JUNE 2013 EXAMINATION

DATE: 12 JUNE 2013

TIME: 09H00 – 11H00 TOTAL: 100 MARKS

DURATION: 2 HOURS PASS MARK: 40%

(WQ-71)

BUSINESS LAW

THIS EXAMINATION PAPER CONSISTS OF 4 SECTIONS:

SECTION A: CONSISTS OF:
(i) 10 MULTIPLE-CHOICE QUESTIONS (20 MARKS)
(ii) 6 TRUE OR FALSE QUESTIONS (12 MARKS)
(iii) 5 SENTENCES FOR COMPLETION ANSWER ALL THE QUESTIONS (5 MARKS)

SECTION B: CONSISTS OF 6 CONTRACT LAW QUESTIONS ANSWER ALL THE QUESTIONS (26 MARKS)

SECTION C: CONSISTS OF 8 CORPORATE LAW QUESTIONS ANSWER ALL THE QUESTIONS (22 MARKS)

SECTION D: CONSISTS OF 4 LABOUR LAW QUESTIONS ANSWER ALL THE QUESTIONS (15 MARKS)

INSTRUCTIONS:

1. Read the following instructions carefully before answering the paper, as failure to act upon them will result in a loss of marks.
2. Write your answers in your answer book, which is provided in the exam.
3. Ensure that your name and student number are clearly indicated on your answer book.
4. Write your answers in either blue or black ink in your answer book.
5. Read each question very carefully before you answer it and number your answers exactly as the questions are numbered.
6. Begin with the question for which you think you will get the best marks.
7. Note the mark allocations for each question – give enough facts to earn the marks allocated. Don't waste time by giving more information than required.
8. You are welcome to use diagrams to illustrate your answers.
9. Please write neatly – we cannot mark illegible handwriting.
10. Any student caught cheating will have his or her examination paper and notes confiscated. The College will take disciplinary measures to protect the integrity of these examinations.
11. If there is something wrong with or missing from your exam paper or your answer book, please inform your invigilator immediately. If you do not inform your invigilator about a problem, the College will not be able to rectify it afterwards, and your marks cannot be adjusted to allow for the problem.
12. This paper may be removed from the examination hall after the examination has taken place.
(i) MULTIPLE-CHOICE QUESTIONS

Choose the correct option for each of the following. Write only the question number and your chosen answer. For instance, if you think that the correct answer for number 1 is (a), then write it as 1. (a).

1. One of the essentials of a valid contract is that:
   (a) the contract must be in writing.
   (b) the parties must have contractual capacity.
   (c) the contract must contain an expiry date.
   (d) parties must be enriched by contracts.

2. In contract law, the 'emancipation' of a minor refers to:
   (a) a fraudulent misrepresentation of majority.
   (b) the freedom from the restraints of minority.
   (c) the requirement of a guardian to act for the minor.
   (d) the validation of an agreement by a major.

3. If a material term of a contract is absent and the court cannot imply that term, the contract will be:
   (a) voidable.
   (b) limping.
   (c) void.
   (d) expedited.

4. A warranty:
   (a) is a term of contract and creates rights and duties.
   (b) can be express, but can also be implied by law.
   (c) may lead to cancellation of the contract, if the representation thereof is false.
   (d) All of the above.

5. The perpetual succession of companies means that:
   (a) companies can have lots of successes.
   (b) companies always succeed.
   (c) a company dissolves when its shareholders change or die.
   (d) the existence of a company is separate from the existence of its shareholders.
6. In the case of a business run as a sole proprietorship:

(a) the sole proprietor gets shares that can be transferred.
(b) there is no limitation of liability.
(c) the capital of the business comes from its shares.
(d) All of the above.

7. The partners in a partnership have:

(a) joint liability.
(b) pro rata liability.
(c) joint and several liability.
(d) limited liability.

8. For purposes of income tax, a rebate will imply:

(a) a saving of tax.
(b) a penalty imposed.
(c) tax evasion.
(d) floating capital.

9. In labour law, an employee is entitled to maternity leave of at least:

(a) one month.
(b) three months.
(c) four months.
(d) none.

10. Which of the following constitutes an automatically unfair dismissal in terms of section 187 of the Labour Relations Act?

(a) A dismissal that is considered procedurally unfair.
(b) A dismissal based on the ill-health of the employee.
(c) A dismissal because the employee was absent from work, and the employee could not justify the absence.
(d) A dismissal because the employee refused to carry out an unlawful command of the employer. \[10 \times 2 = 20\]

(ii) TRUE OR FALSE QUESTIONS

Choose whether the following are True or False. If you decide that the statement is false, motivate your answer.

