FEEDBACK TUTORIAL LETTER

1st SEMESTER 2019

ASSIGNMENT 03

FOR
COMMERCIAL LAW 1A
CML 111S
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 1A
The Namibia University of Science and Technology has appointed

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Dear student

Adios Amigos
Adios amigos the road we have travelled has come to an end for this course. We want to thank all of you for being our students. Most of you without your dedication to attend face to face tutorial classes and inputs in class discussions we would not have achieved anything. We are aware and appreciate that studying on distance can be very challenging, hence we are always there for you to assist you where you don’t understand the materials. Those who did not attend classes should be wary of the danger of that exercise as you are left on your own without guidance and face to face contact with a tutor. The importance of attending face to face tutorial is too obvious to require elaboration here. It suffices to mention that it affects a student negatively in a way a student answers some questions and thus leading to low marks. We expect that next semester students will improve their attendance of face to face tutorials. There are there for a reason.

FEEDBACK FOR ASSIGNMENT 3
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 3 and other aspects that reinforces learning to improve performance. Assignment 03 was set to improve marks of students who did not do well enough in assignment 01 and 02.

The essence of assignment 3
Assignments are important part of this module. They assist you to learn and also to qualify for examination. Assignment 03 was moderately easy. 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 1-17). 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.
Question 1
This question was easy and straightforward. Most students got full marks here. We awarded marks as follows:

Answers
1.1. (c)
1.2. (d)
1.3. (e)
1.4. (b)
1.5. (a)

Each correct answer was worth 2 marks. (10)

Question 2
This question was also straightforward and easy as well. Several students thought it was on the requirements for a valid offer & others thought it was on requirements for a contract. This question was knowledge-based on the requirements for acceptance. We noticed that many students got full marks here. Most students explained the requirements. This was not necessary. We awarded for the following.

- Acceptance must be unconditional (1) and unequivocal (1)
- Acceptance must be in response to an offer (1)
- Acceptance must be by the person (1) to whom an offer is made (1)
- Acceptance must be communicated to the offeror in the manner prescribed (1), within the time stipulated (1) and at the place prescribed by the offeror (1)
- Acceptance must be made (1) while the offer still exists (1)

Question 3
This question was a case study on misrepresentation. You needed to specify the type of misrepresentation. This was key to answering the question satisfactorily.

We awarded marks for the following:
• The contract was induced by intentional (fraudulent) misrepresentation
• A false statement of fact that is material was made by a misrepresentor (Mbambo)
• at the time when the contract was entered into
• Mbambo knew that the statement was untrue
• The false statement was made with the aim of inducing the aggrieved party (Kativa) to enter into
  the contract.
• Although there is consensus between the parties, the consensus is defective.
• The contract is therefore voidable
• Kativa has a choice to uphold the contract or
  • to have it declared void (set aside).
• Kativa can in addition, claim delictual damages to put him in the position he would have been in
  if there were no misrepresentation.

(10)

Question 4
The question required of students to distinguish between a condition and a time clause. If you read the
study guide, the answer to this question was obvious. Some students did not get full marks here because
they did not mention that a condition and a time clause can be suspensive or resolutive.  

(6)

Question 5
5.1. This question required students to explain how supervening impossibility of performance differ from
prevention of performance. For some reason many students were not able to explain the distinction
clearly and even satisfactorily. We awarded marks as follows.

(4)

• In case of supervening impossibility of performance, performance is impossible without any
  act of the parties. With prevention of performance, performance is impossible, because of
  the intentional or negligent conduct of the debtor.
• Supervening impossibility of performance will not amount to breach of contract, but
  prevention of performance will constitute breach of contract.
5.2. Students were required to mention the requirements that a plaintiff should prove to claim damages on the basis of breach of contract. Damages is one of the remedies for breach of contract. Most students got this right.

We wish to highlight that students should be mindful of the difference between the words “damage” and “damages”. Damages is what an aggrieved party can claim as a result of breach of contract. It is financial loss suffered by the aggrieved party to a contract that can be claimed. There is nothing like claim for damage. If you omit the word s when writing damage, you will not get a mark.

**Question 6**

You were required to identify and discuss the type of breach of contract that Kertu committed in the given set of facts. You needed to read the different types of breach of contract in chapter 16 and identify the correct one. There were students who stated that Kertu committed defective performance, and some were of the opinion that it was mora debitoris and some prevention of performance. However, the given set of facts related to repudiation.

Marks were awarded as follows:

- This is a form of breach of contract is known as repudiation
- It occurs where the debtor indicates that s/he rejects or repudiates his/her contractual obligations.
- Kertu has indicated that she is not going to perform (by not paying any further instalments)
- The unilateral repudiation by the debtor does not affect the contract and does not terminate the contract.
- The creditor may accept the repudiation and claim damages

Some students did not get full marks here as they did not state the effect of repudiation on a contract. As indicated above, students needed to mention that unilateral repudiation by the debtor does not affect the contract and does not terminate the contract.

