GENERAL PRINCIPLES OF COMMERCIAL LAW

Prescribed textbook:

Havenga, et al. General Principles of Commercial Law, Juta (always use the latest edition)

This document provides an overview of the syllabus and what you will be expected to know for the examinations. The bulleted points under each section are the essential knowledge and will be asked in a similar way in the examination paper. However, be aware that aspects could be combined, or that you may need to analyse a short scenario and apply the principles. A good learning tool is the past examination papers, the memoranda and the examiner’s reports, as these will give you an idea of how the questions are structured in the examination as well as the amount of detail you need to give in order to successfully answer the paper.

RATIONALE: To introduce learners to legal principles in present South African contract and mercantile (commercial) law.

OUTCOME: The learner is able to demonstrate an understanding of the nature, role, history and sources of South African law and the implementation of law in South Africa. The learner is able to demonstrate an understanding of the principles applicable to contracts in general, as well as a variety of contracts such as sale, lease and insurance. Furthermore the learner is able to demonstrate an understanding of specific aspects of mercantile law (commercial law) such as law of partnership.

INTRODUCTION TO THE SOUTH-AFRICAN LEGAL SYSTEM

OUTCOME: The learner is able to demonstrate a knowledge of the nature, sources and classification of the law which affect business relationships together with the means by which law is enforced through the judicial system.

PRESCRIBED MATERIAL: Havenga, et al. General Principles of Commercial Law, Chapters 1 and 2

SPECIFIC LEARNING OUTCOMES

After completion, you should be able to

- outline the history of South African law
- name and discuss the sources of South African law
- provide a general overview of the South African court system and officers of the courts
- explain the doctrine of stare decisis
- differentiate between the ratio decidendi and obiter dictum of a judgment
- define "law"
- differentiate between public law and private law
- define "commercial law"
- differentiate between law and right
• differentiate between a natural person and a juristic person
• name and discuss the four kinds of subjective rights
• understand the purpose, scope and development of the law of property.
• discuss the nature of ownership
• distinguish between ownership and possession
• name and briefly discuss the ways in which ownership is acquired
• explain how ownership and possession are protected
• explain how a personal right comes about
• define the term “delict”
• explain the basic elements of delict, namely: conduct, unlawfulness (wrongfulness), fault, causation and damage/impairment of personality
• name and briefly explain the remedies available to a person suffering damages or non-patrimonial prejudice

GENERAL PRINCIPLES OF CONTRACT

OUTCOME: The learner is able to demonstrate an understanding of the legal rules that relate to the validity of contracts, the rights and duties of the respective parties to the contract, the consequences of breach of such duties and the termination of contracts.

PRESCRIBED MATERIAL: Havenga et al General Principles of Commercial Law, Chapters 3 – 12

SPECIFIC LEARNING OUTCOMES:

After completion, you should be able to

• define a contract
• name the requirements for the formation of a valid contract
• define the concept "consensus"
• define the concepts "offer" and "acceptance"
• name and briefly explain the requirements for offer and acceptance
• name the ways in which an offer may be terminated
• define the following concepts:
  - option
  - invitation to do business
• discuss the conclusion of the following contracts:
  - postal contracts
  - telephonic contracts
  - electronic agreements
• define the concepts "mistake" and "misrepresentation" and explain what the effect thereof is on consensus and ultimately on the contract
• name the requirements to be met before a mistake renders a contract void
• name the requirements to be met before misrepresentation renders a contract voidable
• define capacity to act
• discuss the general rule regarding the contractual capacity of the following persons:
  - minors
  - married women
  - insane persons
  - intoxicated persons
  - prodigals and
  - insolvent persons
• briefly explain how tacit emancipation affects the general rule that a minor is not bound by his unassisted contracts
• explain what the effect is of the contract which a minor concludes without the necessary assistance
• define the concept legal possibility
• be able to describe the concept "unlawfulness"
• state the effect which unlawfulness has on a contract
• give examples of agreements that are prohibited by our common law
• explain the concept “restraint of trade” and briefly discuss the permissibility thereof
• give examples of agreements that are prohibited by statute
• give examples of contracts contrary to public policy
• define the concept "physical possibility"
• state the general rule as to formalities required for the formation of contracts
• give examples of contracts for which certain formalities are prescribed
• describe the following terms of the contract and give examples of each:
  - express terms
  - implied terms
  - tacit terms
  - essentialia
  - naturalia
  - incidentalia
  - suspensive conditions
  - resolutive conditions
  - warranty
• explain the meaning and effect of the parol evidence rule
• name and define the five forms of breach of contract and supply an example of each form
• briefly discuss the requirements for each form of breach of contract
• briefly discuss the various remedies available in cases of breach of contract
• name and briefly explain the various ways by which a contract may be terminated

SPECIFIC CONTRACTS: CONTRACT OF SALE

OUTCOME: The learner will be able to demonstrate an understanding of the essential elements of a contract of sale; of the respective rights and duties of the buyer and seller and the remedies in the event of breach of such duties.

