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Q2	
Q3	
Q4	
Total	

Percentage _____

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 : 07 MARCH 2016

DURATION : 1 HOUR

TOTAL MARKS : 50

EXAMINER : MISS N ISMAIL
MISS B KGORI
MRS S HASSEN
MISS TA NEUHAUS

MODERATOR : ADV EA FREDERICKS

NUMBER OF PAGES : SIX (6) PAGES

INSTRUCTIONS: ALL PAPERS MUST BE HANDED IN

1. Answer all questions.
2. Write legibly.
3. All cellphones must be switched off.

QUESTION 1

1. Define each of the following Latin terms.

1.1 *Bona fides* (1)

Good faith

1.2 *Incidentalia* (1)

Terms agreed by parties for their own purpose in order to fulfil their own needs arising from their circumstances

1.3 *Corpus Iuris Civilis* (1)

Codification of Roman law by the emperor, Justinian

1.4 *Intra vires* (1)

Within the powers or competencies of

1.5 *Lex commissoria* (1)

Cancellation clause.

1.6 *Rei vindicatio* (1)

Remedy of the true owner of the goods to reclaim possession

1.7 *Digesta* (1)

Selections from the works of Roman jurists

1.8 *Par delictum rule* (1)

In the case of equal wrong by both parties, the possessor of the performance is in the stronger position

1.9 *Voetstoots* (1)

As is

[9]

QUESTION 2

2.1 Complete the table below. (6)

	Legislature	Executive	Judiciary
Functions	Make laws (1)	Implement laws (1)	Adjudicate disputes (1) by interpreting and applying the law
Consists of:	Parliament Provincial Legislatures Municipal Councils (1)	President, Deputy President and Ministers Provincial premier and executive council. Municipal Councils (1)	Constitutional Court Supreme Court of Appeal High Courts Magistrates Court Small Claims Court (1)

2.2 The South Gauteng High Court made a ruling regarding the definition of a certain word in the Consumer Protection Act. Answer the questions below with respect to the jurisdiction of the courts.

2.2.1 Would the Supreme Court of Appeal be bound by the South Gauteng High Court's interpretation? (1)

No

2.2.2 Would the Western Cape High Court be bound by the South Gauteng High Court's interpretation? (1)

No

2.2.3 Assume that the Western Cape High Court interprets the same definition in a different manner. Which decision would the Roodepoort Magistrates Court be bound by? Discuss the relevant legal principle. (3)

The Roodepoort Mag Court would be bound by the decision of the South Gauteng High Court. (1) According to the principal of *stare decisis* (1), Mag Courts are bound by the decisions of the High Court. However, where two high courts have given different decisions, a lower court will be bound by the decision of the higher court in its jurisdiction (1).

2.3 Discuss the jurisdiction of the Small Claims Court. (3)

No Legal Representation allowed (1)

Only Civil Matters allowed (1)

Only natural persons can institute claims (1)

Maximum monetary jurisdiction of R15 000 (1)

- 2.4 Jeff lives in a small community in the Karoo. Last year the residents of the community decided that if a wild animal was roaming around, the first person to spot the animal would be given the opportunity to become its owner by occupation. Jeff spots a little goat roaming around and decides to try and catch it for himself. He goes home to collect his animal catching equipment. When he returns, he finds that Jimmy has already captured the goat and asks him to hand it over as he spotted it first. Jimmy refuses and Jeff is forced to go to court to try to claim ownership of the goat. Jeff argues that the rule that “the first person to spot the animal would be given the opportunity to become its owner by occupation” was legally enforceable due to the fact that it amounted to customary law. Discuss, with reference to case law, if Jeff will be successful in court. (6)

According to *van Breda v Jacobs* (1) for a custom to be recognized as legally binding, 4 requirements must be complied with:

- (a) It must be reasonable. (1)
- (b) It must have existed for a long time (1)
- (c) It must be generally recognized and observed by the community (1)
- (d) The contents of the customary rule must be certain and clear (1)

In this case, the custom only came about last year, so it is not long established, thus it won't be recognized as legally binding (1)

- 2.5 Distinguish between the concepts of *obiter dictum* and *ratio decidendi*. (4)

Ratio Decidendi

Ratio decidendi literally means 'the reason for the decision' (1)

the *ratio decidendi* of a case is binding on lower courts (1)

The *ratio decidendi* is the portion of the judgement that forms part of the doctrine of *stare decisis* (1)

Obiter Dictum

Means incidental remark or remark in passing (1)

No binding on lower courts (1)

Just an opinion expressed by the judge (1)

(24)

QUESTION 3

3.1 List, and give an example of, at least two (2) types of subjective rights. (4)

Real right
Intellectual property rights
Personality rights
Personal rights

ANY 2 of the above plus an appropriate example

3.2 List and define the two (2) types of legal subjects. (4)

Natural Persons (1) – Human Beings from birth till death (1)
Juristic Persons (1) – Entities that are recognized by law as being holders of rights and duties (1)

3.3 List, and briefly discuss the derivative methods of acquiring ownership. (4)

For Movables (1) – ownership is transferred by delivery (1)
Immovables (1) – Registration (1)

(8)

QUESTION 4

4.1 List the five (5) requirements for a valid contract. (5)

Consensus (1)

Capacity to act (1)

Legal possibility of performance (1)

Physical possibility of performance (1)

Formalities (1)

	(5)
TOTAL	[50]