1. A voidable contract does not give either party rights or duties.

2. When a resolutive condition is included in a contract, the contract is void until a future event happens.

3. A close corporation may have an unlimited number of members.

4. The trustees of a business trust need authorisation from the Master of the High Court to act.
5. For South African income tax, non-residents are taxed on their South African source income only.

6. In labour law, an arbitration award of the CCMA may be taken on appeal to the Labour Court. \[6 \times 2 = 12\]

(iii) **SENTENCES FOR COMPLETION**

Complete the following sentences by filling in the missing word(s). Write down the question number and missing word(s) only.

For example 1. credit

1. In contract law, the principle of _____ states that nobody can contest the truth of a representation that he or she has made to another party. (1)

2. In corporate law, the _____ personality of a company allows a company to do things in its own name. (1)

3. A close corporation is both owned and managed by its ____. (1)

4. In labour law, conduct on the part of the employer that drives the employee to leave may constitute a _____ dismissal. (1)

5. In labour law, the process of the CCMA in which parties in dispute are helped by a neutral person to reach a mutually agreed-upon settlement is called ____. (1) [5]

[37]
SECTION B: CONTRACT LAW QUESTIONS (26 MARKS)

ANSWER ALL THE QUESTIONS

QUESTION 1
Define or explain the following terms:

(a) the ratification of a contract (2)
(b) the prescription of a debt (2) [4]

QUESTION 2
State in each case whether the following contracts are void, voidable or limping:

(a) the sale of a cell phone to a 12 year old unassisted by her guardian. (1)
(b) the sale of liquor to a 16 year old. (1)
(c) a contract induced by intimidation. (1)
(d) a contract, which becomes impossible to perform due to an Act of God. (1) [4]

QUESTION 3
Jane and Kim entered into a written contract, but the contract contains an important mistake. Instead of stating that for the next 5 years Jane will make a monthly delivery of ‘100 kg of mature cheddar’ to Kim the contract should have stated ‘100 kg of unripened cheddar’.

(a) Assume the contract does not accurately reflect the true intention of the contracting parties. Jane wants to apply to court to have the contract corrected. What is the legal term for this? (1)
(b) Now assume the parties were in fact not of the same mind as to the terms of the contract. What would the legal status of the contract be? Discuss. (4) [5]

QUESTION 4
(a) What is a fraudulent misrepresentation? (2)
(b) Outline the remedies available to the injured party in the case of a fraudulent misrepresentation. (4) [6]
QUESTION 5
What must the injured party prove in order to claim damages as a result of breach of contract? [4]

QUESTION 6
How may a party to a contract transfer the following to a third party:
(a) his rights and duties? (1)
(b) his rights only? (1)
(c) his duties only? (1) [3]
SECTION C: CORPORATE LAW QUESTIONS  (22 MARKS)

ANSWER ALL THE QUESTIONS

QUESTION 1

Name two disadvantages of a sole proprietorship that arise from the inseparability of the sole proprietor’s business from his or her personal estate. [2]

QUESTION 2

(a) Does the founding document of a partnership require formal registration? (1)

(b) What is the maximum number of members that partnerships (other than professional partnerships) are generally limited to? (1) [2]

QUESTION 3

Name the registered document of a close corporation that gives information about its members and accounting officer. [1]

QUESTION 4

Name the three parties involved in a business trust. [3]

QUESTION 5

A company is characterised by the separation of management from ownership.

(a) Who owns a company? (1)

(b) Who manages a company? (1) [2]

QUESTION 6

Explain what the term ‘limited liability’ in relation to a company means. [2]

QUESTION 7

List three duties of a company secretary. [3]
QUESTION 8

(a) Define the following terms relating to income tax:

i. taxable income (3)

ii. the words 'received by' and 'accrued to' as used in Section 1 of the Income Tax Act (2)

(b) What two matters must be examined to determine whether there was a carrying on of a trade for purposes of the 'deduction formula' in the determination of taxable income. (2) [7]
SECTION D: LABOUR LAW QUESTIONS

(15 MARKS)

ANSWER ALL THE QUESTIONS

QUESTION 1
Summarise the procedures that should be followed when conducting an investigation to determine whether there are grounds for dismissal of an employee based on misconduct. [8]

QUESTION 2
How can a dismissal be established in a circumstance where a fixed term contract was not renewed? [3]

QUESTION 3
What is the function of the CCMA? [2]

QUESTION 4
What is ‘indirect discrimination’? [2]

Section A: 37 marks
Section B: 26 marks
Section C: 22 marks
Section D: 15 marks
TOTAL: 100 MARKS