NOVEMBER 2013 EXAMINATION

DATE: 13 NOVEMBER 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) 5 TRUE OR FALSE QUESTIONS (10 MARKS)
   ANSWER ALL THE QUESTIONS

SECTION B: CONSISTS OF 7 CONTRACT LAW QUESTIONS
   ANSWER ALL THE QUESTIONS (30 MARKS)

SECTION C: CONSISTS OF 5 CORPORATE LAW QUESTIONS
   ANSWER ALL THE QUESTIONS (25 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. An agreement to stifle criminal prosecution is:
   (a) voidable.
   (b) void.
   (c) possible of performance.
   (d) ratifiable.

2. In terms of the Matrimonial Property Act 88 of 1984:
   (a) persons may not get married in community of property.
   (b) when persons marry in community of property, the husband has marital power.
   (c) when persons get married in community, the wife has marital power.
   (d) when persons marry in community of property, the wife has the power to bind herself without the husband's consent.

3. The acceptance of an offer:
   (a) may happen after the death of the offeree.
   (b) may happen after the death of the offeror.
   (c) must happen before the death of either party.
   (d) must be in writing.

4. To say that a misrepresentation must be *material* means that:
   (a) it must involve fabric.
   (b) it must involve possessions.
   (c) it must be vital to the existence of the contract.
   (d) None of the above.

5. In the case of a private company:
   (a) the last word in the name of the company must be 'Incorporated' or 'Inc.'
   (b) there must be at least seven directors.
   (c) membership is limited to ten members.
   (d) no offer of shares may be made to the public at large.
6. When the court disregards that a company is a separate entity because directors have improperly used the company as a front, we say that the court has:

(a) pierced the corporate veil.
(b) married the shareholders and members.
(c) smoked the mirrored glass.
(d) carried the torch.

7. The turquand rule entails that:

(a) a company must disclose prescribed information to the public.
(b) everyone dealing with a company is deemed to be familiar with its public documents.
(c) an outsider contracting with a company on good faith is entitled to assume that internal requirements have been complied with.
(d) no act of a company shall be void by reason of the fact that the company acted without capacity.

8. The income tax year of assessment for persons other than a company ends on:

(a) the last day of January.
(b) the last day of February.
(c) the last day of March.
(d) the last day of April.

9. For purposes of income tax, fixed capital is:

(a) not taxed as income.
(b) always taxed as income.
(c) floating capital.
(d) part of gross income.

10. In labour law, suspension as a 'holding operation' to disciplinary action means that:

(a) the employee is suspended with pay.
(b) the employee is suspended without pay.
(c) the employee is dismissed.
(d) the employee is demoted.  

[10 × 2 = 20]
(ii) **TRUE OR FALSE QUESTIONS**

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

1. Ignorance of the law is not a mistake that will render a contract void.
2. Cession involves replacing the original party to a contract with a third party in all respects.
3. The founding document of a trust is a trust deed.
4. When income has 'accrued' to a person, this means that the person has actually received that amount.
5. In labour law, insubordination is a dismissible offence.  

\[5 \times 2 = 10\]
SECTION B: CONTRACT LAW QUESTIONS

(30 MARKS)

ANSWER ALL THE QUESTIONS

QUESTION 1

(a) Define the term 'limping contract'. (3)

(b) Define the term 'ratification'. (2)

(c) Define the term 'specific performance'. (2) [7]

QUESTION 2

What effect does insolvency have on contractual capacity? [3]

QUESTION 3

(a) Adam says to Zack, 'I bet you a million rand that my girlfriend will be late'. Zack says, 'You're on'. Why is this not a valid contract? (2)

(b) Abba says to Zahara, 'I will sell my bike to you for R1 000.' Zahara says, 'I'll let you know.' A few days later Zahara e-mails Abba to say she wants the bike, but she is only prepared to pay R750.

Is Zahara's response an acceptance of the offer? Give a reason for your answer. (2) [4]

QUESTION 4

(a) What is an agreement in restraint of trade? (2)

(b) Under what circumstances are agreements in restraint of trade unenforceable in our law? (2) [4]

QUESTION 5

Identify the kind of condition of contract in each of the following examples:

(a) 'I will sell you my car but will only transfer ownership to you when you have paid up fully.' (2)

(b) 'I will lease you my flat for a year, but if you fail to pay the monthly rental by the 5th of any month, the lease will be cancelled.' (2)

(c) 'I will buy your house if the bank grants me a mortgage loan.' (2)

(d) 'I will buy your cupboard if you clean it first.' (2) [8]
QUESTION 6
List two examples of contracts that have to be in writing to be valid. [2]

QUESTION 7
Identify two duties of an agent in a contract of agency. [2] [30]
SECTION C: CORPORATE LAW QUESTIONS  

(25 MARKS)

ANSWER ALL THE QUESTIONS

QUESTION 1

Describe three consequences of the fact that a company is a separate entity that exists apart from its members.  

[6]

QUESTION 2

List three advantages of trading as a partnership.  

[3]

QUESTION 3

(a) Name three persons or entities who are disqualified from being directors of a company.  

(3)

(b) List three fiduciary duties of a director towards the company.  

(3)

(c) What does the term 'executive director' of a company refer to?  

(2)  

[8]

QUESTION 4

What is the minimum and maximum number of members a close corporation may have?  

[2]

QUESTION 5

(a) List three items that are not allowable deductions from income tax in terms of the general 'deduction formula'.  

(3)

(b) List three items that are allowable deductions from income tax in terms of the general 'deduction formula'.  

(3)  

[6]  

[25]
SECTION D: LABOUR LAW QUESTIONS (15 MARKS)

ANSWER ALL QUESTIONS

QUESTION 1

(a) Define the term 'fixed term contract'. (2)

(b) Under what circumstances is it possible for a court to imply continuous employment in terms of a fixed term contract? (2)

(c) Describe 'selective re-employment'. (3)

(d) Is selective re-employment an unfair labour practice? (1) [8]

QUESTION 2

What does *audi alteram partem* mean? [2]

QUESTION 3

(a) Under what general circumstances is it appropriate to dismiss an employee for the first act of misconduct? (2)

(b) Give an example of the kind of conduct which would allow dismissal for the first act of misconduct. (1) [3]

QUESTION 4

When a court decides that an employee has been unfairly dismissed in a procedural sense, how is compensation for that employee calculated? [2]

[15]

Section A: 30 marks
Section B: 30 marks
Section C: 25 marks
Section D: 15 marks
TOTAL: 100 MARKS