

UNIVERSITY OF FORT HARE

COMMERCIAL LAW SUPPLIMENTARY EXAM

ACL111E

DEGREE EXAMINATIONS

MAY/JUNE 2023

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Time: 3 HOURS
Subject: ACL 111 E
Marks: 100

This paper consists of 16 pages including the cover page

Internal Examiners

Mr ANATHI PHELA

Moderator:

Dr S. Biddie

INSTRUCTIONS

ANSWER ALL QUESTIONS

Where relevant, your answer should be fully motivated and the relevant authority must be cited in support of your arguments.

QUESTION 1

MCQ

Question 1

Which of the following persons does NOT have full contractual capacity? Choose the CORRECT option.

- a) A girl who has just turned 18.
- b) An elderly gentleman who is bedridden at a nursing home for frail care.
- c) A 21 year-old male who is already a student at university.
- d) A 17 year-old girl who recently got engaged.

(1 mark)

The following set of facts applies in Questions 2, 3 and 4:

Thuli owns and operates many hotels and restaurants throughout South Africa. Lindiwe owns a food and catering business which supplies goods commonly used by hotels and restaurants. On 1 September 2016, Thuli received an email from Lindiwe, which read: "Can offer latest Speedy Rice Cookers at R100 each. First 100 customers get a free gift". On 14 September 2016, Thuli emailed a reply stating: "Will have four dozen. Need delivery by 1 October 2016". Lindiwe read the email on 15 September 2016, then wrote back to Thuli saying "Thank you for your email which is receiving our attention". On 29 September 2016, Lindiwe packed the rice cookers and loaded them on a van for delivery to Thuli, but on the same day, before the van left the business premises, Thuli phoned Lindiwe to say that she no longer needed the rice cookers.

Question 2 (refer to facts set out above)

Does the email from Lindiwe to Thuli on 1 September 2016, constitute a valid offer? Choose the CORRECT option.

- a) Yes, it is a declaration by the offeror of her intention to enter into a contract.
- b) No, as this offer has been made generally to the whole world.
- c) Yes, the offer has been effectively communicated to the offeree.
- d) No, Lindiwe's email does not constitute an offer, but rather an intention to trade or to supply information.

(1 mark)

Question 3 (refer to facts set out above)

Is Thuli's withdrawal of the order of rice cookers valid? Choose the CORRECT option.

- a) No. The parties had reached consensus and Thuli's act constitutes a breach of contract.
- b) Yes. Lindiwe's response was vague as it failed to communicate an acceptance of Thuli's offer.
- c) No. Lindiwe had already begun performing their obligations.
- d) No. The parties had not agreed that acceptance could be constituted by delivery of goods.

(1 mark)

Question 4 (refer to facts set out above)

Based on the facts set out above, which one of the following is CORRECT?

- a) The contract was concluded on 14 September 2016.
- b) The contract was concluded on 15 September 2016.
- c) The contract was concluded on 29 September 2016.
- d) No contract was concluded.

(1 mark)

Question 5

Jason rescued Brandy's son from a burning building. Afterward, overwhelmed by the distress of almost losing her son and having all her possessions destroyed in the fire, Brandy thanks Jason for saving her son and promises to be at his service (for anything he needs) should he EVER require it. Is this a legally binding agreement?

- a) No, Brandy cannot be held bound by her verbal undertaking, as it was entered into without the necessary serious intention to be bound.
- b) No, Brandy cannot be held bound by her verbal undertaking because she was under a lot of stress and therefore lacked the necessary contractual capacity.
- c) Yes, Brandy can be held bound by her verbal undertaking, because all of the essential terms of a contract are present.
- d) Yes, Brandy can be held bound by her verbal undertaking, because she has a moral obligation to fulfil the promise.

(1 mark)

The following set of facts applies in Questions 6 and 7:

Joseph heard from a friend, an engineer who works for the local municipality, about a highly confidential meeting at which a proposal was made for a new highway to be built in their area. Joseph realised that, if the plans went ahead, the new, four-lane highway would pass within a few meters of his back door. Wanting to sell his house quickly, Joseph advertised it at a comparatively low price. Leko was interested in the house, especially because it was being offered for sale at such a good price. He inspected the house thoroughly and, standing outside and admiring the view from the back door, he said to Joseph: 'Hmm. Nice view. And so peaceful here. The good price must be because of the current slump in the housing market due to the poor economy.' Joseph did not respond to this comment. Leko agreed to buy the house and they signed an agreement. Three months after he took possession of the property, Leko reads in the local newspaper that the approval has just been made public of plans for the municipality to begin construction of the highway behind the house within the next year. Leko is furious and wants to take legal action against Joseph.

