

UNIVERSITY OF FORT HARE

COMMERCIAL LAW MAIN EXAM

ACL111E

DEGREE EXAMINATIONS

MAY/JUNE 2023

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

This paper consists of 6 pages including the cover page

Internal Examiners

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.

## Section A

### MCQ

#### Question 1

During September 2018 a daring robbery takes place at Pavilion Mall. 3 stores are robbed during the middle of the day by 6 armed gunmen and they get away with over R1 000 000 in goods, including televisions and sound equipment. Following an emergency meeting, the Management of Pavilion Mall put up an advert in a local newspaper offering a reward of R50 000 for any information leading to the arrest of culprits. No information is forthcoming.

One week later, John (a private citizen) notices suspicious activity at the rental unit across from his residence. John notices boxes of televisions being carried into the house and being a concerned citizen, reports it to the SAPS. John is unaware of the reward. As a result of information, SAPS investigates and during a raid on the premises, arrests 6 men believed to be the same 6 gunmen of the Pavilion Mall incident. Some of the stolen goods are also recovered. John is thanked for his assistance.

The next day, a friend tells John about the reward that was issued. John makes queries with the Management of Pavilion Mall but they refuse to pay the reward. John approaches you for advice.

Which one of the following best explains the legal situation?

- a) The contract between John and the Management of Pavilion Mall will be enforced by the courts as Management cannot simply opt out from the contract.
- b) The contract between John and the Management of Pavilion Mall will not be enforced by the courts as John's giving of information had not amounted to acceptance as he was ignorant of the rewards offered.
- c) The contract between John and the Management of Pavilion Mall will not be enforced by the courts as Management cannot make an offer to the public. The offeror must be clearly identified for a valid contract.
- d) The contract between John and the Management of Pavilion Mall will be enforced as the offer of reward was made to the entire world and is therefore valid.

#### Question 2

During a routine audit of claims, a medical scheme uncovers duplicate claims made by and payments made to Doctor Richard Buthelezi of Mayville to the amount of R70 000. The medical scheme approaches Doctor Buthelezi and request the repayment of the overpaid

funds. Doctor Buthelezi informs them that he is unable to pay but the medical scheme insists that he signs an Acknowledgement of Debt (AoD) for the full amount, else they threaten to stop all payments to him until this matter is resolved. He does so, under protest, and later challenges the validity of the AoD based on duress.

Taking into account Relevant law, indicate the best response below.

- a) The AoD signed and entered into by Doctor Buthelezi is voidable based on duress.
- b) The AoD signed and entered into by Doctor Buthelezi is void based on duress.
- c) The AoD signed and entered into by Doctor Buthelezi is valid as one cannot rely on economic duress to invalidate a contract.
- d) The AoD signed and entered into by Doctor Buthelezi is valid as he had committed a criminal offence and must be penalised with a fine in order to pay back the money.

### Question 3

In our modern society, there are many marketing efforts offered to the wider public designed to promote or sell goods and services. Take for example the marketing and offers available each year on 'Black Friday'. Obviously, not all of them indicate a serious offer to be bound by contract.

Which one of the following **WILL BE** considered to indicate a serious offer?

- a) General offers such as a reward for information.
- b) Pamphlets and brochures.
- c) Price lists and catalogues.
- d) Advertisements such as television commercials.

### Question 4

Jason approaches Anton (a collector) and offers to sell him a vintage motorcycle for R35 000. Anton is interested but cannot make a decision right away and the parties agree that if Anton decides that he wants to buy the bike, he would communicate his acceptance to Jason via an email. If Anton decides that he does want the bike and he communicates his acceptance via email, when will the contract come into existence?

- a) A valid contract comes into existence when Anton writes the email to Jason.
- b) A valid contract comes into existence when Anton sends the email to Jason.
- c) A valid contract comes into existence when the email arrives in Jason's mailbox.

- d) A valid contract comes into existence when Jason reads the email.

#### **QUESTION 5**

Edward enters into a 'gentleman's agreement' with his neighbour George to import French wine and to supply it to liquor stores in South Africa.

Which of the following statements **CORRECTLY** describes the legal status of the parties' 'gentleman's agreement'?

- a) A 'gentleman's agreement' is given legal recognition in our law and has legal consequences should it be breached.
- b) A 'gentleman's agreement' is, strictly speaking, not a legally recognised contract, but as our law recognises the need for honour in business contracts, Edward would be able to sue George for damages to his honour.
- c) A 'gentleman's agreement' is actually considered to be an illegal agreement, and both parties have entered into an agreement in contravention of the Contract Law Act.
- d) A 'gentleman's agreement' is not given any legal recognition, and is of no force or effect in our law.

#### **Question 6**

Jack and Jill decide on a weekend breakaway and books a room online at the Hills Hotel in Ballito. On arrival, the couple signs in at the register and pays the money in cash and the contract is concluded. Unfortunately during the course of the weekend, the couple's room is broken into and a number of valuable items stolen. Jack and Jill decides to sue the Hills Hotel for the theft of their property arguing that the owners are liable. The owners however claim that bright visible notices had been displayed to the effect that '*The owners and the staff will not be held liable for any loss or damage sustained by whatsoever cause.*' These notices were displayed on the double doors at the entrance to the premises as well as at the reception where the couple signed in and was highlighted on the online booking form. Jack and Jill however deny seeing the notices.

Which one of the following best explains the legal situation?

