

Tutorial Letter 001/3/2021

Commercial Law 1C

CLA1503

Semester 1 and 2

Department of Mercantile Law

IMPORTANT INFORMATION

Please register on myUnisa, activate your myLife e-mail account and make sure that you have regular access to the myUnisa module website, CLA1503-2021-S1/S2, as well as your group website

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Dear Student

ASSESSMENT CHANGES for 2021 ACADEMIC YEAR

Due to the ministerial request to extend the 2021 registration dates, Unisa had to amend both the semester dates and the assessment arrangements for the 2021 academic year.

During 2021 we will have only one semester and only one tuition and assessment period.

The purpose of this TL001 is to inform you of the new assessment requirements for module CLA1503 for students registered during 2021 for the one semester period.

1 ASSIGNMENT DUE DATES

NB: The due date for the assignments in the 2021 academic year will be as follows.

Assignment number	Due date	Unique number
Assignment 01	13 May 2021	707622
Assignment 02	28 June 2021	626985

2. ASSESSMENT

2.1 Assessment criteria

Refer to paragraph 8.1 of Tutorial letter 101/3/2021.

2.2 Assessment plan

During this module, you will be assessed as follows:

- You will be required to submit TWO assignments; and
- You will be required to write a non-venue-based examination

2.3 Assignments

Assignments are part of the learning material for this module. As you do the assignments, study the reading texts, consult other resources, discuss the work with fellow students or the lecturers or do research, you are actively engaged in learning. Looking at the assessment criteria given for each assignment will help you to understand what is required of you more clearly.

2.3.1 *Commentaries and feedback on assignments*

The commentary on assignment 01 and 02 will be uploaded on myUnisa. As soon as you have received the commentary, please check your answers. The assignment and the commentary on the assignment constitute an important component of your study material for the examination.

To obtain the full benefit of completing the assignment, you should, after receiving it back, also go through the process of self-assessment in accordance with the guidelines that will be provided in Tutorial Letter 201/2021 for assignment 01 and Tutorial Letter 202/2021 for assignment 02.

2.3.2 *Assessment and assignments*

PLEASE NOTE:

Although students may work together when preparing assignments, each student must write and submit his or her own individual assignment. In other words, you must submit your own ideas in your own words, sometimes interspersing relevant short quotations that are properly referenced. It is unacceptable for students to submit identical assignments on the basis that they worked together. That is copying (a form of plagiarism) and none of these assignments will be marked. Furthermore, you may be penalised or subjected to disciplinary proceedings by the University.

2.3.3 ***General approach to answering essay or problem-type questions in assignments***

In order to answer your assignments satisfactorily, you must work through the prescribed study material carefully. The following basic guidelines can be of help:

- To complete your assignment satisfactorily, you must consult your study guide, textbook, and tutorial letters. Read the questions carefully, ascertain what they deal with, and then use only the relevant information from your study material to answer the questions.
- Students normally complain that they cannot rewrite the study material in their own words. Unfortunately, you have to get used to doing this, since this is another way of determining your understanding of the content. However, there are three easy steps towards accomplishing this:
 - Study the relevant study material until you understand it. While you are reading the section or chapter, make notes or lists of the key words and concepts.
 - Put away your study material and try to summarise that study unit in your own words by using your notes and list of key words.
 - Use the study material to finalise your summary.

You are often expected to consult study material when answering an assignment.

- Quotations from sources must be kept to a minimum.
- If you do use quotations, they must be accurate, and you must give proper attribution. The use of other sources, without the necessary acknowledgement, amounts to plagiarism. Plagiarism takes place when you use words, ideas and thoughts of other persons and represent them as your own. Plagiarism is a form of theft that can materialise in various dishonest academic activities.
- Latin expressions must be typed in italics.
- Neatness is a prerequisite. Plan your answers in advance. For essay-type answers, you should do several rough drafts before you write the final answer.
- We restrict the length of assignment answers to teach you to write concise and logical legal arguments. It is very easy to write long, rambling answers, but these answers do not earn good marks. You must learn to summarise your study material so that you can answer a question in a factually correct, concise and logical manner. This will also teach you to give similar answers in an examination.

2.3.4 *Assignment submission information*

There are TWO assignments for this semester.

- Assignments 01 is a written assignment.
- Assignment 02 is a multiple-choice assignment that you must answer online.

Assignments 01 and 02 will count 50% each towards your year mark.

NB: Late submissions will not be marked.

All students who submit assignment 01 in time (before or on the date of submission) will be admitted to the examination regardless of the mark obtained for the assignment. Students, who do not submit assignment 01 before or on the due date, will not receive admission to write the examination. The mark obtained for the compulsory assignment will count towards your final mark.

Submission of assignments 02 is compulsory in the sense that their submission will not grant you admission to the examination. However, the mark obtained for these assignments will count towards your semester mark (and final mark).

2.4 **Submission of assignments**

The questions for Assignments 01 and 02 can be found at the end of this Tutorial Letter.

