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Name and Surname: _____

Student Number: _____

Lecturers Name: _____

PROGRAM : NATIONAL DIPLOMA
ACCOUNTING/BANKING/CREDIT
MANAGEMENT/LOGISTICS/MANAGEMENT/
MARKETING

SUBJECT : **BUSINESS LAW 1A**

CODE : **BSL1A11/BUS11A1/BUL41A1**

DATE : 31 MAY 2016

DURATION : 2 HOUR

TOTAL MARKS : 100

EXAMINER MISS N ISMAIL
MISS B KGORI
MISS T NEUHAUS
MRS S HASSEN (APB)

MODERATOR ADV EA FREDERICKS

NUMBER OF PAGES TWELVE (12) PAGES

INSTRUCTIONS: ALL PAPERS MUST BE HANDED IN

1. Answer all questions.
2. Write legibly.
3. All cellphones must be switched off.
4. Write your lecturer's name on all the provided answer sheets

QUESTION 1: CONSENSUS

1.1 Ayant lives in Pretoria. He advertises to sell his old cellphone on OLX. Thomas, who lives in Johannesburg, sees the advertisement and posts an offer to purchase to Ayant on the 15th of July 2016. The offer reaches Ayant on the 17th of July 2016. Ayant sends his acceptance letter via post on the 19th of July 2016. The letter arrives on the 21st of July 2016 and he reads the letter on the 28th of July.

1.1.1 According to South African law, which theory regarding the time and place of the conclusion of a contract, will be applicable to the abovementioned set of facts. (1)

Expedition theory

1.1.2 When was the contract concluded. (1)

19th July

1.1.3 Where will the contract be concluded. (1)

Pretoria

1.1.4 The letter gets lost by the post office and never arrives at Thomas's post box. Would the contract still have been concluded between the parties and provide a reason for your answer. (2)

Yes, the contract will still have been concluded (1) The contract is concluded as soon as the acceptance has been posted (1)

1.2 State whether the following contracts are valid, voidable or void. Provide a reason for your answer.

1.2.1 Sulaiman is selling his car to Muneer. Sulaiman is aware that his car's brake cables have been eaten by rats and that they no longer work at all. He informs Muneer that his car is in perfect working order. (2)

Misrepresentation (1) Voidable (1)

1.2.2 Prudence buys her husband a gold ring. She believes the ring to be solid gold. A week after her husband has been wearing it, the gold starts to chip off. She finds out that the ring is not solid gold and that it is actually only gold plated. (2)

Mistake (1) Void (1)

1.2.3 Nazreen's mother has been pestering her to buy her iPad for R12.50. After months she finally gives in and reluctantly sells the iPad to her mother. (2)

Undue Influence (1) Voidable (1)

- 1.2.4 Thomas threatens to leak naked photo's of Raquel if she doesn't sell her car to him for R420. (2)

Duress (1) Voidable (1)

(13)

QUESTION 2: CAPACITY

- 2.1 Fully discuss the capacity of persons in the following age groups.

- 2.1.1 Persons aged 0-7. (2)

No Legal capacity (1) Cannot conclude any contracts regardless if they have assistance (1)

- 2.1.2 Persons aged 7-18.
(2)

Limited Legal capacity (1) Can only conclude contracts with the assistance of a parent/guardian (1)

- 2.1.3 Persons older than 18. (2)

Full Legal capacity (1) Can conclude any contracts they without assistance (1)

- 2.2 Thomas is a 17 year old unemancipated and unmarried minor. He concludes a contract with Muneer (a major with full legal capacity), to buy his 10 year old laptop for R100 000. Thomas gave Muneer a fake driver's license showing he was 21 years old. Discuss the legal position. (3)

Thomas would be called a fraudulent minor (1)
the minor should be held liable on the contract as though he or she were, in fact, a major and had the capacity to act (1)
The minor would also be liable in delict (1)

- 2.3 List the various matrimonial property regimes recognised by SA Law. (3)

In community of property

Out of community of property with the accrual system

Out of community of property without the accrual system

- 2.4 In the following questions, state whose consent is required in order to conclude a valid contract.

