UNIVERSITY OF FORT HARE

COMMERCIAL LAW 1B
LCM 121

SUPPLEMENTARY EXAMINATIONS

JANUARY / FEBRUARY

2019

Time: 2 Hours 30 Minutes

Subject: Commercial Law 1B

Marks: 100

This paper consists of 13 pages including the cover page

Internal Examiners

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Instructions

1. Answer all questions in section A (Multiple Choice Questions — MCQ);
2. Answer section A in the MCQ sheet provided;
3. Answer all questions in sections B and C in the examination answer book;
4. There is only one correct answer for each of the questions in section A;
5. Read instructions carefully before you answer any question;
6. It is in your best interest to write clearly and legibly.
SECTION A: MULTIPLE CHOICE QUESTIONS (MCQ)  

[1 x 50 = 50MARKS]

1. Which one of the following statements is untrue about the duties of a credit provider  
   (a) He must register with the Credit Regulator  
   (b) He need not make a credit assessment of the consumer at the beginning  
   (c) He must report the details of a credit agreement that he has entered into to the national  
       credit register  
   (d) The consumer may request a statement of the amount required to settle his account  
   (e) All statements are true

2. Which one of the following statements is untrue about reckless credits  
   (a) A credit provider may not enter into a reckless agreement with a consumer  
   (b) Before a contract is entered into the credit provider must assess the consumer’s credit  
       worthiness  
   (c) A credit provider may use its own means as long as the means used are fair and objective  
   (d) Information on the consumer may not be obtained from a credit bureau without the  
       consumer’s consent  
   (e) All statements are true

3. Which one of the following statements is untrue about the initiation of a debt review process  
   (a) A court may refer the matter to a debt councillor  
   (b) A consumer may himself apply to a debt councillor to have himself declared over-indebted  
   (c) A debt councillor may declare a consumer not over-indebted and reject the application  
   (d) The debt councillor may not declare a consumer over-indebted before referring the  
       matter to court  
   (e) All statements are true

4. Which one of the following statements is untrue about a consumer who is in default  
   (a) The credit provider may draw the consumer’s notice in writing  
   (b) The credit provider may propose to the consumer that the consumer refer the agreement  
       to the debt councillor  
   (c) The credit provider may propose to the consumer that the consumer refer the agreement  
       to an Ombudsman  
   (d) The credit provider may propose to the consumer that the consumer refer the agreement  
       to a consumer court  
   (e) All statements are true

5. Which one of the following statements is untrue about the definition of a consumer  
   (a) The party to whom goods and services are sold under a discount agreement  
   (b) The party to whom money is paid under a pawn transaction  
   (c) The party who is a borrower under a secured loan  
   (d) The party who is a guarantor under a credit guarantee  
   (e) All statements are true
6. Which one of the following statements is untrue about the functions of the National Credit Regulator?
   (a) It must promote and support a fair, transparent and competitive credit market
   (b) It must educate the public to promote awareness of consumer credit matters
   (c) It must enforce the National Credit Act 34 of 2005 by promoting informational dispute resolution between role players
   (d) It must monitor matters in the credit market and report thereupon to the Minister
   (e) All statements are true

7. Which one of the following statements is untrue about the National Consumer Tribunal?
   (a) It is a juristic person with jurisdiction throughout the country
   (b) It conducts its proceedings in public in an informal inquisitorial manner
   (c) It consists of a chairperson and at least ten persons
   (d) No person is allowed to appeal against the decision of a single member panel
   (e) All statements are true

8. Which one of the following statements is untrue about the powers of the National Consumer Tribunal?
   (a) It may review a decision by the National Credit Regulator
   (b) It may not cancel the registration of a registrant on any grounds
   (c) It may impose an administrative fine in respect of prohibited conduct
   (d) All statements are true

9. Which one of the following statements is untrue about unlawful provisions in the National Credit Act
   (a) An agreement may not purport to waive the consumer’s statutory rights
   (b) An agreement may not exempt the credit provider from liability for an act, omission or representation by a person acting on his behalf
   (c) An agreement may not exclude implied guarantees or warranties
   (d) An agreement may not purport to defeat the purposes of the Act
   (e) All statements are true

10. Which one of the following statements is true about the termination of lease agreements
    (a) It may be terminated by notice by any of the parties
    (b) It may be terminated upon the death of the contracting parties
    (c) It may be terminated when a lessor is insolvent
    (d) It may be terminated when a lessee is insolvent
    (e) All statements are true