Question 6 (refer to facts set out above)

Which one of the following statements describes the position most CORRECTLY?

- a) There was a misunderstanding or misapprehension by Joseph regarding facts, events or circumstances relating to the contract.
- b) Joseph failed to correct a false impression that Leko had about the property, in order not to put Leko off entering into the contract.
- c) A negligent, false statement of fact was made by Joseph to Leko with the intention to persuade Leko to enter into the contract.
- d) There was an intentional, designed concealment of fact by Joseph committed with the intention to persuade Leko to enter into the contract.

(1 mark)

Question 7 (refer to facts set out above)

Will Leko be successful in his legal action against Joseph?

- a) Yes, because Joseph had an obligation in these circumstances to tell Leko about the highway, information which Leko clearly did not know.
- b) No, because actions for misrepresentation can only arise where there has been an express incorrect assertion of fact.
- c) No, Joseph did not say anything to mislead Leko.
- d) No, because Joseph had no duty to disclose the information about the highway, which was essentially public information.

(1 mark)

Question 8

Which one of the following forms of mistake would render a contract VOID? Choose the CORRECT option below.

- a) A mistake of law.
- b) A mistake of fact.
- c) A mistake in motive.
- d) A mistake in expression.

(1 mark)

Question 9

What is the effect of a contract which is deemed to be contrary to public policy? Choose the CORRECT answer.

- a) It is illegal and both parties are criminally liable.
- b) The parties have failed to reach consensus.
- c) The contract will be void and unenforceable.
- d) It is voidable and one party must compensate the other party for any loss that he has suffered.

(1 mark)

Question 10

In terms of South African law, natural persons may get married under certain marital regimes. Which of the following marital regimes is NOT recognised under South African law?

- a) Out of community of property with the accrual system.
- b) In community of property with the accrual system.
- c) Out of community of property without the accrual system.
- d) In community of property.

(1 mark)

Question 11

Harry, 17 years old and without his guardian's consent, purchased a state-of-the-art cellphone from a local electronics retailer. After he turned 18, he continued to use the cellphone and to make payments in terms of the contract. He heard, in Commercial Law lectures at the university, that a person only becomes a major, with full contractual capacity, once he turns 18. Relying on this knowledge, Harry wants to cancel the contract and reclaim all payments made to the retailer in terms of the contract. What is the CORRECT position? Choose the most appropriate answer.

- a) Harry did not have any assistance from, nor have the consent of, his guardian at the time he entered into the contract. The contract is therefore void for lack of capacity.
- b) Harry was a minor when he contracted, and therefore he is not liable on the contract.
- c) Harry is liable on the contract because he knew that he needed his parent's consent or assistance to enter into the contract.
- d) Harry is liable on the contract, even though he lacked consent or assistance from his guardian at the time he contracted. Harry is liable because he tacitly ratified the contract after he turned 18.

(1 mark)

Question 12

Choose the CORRECT answer.

Sizwe Builders agree to build a house for Mr Naidoo. One of the terms in the contract states that the house should be completed by no later than 1 September 2016. The contract also states that for every day that the builders are late in completing the house, they will have to pay R5 000 to Mr Naidoo. This kind of clause is known as:

- a) a cancellation clause;
- b) an exclusion clause;
- c) a resolutive clause;
- d) a penalty clause.

(1 mark)

Question 13

John, with the consent of his father, entered into a contract of employment with the harbour master in Durban. One of the terms of the contract was that John could not resign from his employment within the first two years. John would be an apprentice to the harbour master and then become qualified as such. John's father did not know of the term which prohibited John from resigning, nor was he present when the contract's terms were negotiated and signed. John has changed his mind and wants to get out of the contract, saying that he was a minor and was not properly assisted when entering into the contract. What is the position? Choose the most CORRECT option below.

- a) The contract is invalid on the basis of incapacity, as John's father was not present when the contract was negotiated, nor when it was signed, and therefore his consent was not valid.
- b) The contract is valid, as John's father did not need to know the details of the contract, but he only had to consent to, and know the type of, the contract being entered into.
- c) The contract is invalid on the basis that a guardian can never consent to a minor entering into a contract of employment.
- d) The contract was valid as John's father did not need to know the details nor the type of the contract, as his consent is always legally binding.

