

UNIVERSITY OF FORT HARE

COMMERCIAL LAW 1B
LCM 121

DEGREE EXAMINATIONS

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Time: 2Hours 30Minutes

Subject: Commercial Law 1B

Marks: 100

This paper consists of 14 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 all questions in section B and C;
3. There is only one correct answer for each of the questions in section A;
4. Read instructions carefully before you answer any question;
5. Answer section A in the MCQ answer sheet provider;
6. Answer all questions in sections B and C in the examination book provided;
7. It is in your best interest to write clearly and legibly.

SECTION A: MULTIPLE CHOICE QUESTIONS (MCQ)

[1 x 50 = 50MARKS]

QUESTION 1

Which of the following statements about passing of ownership of immovable property is untrue? A buyer will only obtain ownership (a real right) of immovable property where:

- a. the seller has the intention of transferring ownership and the buyer has the intention of obtaining ownership;
- b. the property is registered in the name of the seller;
- c. the seller is the owner of the thing sold;
- d. all statements are true
- e. none of the above statements is true.

QUESTION 2

Which of the following statements about passing of ownership of movable property is untrue? A buyer will only obtain ownership (a real right) of movable property where:

- a. the seller is the owner of the thing sold;
- b. both parties have the intention to pass ownership;
- c. where it is a cash sale, the seller to deliver the thing sold even if the buyer has not yet paid the purchase price
- d. all statements are true;
- e. none of the above is true

QUESTION 3

Which of the following statements about passing of risk is untrue?

- a. the parties may not change the duty of safe keeping through an agreement;
- b. the first duty of the seller is to take care of and protect the thing;
- c. a buyer may claim damages from the seller for any damage caused by the seller's intentional or negligent conduct;
- d. all statements are true;
- e. none of the above statements is true.

QUESTION 4

Which of the following statements about factors which influence the duty of safe-keeping is true?

- a. the *mora debitoris* or *mora creditoris* of the buyer and the *mora debitoris* of the seller influence the duty of safe-keeping;
- b. where the buyer is in *mora debitoris* or *mora creditoris* the seller will only be held liable for damages caused by his intentional or grossly negligent conduct;
- c. where the seller is in *mora debitoris* he is responsible for any damage whatsoever, even in absence of fault on his part;
- d. all statements are true;
- e. none of the above statements is true.

QUESTION 5

Which of the following statements about the doctrine of passing of risk is true?

- a. the doctrine determines whether the seller or the buyer bears the risk where accidental damage is caused to the thing either by coincident or by acts of God, and not by the culpable conduct of either party;
- b. the general rule is that the owner suffers the loss when his property is destroyed;
- c. the seller while retaining ownership would bear the burden of the total or partial destruction of the thing, without being able to claim the purchase price from the buyer;
- d. all statements are true;
- e. none of the above statements is true.

QUESTION 6

Which of the following statements about the doctrine of passing of risk where the contract is perfecta is untrue?

- a. the thing sold is determined, in the case of an *emptio rei speratae*, the object is fixed after being measured or weighed, and in the case of *emptio spei*, the object sold is determined after individualisation;
- b. the purchase price is determined;
- c. the contract is subject to a suspensive condition;
- d. all statements are true;
- e. none of the statements is true.

QUESTION 7

Which of the following statements about different things sold is true?

- a. in a Sectional property, the thing sold consists of a unit and joint ownership in the common property;
- b. in a Timeshare property, if the time-share scheme is administered as a sectional title scheme, the thing sold is the same as the sectional property, with the limitation that use and enjoyment is allocated to the different owners in terms of time-schedule;
- c. in a *Res aliena*, the thing sold does not affect the conclusion of a valid contract of sale;
- d. all statements are true;
- e. none of the above statements is true.

QUESTION 8

Which of the following statements about the application of the *rei vindication* is true? The true owner of the property is in certain circumstances not entitled to exercise his *rei vindication* where:

- a. the buyer has, by law, a lien or a tacit hypothec over the object sold;
- b. the real owner has instructed a factor to sell the object on his behalf, which factor takes the purchase price for his own account, while not being authorised to do so, a buyer, who has acted in good faith, may only be vindicated by the real owner compensating him the purchase price;
- c. the real owner represented to the buyer that the seller is the owner of the thing sold;
- d. all statements are true;
- e. none of the above statements is true.