You **MUST** submit your assignments electronically via myUnisa. Assignments **must not be submitted by post, fax or e-mail**. For detailed information and requirements as far as your assignments are concerned, see the brochure my Studies @ Unisa that you received with your study material.

NB: Late submissions will not be marked.

When you submit your WRITTEN assignment online via myUnisa, please note the following:

- Type your answers to the assignment in a document in a computer programme such as, for example, Microsoft Word.
- When you have finished your assignment, check that it states the law correctly and that the content is spelt correctly. To check the spelling, use the spell-checker (shortcut in MS Word: Press the F7 key).
- Save the final version of your assignment in a document that is formatted in PDF.
- Submit your PDF document online via myUnisa.

Saving your document in PDF format

You can use various computer programmes to save your assignment in PDF format. A variety of these programmes can be downloaded from myUnisa. Go to the web page entitled "Electronic resources" at <https://my.unisa.ac.za/portal/site/!gateway/page/c919799a-6cdd-4ec2-0019-839c23c198f8> .

2.5 Other assessment methods

There are no other assessment methods for this module.

2.6 The examination

All students who submit the compulsory assignment 01 in time (before or on the date of submission) will be admitted to the examination regardless of the mark obtained for the assignment.

2.6.1 Examination period

There will only be one examination period for 2021 Academic year. This means that all **students registered for the first and second semester** will write the examination in **October/November 2021**, and the supplementary examination will be written in January/February 2022.

2.6.2 Examination paper

The examination is non-venue based. The paper counts 80 marks. During the year, the Examination Section will provide you with information regarding the examination in general, and the confirmation of the examination dates and examination times.

2.6.3 *Previous examination papers*

Previous examination papers are available on myUnisa. Please note that we will not be making the answer guidelines available to you.

However, these examination question papers were created for venue-based examinations. The examination questions will be like the questions asked in the activities in your study guide.

NB: For all other information regarding module CLA1503, you should still refer to Tutorial letter 101/3/2021.

Regards

Your Lecturers

ASSIGNMENT 01
UNIQUE NUMBER: 707622
(13 May 2021)

QUESTION 1

Moses enters into a contract of sale with Xolile to buy a new truck from him (Xolile) one month after Simon's death.

Answer the following questions:

- (i) Distinguish between a time clause and a condition. (2)
 - (ii) Describe the legality of the contractual relationship between Moses and Xolile. (3)
 - (iii) Name and describe the type of clause applicable in this case. (2)
- [7]**

QUESTION 2

Define and give one example of duress. **[2]**

QUESTION 3

State whether the following statement is **True** or **False**:

Where the parties have agreed that the creditor can cancel the contract in the event of the debtor's fault, the creditor will be able to cancel the contract even if the default is not a material breach. **[1]**

QUESTION 4

Name and describe two categories of persons that are recognised by the law. **[4]**

QUESTION 5

Kgotso and Mosidi arrange telephonically to meet at Ahmad's coffee shop at 19h00 the next day.

- (i) Does a contract arise between Kgotso and Mosidi? Motivate your answer. (3)
 - (ii) Name any **THREE** of the requirements of offer and acceptance. (3)
- [6]**

TOTAL: [20]

ASSIGNMENT 02
UNIQUE NUMBER: 626985
(28 JUNE 2021)

QUESTION 1

Which **ONE** of the following sources will a South African lawyer consult on Roman law?

- 1 the Constitution of the Republic of South Africa, 1996
 - 2 Customary Law
 - 3 *the Corpus Iuris Civilis*
 - 4 South African Statute Law
- (2)

QUESTION 2

Jaco is a famous inventor of new, environmentally friendly trucks. He stands in his ultra-modern workshop admiring the revolutionary new electrically powered truck that he designed for the company, Big Trucks, which still owes him R5 000 000.

This sentence contains four legal objects, one from each of the four categories of Jaco's subjective rights.

The R5 000 000 owed to Jaco is an example of ...

- 1 a real right.
 - 2 a personality right.
 - 3 a personal right.
 - 4 an immaterial property right.
- (2)

QUESTION 3

In which **ONE** of the following situations was a **VALID** contract concluded?

- 1 Sally engages a professional seafood caterer to provide seafood for her birthday party, to which twenty guests have been invited. All the guests confirm that they will attend Sally's birthday party. The day before the party, ten of the guests inform Sally that they will not be able to attend the party because they prefer to attend a street party at the same time and date in Sandton.
 - 2 Nicolas makes a new year's resolution and undertakes that he will save R500 each month by paying R500 into his savings account on the first day of each month.
 - 3 Peter purchases a new pair of running shoes for R600 on the official website of Nike.
 - 4 Reeze undertakes to sell the moon and one star to Shana for R500.
- (2)

QUESTION 4

Peter studies for a B.Com-degree at Unisa. While writing an examination he sees a beautiful girl, Maureen, at the examination hall and falls head over heels in love with her. He rushes to her, introduces himself and invites her to go to the movies with him. They agree to meet the next Friday at 6 o'clock in front of Sterkinekor. Peter arrives at Sterkinekor at the agreed time, but Maureen is not there. After he has waited for more than two hours, he decides to go home and consults his Commercial Law textbook to see whether he can take legal action against Maureen for not honouring their appointment. Only later Peter learns that Maureen's car broke down on her way to Sterkinekor.