(1 mark)

Question 14

Ted, who is 12 years old, is walking with his father in the shopping mall when he sees a video game that he wants to purchase. Ted's father tells the shop assistant that his son will purchase the video game with his own money, which he got for his birthday. When Ted gets home, he realises that to play the game he requires an internet connection, which he does not have. Ted wants to set the contract aside because he is a minor and therefore, he argues, he lacks contractual capacity. Which one of the following options is CORRECT?

- a) Ted can set the contract aside because a minor can never, in law, be bound by a contract.
- b) Ted cannot set the contract aside because he completed the contract with his father's consent and assistance, and therefore the contract is valid and binding.
- c) Ted cannot set the contract aside, as the contract is actually between his father and the shop assistant because his father gave his consent for the contract to be concluded.
- d) Ted's father can set the contract aside because he gave consent and therefore the contract is between the father and the shop assistant.

(1 mark)

Question 15

Complete the following sentence, choosing the CORRECT option.

If you enter into a contract with a person who is regarded as an enemy of the state, the contract is:

- a) valid and binding;
- b) void from the outset;
- c) voidable at the instance of the state;
- d) valid but unenforceable until that person is no longer regarded as an enemy of the state.

(1 mark)

Question 16

Nigel, aged 16, with his parents' knowledge, manages a lemon juice stand at the local market every weekend. Nigel has his own bank account for the business. Nigel purchases 50 crates of lemons from the market, and agrees to pay for the lemons at the end of the month. However, two days before payment is due, Nigel sees a motor cycle on special and decides to buy that instead. Nigel argues that he does not have to pay for the lemons because he is a minor and therefore did not have capacity to buy them. What is the position? Choose the most APPROPRIATE option.

- a) Nigel may be held liable for payment as he personally entered into the sale agreement, despite his being a minor.
- b) Nigel may not be held liable for payment, as his parents emancipated him only insofar as the sale of lemon juice is concerned, and he was not authorised to enter into other agreements.
- c) Nigel may not be held liable for payment at all, as his parents had to give express, written consent to emancipate him, which consent they never gave.
- d) Nigel may be held liable for payment, as he was tacitly emancipated by his parents in relation to the running of his business.

(1 mark)

Question 17

Lee agrees to lend his lawnmower to Brent. They agree that Brent will return it to him when he (Brent) no longer needs it. There is no discussion about a specific date by which the lawnmower must be returned. Lee is concerned that he may never get his lawnmower back and feels that the agreement is too vague and uncertain. He approaches you for advice. Choose the CORRECT option.

- a) The contract is not vague and uncertain as the courts have held that terms of performance can be left open ended.
- b) The contract is vague and uncertain because the parties have not put it in writing.
- c) The contract is not vague and uncertain because the parties are entitled to enter into oral agreements, and to leave all terms open ended and up to each person's discretion.
- d) The contract is vague and uncertain because Brent is granted an unlimited choice as to whether or not he needs to return the lawnmower.

(1 mark)

Question 18

A contract has to be lawful in nature. Which one of the following is NOT an unlawful contract?

- a) An agreement of sale concluded with a person with a criminal record.
- b) An agreement to buy unlicensed firearms from a former military commander.
- c) An agreement between a student and a drug dealer to purchase, without a doctor's prescription, medication for which a prescription is required by law.
- d) An agreement, between a witness and the accused in a criminal trial, for the witness to alter his evidence in court.

(1 mark)

Question 19

Mary enters into a credit agreement with Patrick. In terms of this agreement she is not allowed to approach any court system whatsoever, even where she wishes to be placed under administration by order of the Magistrate's Court. She applies for an administration order, which the Magistrate's Court grants. Which one of the following statements CORRECTLY describes the status of the order granted by the Magistrate's Court?

- a) The order is valid, but the clause prohibiting Mary from applying for an administration order will be declared invalid – as it is against public policy – because it undermines the functioning of the court system.
- b) The order will remain valid, but Patrick will not be bound by the court order as they prohibited Mary from applying for the administration order in the contract of sale.
- c) The order will be invalid, as it has passed judgment over a person who was contractually prohibited from applying for an administration order.
- d) The order is invalid and the contractual term prohibiting Mary from applying for an administration order is also invalid.

