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Centre for Open and Lifelong Learning

FEEDBACK TUTORIAL LETTER

2ND SEMESTER 2020

ASSIGNMENT 1

BUSINESS LAW

(BLW512S)



ΠΑΜΙΒΙΑ UNIVERSITY
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CENTRE FOR OPEN AND LIFELONG LEARNING

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TUTORIAL LETTER 02/2020

Dear Student

I trust that, by the time you are reading this Second Tutorial Letter of 2020 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 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 is available on MyNust.)

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. A large number of students did not follow the instructions. Assignments must be submitted using Calibri, font size 11, line spacing 1.5. It is really difficult to mark assignments that are submitted with single spacing.
2. 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.
3. **Read your answer!** Carelessness costs marks!
4. Make sure that you have answered all the questions. In an assignment there is no excuse to omit questions.
5. 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!
6. 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.
7. On the other hand, if the question asks you to "name" or "identify" something, an explanation is not required, and you will waste valuable time in the exam writing unnecessary long paragraphs.
8. 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.
9. 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.
10. Note that in the exam you will be penalised 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.

11. 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.

You have been provided with two units of Additional Study material, which covers lease agreements and replaces units 9 and 10 in the study guide.

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

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BUSINESS LAW [BLW 512S]**ASSIGNMENT 1 / 2020**

QUESTION 1

This question expected of you to apply your knowledge of various aspects of the work (from several different units) to one case study.

Read all the questions carefully before you start and answer only what is requested of you.

Always apply the facts of the case study to the law.

I am concerned that many students do not seem to remember the basic principles of the law of contract as studied in Commercial Law 1A. Please revise the concepts “valid”, “void” and “voidable” as well as suspensive and resolutive conditions.

1.1

Conversation “A” is a contract of purchase and sale and conversation “B” is a lease agreement. Neither of these contracts are conditional – an agreement to pay at a later date is not a suspensive condition! If you could not identify these contracts you would, in all likelihood, not have been able to do the questions that followed.

1.2

You were required to list and identify the *essentialia* of a contract of purchase and sale with reference to the relevant facts in the case study. The *essentialia* (the *merx*, the price and the intention to buy and sell) determines whether a particular contract is a contract of purchase and sale, or some other type of contract, it does not influence the validity of a contract. If you are unsure about the requirements for a valid contract, revise Commercial Law 1A. Also, be careful not to confuse the *essentialia* of a contract of purchase and sale with the requirements for a contract to be *perfecta*.

1.3

This question was about lease agreements, not about credit agreements! Once again you had to list and identify the *essentialia* of a contract of lease, namely:

- the use and enjoyment of a specified thing - Natangwe may use Veronica’s computer;
- the use and enjoyment of the thing is temporary - Natangwe can only use the computer until he has completed his assignment;
- the rent for its use and enjoyment – Natangwe must pay Veronica N\$50

1.4

Watch the mark allocation in order to decide how many facts to include in your answer. You cannot expect to get good marks if you write only three lines for a nine-mark question. Once

again you had to refer to the relevant facts in the case study.

Natangwe's duties are to pay rent, to use and care for the property properly and to return the property. The lessee must pay the agreed rent in the agreed manner and at the agreed place. In this instance Natangwe must pay Veronica the amount of N\$50.00 when she has finished using the computer. Payment must be made at Veronica's house. If the lessee uses the thing, she must do so in a proper manner and only for the purpose agreed upon by the parties. Natangwe must use the computer carefully and only to finish her assignment. She may not, for example, use it to play games. The lessee must restore the property to the lessor on expiry of the lease, in the same condition in which it was delivered, fair wear and tear expected. Natangwe must return the computer once she has finished using it and must ensure that it has not been damaged.

Note: no marks were allocated to answers that were a "copy and paste" from the study guide.

1.5

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.

PLEASE NOTE the following is not a model answer but an illustration of how to apply the methodology to this question.

1. GET an understanding of the problem:

This question concerns the risk rule. Who will bear the risk of the destroyed computer, the seller or the purchaser? Has the risk passed to the purchaser? And in the case of a lease agreement?

2. IDENTIFY and EXPLAIN the relevant legal concept:

The seller (Veronica) has the obligation to keep the *merx* in safe custody prior to delivery. However, in terms of the passing of the risk rule the risk of accidental damages or destruction of the *merx* will pass from seller to purchaser when the contract is *perfecta*.

3. LIST and EXPLAIN the requirements:

For a sale to be *perfecta* the following requirements must be met:

- a price which is fixed or ascertainable

- a thing sold to be specified
- the contract is unconditional

4. COMPARE the requirements with the facts and CHECK whether they have been met:

All the requirements appear to have been met and the contract is *perfecta*.

5. CONCLUDE and ANSWER the question:

The sale is *perfecta* and the purchaser (Natangwe) bears the risk (she must pay the purchase price).

NOTE: The contract was not subject to a suspensive condition. Revise Commercial Law 1A if you cannot remember what a suspensive condition is!

The risk rule is unique to contracts of purchase and sale. In any other type of contract if performance becomes impossible the contract will terminate and the counter performance of the other party is also extinguished.

QUESTION 2

These questions were straight-forward, and most students scored good marks. Always read your questions carefully and answer only what is asked of you. In this instance only one or two words were required. It is important that you understand the meaning of the terminology used and the concepts referred to. In the examination this can also be assessed “the other way around”; i.e. I give you the concept, and you must explain what it is. Make sure you can do this.

2.1 Suspensive condition

2.2 Delivery with the short hand / *brevi manu*.

2.3 Lay-by agreement

2.4 Patent defect

2.5 *Sale ad mensuram*

2.6 Tacit relocation

2.7 Implied authority

2.8 *Emptio spei*

2.9 Landlord’s tacit hypothec

2.10 Cooling off period

QUESTION 3

These questions were similarly straight forward. Once again, no marks were allocated to answers that were a “copy and paste” from the study guide.

- 3.1 The seller must be the true owner and the parties must intend to transfer ownership. Payment on its own, without these requirements, is not sufficient for the passing of ownership.
- 3.2 Where the seller is a merchant or manufacturer; gave an express guarantee that the thing is free from latent defects; or acted fraudulently.

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.

1.	You need to GET ↓	an understanding of the practical problem/question <i>(this is preparation but does not form part of your answer)</i>	
2.	You need to IDENTIFY and EXPLAIN ↓	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	
3.	You need to LIST and EXPLAIN ↓	the requirements/sub-requirements for the legal concept	
4.	You need to COMPARE ↓	the requirements with the facts given in the problem narrative	
5.	You need to CHECK ↓	whether each and every requirement is met YES	
6.	You need to CONCLUDE whether the legal concept selected above (step 2) is ↓	<ul style="list-style-type: none"> • either applicable and its legal consequences (for instance: contractual liability, valid partnership agreement or contract) follow 	<ul style="list-style-type: none"> • or not applicable and its legal consequences do not follow
8.	You need to ANSWER	the practical problem/question	

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