PRESCRIBED MATERIAL: Havenga et al. General Principles of Commercial Law Chapter 13
SPECIFIC LEARNING OUTCOMES:

After completion, you should be able to

- define a contract of sale
- name and briefly discuss the essential elements of a contract of sale
- name and discuss the common law rights and duties of the parties
- explain what is meant by a latent defect and what the seller's duties in this respect are
- explain what remedies are available to the buyer if there is a breach of the implied warranty against latent defects by the seller
- name and discuss the requirements for the transfer of ownership
- name and briefly explain the various forms of delivery of the thing bought
- explain the passing of risk rule and indicate when does risk pass

SPECIFIC CONTRACTS: CONTRACT OF LEASE

OUTCOME: The learner is able to demonstrate an understanding of the essential elements of a contract of lease; of the respective rights and duties of the lessor and lessee and the remedies in the event of breach of such duties.

PRESCRIBED MATERIAL: Havenga et al. General Principles of Commercial Law Chapter 14

SPECIFIC LEARNING OUTCOMES:

After completion, you should be able to

- define a contract of lease
- name and briefly discuss the essential elements of a contract of lease
- name and briefly discuss the common law duties of the lessor
- name and briefly discuss the common law duties of the lessee
- briefly discuss the remedies available to the lessee if the lessor is in breach of his duties
- briefly discuss the remedies available to the lessor if the lessee is in breach of his duties
- explain the meaning and working of the following:
  - the landlord's tacit hypotec for unpaid rent
  - the doctrine of huur gaat voor koop
- name and briefly describe the ways in which a lease is terminated

SPECIFIC CONTRACTS: CONTRACT OF INSURANCE

OUTCOME: The learner will demonstrate an understanding of the types of insurance contracts; the essential elements of a contract of insurance and the duty of the insured to disclose.
SPECIFIC LEARNING OUTCOMES:

After completion, you should be able to

- briefly explain the concept "insurance"
- differentiate between indemnity and non-indemnity insurance
- name and briefly discuss the essential elements of a contract of insurance
- discuss the duty of the insured to disclose material facts

THE CREDIT AGREEMENTS ACT

The learner is able to demonstrate an understanding of the nature, purpose and implementation of the National Credit Act (NCA).

OUTCOME: The learner is able to demonstrate an understanding of the nature, essential elements, characteristics and termination of the various forms of business enterprise.
SPECIFIC LEARNING OUTCOMES

After completion, you should be able to:

- name and briefly explain the different forms of business enterprise that exist in South Africa
- define and distinguish a partnership as a business venture
- discuss the nature of a partnership
- explain how a partnership is formed
- name and briefly describe the essential elements of a partnership
- name and briefly discuss the rights and duties of the partners
- name and explain the ways in which a partnership is terminated
- define a company and explain its characteristics
- explain what is meant by legal personality
- explain the difference between business entities with legal personality and those without
- indicate the sources of company law
- explain how a company is formed
- explain the types of companies and the characteristics and uses of each type
describe the organs and officers of a company
- discuss representation of a company
- explain the meaning of winding-up and deregistration
- identify and distinguish a close corporation from a company by way of its characteristics
- explain the relevance of the close corporation under the Companies Act of 2008
- discuss the formation and membership of a close corporation
- discuss the management of a close corporation
- discuss the capacity of members to represent the close corporation

ASPECTS OF COMMERCIAL LAW: RISK AND ETHICS

This section comprises 20% of the exam paper.

Prescribed material: The notes are to be downloaded from your student login on the CSSA website.

After completion, you should be able to:

- Explain risk management.
- Explain the role of risk management in good governance with examples.
- Identify different types of risks
- Categorise and prioritise risk.
- Explain the consequences for not conforming to legal and specified requirements in preparing for risk assessment
- Identify significant hazards within the workplace.
• Analyse potential risks and the impact thereof on an organisation.
• Identify and explain the steps in a risk management plan.
• Explain the need for ethical practices at work.
• Identifying and understanding the ethical issues in an organisation.
• Explain the purpose of a code of conduct.
• Identify ethical issues in the workplace.
• Explain how unethical practices in the workplace can be stopped or prevented.

ASSESSMENT:

A 3-hour written examination of 2 compulsory sections, as follows:

Section A General principles of law 80%
Section B Ethics and Risk Management 20%