NOVEMBER 2012 EXAMINATION

DATE: 14 NOVEMBER 2012

TIME: 09H00 – 11H00
TOTAL: 100 MARKS

DURATION: 2 HOURS
PASS MARK: 40%

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 6 QUESTIONS
ANSWER ALL THE QUESTIONS (28 MARKS)

SECTION C: CONSISTS OF 9 QUESTIONS
ANSWER ALL THE QUESTIONS (26 MARKS)

SECTION D: CONSISTS OF 5 QUESTIONS
ANSWER ALL THE QUESTIONS (16 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.

NOTE: FOR ADDITIONAL INSTRUCTIONS PLEASE TURN TO PAGE 2.

Examiner: SAILT
ADDITIONAL INSTRUCTIONS
In this examination, the Consumer Protection Act will be abbreviated as the CPA.
(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. Faizel wants to enter into a contract with John. Faizel is 19 years old.
   (a) Faizel is a minor and cannot enter into a contract.
   (b) Faizel will need his guardian's consent to contract, because he is older than 7, but under 21.
   (c) Faizel is not a minor and may enter into contract with John.
   (d) Both (a) and (b) above.

2. In the case of a contract entered into by misrepresentation, when a party claims 'restitution', it means that:
   (a) the contract must be corrected.
   (b) the contract is validated by the injured party.
   (c) the parties must be returned to the same position they were in before contracting.
   (d) the parties must take a break before continuing with their obligations.

3. Abu sells Jill a blue-fanged lizard. When Jill hears that this amounts to the illegal sale of an exotic animal she changes her mind about the purchase and asks for your advice. You will tell her that:
   (a) the contract is binding because she and Abu had an agreement.
   (b) no contract exists as it is void due to illegality.
   (c) she may cancel the contract or uphold it.
   (d) the contract is voidable due to her mistake.

4. When co-contractors are jointly liable it means that:
   (a) a creditor may recover from any one of the co-contractors the entire amount of the debt.
   (b) the debtor and the creditor have become the same person.
   (c) a creditor may recover from any one of the co-contractors only his or her proportional share of the debt.
   (d) None of the above.

5. In terms of the CPA, if goods do not comply with the implied warranty of quality, the consumer may return the goods to the supplier within ______ after delivery.
   (a) 6 weeks
   (b) 3 months
   (c) 6 months
   (d) 12 months
6. In the case of a sole proprietorship:
   (a) a personal liability company is formed.
   (b) there are shares that can be transferred to a maximum of 50 members.
   (c) the sole proprietor has limited liability.
   (d) there is no perpetual succession.

7. A partnership is formed by:
   (a) an agreement.
   (b) registering a partnership agreement with the Master of the High Court.
   (c) registering a memorandum of incorporation.
   (d) Both (a) and (b) above.

8. A close corporation may have a maximum of _____ members.
   (a) 10
   (b) 20
   (c) 50
   (d) None of the above, membership is unlimited.

9. Which of the following cannot be deducted in determining a person's taxable income?
   (a) losses incurred through fire or theft
   (b) private maintenance expenses
   (c) the costs of advertising for purposes of trade
   (d) the costs of taking out a copyright for purposes of trade

10. Babalwa is dismissed when her employer hears that she is pregnant, because he thinks that this will affect her work-performance.
    
    (a) This is an automatically unfair dismissal.
    (b) This is a fair dismissal based on Babalwa's incapacity.
    (c) This is a fair dismissal, as long as Babalwa's employer conducted a hearing prior to dismissal.
    (d) This will be considered an unfair dismissal only if Babalwa can prove unfairness by showing that she can still do her work. [10 × 2 = 20]
(ii) TRUE OR FALSE QUESTIONS

Indicate whether the following statements are true or false.

Should you decide that a statement is FALSE, you must explain why.

