CENTRE FOR OPEN AND LIFELONG LEARNING

BUSINESS LAW (BLW512S)

TUTORIAL LETTER 02/2019
Dear Student

I trust that, by the time you are reading this Second Tutorial Letter of 2019 for Business Law, you have received and perused your marked Assignment number 1.

To those of you that did well – CONGRATULATIONS! It is a pleasure to mark assignments that have obviously been completed with care. To those of you that fared poorly – remember that your marks are often a reflection of your attitude; if you try to complete an assignment in the shortest time possible you cannot expect to do well.

It is apparent that many students still do not know how to study on distance mode. The study guide contains a detailed introduction with recommendations about how to use the guide. You do not learn anything by simply scratching around to find the page in the study guide that appears to have the answer to a particular question in the assignment. You need to work systematically from the beginning of the semester; otherwise you will be unable to master the subject.

Please feel free to contact me for assistance while you are studying. I prefer e-mail as method of communication, and will try my best to respond as soon as possible. Very few students approached me for assistance while they were completing their assignment. Yet during the week before the exam I am inundated with students crying that they do not understand the work. By then it is too late! I must unfortunately make it clear that I will NOT be available to explain the entire semester’s work within a couple of hours to students who have not made the effort to work during the semester.

The purpose of this letter is, inter alia, to make certain observation regarding your answers to the questions as contained in the aforesaid assignment in an attempt to guide you to find the most appropriate answers and/or solutions. (In these explanations, references to page numbers refer to page numbers in the only study guide for Business Law, which you received upon registration.)

Business Law is a difficult course, especially so if you are not proficient in the English language. However, it is not impossible to pass, or even to do exceptionally well. All it takes is hard work and commitment.
Remember that tutorial letters form part of your study material for examination purposes.

Firstly, some general comments:

1. Some students tend not to **read a question** in order to establish exactly what is asked and, as a result, you have lost marks. Also observe the **mark allocation** in order to decide how many facts to include in your answer.

2. **Read your answer!** Carelessness costs marks!

3. Make sure that you have answered all the questions. In an assignment there is no excuse to omit questions.

4. Make sure of the **spelling of words**. You were already requested to do so in the First Tutorial Letter. There is therefore no excuse if you have lost marks as a result thereof. It is really alarming to note that tertiary students misspell words even when copying from the study guide!

5. The use of **telegram-style answering** is not accepted. Again, it is evident that most of you have not read the First Tutorial Letter where these issues have been addressed. A mere “Yes” or “No” answer also does not deserve any marks, as you were warned that such an answer requires a proper motivation in addition.

6. On the other hand, if the question asks you to “name” something, an explanation is not required, and you will waste valuable time in the exam writing unnecessary long paragraphs.

7. Keep your answers concise and to the point. In the examination the markers do not have time to wade through pages of jumble in order to search for one correct key word. In fact, we do not mark on key words at all; if the context in which you use the words does not show understanding no marks will be allocated.

8. Please do not copy the questions into your assignment book; the tutors have a copy of the assignment and it wastes time to have to figure out where the question ends and the answer starts.

9. Note that in the exam you will be penalized if the first part of your answer is wrong, but your motivation is perhaps correct (or **vice versa**). The reason for this way of marking is that if you contradict yourself in your answer it gives the impression that you do not understand the study material properly.
10. Read the instructions in each question carefully. The following terms appear frequently in the phrasing of questions. You should know their meaning and answer accordingly.

- **Analyse**: Separate the topic into parts and examine each part critically.
- **Compare**: Look for qualities or characteristics that resemble each other. Emphasise similarities but also mention differences.
- **Contrast**: Stress the differences between concepts, qualities, events or problems.
- **Criticise**: Assess and evaluate. Point out correct and incorrect aspects.
- **Define**: Give a concise, clear and authoritative meaning. Details are not required.
- **Describe**: Recount, characterise, sketch or relate in sequence or story form.

