



**UNIVERSITY OF JOHANNESBURG
KINGSWAY CAMPUS**

FACULTY OF LAW

DECEMBER EXAM 2016

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

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

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

THIS PAPER RUNS TO 5 (FIVE) 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 [10]

- 1.1 The Consumer Protection Act 68 of 2008 provides a so-called “*blacklist*” of unfair, unjust or unreasonable transactions, agreements, terms or conditions or notices. State any three examples of these. (3)
 - 1.2 The National Credit Act, No. 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)
 - 1.3 Briefly discuss the accessory nature of contracts of security. (2)
 - 1.4 List any three forms of unlawful competition. (3)
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QUESTION 2 [6]

Answer 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)

SUB-TOTAL: SECTION A

[16]

SECTION B – APPLICATION QUESTIONS

QUESTION 3 [10]

Sarah Sewsunker 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, Sarah 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. Sarah 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.

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

- 3.1 At the time when Sarah took out an insurance policy with PayOut Insurers for her motor vehicle, she and PayOut Insurers agreed that the value of her motor vehicle was R330 000. Is this a valued or an unvalued policy? (1)
- 3.2 With reference to your answer in question 3.1 above, what will Sarah need to prove under the circumstances should she want to claim from PayOut Insurers? (1)

Sarah approaches you for advice in relation to her claims to have her motor vehicle repaired.

- 3.3 Draft an email to Sarah in which you 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, and further also advise Sarah whether her claims will be successful or not. (6)

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

Your answer should not exceed one (1) page.

QUESTION 4 [9]

Miriam Nhlapo's estate was sequestrated by the High Court (Gauteng Local Division, Johannesburg) on 12 June 2016. 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.

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

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- 4.1 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 obligated to follow Gloria's instructions? Briefly explain your answer. (4)
- 4.2 Based on your answer in question 4.1 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)

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

Your answer should not exceed one (1) page.

QUESTION 5 [19]

From: KgosiMathebula@gmail.com
To: Commercial Law 100 Student
Subject: Lease Agreement Query

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 3 December 2012, I concluded and entered into a lease agreement with Thabo Mokone, who is still at this present time my landlord. The lease agreement was entered into in respect of a warehouse situated at 24 Third Avenue, Booysens Reserve, Johannesburg. The rental payable in terms of the lease agreement is R 40 000 a month. The lease agreement was concluded for a period of 30 years and none of the rights and duties nor the consequences that apply by virtue of the common law were changed or amended. Two years after the conclusion of the lease agreement Thabo decided that he would like to sell the immovable property on which the warehouse is situated. I objected to the sale on the basis that I had put a lot of my own funds into building additional structures to the warehouse. Thabo thus gave me the first option to buy the warehouse, but my loan application was unfortunately turned down by all the major banks. After informing Thabo that my application was turned down he entered into a fit of rage and told me that I would have to deal with the consequences of my actions and my fate now lies in the hands of the new owner of the property. The property was sold on 3 December 2016. At the time of writing this email I am in arrears with two months rental and there are various structures on the property that are in need of repair. Is there any way that I may remain in occupation after the property has been sold? I am in urgent need of your assistance.

Kind regards

Kgosi Mathebula

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

5.1 List the essential elements of a lease agreement. (3)

5.2 Write a letter to Kgosi in which you set out his rights as a lessee to remain on the property. Your answer should include: (10)

- the legal maxim (rule) applicable at common law; and
- an explanation on the length of time that Kgosi may remain on the property taking into consideration that the lease was not registered at the deeds registry.

Marks will be given for spelling, language and presentation of your letter (3)

5.3 Assume that instead of setting the rental at R 40 000 a month, Kgosi and Thabo agree that since the object of the agreement is farming land, Kgosi should pay Thabo a portion of the profits that he makes on a monthly basis from the sale of his crops. Would this be a valid clause in a lease agreement? In what circumstances, would a clause of this nature not be valid for a lease agreement? (3)

QUESTION 6 [13]

Jesse provides a number of accounting services to various small businesses in Johannesburg. One of her clients, Mofokeng Incorporated makes use of her services. In the preceding three years Jesse, has at least once a week spent the entire day at the offices of Mofokeng Incorporated tending to all their accounting needs.

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6.1 Identify the relationship between Jesse and Mofokeng Incorporated. (1)

6.2 How is this relationship distinct from an employee/employer relationship? (2)

6.3 Assume that the business of Mofokeng Incorporated begins to grow exponentially, and over time Jesse begins to provide her services not on a weekly basis but on a daily basis. It has reached a point where Jesse is in fact present at the offices of Mofokeng Incorporated daily from 9:00 to 17:00 and often beyond those hours. She is allocated her own office at the company's headquarters. The directors of the company often ask Jesse if she can assist in handling other matters not directly related to her work and she is regularly invited to attend meetings concerning the direction of the company. After several years of providing her services on this basis Jesse's contract with Mofokeng Incorporated is terminated.

Determine whether your answer to question 6.1 above would change in light of the changed nature of the relationship. Your answer should include an exposition of the tests that the court may make use of in order to determine whether control is present. Do not include the statutory presumption in favour of an employee in your answer. (10)

QUESTION 7 [13]

Megan is a first-year trainee accountant at Fitzgerald & Matabane Incorporated, a medium-sized audit firm based in Johannesburg, and she is currently involved in the 31 July 2016 year-end audit of Moonshine Liquors (Pty) Ltd. Whilst busy with the audit, she discovers that Moonshine Liquors (Pty) Ltd has failed to comply with its obligation to withhold and pay over to the South African Revenue Service (SARS) Pay As You Earn (PAYE) from all amounts of remuneration paid to its employees during the 2016 tax year.

Megan is concerned that the failure to withhold PAYE from SARS may constitute a reporting irregularity.

- 7.1 Discuss the duty of an auditor to report a '*reporting irregularity*' to the Independent Regulatory Board for Auditors. (6)
- 7.2 What are the consequences for an auditor for failing to report on a reportable irregularity? (3)
- 7.3 The King III Report identifies four responsibilities of the audit committee, in addition to its statutory duties. Name these duties. (4)

SUB-TOTAL: SECTION B	[64]
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GRAND TOTAL	[80]
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