Course Name: COMMERCIAL LAW 1A
Course Code: CML 111S
Department: SOCIAL SCIENCES
Course Duration: SEMESTER 1 MODULE
NQF Level and Credit: NQF LEVEL 5, 12 CREDITS
Moodle Enrollment Key: CML 111S

Marker-tutor Details

Your marker-tutors for COMMERCIAL LAW 1A
The Namibia University of Science and Technology has appointed the following tutors as marker-tutors for COMMERCIAL LAW 1A

Your marker-tutors for COMMERCIAL LAW 1 A
The Namibia University of Science and Technology has appointed

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Dear student

FEEDBACK FOR ASSIGNMENT 2

This tutorial letter contains reading skills, suggested way of answering questions, responses to problems identified during the tutor-marking, clarification of misinterpreted/not clearly understood concepts or questions relating to assignment 2 and other aspects that reinforces learning to improve performance.

The essence of assignment 2

The questions in this assignment are based on learning outcomes formulated for this course. Several components of commercial law 1A were tested in your responses (units 1-15). In your answers we looked for evidence inter alia, critical reading, application of understanding, reflexive responses, coherence and correctness, grammaticality and spelling. You need to focus on the length of your responses.

Understanding the question: task/process words

It is important to analyse the task/process words before you begin to answer any question. The ‘process words’ or instruction words identify what you are supposed to do.

Reading strategies

Before you embark on an assignment, you will need to engage and to interact with the prescribed materials (in this regard your study guide) by applying effective reading skills. These skills will help you to become familiar with the prescribed reading materials.

QUESTION 1

This question was problematic for some students. Some students were of the view that the question required for identification of each statement whether it was an essentialia, naturalia or incidentalia. Some thought it had to do with offer and acceptance. None of these were required. But a lot of students knew what the question was about. The question was essentially on condition and time clause. You needed to specify in a specific question whether it was a suspensive condition or resolutive condition and in some instances whether it was a time clause suspensive or time clause resolutive.
The difference is simple. If an obligation in a contract is subject to an uncertain future event then it is a condition, whereas if the obligation is subject to a certain future event then it is a time clause.

We awarded marks as follows:

1.1 Anna agreed to lend Tom N$ 500.00 until Tom gets his salary. (3)
   - Resolutive
   - condition
   - The continued existence of the contract depends on an uncertain future event.

1.2 Sarita agreed to pay school fees for her son, two months after she pass Grade 6. (3)
   - Suspensive
   - time clause
   - The duty to perform is postponed until the determined or ascertain moment has arrived.

1.3 Jack agreed to give Marry a car when she gets her learner’s licence. (3)
   - Suspensive
   - condition
   - The operation of the existing obligation is postponed until the happening of an uncertain future event.

1.4 Angie agreed to loan Tekkie N$ 800.00 for seven months. (3)
   - Resolutive
   - Time Clause
   - The obligation will continue until the expiry of a certain period of time.

1.5 Dod agreed to buy Tembie shoes until she finishes her studies. (3)
   - Resolutive
   - Condition / Time clause *(she will finish her studies at some stage)*
   - The continued existence of the contract depends on an uncertain future event / The obligation
will continue until the expiry of a certain period of time (*depending on whether the student identified this as a condition or a time clause*)

**QUESTION 2**

This question was misconstrued by many students. Students felt this was on *stipulatio alteri* (contracts in favour of a third party). Some were of the view that it was about delegation and some thought it was on novation. None of these concepts were applicable. The majority of the students gave very generalised answer without reference to the study guide. Some went at length dealing with bank requirements on granting of a loan and issues of cashflow. These were not required and are not even in the study guide.

We will not ask you questions on things that are not in the study guide. The moment you start generalising your answer as a student you should know you have lost focus.

The question dealt with cession. Students were required to define cession and also state whether it was possible to cede the right to a loan. The study guide is clear on this aspect that certain rights such as a right to credit or get a loan cannot be ceded. Many students overlooked this essential aspect.

We awarded marks as follows:

- Sara’s proposal relates to cession
- Cession is a transfer of a right by agreement
- The debtor does not have to consent to cession
- However the right to obtain a loan may not be ceded
- Sara may not cede her rights to obtain a loan from Duo Bank

**QUESTION 3**

Question was cancelled. We realised it was too complex at your level. Hence for those who attempted it no marks were awarded for such. This resulted in the assignment being marked out of 33 marks.
QUESTION 4

For some students this question was problematic. This could only be as a result of inadequate reading and a lack of proper understanding of the study material. This question could have been answered from two perspectives. Depending on how the students interpreted the question. The first is relating to *supervening impossibility of performance* and the other relating to breach of contract.

For supervening impossibility of performance we awarded marks as follows:

- Supervening impossibility of performance
- The performance become objectively or absolutely impossible
- After the conclusion of the contract
- but during the existence of the contract
- This was beyond the control of the parties
- The happening was unforeseeable with reasonable foresight
- The happening was unavoidable with reasonable care
- The contract will terminate
- HJ Transport was not in breach of the agreement
- Andile cannot claim damages

For those students that tackled it from breach of contract angle, we awarded marks as follows:

- Breach of contract can be committed if either the debtor or creditor
- Performs late or
- Does not perform at all or
- Perform in a defective manner
- It seems time was an element in this contract
- Mora debitoris is committed if debtor fails to perform within a reasonable time, if no time is specified or after the expiration of time for performance and
- if delay is due to the fault of the debtor
- HJ Transport was not in breach of contract
- As the delay was not due to their fault but due to a faulty maintenance road
- Andile cannot claim damages

QUESTION 5
The question was straightforward and need no further elaboration. Students who did not get marks here should consider revising.

GENERAL OBSERVATIONS/COMMON MISTAKES
As we were marking your scripts, we identified the following weaknesses from some of the students:

- Lack of understanding of the questions. You should make sure that you analyse the key words/task words of the question and your answer should give the required response.
- Incorrect spelling of words such as contract and mora debitoris by referring to contact and mora debitorries. You should ensure correct spelling of words as they appear in the study guide. If you type your work this can generally be avoided as the computer will spot this.
- Use of foreign materials (such as English law books) thereby referring to requirements for the formation of a valid contract such as specifics, consideration and proper form. (BE CAREFUL WHEN USING MATERIALS OF OTHER JURISDICTIONS-LAWs ARE DIFFERENT). Your study guide in most cases is enough to answer questions in an assignment. Stick to that. Use sources that you are sure they are applicable to Namibian law.
- Some students’ answers were unnecessarily too long. Always consider marks allocation and that should be a factor to help you determine how long your response to each question should be. It is hard to contemplate a student answering a 3 marks for example for a full page or half page or answering a 10 Marks question in 2 to 3 pages.
- Some students did not attempt all the questions. Some questions were left blank. This behavior is discouraged. Students are encouraged to attempt to answer all questions where this is the instruction. Students should phone us on numbers provided in tutorial letters or make arrangements for face to face consultation if this possible to discuss challenges faced when
answering questions (especially if a question or questions are not clear to them. WE ARE HERE TO HELP.

- There were instances of verbatim copying from the study guide. You should always paraphrase and put explanations in your own words. Only then we can be sure you understand the work.

END OF FEEDBACK TUTORIAL LETTER