Please feel free to contact any one of your marker-tutors at the following numbers:

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QUESTION 1
These questions were straight-forward, and most students scored good marks. Thank you for your efforts in using your own words. Please watch the mark allocation: for two marks you need not write more than two lines!

1.1
Always read your questions carefully! Many students gave the *essentialia* of a contract of purchase and sale, not a contract of lease. The essentialia for a contract of lease are:

- the lessor is to give and the lessee to receive the use and enjoyment of a specified thing;
  
  *(note that it is not a requirement that it must be immovable property, movable property can also be the subject of a lease agreement – you can, for example, lease a car)*

- the use and enjoyment of the thing (property) is temporary;

- the rent for its use and enjoyment.

1.2
The credit agreement must be entered into as a result of the initiative of the credit grantor AND the agreement is entered into at a place which is not the credit grantor’s usual place of business.

*Note that BOTH requirements must be present for the credit receiver to be able to rely on the cooling off period in terms of Section 13 of the Credit Agreement Act 75 of 1980, as amended.*

1.3
The answer to this question could not be obtained from the study material. Six marks were awarded to all students.

1.4
The purported agent professed to act on behalf of another; the person on whose behalf the purported agent professed to be acting must have been in existence at the time of the transaction; and the purported principal must have contractual capacity (both at the time of
ratification and at the time when the purported agent acted).

Watch your spelling! Marks were deducted if you wrote ‘rectification’ or ‘ractification’. Furthermore, to be in existence is not the same as to be present. If the principal was present there would have been authority, and thus no need for ratification.

1.5
a) Symbolical delivery
b) Constitutum possessorium
c) Brevi manu (delivery with the short hand)

You were only required to name the type of delivery; no explanation was required.

1.6
The risk of accidental damage to the thing sold will pass to the purchaser from the moment the contract is perfecta.

**QUESTION 2**

2.1 No. Defect not present at the time of contracting.
2.2 No. Defect was visible.
2.3 No. Defect not so serious.
2.4 Yes. All requirements have been met.
2.6 No. Defect not present at the time of contracting.

Remember that a motivation should refer to a legal principle; simply stating the facts is not sufficient.

**QUESTION 3**

Write your answers in paragraph form. Marks will be deducted for answers using bullet points – these are used for lists, not for discussions.

Remember the methodology of answering problem questions: it is not enough to simply identify the relevant legal concept – you need to give the requirements and indicate whether they have been met or not, because only then will the legal concept be applicable. DO NOT START YOUR ANSWER WITH A CONCLUSION!

See Annexure ‘A’ “Guidelines for answering problem questions” attached hereto.
There is a tacit warranty / guarantee against eviction which is incorporated in a contract of purchase and sale by the operation of the law - *ex lege*. The guarantee protects the purchaser in the situation where the seller is not the owner of the thing sold. The seller guarantees to the purchaser that the purchaser will have undisturbed possession of the *merx*.

Mr Morkel will be protected by the guarantee but in the event of threatened eviction, as in this case, he must:

- Try to keep the thing in his possession and not simple hand it over to Mr Dauseb unless Mr Dauseb proves that he has an indisputable right to the motor vehicle;
- Notify the seller of the threatened eviction which is pending in order for the seller to assist him;
- In the event that seller fails to assist, Mr Morkel must put up a strong defence, failing which he will lose his right of recourse against the seller.

In the event of Mr Morkel being evicted from the possession of the motor vehicle, he is entitled, if he is wholly evicted, to the cancellation of the contract, as well as repayment and damages for the seller’s breach of contract.

**QUESTION 4**

You will not be required to list the various prohibitions as contained in the Credit Agreements Act, however you need to know what legal effect the non-compliance with these prohibitions have on the agreement. In some instances the contract will be void, in some instances the contract will remain valid, but it will be a criminal offense, and in other instances the agreement will remain valid, but the particular clause will be void.

4.1

The contract is valid. The purchaser may trade in goods as a deposit / initial payment.

4.2

Credit agreements must be in writing and signed. The agreement will be valid but this is an offense.
4.3
Credit agreements may not exclude *ex lege* guarantees (the guarantee against latent defects). The agreement is valid but the clause is void.