To emphasise, repudiation may be described as the notice, whether express or tacitly given by the debtor that he or she will not comply-or continue to comply-with his or her obligations. In essence, a denial of an obligation or refusal to comply with an obligation is an example of repudiation.

Total (50)
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.

- 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.

- 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.
FEEDBACK TUTORIAL LETTER
"COURSE NAME" COMMERCIAL LAW 1A
"COURSE CODE" CML 111S

SEMESTER 1/2019

EXAM POINTERS/ 2019 EXAMINATION

How to prepare for exams

Prepare for exams

- Make a study plan and commit to it.
- Read and understand content of study material.
- Look at your tests and assignments answers to detect your weaknesses and strengths.
- Make notes when studying.
- Highlight sections that you experience challenges.
- Understand exam guidelines and format.

When can you start with exam prep?

Immediately after receiving your exam time table and seeing that you have qualified for exams by:

- Studying.
- Making notes.
- Revising with submitted assignments, past test and exam papers
- Contact lectures or fellow students when experiencing challenges.

Which resources do you have and use to prepare for the examination?

- Feedback Tutorial letters
- Study Guide (Commercial law 1A)
- Assignments and previous question papers
- Fellow students and lecture notes
- Discussions on student forums on the WhatsApp group

Effective exam revision

- Avoid procrastinating
- Avoid distractions
• Stick to your study table
• Test yourself with past exam and test papers
• Exercise, eat enough and get sufficient rest
• Identify demotivators and
• Reward yourself

How to manage when demotivated
• Think about results of your goals, e.g. getting employment, buying a car or house.
• Say it loud (I am going to study and will get a distinction).
• Focus on the here and now – not on the past or future.
• Separate yourself from negative people

Unexpected events
Examples
- Financial crisis
- An illness or injury
- A crisis involving family members or loved ones
- Stress related to frequently feeling e.g. you don’t have enough time
- Stress related to relationship problems

How to manage those events

Analyse the problem to consider all possible solutions.
Seek help from: peers, family, academics, counselling (depending on the kind of help you need).

Counselling
Contact: NUST relevant department
EXAMINATION SCOPE & STRUCTURE

FIRST OPPORTUNITY EXAMINATION

Question 1 (it will cover unit 1-17 of the study guide)

Identify and name legal concepts.

This question will require students to identify legal concepts. In other words, the question is couched in a way that it contains 20 statements for which students should mention a legal concept for each statement.

For example,

Statement: the transfer of a duty from one debtor to another

Legal concept: Delegation

20 statements will be provided amounting to 40 Marks. For each correct legal concept identified and named 2 marks will be awarded.

Question 2

This question will cover units 1-17, but predominantly units 4-17. It is a multiple-choice question. The question will comprise of 10 statements and students will be required for each statement to choose a correct answer from the options that will be given for each statement. Each correct answer for each statement is worth 2 marks, that makes 20 marks a total for question 2.

Question 3

This question will be on breach of contract and remedies for breach of contract. These are discussed under units 16 and 17 of the study guide.

Question 3 will therefore consist of three short structured theory questions. Thus, 3.1 will be for 4 marks, 3.2 for 4 marks and lastly question 3.3 will be for 1 mark. The total for question 3 will be 10 Marks.

Question 4

It will deal with contractual capacity as a requirement for the formation of valid contract).

Short structured questions. This question will comprise of three sub short structured theory questions. 4.1 and 4.2 will be 4 marks each and 4.3. for 2 marks. The total for question 3 will be 10 marks.
Question 5

This question will be based on one of the factors influencing consensus. The factors influencing consensus are dealt with in unit 7 of the study guide. A problem type question (case study) will be given on a set of facts that you must read and determine which of the factors influencing consensus is at play. This can either be on misrepresentation, or duress or undue influence or mistake. The question will be for 10 Marks. You need to answer this question properly and systematically. Avoid generalisation.

It is important to keep in mind that apart from mistake, all other factors influencing consensus renders a contract voidable. This is because consensus exists, but it was obtained improperly. The remedies for a contract which is voidable are the mere upholding of a contract (keeping the contract) or the cancellation thereof (not wanting to continue with the contract) and in addition the claim for delictual damages (claim for financial loss as a result by the aggrieved party). With mistake, which is material and reasonable, a contract is rendered void because no consensus exists. It also follows then that there are no remedies available to the aggrieved party for mistake.

