

UNIVERSITY OF FORT HARE

FACULTY OF LAW

ALICE CAMPUS

Commercial Law
ACL121

DEGREE MAIN EXAMINATION

OCTOBER/NOVEMBER 2024

Time: 3 Hours

Subject: ACL 121

Marks: 100

This paper consists of 6 including the cover page.

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Internal Moderator: Prof. MR Phooko

INSTRUCTIONS

1. Answer ALL questions.
2. Read the questions carefully.
3. It is in your best interest to write clearly and legibly.

SECTION A-MULTIPLE CHOICE QUESTIONS: EACH QUESTION CONSISTS OF TWO(2) MARKS.

Question 1

1.1 what is an Auction?

- a) Is the primary duty of the buyer to pay the purchase price.
- b) It is a sale, usually open to the public, where the buyers bid in competition with one another on the thing actioned, which is sold to the highest bidder.
- c) Is when the goods sold still have to be weighed, measured, or counted.

1.2 Symbolic delivery

- a) a seller may physically bring a thing to the buyer's home and hand it over.
- b) the handing over of the thing is symbolized or represented by some other action.
- c) Is used where the property is too heavy or big to be physically handed over.

1.3 when the rental is bracketed?

- a) Where the agreement states that the length of the lease expressly or by implication, the lease comes to an end at the agreed period.
- b) if the lease agreement states that the rental is payable as a range rather than an exact figure.
- c) The lease is a mixture of a fixed-term and a periodic lease.
- d) The lease has no fixed duration.

1.4 Secured creditors are defined as

- a) Creditor who hold security over their claims, such as a mortgage bond
- b) a person to whom you owe money or other performance.
- c) creditor who is entitled to payment after secure creditors have been paid, but before all the other
- d) creditor that is paid out of the free residue after preferent creditors.

1.5 What does the Wills Act govern?

- a) the making of wills in our law.
- b) the disposition of an estate.
- c) how the trustee must collect and preserve assets in the insolvent estate.
- d) that a will must be in writing and signed.

1.6 When does the personal security exist?

- a) when security takes place in the form of real security or personal security.
- b) where the right can only be enforced against a person.
- c) where one person makes themselves liable for the debts of another person

d) when the surety and debtor may not be able to repay the debts.

1.7 Pactum commission

- a) Clause that allows the mortgagee to demand that a debtor repays the amount of the loan plus interest if the debtor misses a payment as agreed.
- b) A clause that allows either party to end the mortgage by giving the agreed notice period to the other party.
- c) a clause where a creditor keeps the pledge object to themselves with no price paid if there is a default or missed payment by the debtor.
- d) Clause that allows for interest to be added to the principal debt.

1.8 Select the incorrect statement. The Labour Relations Act aims to

- a) provide structures to resolve disputes between parties in the employment relationship
- b) encourage employees to join trade unions and employers to join employer's organisation
- c) regulate the law of unfair dismissal and unfair labour practise.
- d) consider the terms that apply to the employment relationship.

1.9 Complete the following sentence. Arbitration :

- a) Is the only method of dispute resolution
- b) Processes can only be chaired by an attorney
- c) Awards or outcomes are public records.
- d) Is a process whereby disputing parties refer the dispute to a neutral third party, where the neutral party, after investigating, makes binding decisions.

1.10 A partnership is

- a) contractual agreement entered into by two or more people, each of whom must make a contribution to the partnership.
- b) a written contract known as trust.
- c) the duty to act with reasonable care in the management of the trust's assets.
- d) duty of good faith in the management of the trust.

1.11 what is the right of the insured?

- a) when the insured suffers loss because the risk is insured against materials.
- b) when the insurer takes the place of the insured and sues a wrongdoer.
- c) When claiming for the loss.
- d) When the insurer finds out that the policy contains a forfeiture.

1.12 Sound recordings are

- a) the storage of sound, such as recordings contained in podcasts, audio clips, etc.
- b) Broadcast consists of sound or images that are meant for the general public and transmitted by telecommunication.
- c) Is a set of instructions which, when used in a computer, cause the computer to perform a particular task.

1.13 The Bank Act was passed into law to

- a) Issue out circulars and the provisions of guidelines, when necessary.
- b) Govern and supervise the business of public companies taking deposits from members of the public.
- c) To ensure that the performance measures and standards implemented by the institutions.
- d) Offer customers suitable and helpful advice, when necessary.

1.14 Competition law is aimed at

- a) charging excessive prices that are detrimental to consumers.
- b) preventing uncompetitive behaviour and promoting an open market.
- c) selling goods or services to a buyer.

1.15 Merger is the amalgamation of two or more companies into one entity.

- (a) True
- (b) False
- (c) None of the above.

Total

(15x 2=30)

TOTAL MARKS

[30]

SECTION B -SHORT QUESTIONS

Question 1

Who may approach an appropriate body to enforce a right of the consumer in terms of the Consumer Protection Act 68 of 2008(CPA)? (6)

Question 2

Penny has agreed to act as an agent for Busi. In terms of the agreement, Penny has to drive from East London to Durban to conclude certain business transactions on behalf of Busi. While taking a comfort break during the journey, Penny's car is broken into and Penny's laptop that was on the backseat of the car, is stolen. Penny wants Busi to pay for a replacement laptop. Do you think Busi is legally obligated to replace Penny's laptop? Support your answer (4)

Question 3

What is electronic commerce? (2)

Question 4

Explain the difference between voluntary and compulsory sequestration. (4)

Question 5

Name instance where the executor does not have to provide security (4)

Question 6

Sefako borrows R1000 000 from Absa Bank to build a holiday home, which Sefako intend to rent out in Port Alfred. The FNB bank has a mortgage over the holiday home. After 10 years, Sefako still owes Absa just over R500 000. Due to the need for an additional hospital in the area, the government decided to expropriate the land on which Sefako 's holiday home was built. Sefako is paid R8000 000 as compensation. While the mortgage over the property comes to an end. Is Sefako still liable for the outstanding balance on the loan? Support your answer (5)

Question 7

Mention remedies for unfair dismissal and unfair labour practise (6)

Question 8

Write a paragraph on the procedure to be followed at arbitration (10)

Question 9

- i. Briefly explain what is a partnership. (4)
- ii. List types of partnership (2)

Question 10

What are the *essentilia* of a contract of insurance? (6)

Question 11

How long does copyright last in each of the following:

- (a) A sound recording
- (b) A musical work? (4)

Question 12

List four types of behaviour that would constitute the offence of insider trading (8)

Question 13

What is the difference between private and public competition? (5)

Total (70)

TOTAL MARKS [100]

THE END