(1 mark)

Question 20

John purchased tickets for himself and his family to go on a cruise for a week in the Mediterranean. The agreed departure date was 20 July 2016. They have been notified by way of sms that the cruise will be temporarily delayed until 21 July, due to bad weather off the coast of Africa. John is angry about this as the later return date does not suit his schedule, which includes an important board meeting in Durban on 28 July. John claims back the price of the cruise, arguing that the contract has terminated on the basis of impossibility of performance. What is the legal position? Choose the CORRECT option.

- a) The contract has not terminated on the basis of physical impossibility of performance, as the impossibility is only temporary in nature.
- b) The contract has terminated on the basis of physical impossibility of performance, as the cruise line company cannot perform the contract on the specific dates when performance is due.
- c) The contract has not terminated on the basis of physical impossibility of performance, but John is entitled to a court order specifically compelling the cruise line company to perform at a later date of his choosing.
- d) The contract has not terminated but, where, as in this case, performance is only temporarily impossible, it is only the service provider who is prohibited or restrained from cancelling due to temporary impossibility of performance.

(1 mark)

Question 21

Sandy and Brock entered into a contract of purchase and sale of uranium. At the time when they entered into the contract, all that was required, in terms of the *Control of Uranium Act, 2009* was that the parties notify the Minister of Trade and Industry that they were concluding a contract. Shortly after concluding the agreement, a newly appointed Minister of Trade and Industry introduced more onerous regulations to the Act with additional conditions. Sandy is unable to comply with the conditions that have been introduced and so she fails to perform her obligations in terms of the contract. Brock sues Sandy for breach of contract. Sandy approaches you for legal assistance. Choose the CORRECT option below.

- a) Sandy cannot raise the defence of impossibility of performance as she ought to have foreseen this consequence occurring.
- b) Sandy can raise the defence of supervening impossibility as the new regulations fall within the category of an act of State and she is therefore not liable.
- c) Sandy can raise the defence of impossibility of performance, as a change in the regulations, by a new minister, was not reasonably foreseeable.
- d) Sandy cannot raise the defence of impossibility of performance as she should have taken proper steps to guard against the effect of a change in regulations.

(1 mark)

Question 22

A contracting party will be excused from having to perform an obligation where performance becomes legally or physically impossible. Which of the following describes a situation in which a contracting party will NOT be excused from performing?

- a) Where the impossibility of performance is due to either *vis major* or *casus fortuitus*.
- b) Where the person claiming impossibility was responsible for the impossibility.
- c) Where there is absolute impossibility of performance.
- d) Where the impossibility of performance was unforeseeable.

(1 mark)

Question 23

Vitriolix Inc, a software developer in Durban, employs Bloggs, a promising programmer, to develop a seventh generation computer game, Carnage Quest. Bloggs undertakes not to work for any other software developer in competition with Vitriolix Inc in KwaZulu-Natal for four years. Bloggs has just left and begun working for Shaix Inc, a software developer in Westville. Which one of the following answers is INCORRECT?

- a) Once Vitriolix Inc proves that the restraint clause exists, it is up to Bloggs to prove it is against public policy.
- b) Such a restraint clause is, in principle, valid and enforceable to the extent that it is not in conflict with public policy.
- c) The restraint of trade is invalid as it goes against the right to choose a trade, occupation or profession as set out in section 22 of the *Constitution*, 1996.
- d) If Vitriolix Inc asks the court to apply the principle of restriction, the court can find that the clause is valid but can reduce the period of operation to as little as one year.

(1 mark)

Question 24

Which one of the following answers is CORRECT?

Suvisha enters into a written contract with Neeresh to construct a large yoga studio on a vacant plot of land she owns. The contract contains a standard non-variation clause which precludes parties from making oral amendments. Suvisha agrees to pay Neeresh R150 000 upon completion of the work. As work progresses, and due to substantially increased building costs, Suvisha and Neeresh orally agree that Neeresh can omit the installation of the koi pond planned for the courtyard as long as they reduce the final contract price by R10 000. This subsequent oral agreement is:

- a) an enforceable contract, as all essential elements have been met;
- b) unenforceable under the caveat subscriptor rule;
- c) enforceable as the parties have reached consensus;
- d) unenforceable, because their contract was in writing and the non-variation clause meant that it could not be modified orally.