11. Which one of the following statements is untrue about the *huur gaat voor koop* principle
    (a) A lessee in terms of a short lease is protected if he is in occupation of the leased property
    (b) A lessee in respect of a long lease will be protected for the full duration of the lease provided that registration of the lease has taken place
    (c) Where the lessee is not in occupation the lease will be binding on persons who acquire the land without rendering a counter-performance
    (d) Only A and B are true
    (e) All statements are true

3
12. Which one of the following statements is untrue about providing undisturbed use and enjoyment by third parties?
(a) The lessee must inform the lessor to enable the lessor to defend the lessee’s rights in the property
(b) The lessee may not abandon the leased property without putting a virilis defensio
(c) Lessee need not notice the lessor if it appears that the third party’s claim is indisputable
(d) A lessee must always notify the lessor of the disturbance not matter what, she has no choice.
(e) All statements are true

13. Which one of the following statements is untrue about providing undisturbed use by the lessor
(a) He himself may not disturb the lessee’s use and enjoyment
(b) He has the right to inspect the leased property regularly in order to comply with his duties of maintenance
(c) The nature of the repairs may require the lessee to vacate the property temporarily
(d) If the lessor undertakes essential repairs the lessee has to tolerate the disturbance
(e) All statements are true

14. Which one of the following statements is untrue about the nature and extent of the calculation of the counter performance in lease agreements
(a) The contract may stipulate a specific amount
(b) The contract can provide that the rent be fixed according to a formula convertible into money
(c) The contract may provide that the rent be fair compensation
(d) The contract may provide for a third person to determine rent
(e) All statements are true

15. Which one of the following statements is true about the lessor’s tacit hypothec:
(a) It comes into operation when the rent falls in arrears;
(b) It exists even after the rent is paid;
(c) It extends over movable and immovable things;
(d) It operates even if the movable things have been taken off the leased premises
(e) All statements are true

16. Which one of the following statements is untrue about the application of the National Credit Act
(a) Juristic persons are also protected if they conclude large transactions.
(b) Credit providers must register with the National Consumer Tribunal.
(c) Some credit bureaux need not register with the National Credit Regulator.
(d) The National Credit Regulator is primarily concerned with dispute resolution.
(e) All statements are untrue
17. Which one of the following statements is true about credit agreements? It is a small agreement if it is:
(a) More than R15 000;
(b) Less than R15 000;
(c) Between R15 000 and R250 000;
(d) Less than R250 000;
(e) No statement is true

18. Which one of the following statements is true about the rei vindicatio? The true owner of a thing is sometimes not entitled to exercise his rei vindicatio
(a) If the real owner represented to the buyer that the seller (and not himself) is the owner of the thing sold;
(b) If the object was sold in terms of an order of court;
(c) Both statements are true
(d) Only statement A is true

19. Which one of the following statements is true about a material term in a contract? A material term in a contract is determined by enquiring whether:
(a) The parties applied their minds to the term;
(b) The parties agreed, either expressly or impliedly, that the term should form part of the contract;
(c) The parties agreed that the term be binding on them;
(d) None of the statements above is correct;
(e) All statements are true

20. Which one of the following statements is true about a contract of sale? Which of the following rights does the buyer receive on mere conclusion of a contract of sale?
(a) Ownership;
(b) Personal right;
(c) Real right;
(d) Only answers A and B are true
(e) All statements are true

21. Which one of the following statements is true about a warranty? When the seller gave a contractual warranty against the existence of a latent defect, which remedy can be used to claim damages by the buyer:
(a) Actio empti;
(b) Actio redhibitoria;
(c) Actio quanti minoris;
(d) All of the above are available
(e) Only A is true
22. Which one of the following statements is untrue about a sublease? It means
(a) A second lease is not formed between the sublessee and the lessor;
(b) No legal relationship exists between the original lessor and the sublessee;
(c) If the lessee receives no rent from the third party but allows such party to use the
property, it is also called a sublease;
(d) Only A and C are untrue.
(e) All statements are untrue

23. Which one of the following statements is untrue about a pre-emptive right
(a) It is a personal right by virtue of an agreement between the right grantor and right holder
(b) It entitles one party to claim from another
(c) The holder of the pre-emptive right has a right of first and exclusive choice of deciding
whether he wants to conclude a contract with the right grantor
(d) But the right grantor is not obliged once he decides to sell to first offer the right to the
right holder
(e) All statements are true