- 2.4.1 An Insolvent person. (1)

Trustee

2.4.2 Spouse married in community of property. (1)

Other spouse

2.4.3 Child selling immovable property to the value of R200 000. (2)

Parent/Guardian
High Court

2.5 Discuss the capacity of mentally deficient persons to enter into a contract. (2)

No capacity to conclude contracts (1) unless they are experiencing a lucid moment (1)

(18)

QUESTION 3: POSSIBILITY OF PERFORMANCE

3.1 Lorraine concludes a contract with Mikayla in terms of which Mikayla will deliver 5kg of illegal blood diamonds in exchange for R300 000. Mikayla has already delivered the illegal blood diamonds and claims the purchase price from Lorraine. Lorraine refuses to pay the purchase price.

3.1.1 Discuss whether Mikayla will be successful in claiming the purchase price from Lorraine. (3)

No (1)

Ex turpi causa (1)

Def of ex turpi causa, from a shameful cause, no action arises (1)

Court will not enforce (1)

3.1.2 Discuss whether Mikayla will be successful reclaiming the illegal blood diamonds from Lorraine. (3)

Par delictum (1)

In equal guilt, the position of the possessor is stronger (1)

Can be relaxed in certain cases (1)

3.2 Distinguish between objective and subjective possibility of performance. (2)

Objective – impossible for anyone in the world to perform

Subjective – impossible for the specific party to perform

(8)

QUESTION 4: FORMALITIES

4.1 Discuss what the requirement of formalities refers to. (2)

It refers to the external (1) visible (1) form of contracts

4.2 List at least three (3) types of contracts where the law requires formalities. (3)

- a) Contract for the alienation of land
- b) Suretyship
- c) Contracts of donation where performance is due in the future
- d) Consumer contracts
- e) Ante-nuptial contracts

(5)

QUESTION 5 TERMS OF THE CONTRACT

5.1 Define the following concepts:

5.1.1 *Essentialia* (1)

Those terms that are essential for the classification of the contract as belonging to a particular class or category

5.1.2 *Naturalia* (1)

Naturalia are terms which the law automatically form part of a particular type of contract.

5.1.3 *Incidentalia*. (1)

Additional terms added to the contract to provide further detail

5.2 Identify the following type of time clauses or condition.

5.2.1 Busi and Sabreen conclude a contract in terms of which Sabreen will stop working for her when she reaches 25. (1)

Resolute time clause

5.2.2 Naz and Taryn conclude a contract in terms of which Naz will employ Taryn on condition that she passes all her exams. (1)

Suspensive condition

5.2.3 Imo-Rhesa concludes a contract with Eesa in terms of which Imo-Rhesa will purchase Eesa's vehicle upon Eesa's death. (1)

Suspensive time clause

- 5.2.4 Mary and Joseph conclude a contract in terms of which Mary will rent Joseph's house. The contract includes a term that states that if Mary brings an animal onto the property the contract will terminate. (1)

Resolutive condition

- 5.3 Identify the following contractual terms.

- 5.3.1 Payton and Paige conclude a credit agreement. One of the terms in the contract states that in the event that one of the parties fails to pay an instalment, the other party will be liable to pay a fine of R250. (1)

Penalty clause

- 5.3.2 Cherie and Sipho conclude a contract of sale. In the contract it states that the house that is sold must continue to be used as a soup kitchen. (1)

Modus

- 5.3.3 Jack and Jill conclude a contract in terms of which Jack will climb up the hill to fetch her a pail of water. The contract clearly states that if Jack is unable to fetch the pail of water, the contract will automatically terminate. (1)

Cancellation clause / lex commissoria

- 5.3.4 Donald Trump concludes a contract with Hilary Clinton. The contract contains a term that states that if any alterations need to be made to the contract, they must be done in writing. (1)

-
- 5.3.5 Kanye West buys a TV from Game with an undertaking that it is without defect and should it fail in the first 24 Months, he can take it back for a full refund. (1)

Warranty

(12)

QUESTION 6 INTERPRETATION

- 6.1 Discuss the Parol Evidence Rule (3)

- Once a contract has been reduced to writing (1) or integrated into a single complete document, the written document is the only record of the agreement (1), and it is this document which has to be interpreted in order to determine the content of the contract (1).
- In other words the written contract serves as the only evidence (1) allowed regarding the contents of the parties contract (no extrinsic evidence)

6.2 Two months after purchasing a house, Susan notices that the contract of purchase and sale reflects the incorrect purchase price as a result of a typing error. Identify and discuss the concept to remedy this error. (3)