QUESTION 9

Which of the following statements about warranty against eviction is untrue?

- a. any action by a third party who has no better rights in the thing sold than the buyer, and who deprives the buyer of the total or partial use, enjoyment and disposal of the thing sold, constitutes eviction;
- b. the seller is not obliged to transfer ownership to the buyer except where he himself is the owner of the thing sold;
- c. the seller is not obliged to give the buyer a warranty against eviction;
- d. More than two statements are untrue;
- e. all statements above are true.

QUESTION 10

Which of the following statements in warranty against eviction about the buyer's right of recourse is true?

- a. in Total eviction the buyer may cancel the contract in terms of the *actio ex emptio*;
- b. in Partial eviction where the eviction has left the buyer with so little a remainder of the thing sold that it cannot be said that a reasonable man would have bought the thing, the buyer may cancel the contract;
- c. in Partial eviction where the portion evicted is not of such a substantial nature, and the remains of the thing sold can be effectively used, the buyer may retain the remains and claim a pro rata repayment of the purchase price as well as damages from the seller;
- d. all statements are true;
- e. none of the above statements is true.

QUESTION 11

Which of the following statements about the aims of the Rental Housing Act 50 of 1999 is true? Its aim is:

- a. to define the responsibility of government in respect of rental housing property;
- b. to create mechanisms to promote the provision of rental housing property;
- c. to promote access to adequate housing through creating mechanisms to ensure the property functioning of the rental housing market;
- d. only statement A is true;
- e. all statements are true.

QUESTION 12

Which of the following statements about the Rental Housing Act 50 of 1999 is untrue?

- a. its provisions are enforced by the Rental Housing Tribunals;
- b. any lessee, but not a lessor may lodge a complaint concerning an unfair practice with a Tribunal;
- c. if it appears prima facie that a dispute concerning an unfair practice exists, the Tribunal must investigate whether the dispute relates to an unfair practice;
- d. all statements are true;
- e. none of the above statements is true.

QUESTION 13

Which of the following statements about temporary conferment of power of use and enjoyment in a lease contract is untrue?

- a. the parties must agree that use and enjoyment of the property shall be relinquished to the lessee in perpetuity;
- b. the parties may agree that the lessee may be entitled to consume the property;
- c. the parties may agree that the lessee acquire the right to remove clay, stone, salt or minerals from the property;
- d. all statements are true;
- e. all statements are untrue.

QUESTION 14

Which of the following statements about the National Credit Act 34 of 2005 is untrue?

- a. in a pawn transaction a creditor provides credit or advances money and takes goods as security. The resale value of the goods need not exceed the amount of the credit;
- b. in a discount transaction goods or services are provided to the consumer over a period of time. More than one price is quoted: a lower price if the account is paid before a certain date, and a higher price if the account is paid after this date;
- c. in an instalment agreement movable goods are sold and the price is to be paid in instalments and the goods are not delivered until all instalments are paid;
- d. more than two answers are untrue;
- e. all statements are true.

QUESTION 15

Which of the following statements about the credit facility under the National Credit Act 34 of 2005 is untrue?

- a. it is an agreement in terms of which the credit provider supplies goods or services, or pay an amount to the consumer, or on his behalf, or at his direction;
- b. the consumer's obligation to repay the money is deferred or he is billed periodically;
- c. the consumer is not charged a fee or any interest on the deferred amount because the amount is normally deferred for a very short time;
- d. all statements are true;
- e. none of the above statements are true.

QUESTION 16

Which of the following statements about transaction which are exempted from the application of the National Credit Act 34 of 2005 is untrue?

- a. the Act does not apply to agreements in terms of which the consumer is a juristic person and its asset value or annual turnover, together with that of its related juristic persons, does not exceed R1 million;
- b. the Act does not apply to agreements in terms of which the credit provider is the Reserve Bank;
- c. the Act does not apply to transactions between a stokvel and its members;
- d. all statements are true;
- e. none of the above statements is true.

QUESTION 17

Which of the following statements about unlawful agreements in terms of section 89 of the National Credit Act 34 of 2005 is untrue?

- a. unlawful agreements are agreements concluded with persons under administration order without the administrator's consent;
- b. unlawful agreements are agreement concluded with emancipated minors;
- c. unlawful agreements are agreements resulting from negative option marketing
- d. all statements are true;
- e. none of the above statements is true.