(1 mark)

Question 25

Cicero and Caesar enter into negotiations about the sale of Cicero's farm. During the negotiations they agree that the contract will be an oral one and that a deposit must be paid by 30 December 2016. In these circumstances, have Cicero and Caesar entered into a legally valid contract? Choose the CORRECT option below.

- a) The contract is valid and binding as all the formalities have been met.
- b) The contract is invalid because the law requires that the sale of immovable property must be in writing and the contract must be signed by both parties.
- c) The contract is invalid as it is against statutory law to require a deposit as a condition in a sale of immovable property.
- d) The contract was valid and binding from the outset, as the compliance with formalities and conditions is only voluntary.

(1 mark)

Question 26

Woody agreed to sell to Ellie, a restaurant owner, the beef from 10 of his cattle, cut into steaks. The contract provided that the meat would be delivered in two equal instalments, on 1 May and 1 June. When the first instalment was delivered, Ellie refused to take the meat, saying that she did not have space in her refrigerators. The meat was returned to Woody's storehouse. If Woody wants to sue Ellie for breach of contract, what should he do?

- a) Ask for rescission since neither side has performed.
- b) Take the meat back to the restaurant and leave it outside on the pavement.
- c) Cancel the contract and claim for specific performance.
- d) Cancel the contract and claim for damages.

(1 mark)

Question 27

Which one of the following types of loss may NOT normally be recovered for breach of contract?

- a) Loss of profit.
- b) Expenses incurred in carrying out the terms of the contract.
- c) Emotional turmoil.
- d) Consequential loss.

(1 mark)

Question 28

Peter and Hector are having trouble agreeing on the meaning of a clause in their contract of sale. Peter approaches you for advice on how the issue may be resolved. Choose the CORRECT statement below.

- a) Peter should refuse to perform what he contracted to do.
- b) Peter and / or Hector should approach the court for a declaratory order.
- c) Peter is entitled to sue Hector for specific performance on the basis of what he believes the 'vague' term to mean.
- d) Even if there is a single vague term in a contract, this will result in the contract being declared void for vagueness.

(1 mark)

Question 29

Which one of the following answers is CORRECT?

Sansa leased a house to Queen (in terms of an oral agreement) for a period of three years. A year later, Sansa agreed that Rosemary could take over the lease from Queen. Thereafter, Rosemary paid rent to Sansa for a period of a year, after which she fell in arrears with her rental payments. Sansa sued Queen for the outstanding rent that was due. If Sansa is unsuccessful, it will be because what has occurred is:

- a) novation, as a new lease agreement has replaced the old one, which has the effect of terminating the old agreement;
- b) subrogation, as Rosemary has succeeded to the rights which Queen held;
- c) merger, as one party has acquired the rights and duties of the other party to the contract;
- d) set-off, as each party was indebted to the other, and the debts have now been balanced.

(1 mark)

Question 30

Larry agreed to paint the four bedrooms of Ben's house for R2 000. The full contract price was due and payable when the work was completed. After Larry has completed preparing the walls for painting, and has painted a primer coat in one bedroom, Ben tells Larry to stop painting the house because he has changed his mind about having the job done. Ben refuses Larry further access to the premises and subsequently refuses to pay Larry anything for the work already completed since no payment was due until the work was completed. Larry estimates that the cost of materials and labour for work that he has actually done at Ben's house would amount to R300 and the cost that he saves as a result of not continuing with the work would amount to R700. Can Larry successfully sue Ben for compensation for loss suffered and, if so, for what amount? Choose the CORRECT answer.

- a) Yes, he can claim the actual cost he has incurred with respect to the materials and labour only, i.e., R300.
- b) Yes, he can claim the full R2 000 as agreed.
- c) No, because nothing was due prior to completion.
- d) Yes, he can claim the contract price less the cost that he has been saved by not having to complete the work, i.e., R1 300 (R2 000 minus R700).

(1 mark)

[Total for Section A = 30 marks]

(30)

Question 2

2.1 Mention the hierarchy of courts in in South Africa.

(5)

2.2 Discuss the key distinction between civil and criminal trial within the South African legal system.

(10)

[15]

Question 3

Write a following note on the following concepts:

- 3.1 Jurisdiction
- 3.2 Ratification
- 3.3 Duress
- 3.4 *Mora creditoris*
- 3.5 Set-Off

[25]

Question 4

4.1 Discuss the hierarchy of courts within the South African legal system

[30]

[Total for this paper: 100 marks]

-END OF EXAMINATION PAPER-