- a) The contract has been concluded but doubt remains as to whether the signs and notices were brought to the couple's attention as they were not specifically told about it.
- b) No contract has been concluded as there was no true consensus between the parties.
- c) The contract is voidable as there seems to be a mistake on the side of Jack and Jill

regarding the essential terms of the contract.

- d) The contract has been concluded and the notices have been sufficiently brought to their attention.

### **Question 7**

Daniel and Debbie decide to attend the annual Beach Carnival Fair held at North Beach, Durban. At the carnival Daniel buys a few tickets for the various rides and the couple spend a most enjoyable afternoon there. However, during a freak accident at the last ride named 'The Swing of Terror', Daniel's seat breaks and he falls, fracturing his head and spine resulting in serious spinal and brain injury. Six months later, whilst Daniel is still undergoing physiotherapy, the couple decides to sue the organisers of the Beach Carnival Fair for damages. The organisers however deny liability and claim that a disclaimer notice was included on the back of all tickets sold, disclaiming any liability.

Which one of the following best explains the legal situation?

- a) The contract has been concluded but the terms on the ticket does not form part of the contract between the parties.
- b) The contract has been concluded including the disclaimer, as it is public knowledge that organisers are not liable in such instances for freak accidents.
- c) The contract has been concluded and the special notices have been sufficiently brought to their attention by printing it on the back of the ticket.
- d) The disclaimer notice forms part of the contract as Daniel and Debbie will be bound based on the caveat subscriptor maxim.

### **Question 8**

Peter purchased tickets for himself and his family to go on a cruise for a week to the Portuguese Islands. The agreed departure date was 17 September 2018. They were notified by way of SMS that the cruise would be delayed until 20 September, due to bad weather brought on by Hurricane Jackson. Peter is angry about this as the later return date does not suit his schedule. Peter claims back the price of the cruise, arguing that the contract has terminated on the basis of impossibility of performance.

Which one of the following best explains the legal situation?

- a) 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.
- b) The contract has not terminated on the basis of physical impossibility of performance, but Shaun is entitled to a court order specifically compelling the cruise line company to perform at a later date of his choosing.

- c) The contract has not terminated on the basis of physical impossibility of performance, as the impossibility is only temporary in nature.
- 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.

### Question 9

John, a cancer patient at Life Entabeni Hospital, believes he is dying and asks his nurse to hear his last confession. He tells the nurse that he has been skimming profits from his clients' accounts for over 30 years. John cannot live with the guilt anymore and seeks forgiveness. The nurse convinces him he would be forgiven if he donates half of his worldly assets to the hospital's cancer ward. John acts on the nurse's advice and makes the donation. Two months later, it appears that the cancer is in remission and that John has recovered fully. He wants to have the donation set aside.

Which one of the following best explains the legal situation?

- a) Yes, he may claim that he was acting under duress, having been induced by the fear of his imminent death to make the donation.
- b) No, John may not claim he was unduly influenced as the nurse did not herself gain any direct advantage as a result of the donation.
- c) Yes, he may, as long as he can show that he was unduly influenced by the nurse to conclude a transaction which he would not normally have concluded.
- d) No, the donation is invalid because it is incapable of being legally performed as it is immoral and contrary to public policy

### QUESTION 10:

Sizwe makes his way to South Beach, determined to have some fun. He meets a young lady that promises to spend a few hours with him (including a sexual favour) if he agrees to pay her R1000. Both Sizwe and the young lady is over 18 years old, and has full capacity to contract. Sizwe agrees and they enter into a verbal contract.

Choose the **MOST CORRECT** response from the options listed below.

A general principle of contract is that a contract would be unlawful if:

- a) the contract provides for a performance which in itself is unlawful.
- b) the agreement is made for a common purpose which is illegal.
- c) the agreement is unlawful if it facilitates or indirectly encourages an illegal act.

- d) All of the above.

**QUESTION 11:**

A contract has to be lawful in nature. Which of the following contracts would be lawful? Choose the CORRECT option.

- a) An agreement to enter into a contract with a person acknowledged to be a terrorist in the Republic of South Africa.
- b) An agreement of sale concluded with a person with a criminal record.
- c) An agreement of sale of goods 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.

**QUESTION 12**

Ojay and Simpson are involved in a motor vehicle accident. It is evident from the facts that Ojay drove at an excessive speed and applied his vehicle's brakes too late, causing him to crash into Simpson's vehicle. As a result Simpson's vehicle is damaged to the amount of R16 000. Which court would be most suitable to bring the claim?

- a) The Constitutional Court.
- b) The High Court.
- c) The Magistrates' Court.
- d) The Supreme court of appeal

**QUESTION 13**

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.

**QUESTION 14**

John and Kalisi enter into negotiations about the sale of Kalisi'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 2018. In these circumstances, have John and Kalisi 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

**Question 15**

Which one of the following options is **CORRECT**?

Estelle (who is married OUT of community of property to John) borrows money from ABSA Bank in order to buy a small 2<sup>nd</sup> hand car. She signs a loan agreement with ABSA for R 70 000 without consulting her husband or getting his approval. The contract between Estelle and ABSA Bank is:

- a) valid as married woman have full contractual capacity;
- b) void as married woman lack contractual capacity and are subject to the marital power of her husband;
- c) voidable as married woman have limited contractual capacity; or
- d) voidable, although her husband may ratify the transaction.

**(30)**

**Question 2**

**2.1** List the sources of commercial law in South Africa. **(5)**

**2.2** Discuss the key distinction between attorneys and advocates within the South African legal profession **(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]

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[Total for this paper: 100 marks]

**-END OF EXAMINATION PAPER-**