QUESTION 18

Which of the following statements about the functions of National Credit Regulator under the National Credit Act 34 of 2005 is untrue?

- a. it must promote and support a fair, transparent, competitive, sustainable, responsible, efficient, effective and accessible credit market;
- b. it must monitor matters in the credit market and report annually to the Minister;
- c. it must ensure that credit providers educate consumers to promote awareness of credit consumer matters;
- d. all statements are true;
- e. none of the above statements is true.

QUESTION 19

Which of the following statements about the National Consumer Tribunal under the National Credit Act 34 of 2005 is untrue?

- a. the Tribunal consists in a Chairperson and nine other persons;
- b. a person may appeal against a decision of a single member to a full panel of the Tribunal;
- c. Tribunal fulfils functions which are not similar to those found in a court of law;
- d. more than two answers are untrue;
- e. all statements above are true.

QUESTION 20

Which of the following statements about reckless agreement under the National Credit Act 34 of 2005 is untrue?

- a. A credit agreement is reckless in terms of section 80(1) if the consumer did appreciate and understand the risk, costs or obligations under the agreement;
- b. A credit agreement is reckless in terms of section 80(1) if the credit provider failed to conduct a proper assessment;
- c. a credit provider may enter into a reckless agreement with a consumer if the consumer fails to provide fully and truthfully the requested information;
- d. all statements are true;
- e. none of the above statements is true.

QUESTION 21

Which of the following statements about the *essentialia* of insurance contracts is untrue?

- a. the insurer will compensate the insured for his/her loss;
- b. the insured has an insurable interest;
- c. the insurer's obligation is to dependent on the occurrence of an uncertain future event;
- d. all statements are true;
- e. none of the above statements is true.

QUESTION 22

Which of the following statements about insurance intermediaries in insurance contracts is untrue?

- a. to negotiate best terms for insurance on behalf of insured;
- b. to disclose all relevant information to insured;
- c. do not owe a duty of good faith to insured;
- d. all statements are true;
- e. none of the above statements is true.

QUESTION 23

Which of the following statements about an insurance claim in insurance contracts is untrue?

- a. an insurer must accept, reject or dispute a claim within a reasonable period after receiving a claim from the insured;
- b. where an insurer rejects a claim, he must inform the insured in writing of the reasons for his decision;
- c. where the insurer rejects the claim, he must inform the insured that he/she has 80 days within which to make representation to the insurer in respect of the insurer's rejection decision;
- d. all statements are true;
- e. none of the above statements is true.

QUESTION 24

Which of the following statements about the duty to disclose in insurance contracts is untrue?

- a. the insured has a legal duty to disclose all relevant and irrelevant information to the insurer within his/her actual or constructive knowledge;
- b. the insurer has the responsibility to disclose all information that could decrease or exclude the risk;
- c. the insured must disclose the information to the insurer after the contract has been concluded;
- d. more than two statements are untrue;
- e. all statements are true.

QUESTION 25

Which of the following statements about the test which must be applied to determine who must disclose in insurance contracts is untrue? Section 52(1)(b) of the Long-term Insurance Act states that:

- a. the representation shall be regarded as material if a reasonable, prudent person would consider that the particular information constituting the representation or which was not disclosed, should have been correctly disclosed to the insurer so that the insurer could form its own view as to the effect of such information on the assessment of the risk;
- b. in *Liberty Life Association of Africa Ltd v De Vaal* [1999] (4) SA 1177 (SCA) the court stated the test as: would the reasonable person as the proposer have regarded the information as relative to the assessment of the risk by the insurer;
- c. in *Qilingele v SA Mutual Life Assurance Society Ltd* 1993 (1) SA 69 (A) the court stated that the test is: whether the reasonable person would view the information as relative to the assessment and quantification of the risk.
- d. all statements are true;
- e. none of the above statements is true.

Question 26

Unlawful agreements are those concluded with:

- a. Emancipated minors;
- b. A person under an administration order with the administrator's consent;
- c. Registered credit providers;
- d. Mentally unfit persons;
- e. None of the above is correct.

Question 27

A insured her car for R80 000 although the car is only worth R40 000. She pays premiums of R400 instead of R200 which she would have paid if she insured the car for its real value. What is this kind of insurance called?