24. Which one of the following statements is untrue about a latent defect
(a) It is a defect in the thing sold
(b) It is of such a nature that it renders the thing fit for the purpose for which it was bought
(c) The defect must affect the utility of the thing
(d) The defect must exist at the time of conclusion of the contract
(e) All statements are true

25. A draws a cheque, which is crossed 'not negotiable', on B Bank in favour of C and delivers this
cheque to C. X steals the cheque from C, forges C's endorsement and uses the stolen cheque
to pay D who is unaware of what happened. D deposits the cheque into her bank account at
Y Bank and Y bank obtains payment from B Bank who debits A's account. D is not a customer
of B Bank. Indicate which of the following statements, about the legal consequences of such
a cheque, is incorrect:
(a) B Bank will be protected if it paid in good faith and without negligence;
(b) C will be entitled to claim his losses from D;
(c) B Bank will be entitled to debit A's account;
(d) Section 81 of the Bills of Exchange Act (BEA) applies to such a cheque;
(e) All the statements above are correct.

26. Indicate the incorrect statement pertaining to the non-transferable cheque in terms of section
75A of the Bills of Exchange Act (BEA):
(a) The cheque is still transferable;
(b) Such a cheque is deemed to be crossed generally;
(c) The words 'not transferable' may not be cancelled;
(d) The cheque is valid between the parties thereto;
(e) All statements are correct.

27. Which of the following statements is incorrect about crossings?
(a) A crossing becomes a material part of a cheque;
(b) The effect of a crossing is that the drawee bank may only pay another bank;
(c) The drawee bank may not pay a crossed cheque in cash over the counter;
(d) A crossing influences the negotiability of a cheque;
(e) All the statements above are correct
28. The doctrine of unfair dismissal of an employee implies that:

(a) It has been given a narrower meaning in the Labour Relations Act than it had before;
(b) The basic goal with this doctrine is to protect the employer;
(c) It does not include the retrenchment of employees;
(d) The dismissal must be justified also on substantive grounds;
(e) All statements are correct.

29. Which of the following courts will have jurisdiction to issue an order of sequestration?
   A local division of the High Court;

(a) The provincial division of the High Court;
(b) The magistrate’s court;
(c) The small claims court;
(d) More than one of the above statements are correct.

30. Indicate the correct statement about voluntary surrender:

(a) There are usually two parties involved, the creditor as applicant and the debtor as respondent;
(b) The applicant must publish a notice of surrender in the Government Gazette;
(c) Sales in execution can still proceed after publication of the notice of surrender in the Government Gazette;
(d) Copies of the notice of surrender need not be sent to all known creditors;
(e) All the statements above are correct.

31. A debtor applying for voluntary surrender must prove that the sequestration of his estate is to the benefit of his creditors. Which of the following forms part of this requirement?

(a) Sequestration must be to the advantage of his creditors as a group;
(b) Sequestration must be to the advantage of the debtor;
(c) Creditors must be paid in full;
(d) It is unnecessary that creditors should at least receive a dividend;
(e) None of above forms part of this requirement.

32. Which of the following statements is correct about compulsory sequestration proceedings?

(a) A creditor with a liquidated claim of at least R100 may bring such an application;
(b) The applicant does not have to give security to the Master to defray the sequestration costs;
(c) The applicant does not have to prove that the debtor is insolvent or has committed an act of insolvency;
(d) The court will normally not place the estate under provisional sequestration;
(e) All the statements above are wrong.

33. The benefit which stipulates that the principal creditor first demand performance from the principal debtor before claiming from the surety is known as:

(a) Benefit of division;
(b) Benefit of excursion;
(c) Recourse against co-sureties;
(d) Benefit of cession of actions;
(e) Recourse against principal debtor.
34. Before a company will incur liability on a negotiable instrument through its signature certain requirements must be complied with. Which of the following is no longer one of these requirements?

(a) The representative of the company who signs must be authorised by the company;
(b) The name of the company must be correct in all respects;
(c) If a representative mode of signing is used by the person signing, he must indicate his representative capacity;
(d) All the statements are correct.

35. Select the correct statement. A carrier may escape liability in instances of:

(a) Casus fortuitous, Damnum fatale or force majeure;
(b) Any negligence on the part of the consignor;
(c) An inherent defect or vice in the goods themselves which leads to the damage;
(d) All the above statements are correct;
(e) None of the above statements is correct.