Which **ONE** of the options provided below will complete the following sentence **CORRECTLY**?

Peter's appointment with Maureen was **NOT** a contract because ...

- 1 their appointment was not in writing and signed by them.
- 2 they did not have the intention to create legally enforceable obligations.
- 3 it was not physically possible for Maureen to honour their appointment.
- 4 it was not juridically possible for Maureen to honour their appointment. (2)

QUESTION 5

Morake owes Ismael an amount of R70 000. Morake and Ismael enter into an agreement in terms of which Ismael will cancel 30% of the debt if Morake agrees to sponsor Ismael's visit to the "Blue House" brothel.

Which **ONE** of the following statements is **CORRECT**?

- 1 Morake and Ismael's contract is lawful because they have reached consensus.
- 2 Morake and Ismael's contract is lawful because they both have capacity to enter into juristic acts.
- 3 Morake and Ismael's contract is unlawful because their agreement is partially enforceable.
- 4 Morake and Ismael's contract is unlawful because their agreement is contrary to good morals. (2)

QUESTION 6

Chris and Paul enter into a contract in terms of which Paul has to deliver a dozen bottles of export wine to Chris. Chris has already paid the purchase price. Paul now indicates that he does not intend to perform in terms of the contract.

Which **ONE** of the following types of breach of contract has Paul committed?

- 1 Repudiation
- 2 *Mora debitoris*
- 3 Positive malperformance
- 4 Prevention of performance (2)

QUESTION 7

On 10 August 2020 Lina concludes an agreement with the AMG Insurance Company in terms of which the company undertakes to compensate Lina for any damage that she might suffer if the house that she inherited from her father, should be damaged by fire. She undertakes to pay a monthly premium of R300 and the first premium will be due on 31 August 2020. On 20 August 2020, the house is completely burnt down.

Which **ONE** of the following statements is **CORRECT**?

- 1 As a valid contract of insurance came into existence on 10 August 2020, AMG is bound to compensate Lina for the damage.
- 2 A valid contract of insurance will only come into existence when the first premium is paid by Lina.
- 3 Although a valid contract of insurance was concluded on 10 August 2020, Lina will only be covered by the contract when the first premium has been paid.
- 4 As Lina inherited the house and did not pay for it herself, she does not have an insurable interest in the house and the contract is invalid. (2)

QUESTION 8

Khomotso and Stanford, an estate agent, enter into a contract in terms of which Stanford undertakes to sell a poultry farm on behalf of Khomotso. They agree that if Stanford succeeds in selling the property, Khomotso will pay him seven percent of the selling price as commission. Their contract also provides that Khomotso will not be liable for expenses incurred in the execution of the task. Because of financial problems, Stanford's estate is sequestrated before the property is sold.

Which **ONE** of the following statements is **CORRECT**?

- 1 Khomotso need not pay Stanford any commission if Stanford sells the farm, since a contract of mandate is a gratuitous undertaking to perform a task.
- 2 The contract between Khomotso and Stanford is invalid since it excludes Khomotso's liability for expenses incurred during the execution of the task.
- 3 The contract between Khomotso and Stanford is not terminated when Stanford's estate is sequestrated.
- 4 Khomotso may only revoke their contract for a legally acceptable reason; otherwise, the revocation itself may amount to a breach of contract. (2)

QUESTION 9

A group of twenty-two auditors meet to consider forming a partnership. They meet to agree on the contribution each one of them will make to the partnership. Some of the partners want the partnership to deal only with audits, and others want it to deal only with tax matters.

Which **ONE** of the following issues must be addressed before the requirements for a partnership will be satisfied?

- 1 The parties must determine a common objective.
- 2 The parties need to reduce the number of prospective partners to less than twenty.
- 3 The parties need to put the agreement in writing.
- 4 The parties must stipulate the amount each member must contribute. (2)

QUESTION 10

Paulus owes money to Paul. The full amount of the debt is secured by a suretyship contract in which Evert is the surety, and also by a cession to Paul of Paulus's right to receive payment from Ryan.

Which **ONE** of the following statements is **INCORRECT**?

- 1 Paulus may cede to Evert his right to receive payment from Ryan.
- 2 Paulus is not entitled to sue Ryan for the money he owes him in order to pay Paul.
- 3 Evert is not entitled to the benefit of division if Paul attempts to recover the entire debt from him.
- 4 Evert may possibly obtain a right to the money which Ryan owes to Paulus if he settles the entire debt. (2)