4.4
The credit grantor may not take the law into his own hands. If he does the credit receiver has a right to re-instatement. The agreement is valid but the clause is void.

**QUESTION 5**

*This question was not lease agreements, not about credit agreements!*

5.1
The landlord has a tacit hypothec over all movables that are on the premises while the rent is in arrears. This includes movables belonging to a third party if they were brought on to the premises with the third party’s consent (express or implied) and with the intention that they remain there indefinitely for the use of the lessee, and the owner of the goods fails to notify the lessor of his/her ownership. The computer may be attached.

5.2
This is called tacit relocation, which is an implied agreement to continue with the lease agreement at the same rent as that of the original lease.

*Always read the facts carefully. Nowhere does it state that they entered into an express agreement to renew the rent.*

Please do not hesitate to contact me if you have any queries regarding the work covered in the assignment.
GUIDELINES FOR ANSWERING PROBLEM QUESTIONS

In order to find a legal answer to a practical problem requires reasoning, where a number of steps are to be taken in a specific order. This order is described in the following flowchart.

One aspect should become clear when studying the flowchart: In order to successfully master the application of the law, we need a certain knowledge basis from which we can draw partial answers. So what does that tell us about studying? Well, it points out that knowledge comes first, and understanding can only be developed on the basis of facts that have been learned. But don’t get it wrong: both knowledge and understanding are needed in order to analyze a problem and to devise a solution to it.*

Knowledge → Understanding → Problem-Analysis → Problem-Solution

*In order to develop a solution to a specific problem, you need to conduct a problem-analysis, which requires an understanding of the problem-area; but a sound knowledge base is a prerequisite for your understanding.

<table>
<thead>
<tr>
<th>Step</th>
<th>Action</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>You need to GET</td>
<td>an understanding of the practical problem/question (this is preparation but does not form part of your answer)</td>
</tr>
<tr>
<td>2.</td>
<td>You need to IDENTIFY and EXPLAIN</td>
<td>a legal concept, providing a legal consequence which matches/corresponds with the desired/requested outcome, the objective. Briefly discuss the meaning of the legal concept</td>
</tr>
<tr>
<td>3.</td>
<td>You need to LIST and EXPLAIN</td>
<td>the requirements/sub-requirements for the legal concept</td>
</tr>
<tr>
<td>4.</td>
<td>You need to COMPARE</td>
<td>the requirements with the facts given in the problem narrative</td>
</tr>
<tr>
<td>5.</td>
<td>You need to CHECK</td>
<td>whether each and every requirement is met YES [] NO</td>
</tr>
<tr>
<td>6.</td>
<td>You need to CONCLUDE whether the legal concept selected above (step 2) is either applicable and its legal consequences (for instance: contractual liability, valid partnership agreement or contract) follow</td>
<td>or not applicable and its legal consequences do not follow</td>
</tr>
<tr>
<td>8.</td>
<td>You need to ANSWER</td>
<td>the practical problem/question</td>
</tr>
</tbody>
</table>
NOTE THE FOLLOWING:

1. The purpose of problem-based questions is to assess whether you have the ability to apply the law to a given set of facts in order to come to a well-motivated conclusion.

2. Do not start your answer with a conclusion – you cannot be sure of what the conclusion is going to be before you have worked through the entire process.

3. Simply re-stating the law is not enough. COMPARE the requirements with the facts given in the problem narrative. State which ones are applicable / not and give reasons based on the facts. In other words, MOTIVATE YOUR ANSWER. Simply stating the legal principles will not earn you marks.

4. It is quite possible that, based on your interpretation of the facts, your final conclusion might differ from that of your fellow student. Marks are awarded for a well-constructed argument that shows understanding, irrespective of the final conclusion.

5. Keep your answers concise and to the point. In the examination the markers do not have time to wade through pages of jumble in order to search for one correct key word. In fact, we do not mark on key words at all; if the context in which you use the words does not show understanding no marks will be allocated.

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