36. Which of the following statements is incorrect about the effects of the sequestration on the insolvent?

(a) Generally speaking the insolvent may still conclude valid contracts;
(b) If a contract adversely affects his estate the insolvent must obtain the prior written consent of the trustee;
(c) If the insolvent fails to obtain such written consent the contract is invalid;
(d) The insolvent may not carry on business;
(e) All the statements are correct.

37. Which of the following statements is true about a lien?

(a) Actual physical possession of the thing by the creditor is not required;
(b) In the case of a debtor /creditor lien the creditor has incurred expenses in respect of a thing belonging to the debtor in execution of his contractual duty towards the debtor;
(c) A lien-holder has no preferred right in the case of the debtor's insolvency;
(d) Salvage and storage liens operate because there was agreement between the parties involved that the creditor may incur the expenses.

38. The vicarious liability of the employer implies that:

(a) The employer will not be liable for delicts committed by the employee in the course and scope of his employment;
(b) The doctrine of vicarious liability of the employer is not controversial and is in line with the general principles applicable to delicts;
(c) There should be an employer-employee relationship existing at the time of the commission of the wrongful act;
(d) The employee can also act outside the scope and course of the employment;
(e) The employer will also be liable even if no wrongful act was committed.
39. The delictual liability of the collecting bank implies that:

(a) The bank acts lawfully and without negligence;
(b) Such liability is based on a duty of care towards the true owner;
(c) No damages can be claimed from the bank;
(d) The Bank’s conduct did not lead to the owner’s loss;
(e) All statements are correct.

40. Which statement is correct?

(a) If the credit receiver decides to terminate the contract the credit grantor does not have to repay him;
(b) If the credit receiver decides to terminate the contract the credit grantor must repay him within 5 days;
(c) The return of the goods must occur at the place of business of the credit grantor;
(d) None of the above is correct;
(e) Only (b) and (c) are correct

41. Indicate the incorrect statement about the expenses which may be incurred in respect of liens

(a) Necessary expenses: these are costs necessary for the preservation and protection of the thing;
(b) Luxurious expenses: these are costs which are necessary and useful for the satisfaction of the individual;
(c) Useful expenses: these are expenses incurred which increase the market value of the thing;
(d) All statements are correct

42. Indicate which one of the following statements is incorrect about the definition of a promissory note

(a) It is an unconditional order in writing to pay;
(b) It is a promise made by one person to another;
(c) It is a promise to make payment on demand or at a fixed or determinable future time;
(d) All statements are correct.

43. Indicate which one of the following statements is incorrect about the definition of a bill

(a) It is an unconditional promise in writing addressed to one person by another;
(b) It is an order that requires the person to whom it is addressed to pay on demand;
(c) It is an order which must be signed;
(d) All statements are correct.

44. Indicate the incorrect statement regarding tacit granting of credit

(a) It is where the seller accepts security for the payment of the purchase price;
(b) It is where the parties agree on an interest rate for the payment of interest on the purchase price;
(c) It is where the granting of credit can be deduced from previous transactions between the parties;
(d) All statements are correct.
45. Indicate the incorrect statement about the forms of evictions

(a) The true owner of the thing sold may claim his property from the buyer;
(b) A third party obtains possession of property and the buyer cannot claim this property from the third party due to defective title;
(c) In terms of the rule that lease goes before sale the buyer is sometimes obliged to allow the lessee to use and enjoy the property until the lease expires;
(d) All statements are correct.

46. Indicate which statement is incorrect about the rules were eviction is imminent

(a) The buyer must notify the seller of the threatened eviction;
(b) The seller must assist the buyer in proving his title;
(c) The buyer has to notify the seller even if the seller has already received knowledge of the eviction;
(d) All statements are correct.

47. Indicate the incorrect statement on duties of the carrier

(a) The consumer has the right to demand quality service that persons are generally entitled to;
(b) The carrier may discriminate against any person on reasonable grounds;
(c) The consumer does not have a right to select his supplier or service provider in carriage;
(d) All statements are correct.

48. Indicate the incorrect statement about the content of real right of mortgage

(a) Unlike the real right of pledge, the mortgagor usually remains in possession of the mortgaged property;
(b) The same property could be subject to more than one mortgage bond;
(c) The mortgagor may generally confer further rights in respect of the property without the consent of the mortgagee;
(d) All statements are correct.

