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Centre for Open and Lifelong Learning

FEEDBACK TUTORIAL LETTER

1st SEMESTER 2020

ASSIGNMENT 1

**COMMERCIAL LAW 1A
CML111S**

Dear Student,

The purpose of this letter is, inter alia, to make certain observation regarding your answers to the questions as contained in the aforesaid 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 Commercial Law, which you received upon registration.)

Remember that tutorial letters form part of your study material for examination purposes.

Firstly, some general comments:

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.

Read your answer! Carelessness costs marks!

Make sure that you have answered all the questions. In an assignment there is no excuse to omit questions.

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!

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**.

On the other hand, if the question asks you to "name" something, an explanation is not required, and you will waste valuable time in the exam writing unnecessary long paragraphs.

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.

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.

Please note that in the exam you will be penalized 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.

We realise that Commercial Law is a difficult course, especially so if you are not so proficient in the English language. Having said that, however, we can also tell you that it is not impossible to pass, or even to do exceptionally well. All that it takes is hard work and commitment.

Please feel free to contact any one of your lecturers at the following numbers:

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QUESTION 1

- 1.1 Decide when and where the contract was concluded in the following circumstances:
- 1.1.1 Jamie phoned to accept the offer on Monday, the 10th of March at 17:00 in the afternoon. Mia was at that stage on her way to Durban in South Africa, but she received the call on her cell phone while she was at a coffee shop in Grunau, Namibia. (3)
- 1.1.2 Jamie posted her letter of acceptance on the Monday 10th at a post office in Noordoewer, Namibia. (Suppose that Mia expressly authorised postal acceptance.) (3)
- 1.2 Suppose in 1.1.1 above that Jamie phoned to reject the offer, but changed her mind and phoned again at 21:00 to accept the offer. Can she still rely on an offer? (2)
- 1.3 Suppose in 1.1.1 above that Jamie stipulated that acceptance must be made before Tuesday, the 11th of March, and Jamie only accepted the offer on Wednesday, the 12th of March. Is the acceptance valid? (2)

TOTAL MARKS: 10

ANSWER

What was expected was for a student to identify the place, date and applicable theory. Most students did not indicate the applicable theory.

1.1

- information theory applicable
- 10th March
- Gurunau Namibia

1.1.1

- Expedition theory applicable
- Noordoewer
- 10th March

The students were supposed to indicate whether the offer is still valid or not and give reasons.

1.2

- No
- Once rejected the offer falls away

1.3

- No
- Offer expired

QUESTION 2

2.1 Identify and define the following legal concept:

Deon put his house on the market for the purchase price of N\$ 450 000.00. On the 3rd of March Mary came and had a look at the house and asked Deon not sell it to anybody else until the 12th of March, by which date she will tell him whether or not she will buy the house. Deon agreed.(2)

2.2 The basic principles in terms of which disputes have to be heard are known as the rules of natural justice. Name and briefly explain these two rules. (2)

2.3 Name the two elements of consensus.

(1)

TOTAL MARKS: 5

ANSWER

The question was self-explanatory – all the students had to do is identify the concept as illustrated in the set of facts.

2.1

- Option

There are two principles of natural justice – the students can use the English words.

2.2

- Listen to the other side ½
- Meaning both sides should be heard before a decision is made ½
- No one should be a judge of his own cause ½
- Meaning don't judge a cause that is directly linked to you (should have no interest) ½

2.3

- Offer ½
- Acceptance ½

QUESTION 3

Allan has been a cattle farmer in the Gobabis district in Namibia for the last 10 years. He attends many cattle auctions in order to purchase cows for his dairy farm. On one of his visits to the auction, he enquired from Ben whether or not the 10 cows Ben was selling at the auction were in fact milk cows and how many litres of milk they produce per day.

Ben told Allan that his cows were indeed milk cows and produced a minimum of 10 litres of milk each per day. Subsequent to their conversation Allan bid on the cows and purchased them for N\$ 40 000. A week after the purchase of the cows none of them produced a drop of milk.

Advise Allan as to what he could do in these circumstances.

TOTAL MARKS 10

ANSWER

Unit 7 – under factors that influence consensus. If is a ten mark question, you need to discuss in details.

- Misrepresentation
- Unlawful, untrue statement about an existing fact by one contracting party to the other
- Made with the aim of inducing the other party into the contract
- It is intentional
- The misrepresenter knew that the statement is untrue

The effect:

- Although there is consensus, it is defective
- Contract is voidable
- The innocent party can uphold
- Cancel or claim
- damages

QUESTION 4

SWD is a company that produces medical products. During the winter they advertised in the newspapers offering a reward to anyone that got sick with flu after using their products. Susan, a student at NUST saw the advertisement. She falls sick of flu after using their products and they have refused to give her the reward. Advise Susan.

TOTAL MARK: 5

ANSWER

The issue here is if an advertisement is an offer.

- an advertisement is generally not an offer
- but an invitation to buy
- it is not made with serious intentions to be legally bound
- Only an offer if there is a reward attached.

QUESTION 5

Decide in each of the following instances whether the contract is valid, void or voidable. Motivate your answers.

- 5.1 Grace orders an oval-shaped swimming pool to be delivered, but the pool company delivers a square-shaped pool. (2)
- 5.2 Rob phones Lindsay's home number and makes her a job offer. The next morning Lindsay's sister, Janine, comes to work for him. Rob discovers that the offer was made to the wrong person. (2)
- 5.3 A traditional healer tells his patient, Julius, that he should give him all his sheep in order to be cured of Tuberculosis. Julius agrees. (2)
- 5.4 Louis thinks that he becomes the owner of the property by paying for the occupancy. (2)
- 5.5 Robert, a prominent official at the local university, wants to buy Gideon's car. Gideon is reluctant to sell his car to Robert. Robert tells him that if he does not sell the car to him, he will see to it that his son (Gideon's son) will not be allowed to study at the local university. Gideon sells his car to Robert. (2)

TOTAL MARKS: 10

ANSWER

A student needs first of all to differentiate between a void, valid and voidable contract and also know the factors that can influence the validity or non-validity of a contract.

- 5.1 void, mistake of performance
- 5.2 void, mistake regarding identity
- 5.3 voidable, undue influence
- 5.4 void, mistake regarding transactionw
- 5.6 voidable, duress

QUESTION 6

Indicate whether an offer has been made in each of the following cases. Motivate your answer.

- 6.1. A statement of willingness to sell a house but then the buyer is referred to the seller's agent for further details. (2)
- 6.2. Mary writes to John asking whether John would sell his car to her for N\$ 50 000. John replies by saying that he would only accept the price of N\$ 80 000. (2)
- 6.3. Shinedima announces in a commercial law class that he is willing to sell his commercial law books at half price. The next day Angula gives him the required amount but unfortunately the books are sold out. Angula insists an offer was made and that Shinedima should give him the books. (2)
- 5.4. In a moment of happiness Loini tells Saima that she will buy her a watch. (2)
- 5.5. John and Mary are in a club. John is intoxicated and asks Mary to marry him. (2)

TOTAL MARKS: 10

ANSWER

You need to know the factors that can affect the validity of an offer.

- 6.1 No, not definite and complete
- 6.2 No, there is a counter offer
- 6.3 No, was an invitation to buy-no serious intentions to be legally bound
- 6.4 No, no serious intentions to be legally bound
- 6.5 No, no contractual capacity.

TOTAL MARKS FOR ASSIGNMENT 01: 50 MARKS