FEEDBACK TUTORIAL LETTER

2nd SEMESTER 2019

ASSIGNMENT 1

COMMERCIAL LAW 1B
(CMLS112S)
Course Name: COMMERCIAL LAW 1B
Course Code: CML 112S
Department: SOCIAL SCIENCES
Course Duration: SEMESTER 2 MODULE
NQF Level and Credit: NQF LEVEL 5, 12 CREDITS
Moodle Enrollment Key: CML 112S

Marker-tutor Details

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

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

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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 1B were tested in your responses (units 1-8). 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

Question 1.1.

This question required of students to name the requirements for the formation of a contract of purchase and sale. Many students mentioned only the five general requirements of a valid contract. Since this was on a contract of purchase and sale, students were required to mention that in addition to the essentialia, the parties must have the intention to buy and sale, consensus on the purchase price and on the thing.
Question 1.2.

This question was meant to test students understanding on the seller’s duty to guarantee against latent defects. In other words, to apply knowledge to the given set of facts. Some students merely went on to state the remedies for a latent defect, without setting a basis for this. We awarded marks as follows:

- In a contract of sale, the seller has a duty to guarantee against latent defects (1)
- The duty is implied (it applies ex lege (by operation of law), unless expressly excluded by the parties (½)
  To be successful on a claim against latent defect, the following requirements must be met
- The defect must have existed at the time of the conclusion of the contract (1)
- Renders a thing less useful or effective (1)
- Is so serious that a reasonable person would not have bought the thing at all or would have not have agreed on the same terms and conditions had s/he known of the defect (1);
- Is not visible or perceivable by the precise person (1); and
- Was not known to the purchaser at the time of the conclusion of the contract (1)
- Not all the requirements are met (1),
- The requirement that a defect must not be visible or perceivable by the precise person was not met (1)
- P could have seen the defect if P gave the vehicle a proper inspection (½)
- P will therefore have no remedies (1)

Most students could not pick up the fact that the defect was quite visible, hence a patent defect and not a latent defect.
QUESTION 2
This question was straightforward, and answers were obvious from the study guide. These were the answers:

2.1. The sale of the debtor’s property by public auction because of a court judgment against the debtor.
   • Sale in execution

2.2. The sale of goods where goods must still be weighed, measured or counted.
   • Sale ad mensarum

2.3. The Sale of goods in which goods are sold “as is”.
   • Voetstoot sale

2.4. The Sale of goods in a contract in which a person receives the goods from the seller with the option of becoming the owner thereof or rejecting the offer of ownership by returning the goods.
   • Sale or return

2.5. The sale of goods in which the seller undertakes at his own expense to put the goods aboard a ship for conveyance to the purchaser.
   • Free on-board contract (F.O.B)

Each correct answer is worth 2 marks

(10 Marks)

QUESTION 3
Many students copied word for word from the study guide. This is not allowed. You should always endeavour to formulate answers in your own words.

Marks were awarded as follows:

• To keep the thing in safe custody before delivery.
• If the thing is damaged or destroyed due to the fault of the seller while the thing is in his or her custody.
• The seller will be liable for the loss.
• To deliver the thing
• The seller must give the purchaser, or allow the purchaser to take, free possession of the thing
• To guarantee against eviction.
- The seller must undertake to give the purchaser undisturbed possession of the thing
- The seller is to ensure that no one with a better right to the thing will take the thing away from the purchaser.
- To guarantee against latent defects.
- This guarantee does not apply to patent defects.

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 was on vicarious liability. It was not on the duty of the employer to provide a safe and healthy working environment.

Without being too prescriptive marks were awarded as follows:

- The general rule is that a person cannot be held liable for the delicts (unlawful conducts) of others (1).
- However, as regards the employer-employee relationship there is an important exception (1).
- This exception is in terms of doctrine of vicarious liability (1).
- In order to hold the employer liable for the delicts of the employee the following requirements must be met:
  - the existence of an employer - employee relationship (1); and
  - the delict must have been committed by the employee within the course and scope of his/her duties (1); and
  - the delict must have been committed by the employee towards the promotion of the interests of his/her employer (1)
- All the requirements are met (1)
- Even though Mr Plenty was not allowed to do what he did (1), Benito was injured when Mr Plenty employed by Cooperative Retail Services was in the course and scope of his duties and promoting the interests of his employer (1)
- Cooperative Retail Services Ltd is liable for the injuries sustained by Benito (1)

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. 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 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