- a. Over-insurance;
- b. Double- insurance;
- c. Subrogation;
- d. Under-insurance;
- e. All the statements above are correct

Question 28

A who stays in East-London sells goods to B who stays in Alice. The goods are conveyed by Flash carriers on behalf of A. A is of the opinion that a problem with the contract between himself and B exists and wants to stop delivery of the goods. A can stop delivery of the goods:

- a. If the contract was a cash sale and B has already paid;
- b. If A retains ownership until the full price was paid;
- c. If the goods are conveyed on behalf of B, the consignee;
- d. All the statements are correct;
- e. None of the above statements is true.

Question 29

Where damage is caused to the insured's interest by a third party and the insured has recovered his damages from his insurer, the insurer is entitled to claim the amount paid from the third party by making use of:

- a. Average;
- b. Contribution;
- c. Formal cession of action;
- d. An excess clause;
- e. Subrogation.

Question 30

The person who creates a bill of exchange is:

- a. The maker;
- b. The holder;
- c. The drawer;
- d. The endorser;
- e. The payee.

Question 31

X forges A's signature on a cheque drawn on B bank in favour of C. C endorses the cheque to D. D can claim from the following persons:

- a. A;
- b. C;
- c. D;
- d. All the persons above;
- e. None of the persons above.

Question 32

An endorsement which does not specify the endorsee and consists only of a signature is called:

- a. Blank endorsement;
- b. Special endorsement;
- c. Restrictive endorsement;
- d. Conditional endorsement;
- e. Partial endorsement.

Question 33

John Smith has been duly authorized to sign cheques on behalf of a company, Value Beaters (Pty) Ltd. The name of the company is not pre-printed on the cheque. He signs, as drawer, one of their cheques like this: 'John Smith for Value Beaters'. Who is liable on this cheque?

- a. Value Beaters (Pty) Ltd;
- b. The drawee Bank;
- c. John Smith;
- d. John Smith and Value Beaters CC;
- e. None of the above.

Question 34

The duty of disclosure entails that:

- a. It is a pre-contractual duty;
- b. All information within the knowledge of the insured must be disclosed;
- c. The duty exists because it is an implied term of the contract;
- d. The insurer is also expected to disclose information that can increase the risk;
- e. All statements are correct.

Question 35

The provisions of the Act dealing with reckless credit entail that:

- a. The credit provider need not make an assessment of the consumer's transaction;
- b. Information about the consumer will usually not be obtained from a credit bureau;
- c. If a commercial purpose is intended with the credit, the basis of success need not be assessed;
- d. The consumer is not obliged to co-operate to provide the required information;
- e. Failure to provide the requested information is a complete defence against reckless credit.

Question 36

If a debtor posts a cheque to his creditor the risk of loss will fall on:

- a. Always on the creditor;
- b. The debtor only if he chose the mode of payment;
- c. It will always be the debtor's risk;
- d. The debtor if he does not comply with his duty of care towards the creditor;
- e. B and D are correct.

Question 37

A draws a cheque which is crossed generally, on B bank in favour of C and delivers this cheque to C. X steals the cheque from C, forges C's indorsement 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 not correct.

- a. B bank will be protected if it paid in good faith and without negligence;
- b. Section 79 of the Bills of Exchange will protect B bank;
- c. B bank is not entitled to debit A's account;
- d. B bank will not be liable if it paid in accordance with the crossing;
- e. All the statements above are correct.

Question 38

Indicate the wrong statement about reckless credit and its consequences

- a. A court may declare an agreement reckless;
- b. A court may also set aside all or part of a consumer's rights and obligations;
- c. The court may also suspend the agreement for a certain period;
- d. Whilst the agreement is suspended the consumer is still obliged to pay interest;
- e. None of the above is wrong.

Question 39

A benefit of suretyship is that the surety who pays the whole amount to the creditor is entitled to a *pro rata* portion of the debt from co-sureties. This is called:

- a. Benefit of excussion;
- b. Benefit of division;
- c. Benefit of cession of actions;
- d. Benefit of recourse against co-sureties;
- e. Benefit of recourse against principal debtor

Question 40

Real security which is not dependent upon the consent of the debtor is called:

- a. Pledge;
- b. Cession;
- c. Suretyship;
- d. Mortgage;
- e. Hypothec

Question 41

In the case of indemnity insurance:

- a. Insurable interest is only required at conclusion of the contract;
- b. Proportionate contribution does not apply;
- c. Subrogation is applicable;
- d. The insurer's liability is not limited to the amount of damages actually incurred;
- e. All the statements above are correct.

