



UNIVERSITY OF JOHANNESBURG

FACULTY OF LAW (AUCKLAND PARK CAMPUS)

SUBMISSION OF ^(SUP)FINAL EXAMINATION PAPERS

November/December 2017

MODULE NAME: Commercial Law 100

MODULE CODE: CML 1B01

LECTURER (S): Adam / Lawrenson

HEAD OF DEPARTMENT: Prof v/d Linde

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) 2

Scanner sheet 0

Other (please specify) n/a

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

SIGNATURE OF LECTURER:

DATE:

[Signature]
24 Nov 17

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

DATE:

ICAL173

[Signature]
24/11/17

FOR ADMINISTRATIVE PURPOSES:

Noted: _____

Date: _____



**UNIVERSITY OF JOHANNESBURG
KINGSWAY CAMPUS**

FACULTY OF LAW

SUPPLEMENTARY EXAMINATION 2017

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 4 (FOUR) PAGES

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 Generally, alterations made to a credit agreement after it has been signed will be regarded as void. List the three exceptions to this rule. (3)
 - 1.2 Discuss the difference between real security and personal security and provide examples of **each**. Your answer should include an indication of which form of security is stronger. (5)
 - 1.3 What is non-indemnity insurance? (2)
 - 1.4 The Consumer Protection Act 68 of 2008 provides that a consumer who is the recipient of unsolicited goods or services is not obliged to pay for such goods or services. Name five (5) examples of unsolicited goods. (5)
-

QUESTION 2

[4]

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

- 2.1 Mario Jones, the auditor of Money Problems Limited, may be appointed as that company's business rescue practitioner. (2)
- 2.2 The business rescue practitioner of No Prospects CC, John Abrahams, suffered serious injuries resulting from a motor vehicle accident. John will be in a rehabilitation facility for over two (2) months, as he needs physical therapy after fracturing his spine in three places. John may be removed from office. (2)

QUESTION 3

[7]

Miriam Nhlapo's estate was sequestrated by the High Court (Gauteng Local Division, Johannesburg) on 12 June 2017. At the first meeting of Miriam's creditors, Johnny Michaels was appointed as the trustee of the insolvent estate. At the second meeting of creditors certain issues arose leaving Johnny unsure of how to proceed, and he has contacted you for advice.

- 3.1 During the second meeting of creditors Gloria Mashaba, who claims that Miriam owes her an amount of R5 000, instructs Johnny to sell specific assets of the insolvent estate. This is the first time that Johnny has heard that Gloria is a creditor, as she has not proved a claim against the insolvent estate. Is Johnny obliged to follow Gloria's instructions? Briefly explain your answer. (4)
- 3.2 Based on your answer in question 3.1 above, what steps should Gloria take in this regard should she wish to claim against the insolvent estate? Your answer should include a brief description of these steps. (3)

SUB-TOTAL: SECTION A

[26]

SECTION B – LONG QUESTIONS

QUESTION 4

[7]

Miles Dube is in the process of purchasing a new motor vehicle. He has applied to Car Bank Limited to finance this motor vehicle, and as a condition of granting the finance, Car Bank Limited insists that the motor vehicle be insured before Miles drives it off the dealership floor. As Miles has never taken out insurance before, he is not sure what type of questions to expect from a potential insurer, and he is further also not sure what requirements there may be on him in relation to disclosing certain information to such a potential insurer. Shortly after Miles turned 18 years old he took the driver's test four times, but each time he failed to successfully obtain a driver's licence. Subsequently he bought a counterfeit driver's licence, and has been using it ever since.

