FEEDBACK TUTORIAL LETTER

1st SEMESTER 2019

ASSIGNMENT 1

COMMERCIAL LAW 1A
CML111S
Course Name: COMMERCIAL LAW 1A

Course Code: CML 11S

Department: SOCIAL SCIENCES

Course Duration: SEMESTER 1 MODULE

NQF Level and Credit: NQF LEVEL 5, 12 CREDITS

Moodle Enrollment Key: CML 11S

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

Mr. B. Tjatjara
Tel: 061 207 2377
E-mail: btjatjara@nust.na

Ms. J. Nghishekwa
Tel: 081 248 9493
E-mail: nghishekwaj@ra.org.na

Ms. E. Wabomba
Tel: 061- 207-2149
E-mail: ewabomba@nust.na
Dear student

FEEDBACK FOR ASSIGNMENT 1

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 1 and other aspects that reinforces learning to improve performance.

The essence of assignment 1

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 04-13). In your answers we looked for evidence of inter alia, critical reading, application of understanding, reflexive responses, coherence and correctness, grammaticality and spelling. You needed 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.

The following terms appear frequently in the phrasing of questions (some were used in assignment 01). You should know their meaning and answer accordingly. Some of these words will be used for the purposes of examination in October/November first opportunity examinations and second opportunity/special examinations as well.

- **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.
• **Discuss:** Examine and analyse carefully. Be complete, provide details and reasons. List the points and give detailed explanation of each point; relate the points so listed to one another in a logical manner.
• **Evaluate:** Provide positive and negative arguments
• **Explain:** Elaborate issues in detail.
• **Distinguish:** This indicates that the answer should compare two concepts or situations so as to show or emphasise differences between them.
• **Motivate:** State the factors that lead you to a certain answer or conclusion.

**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. You were required to do this.

**QUESTION 1**

1.1. This question was straightforward, and it was not challenging to most students and students were able to answer it satisfactorily for 5 marks. We noticed in our marking that a plenty of students got 5 full marks here. Some students gave elaborative answers by giving examples and long answers. This was not required, and we did not award marks for this. The students were required to deal with the five requirements of a valid contract and determine whether they were met in the set of facts provided in the question.

1.2. The question was somewhat problematic for most students. Students are required to consider revising on contracts that are subject to a suspensive condition and resolutive condition. Essentially to qualify as a condition, the operation of the contract or the obligations in terms of the contract must be subject to a condition. This was not the case in the question at hand. In fact, the wedding and cancellation thereof did not affect the contract for the sale of the car. A model answer was as follows:
A valid contract is binding on parties
- The contract is not subjected to a suspensive condition
- The parties should perform in terms of the contract
- The wedding was the motive for Jackie to enter into the contract
- Cancellation of the wedding has no effect on the obligations of the parties in terms of the contract.

**QUESTION 2**

2.1. This question was on the difference between an option and right of pre-emption. It was straightforward. Most students did well and got the full marks here. The difference essentially is this:
- The grantor of the right of pre-emption has no obligation to offer the goods to the right holder and holder of a right has no obligation to purchase.
- The option giver is obliged to sell the thing to the option-holder if option is exercised.

2.2. This question misled some students. The core aspect of the question was that even though a right of pre-emption was concluded, this lapsed after three years. Thus, students were expected to answer as follows:
- Hedad is the holder of a pre-emption right.
- Hedid had no obligation to sell the property to him
- Hedad has no recourse against Hedid

Some students were of the view that this was an option. This is not the case. This question related to a right of pre-emption.
QUESTION 3

Most students fairly did well in this question. The question was essentially on misrepresentation. You needed to be too specific on the type of misrepresentation. We accepted on the set of facts if students stated intentional (fraudulent) or negligent misrepresentation. Students were required to justify why it was either intentional (fraudulent) or negligent misrepresentation. In amongst others we awarded marks for a discussion of negligent misrepresentation as follows:

- James had negligently misrepresented the facts about the car.
- He made a false statement
- That is material
- Made with the intention to induce Anna to enter into a contract
- James had no intention of making a false statement
- James honestly believed in the truthfulness of the statement
- But failed to take steps a reasonable car dealer would have taken to verify the truth of his statement
- Contract is voidable
- Anna can uphold or rescind the agreement
- And can claim damages

For intentional misrepresentation we awarded marks as follows:

- James misrepresented the facts about the car.
- He made a false statement
- That is material
- Made with the intention to induce Anna to enter into a contract
- James did not believe in the truth of the statement or
- Made the statement recklessly
- Contract is voidable
- Anna can uphold
• or rescind the agreement
• And can claim damages

QUESTION 4

This was a killer question for most students. The challenge manifested itself in a way that students interpreted the question or the comprehension of what was required differently. This question was answered by some students in a very generalised way. This question was on restraint of trade.

Without being too prescriptive, the model answer is as follows (we expected something along this lines):

• The contract of employment Anna entered into contains a restraint of trade clause
• Which prohibits the liberty of one or both parties to engage in one or more specified commercial activities
• For a period of time and within a specified geographic area
• The right to practice a profession and carry on any trade or business is guaranteed by Article 21 of the Namibian Constitution
• The restriction on such right is regarded in a serious light by the law.
• It is in the public interest that contracts must be executed, if freely and willingly entered into.
• The principles of public interest and right partake in business or trade are in conflict
• Restraint of trade clauses are valid and enforceable if freely and willingly entered into.
• The court will refuse to enforce the contact if circumstances show that it is against public policy.
• In this case it will be against the public policy to prohibit Tunga to practice her trade in the whole of Namibia.

Think of this! Can you imagine whether it is reasonable to restrict someone to work for another employer for 10 years and the whole of Namibia. For one think the whole of Namibia is just too wide of a restriction and 10 years is as well too long.
QUESTION 5

5.1
Some students were of the view that the contract is void. This is not the case. Intoxication is a question of fact. The fact that a person is drinking does not render them incapable of concluding valid contracts. It must be proven at the relevant time that the person was so drunk to the extent that they did not know what they were doing. The marks were awarded as follows.

- Valid
- Tome made a valid offer
- Sarita accepted the offer

5.2

- Void
- David is an insane person
- David has no contractual capacity

Alternative answer:

- Valid
- If the contract is concluded during a clear moment
- The onus is on the other party to proof

5.3
Some students were not able to state what kind of misrepresentation it is. Remember they are three different kinds of misrepresentation, namely, innocent, negligent and intentional (fraudulent). In this case, it was fraudulent. Marks were awarded as follows:

- Voidable
- Jones fraudulently misrepresented the facts
- Consensus was defective
5.4

- Contract is limping
- Valid from the minor’s side and void from the major’s side
- The minor needs consent.

5.5

Here the contract is valid

- All contracts entered into during the marriage in community of property without consent are
- Valid.
- Adjustment can only be done once the marriage is dissolved.

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. There is a difference between damage and damages.
- Use of foreign materials (such as English law books). (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.
- Use of old study Guide. PLEASE TAKE NOTE THAT the study guide was revised in 2019 and certain aspects of the law has changed ie age of majority from 21 to 18. There are other aspects which were amended and revised. You are required to use the revised 2019 study guide for assignment 2. This will avoid the risk of relying on old and outdated work.
- 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.
• Incorrect use of terminology. Some students wrote damage instead damages. Use of correct terminology cannot be overemphasized.

• 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 is 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

Benhard Tjatjara
Tel: 061 207 2377 (office)
Course Coordinator and Lecturer/Tutor Marker
Commercial Law 1A