- Rectification (1)
 - Refers to the correction/amendment of a written contract where it does not reflect the true intentions of the parties (1)
 - Parties can rectify a contract where:
 - They can prove what their true intention was (1); and
 - The written contract does not actually reflect the parties true intention (1)

6.3 List the guidelines used to determine parties' intention. (5)

1. Parties normally use all words in their ordinary grammatical meaning.
2. After ascertaining the literal meaning of the words or phrase, the context in which the words are used, the contract as a whole and the surrounding circumstances are taken into account
3. If uncertainty or ambiguity remains with regard to a word or a phrase, the courts sometimes interpret the clause against the party who was responsible for its drafting.
4. Various presumptions can be used.
5. If a contract has been reduced to writing, the PAROL EVIDENCE RULE applies.

(11)

QUESTION 7 BREACH OF CONTRACT

7.1 List and discuss the various forms of breach of contract. (10)

1. Mora Debitoris
Occurs where the debtor does not perform at the agreed time or if no agreement as to when, within a reasonable time.
2. Mora Creditoris
creditor causes the debtor's performance to be delayed
3. Positive malperformance
Occurs where the debtor performs contrary to the terms of the contract. Ie tenders a lesser quantity of product than was agreed upon in the contract.
4. Repudiation
Any conduct that indicates that the one of the parties may not honour the obligations under the contract.
5. Prevention of performance
Dr or Cr prevents the other contracting party from performing

(10)

QUESTION 8 REMEDIES FOR BREACH OF CONTRACT

8.1 List at least two (2) circumstances where specific performance cannot be claimed. (2)

- ⊙ Where it is impossible for the debtor to perform. (1)
- ⊙ Where damages would be an adequate form of compensation (1)
- ⊙ Where it would be unfair to the defendant (1)
- ⊙ Where performance would include a personal relationship between the parties. (1)

8.2 AKA is buying Trevor Soah's house. In terms of the contract, a deposit of 50% must be paid before delivery of the keys. The deposit was not made and AKA wants delivery before the payment of the deposit.

8.2.1 Discuss the defense Trevor Soah can use in order to refuse delivering the house keys. (2)

- Exceptio non adimpleti contractus - The defendant can refuse to perform by relying on fact that pl hasn't performed in full

8.2.2 Assuming the keys have now been delivered and the purchase price has been fully paid and Trevor Soah enters the house and notices that one of the walls is broken, discuss the most appropriate remedy in this case. (2)

The most appropriate remedy would be to claim a reduction in purchase price (1) as defective performance was delivered (positive malperformance) (1)

8.3 Discuss when cancellation of the contract can be claimed. (3)

- ⊙ Normally a creditor will only be able to cancel if there was a lex commissoria (cancellation clause) (1).
- ⊙ however, the creditor is also entitled to cancel the contract (1) if the creditor can show that the time for the performance was of the essence (1).
- ⊙ It is not sufficient merely to state a date by which the parties shall perform (1).
- ⊙ The parties need to state that time is of the essence, or include a lex commissoria (1) in order to cancel the contract where there has been mora debitoris.
- ⊙ Courts have also been willing to look at surrounding circumstances of the case in order to determine if the time of the performance was of the essence (1)
- ⊙

8.4 Discuss how the court will go about determining damages. (4)

- ⊙ Iro contract of sale the damage is the difference between the market price and the contract price
- ⊙ Iro a money debt interest is charged
- ⊙ Iro defective execution can claim an amount to repair the defect or the cost for someone else to do the work

(13)

9.1 Provide the period of prescription for the following:

9.1.1 Debt secured by a mortgage bond. (1)

30 years

9.1.2 A debt arising from an instalment sales agreement. (1)

3 years

9.1.3 Debts in respect of taxation (SARS). (1)

30 years

9.2 Sameera owes her sister, Shaaista, R5 000. One Sunday afternoon, Shaaista needs R2 000 in cash to pay the plumber, however, the ATM closest to her residence is out of service. Shaaista borrows R2 000 from Sameera.

9.2.1 Identify the method of termination that is applicable. (1)

Set off

9.2.2 List the requirements to be met in order for the method of termination identified in question 9.1 to be effective. (4)

- Debts must be similar in nature
- Debts must be liquidated
- Debts must be claimable
- Debts must be between the same parties

9.3 List at least two (2) other ways that a contract can be terminated. (2)

Discharge

Waver

Performance

Death

(10)

TOTAL [100]