- 4.1 Miles informs you that should a potential insurer ask him whether he has a valid driver's licence, he will answer in the affirmative. What will such a positive action by Miles amount to, and what will the effect thereof be on a contract of insurance concluded as a result thereof? (3)

- 4.2 Miles informs you that he hopes that a potential insurer will simply assume that he (Miles) has a valid driver's licence, and that under such circumstances he will simply refrain from making mention of this issue. What will such an omission by Miles amount to; how does it differ from his action in question 4.1 above and what will the effect thereof be on a contract of insurance concluded as a result thereof? (4)
-

QUESTION 5

[7]

Naomi has been rendering services to Accounting Consultants Limited for a few months. She is unsure whether she is employed by Accounting Consultants Limited or whether she renders services to them as an independent contractor. The Labour Relations Act 66 of 1995 and the Basic Conditions of Employment Act 11 of 2002 both provide for a statutory presumption of favour of employees. Regardless of the form of the contract entered into by Naomi and Accounting Consultants Limited, it will be presumed that Naomi is an employee, if at least one of several factors are present. List these seven (7) factors. (7)

QUESTION 6

[9]

Siphiwe leases his garden cottage to Nonhlanhla for a period of 12 months. Nonhlanhla fails to pay the rental as agreed and is subsequently in arrears. Because of Nonhlanhla's default, Siphiwe takes possession of Nonhlanhla's 105 inch UHD Samsung television set which she uses at the garden cottage. Siphiwe informs Nonhlanhla that he will only release the television set once he receives payment of the outstanding rent from her.

- 6.1 May Siphiwe legally take possession of the television set? Motivate your answer. (4)
- 6.2 Assume, for this question 6.2 only, that the 105 inch UHD Samsung television set actually belongs to Nonhlanhla's uncle, Desmond. Discuss how this will affect your answer given in question 6.1 above. (5)
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QUESTION 7

[15]

You are approached by Thandi Smith who is a director of Square Circle (Pty) Ltd ("the company"). The company is a social media consultancy firm, and manages social media profiles for businesses. As many businesses have recently started employing their own in-house social media managers, the company has experienced a steep decrease in profits. Thandi is of the opinion that the company is still able to meet all of its financial obligations at present, but the future financial prospects of the company are bleak.

Draft a memorandum to Thandi in which you explain and provide advice on the following matters. Questions 7.1 to 7.4 are to be addressed in a single letter to Thandi.

- 7.1 What is the aim of business rescue? (2)

- 7.2 When is a company “financially distressed” as provided for in the Companies Act 71 of 2008? (2)
- 7.3 How could the company commence with business rescue proceedings? Your answer should also refer to when business rescue will take effect under these circumstances. (3)
- 7.4 Should an “affected person” as provided for in the Companies Act 71 of 2008 not be satisfied with the action of the company taken in terms of question 7.3 above, what right does such a person have, and on what grounds? (4)
- Marks will be awarded for the layout, spelling and format of your memorandum. (4)
-

QUESTION 8

[16]

Ayanda van Wyk bought a four bedroom house in Brixton, Johannesburg. Ayanda rents out two of the rooms for R4000 per month for a period of 12 months to Nthabiseng Ncube, a student at the University of Johannesburg. Six (6) months into Nthabiseng's lease Ayanda decides to sell the house to Thabo Ngwenya as she wants to relocate to Centurion to be near her sick father. Nthabiseng is worried that she might be evicted by the new owner and approaches you for advice.

Write a letter to Nthabiseng wherein you provide advice and answers on the matters below. Questions 8.1 to 8.6 are to be addressed in a single letter to Nthabiseng.

- 8.1 What type of agreement was concluded between Ayanda and Nthabiseng? (1)
- 8.2 What are the *essentialia* of the agreement identified in question 8.1 above? (3)
- 8.3 What duties do Ayanda owe Nthabiseng in terms of the agreement entered into between them? (3)
- 8.4 Is Nthabiseng entitled to rent out the second bedroom to her friend Lara? Provide a brief reason for your answer. (2)
- 8.5 Will Nthabiseng be allowed to occupy the house until the end of the period set out in the lease agreement even though the property had been sold to Thabo in the meantime? Briefly motivate your answer. (2)
- 8.6 Advise Nthabiseng of any two ways by which a lease agreement can be terminated. (2)

Marks will be awarded for the layout, spelling and format of your letter. (3)

SUB-TOTAL: SECTION B

[54]

GRAND TOTAL

[80]