excess Insurers.

Explain the principles applicable when one insures the same risk object with different insurers and a loss is suffered in relation to that risk object. Also explain whether Nancy will be successful in her claims or not. (6)

- Nancy may only recover the amount of the loss and no more (she may not be placed in a better position than she would have been in if the loss had not occurred) (1)
- She may thus not recover the full loss from both insurers (1) so therefore her claims will not be successful (1)
- She may however recover the total loss from one insurer (1) or a *pro rata* portion from each of the insurers (1)
- The 'principle of contribution' is applicable (1) – where an insurer pays more than its *pro rata* portion of the amount claimed, it has a right of recourse against the other insurers of the same risk object (1)

**[Any six marks may be awarded]**

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## QUESTION 6

[9]

Dumisani, a student at the University of Johannesburg would like to rent a house in Parkhurst. As he is a student the lessor is not certain that Dumisani will be able to meet the monthly rental. Dumisani assures him that his allowance will cover the rent. The lessor agrees to lease the property to Dumisani on condition that both Dumisani's father (Tau) and uncle (Archie) bind themselves to pay any arrear rental in the event that Dumisani does not.

- 6.1 Identify and define the form of security between Tau and the lessor. (3)
- Surety agreement (1)
  - It is an agreement by means of which one person (the surety) renders him/herself liable towards a creditor of another person (1) (the debtor) for the proper performance of the obligations of the debtor. (1)
- 6.2 List three (3) formalities that should be complied with before the agreement identified in question 6.1 above will be valid. (3)
- Writing (1)
  - Identify the principal creditor (1) and surety (1)
  - Name of principal debtor (1)
  - Signed by surety (1)
- [Any three of the above]**
- 6.3 With reference to your answer in 6.2 assume that the lessor claims the rental from Tau without ever claiming it from Dumisani. Identify and explain any defence/s that Tau could rely on. (3)
- Benefit of excussion (1)
    - Surety can insist that the creditor first recover as much as possible of the due debt from the principal debtor before proceeding against the surety. (1)
  - Benefit of division (1)
    - Available when there several sureties iro the same obligation, and the creditor attempts to recover the entire debt which is due from a single surety. (1)
    - Any surety held liable can demand that the debt be divided *pro rata* among the sureties and that he should only be liable for his *pro rata* share of the debt. (1)

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## QUESTION 7

[11]

The directors of i-Orchard (Pty) Ltd (the company) foresee the reasonable likelihood that the company will, within the next six (6) months, be unable to pay its debts as they become due in the ordinary course of business, and will most likely reach a situation where its liabilities exceed its assets. The directors therefore elect to begin business rescue proceedings to try and save the financially distressed company. They register the relevant board resolution with the Companies and Intellectual Property Commission (CIPC) and commence business rescue proceedings. Various parties are affected by the company's decision. These parties approach you together as a collective seeking your legal advice. Johan, a successful businessman, lent the company R700 000 which the company failed to repay. He initiated proceedings against the company in the High Court (Gauteng Local Division, Johannesburg) to reclaim his money, and the court proceedings are almost finalised. Faatima worked for the company for the last

five (5) years and she is concerned about the effect that business rescue will have on her employment contract. Mpho leases office space to the company and he is concerned about the effect of the business rescue proceedings on his agreement with the company. Thandi holds shares in the company and is unsure whether those shares will be taken away from her. Hlaudi is a director of the company and does not know what his position will be now that business rescue proceedings have commenced. Write a single legal memorandum to all the above mentioned persons wherein you explain their legal rights or the potential outcome of their respective situations, taking into consideration that the company has been placed under business rescue. (Your answer must apply any relevant law to the facts). (8)

Marks will be awarded for spelling, language and presentation of your memorandum. (3)

- Johan: General moratorium on legal proceedings against the company (1), Johan's court application will be suspended (1)
- Faatima: BR proceedings do not affect employees they continue to be employed on the same T's and C's. (1) The BR proceedings will not affect Faatima's employment contract (1)
- Mpho: The BR Practitioner maintains a discretion to suspend this agreement either partially, entirely or conditionally. (1)
- Thandi: Shareholders right will not be amended unless in the ordinary course of business or by way of a court order or pursuant to an approved BR plan (1). Thandi will not lose her shares in the company (1).
- Hlaudi: BR practitioner has full management control during BR Proceedings (1) directors however do not lose their positions and continue to exercise the functions of a director (1) subject to the wishes of the BR practitioner (1).
- 3 marks to be awarded for spelling grammar and punctuation

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## QUESTION 8

[12]

\*Email format omitted

25 November 2017

Dear Commercial Law 100 student

I understand that you are well versed in the general issues surrounding the South African legal landscape. I write to you at a time of great stress. On 25 November 2015 I concluded and entered into a lease agreement with Jacob Gigaba. The lease was entered into in respect of a commercial pecan nut farm situated in Vredefort. The rental payable in terms of the lease agreement was R40 000 a month. The agreement was concluded for a period of eight (8) years and none of the rights and duties nor the consequences that apply by virtue of the common law were changed or amended. Two (2) years after the conclusion of the lease agreement Jacob decided that he would like to sell the farm. I objected to the sale on the basis that we had a lease agreement in place that rightfully still entitled me to stay on the premises for another six (6) years. I have also put a lot of my own funds into building additional structures such as a sun deck next to the swimming pool, as well as the construction of a new irrigation system. Jacob assured me that he would repay me for these expenses. After deciding to sell the farm, Jacob told me that he did not care about the lease agreement or any money that he may or may not owe me, and that as owner he maintained the right to sell the property at any time. At the time of writing this email I am two (2) months in arrears with the rental payments. The farm was sold three (3) weeks ago to Nkosazana Sisulu. I met Nkosazana on several

occasions when she came to view the farm before the sale was concluded. Today she sent me a letter informing me that I had 72 hours to vacate the farm.

Kind regards,

Cyril Mantashe.

Write an email to Cyril in which you fully explain any right that he may have to hold the new owner bound to the lease agreement. Your email should include answers to the following, which should be addressed in a single email to Cyril:

- 8.1 What common law principle applicable to lease agreements, if any, may Cyril rely on when there is a transfer of title? (1)
- Huur Gaat Voor Koop principle (1)
- 8.2 Do the circumstances entitle Cyril to make use of this common law principle and if so, why? (6)
- This is a short term lease agreement (1)
  - An agreement less than 10 years (1)
  - All that is required for a short term lease agreement to be enforceable against third party is knowledge by the third party (1) or occupation by the lessee (1)
  - As Cyril was already in occupation of the property (1) - knowledge is ascribed to the third party (1)
  - Therefore Cyril will be entitled to rely on the principle (1)
- 8.3 What rights do Nkosazana and Cyril have respectively regarding the possibility to reclaim outstanding obligations (i.e. the costs for the irrigation system and the unpaid rental)? (2)
- No obligations that were owed by the previous landlord and the tenant are transferable. (1)
  - The lessee will not have to pay the purchaser the outstanding rental (1)
  - The purchaser will not have to pay the costs for the irrigation system (1)
- Marks will be awarded for spelling, language and presentation of your email. (3)

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**SUB-TOTAL: SECTION B**

**[51]**

**GRAND TOTAL**

**[80]**