49. Indicate the incorrect statement about the parate executie

(a) The pledgee after obtaining a court order can have the goods sold;
(b) The parties may agree that the pledgee may sell the goods without recourse to the court and satisfy the debt from the proceeds, this is called parate executie;
(c) The pledgor may object to the parate executie if it is to his prejudice;
(d) All statements are correct.

50. Indicate the incorrect statement about the real right of pledge

(a) The pledgee may keep the object under his control;
(b) The pledgee may single out this object for purposes of execution without obtaining judgement;
(c) The pledge may even form part of the pledgee’s estate;
(d) More than two statements are incorrect;
(e) All statements are correct.
SECTION B: SHORT QUESTIONS

Answer ALL questions in your answer book by writing TRUE (T) or FALSE (F) next to the question number.

1. Rectification of a blank space on a deed of sale of land can take place regardless of whether the contract is valid or not;

2. The National Consumer Tribunal does not have jurisdiction throughout the country;

3. The legal aid available where there is a warranty by operation of law in a sale differs from the legal aid available where the warranty is given contractually where a party also wants to claim damages;

4. The Rental Housing Act places no restriction on the quantum of rent that may be charged or on the grounds on which tenants may be evicted;

5. The parties agree that the rent is ‘between R700 and R800’ per month. This is a valid lease;

6. As a general rule the seller will not be liable for damages caused to the thing sold before delivery, where his conduct was without fault;

7. Parties can waive any of the provisions of chapter 3 of the Rental Housing Act, deemed to form part of a lease;

8. Deed of alienation is defined as a document or documents in terms of which land is alienated;

9. The requirement for formalities in terms of the Land Alienation Act seeks to prevent disputes regarding the contents of a contract;

10. The *more debitoris* or *mora creditoris* of the buyer and the *mora debitoris* of the seller influence the duty of safe-keeping.

11. The words ‘not negotiable’ as part of a general crossing has the effect that such a cheque cannot be transferred further.

12. The insurer can cancel the contract if the misrepresentation could possibly materially influence the assessment of the risk.

13. If the principal obligation comes to an end the suretyship also lapses.

14. If only a part of the debt remains unpaid the thing which is subject to the pledge will be proportionately released.

15. The claim is instituted by the insurer in the name of the insured. This is called Subrogation.

16. Apart from certain exceptions, carriage by road is allowed without permit or operating license.
17. A surety who has paid the principal debt may lose his right of recourse against the principal debtor should he negligently fail to inform the principal debtor that he paid the principal debt.

18. The interests of a secured creditor generally rank in priority over the interests of the group of creditors.

19. A forged signature is wholly operative.

20. The most important privilege of a holder in due course is that he holds the bill free from any defect in the title of prior parties and may enforce payment against all parties liable on the bill.

SECTION C: LONGER QUESTIONS [30 Marks]

Answer ALL questions in your answer book.

1. Compare and contrast the below statements by placing them next to the correct warranty.

<table>
<thead>
<tr>
<th>Warranties</th>
<th>Statements</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. affirmative</td>
<td>(A) states specific terms that the insured has to comply with to the letter.</td>
</tr>
<tr>
<td>2. promissory</td>
<td>(B) framed in general terms and does not specify in detail what the insured must do.</td>
</tr>
<tr>
<td>3. warranty of fact</td>
<td>(C) expression of an opinion</td>
</tr>
<tr>
<td>4. warranty of knowledge</td>
<td>(D) insured warrants the presents or absence of a certain fact, irrespective of whether or not the fact falls within his field of knowledge.</td>
</tr>
<tr>
<td>5. warranty of opinion</td>
<td>(E) insured warrants facts that fall within his field of knowledge.</td>
</tr>
<tr>
<td>6. relative warranty</td>
<td>(F) insured warrants that a certain factual situation will be maintained after conclusion of contract.</td>
</tr>
<tr>
<td>7. absolute warranty</td>
<td>(G) insured confirms the correctness of a factual situation which refers to the present or the past.</td>
</tr>
</tbody>
</table>

2. Explain a ‘voetstoots’ (‘as is’) clause and its consequences in a contract of sale? (4)

3. Distinguish between an option and a pre-emptive right. (6)

4. What is the main purpose of the Policyholder Protection Rules? (3)

5. State 4 ways in terms of which an instrument is a bearer instrument. (4)
6. Explain the parole evidence rule. (3)

7. Discuss three mediums of carriage (3)

Oooo End oooO