1. A material term of a contract is vital to the existence of the contract.
2. Before the trustees of a business trust are permitted to act, they need authorisation from the Registrar of companies.
3. A business trust has a director and shareholders.
4. For purposes of income tax, a person's 'gross income' excludes any amounts that are accrued to, but not yet received by the taxpayer.
5. In labour law, the most important requirement for a fair procedure in dismissal for misconduct is that the employee has a right to be heard.  

[5 × 2 = 10]

[30]
SECTION B

ANSWER ALL THE QUESTIONS

(28 MARKS)

QUESTION 1

(a) List four categories of persons, other than minors, who have limited contractual capacity. (4)

(b) A contract entered into by an unassisted minor can subsequently be validated by the guardian. What is this process called? (1) [5]

QUESTION 2

Explain the principle of estoppel. [3]

QUESTION 3

(a) Give the four requirements that the injured party must prove for a contract induced by misrepresentation to be rendered voidable. (4)

(b) What remedies will the injured party have, in the case of a fraudulent misrepresentation? List three remedies. (3) [7]

QUESTION 4

Must all contracts be in writing to be valid? Give a reason for your answer. [2]

QUESTION 5

(a) In what circumstance can a party cancel a contract on breach of contract? (2)

(b) What must the injured party prove in order to claim damages as a result of breach of contract? (4) [6]

QUESTION 6

(a) What does the CPA state regarding the type of language to be used in consumer agreements? (2)

(b) In terms of the CPA, list three items of information that must be contained in a sales record when you buy goods. (3) [5] [28]
SECTION C (26 MARKS)

ANSWER ALL THE QUESTIONS

QUESTION 1
(a) Explain against whom a creditor can proceed if a partnership is unable to meet its financial obligations for a business debt. (2)
(b) Specify what the liability of partners for the debts of the partnership is called. (1) [3]

QUESTION 2
List the three characteristics of a company that a close corporation also has. [3]

QUESTION 3
Briefly explain in what circumstance the court will 'pierce through the corporate veil' and what the effect is thereof. [3]

QUESTION 4
Name the four types of profit companies. [4]

QUESTION 5
Which two documents must be submitted to the Commission in order to register a company? [2]

QUESTION 6
(a) What is the nature of the liability of directors for the debts of a personal liability company? (2)
(b) What word or abbreviation must follow the name of a personal liability company? (1) [3]

QUESTION 7
Give the least amount of directors the following type of company must have:
(a) a private company (1)
(b) a personal liability company (1)
(c) a public company (1) [3]
QUESTION 8
For the purposes of income tax, from when to when is the 12-month period for the year of assessment for persons other than a company? [2]

QUESTION 9
Explain the difference between employee's tax and provisional tax. [3] [26]
SECTION D (16 MARKS)

ANSWER ALL THE QUESTIONS

QUESTION 1
Define the following terms in labour law:

(a) constructive dismissal (2)
(b) mediation (2)
(c) insubordination (2)

QUESTION 2

(a) Within what period of time must dismissal disputes be referred to the CCMA? (1)
(b) If a dispute is resolved by arbitration, can it be taken on appeal? (1)

QUESTION 3
What can a court order an employer to do if a dismissal was found to be unfair? List three remedies. (3)

QUESTION 4
Kyle is a landscaper's assistant. On Monday after lunch, he returns to work and it is clear that he has been drinking. The supervisor takes him to the manager. The manager calls Kyle to his office for a hearing. He asks him if he is drunk. Kyle doesn't deny this. He says he is trying to stop, but has a drinking problem. His manager replies, 'You're fired for drinking on duty.'

Indicate whether or not there has been an unfair labour practice. Give a reason for your answer. (3)

PLEASE TURN OVER
QUESTION 5

Outline the prescribed minimum time-periods that apply in respect of:

(a) annual leave per 12 month cycle. (1)
(b) family responsibility leave per 12 month cycle. (1) [2]

Section A: 30 marks
Section B: 28 marks
Section C: 26 marks
Section D: 16 marks
TOTAL: 100 MARKS