At this junction it is important to highlight the distinction between a valid, void or voidable contract. Some students tend to get confused or are not able to distinguish between the three. For ease of reference, we re-iterate that a valid contract is an agreement between parties that complies with all the five requirements of a valid contract. It creates rights and duties for both parties (except in the case of a unilateral contract). A void contract indicates that no contract has come into existence despite the endeavours of the parties because one or more of the requirements for a valid contract are lacking. No rights and duties are created therefore no performance has to be delivered and no performance can be claimed. A voidable contract comes into existence validly but because consent to conclude the contract (consensus) was obtained by means of either misrepresentation, duress or undue influence. The aggrieved party or injured party may choose to uphold the contract or set it aside. The distinction is mentioned here for students to understand. You need not deal with the difference in detail on this question.

If you are unsure about how to tackle this question. Look at an example given in the answer to question 3 of assignment 3 in this tutorial letter. It will give you a sense on how you can break down a problem type
question on factors influencing consensus. We herewith give you two examples of a hypothetical set of facts on some of the factors influencing consensus:

EXAMPLE 1

Martin, drives in motor rallies. He owns two Jaguar motor cars, one specially tuned and strengthened for rallies, and the other, a luxury model. The Stig, his long-time buddy says: ‘I say, Martin bro, I am a great admirer of your Jag. Would you be prepared to sell it to me? I am willing to pay you N$ 1 million for it. Of course, I am assuming it is still in good enough condition to match up to a top-of-the-range Mercedes Benz AMG.’ Martin assures The Stig that the car is ‘in excellent condition’ and accepts his offer. Throughout the discussion, Martin is thinking of the luxury model, and The Stig the rally model. The value of each model is approximately the same but The Stig would not have agreed to buy the luxury model.

Is the contract between Martin and the Stig valid, void or voidable? Discuss. (10 Marks)

ANSWER TO EXAMPLE 1

- The factor influencing consensus on this set of facts is mistake (1).
- Mistake is a misunderstanding or mistaken perception of the identity of the other contracting party or obligation(s) of one or both contracting parties which influences the mistaken party’s decision to contract (2).
- The mistake in the present case relates to performance in terms of the contract (2).
- The Stig thinks he is selling the luxury model of the vehicle, whilst Martin thinks it is a rally model (1).
- The mistake in this regard influences both parties to contract (1).
- This type of mistake is material (1).
- Accordingly, there is no consensus (1).
- The contract is void (1).
EXAMPLE 2

Dhlamini believed that he was dying and asked his family to summon the priest. When the priest arrived, Dhlamini confessed that, ten years ago he bought shares in a company at a relatively cheap price because of inside information and that he did not tell his wife. He could not live with the guilt any longer and wanted to be forgiven. He was then told by the priest that absolution could not be granted for dishonesty of this nature, but that the church would excuse him for his actions if he would be willing to sell the shares to the priest. Dhlamini then sold his shares in the concerned company to the priest because of the influence from the priest.

Two months later, Dhlamini recovered fully. He now approaches you for advice on the possibility of having the contract cancelled. He says he would not have freely agreed to enter into the contract. Advise Dhlamini fully.  

(10 Marks)

ANSWER TO EXAMPLE 2

- The contract was induced by undue influence (1)
- Because it took place as a result of the parties having a relationship of trust of a priest and a church member (1)
- Undue influence is an improper, (1)
- Unfair conduct by one contracting party (1)
- That persuades the other contracting party to conclude against the latter’s free will (1)
- In this regard, the priest unfairly influenced Dhlamini to enter into a contract(1)
- The contract is voidable (1)
- Dhlamini can choose to either set aside the contract (1) or
- Uphold the contract (1) or
- AND to claim delictual damages (1)
Question 6
This question will be based on parties to a contract and transfer of contractual rights and obligations.
There will be one structured theory question for 10 marks. This question is a knowledge-based question.

SPECIAL/ SECOND OPPORTUNITY EXAMINATION

The format of this examination somewhat differs from that of normal examination.
Question 1 (Unit 1 to 17)
True or false. (40 Marks)
This question will have 20 statements for which students will be required to indicate whether each of these are true or false. Correct answer for each statement is 2 marks, hence the total is 40 Marks.

Question 2 (it will deal with terms of a contract)
Structured theory questions. (20 Marks)

Question 3 (it will deal with factors influencing consensus)
One structured theory question (10 Marks)

Question 4 (it will deal with contractual capacity as a requirement for the formation of valid contract)
Short Structured questions (10 Marks)

Question 5 (it will deal with formalities as requirement for the formation of a valid contract)
Short Structured theory questions (10 Marks)

Question 6 (it will deal with consensus as a requirement for the formation of valid contract)
Short structured theory questions (10) Marks
REVISION CLASS

There will be a final revision class that will be organised shortly before the examination (depending on students’ request in June to accommodate students from all centres) to enable them to prepare fully for examinations in June 2019.

END OF FEEDBACK TUTORIAL LETTER