Question 42

Mutual insurance means:

- a. The insurer takes out insurance with another insurer to make good the claims the former had to pay out;
- b. An insurer is established by an enterprise for the insurance interests of the enterprise.
- c. The insurers pool their interests by way of co-operation agreements.
- d. An association of members exists and insurance benefits are also offered to the members.
- e. None of the above is correct.

Question 43

Reinsurance means:

- a. The insurer takes out insurance with another insurer to make good the claims the former had to pay out.
- b. An insurer is established by an enterprise for the insurance interests of the enterprise.
- c. The insurers pool their interests by way of co-operation agreements.
- d. An association of members exists and insurance benefits are also offered to the members.
- e. None of the above is correct.

Question 44

Captive insurance means:

- a. The insurer takes out insurance with another insurer to make good the claims the former had to pay out.
- b. An insurer is established by an enterprise for the insurance interests of the enterprise.
- c. The insurers pool their interests by way of co-operation agreements.
- d. An association of members exists and insurance benefits are also offered to the members.
- e. None of the above is correct.

Question 45

Cover means:

- a. The extent of the insurer's liability.
- b. It means the indemnity the insurer provides in the case of the insured's loss.
- c. It is the contractually agreed amount in the case of non-indemnity insurance.
- d. In the case of a partial loss it usually means repair costs.
- e. All the answers are correct.

Question 46

The essentials of a contract of carriage do not consist of the following:

- a. Goods or persons.
- b. Medium of carriage.
- c. Departure point and destination.
- d. Formalities.
- e. Remuneration.

Question 47

Suretyship:

- a. Requires formalities.
- b. Should be in writing.
- c. Should be in writing and be signed by the surety.
- d. Should be in writing and be signed by or on behalf of the surety.
- e. All the statements are correct.

Question 48

Summary execution (*parate executie*):

- a. Is invalid.
- b. Provides that the debtor may retain the pledged object on default by the debtor.
- c. Provides that the creditor may sell the object of his right without recourse to the court.
- d. Is only valid if the court consents.
- e. None of above.

Question 49

Indicate the incorrect statement about mortgage:

- a. In principle a *parate executie* clause is valid.
- b. Unlike pledge the mortgagor usually remains in possession of the mortgaged property.
- c. The same property could be subject to more than one mortgage.
- d. The mortgagor may generally not confer any further real rights in respect of the property.
- e. All statements are correct.

Question 50

A pactum commissorium:

- a. Is valid.
- b. Provides that the pledgee may retain the pledged object as owner thereof on default by the pledgor.
- c. Provides that the creditor may sell the object of his right without recourse to the court.
- d. Is only valid if the court consents.
- e. None of above.

SECTION B: SHORT QUESTIONS

[20 MARKS]

Answer all the questions in your answer book

1. A buys a car from B and B agrees to sell the car to A. They also agree upon the purchase price. After paying for everything, A left the car in B's possession because he wants to surprise his daughter on her birthday. B's premises where the car was kept caught fire before the car was delivered to A:
 - (a) Discuss the above scenario in relation to the doctrine of passing of risk. (5)
2. Distinguish in three points between indemnity and non-indemnity insurance and give clear examples of each. (5)
3. Distinguish between the **Kustingsbrief** and the **Kinderbewys**. (5)
4. In order for a person to be a holder in due course, certain requirements must be met. Mention five (5) of these. (5)

SECTION C:

[30 Marks]

Answer ALL questions in your answer book.

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

Warranties	Statements
1. affirmative	(A) states specific terms that the insured has to comply with to the letter.
2. promissory	(B) framed in general terms and does not specify in detail what the insured must do.
3. warranty of fact	(C) expression of an opinion

4. warranty of knowledge	(D) Insured warrants the presents or absence of a certain fact, irrespective of whether or not the fact falls within his field of knowledge.
5. warranty of opinion	(E) insured warrants facts that fall within his field of knowledge.
6. relative warranty	(F) insured warrants that a certain factual situation will be maintained after conclusion of contract.
7. absolute warranty	(G) insured confirms the correctness of a factual situation which refers to the present or the past.

(7)

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