



<b><u>FACULTY</u></b>	: Law
<b><u>DEPARTMENT</u></b>	: Procedural Law
<b><u>CAMPUS</u></b>	: APK
<b><u>MODULE</u></b>	: INL 100 INTRODUCTION TO LAW
<b><u>SEMESTER</u></b>	: Second
<b><u>EXAM</u></b>	: November 2020 ONLINE

<b><u>DATE</u></b>	: 29 October 2020	<b><u>SESSION</u></b>	: 08:30-11:30
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<b><u>ASSESSOR(S)</u></b>	: MS M PILLAY/ MRG BOUWERS
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<b><u>MODERATOR</u></b>	: PROF DS DE VILLIERS
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<b><u>DURATION</u></b>	: 3 HOURS	<b><u>MARKS</u></b>	: 80
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NUMBER OF PAGES:

**INSTRUCTIONS:**

1. This test has 3 PARTS: PART A (QUESTION 1-9), PART B (QUESTIONS 10, 11 and 12) AND PART C (QUESTION 13, 14, 15 and 16).
2. PART A consists of multiple-choice questions.
3. PART B and PART C are essay type questions.
4. In respect of the multiple-choice questions, please remember to read all the options in your question, before deciding on the correct applicable options and

their respective alphabets, before indicating your choice from the answers provided.

5. In respect of your essay type questions, please read the entire set of facts, before attempting to answer. Also pay special attention to the different instructions provided in questions 10, 11, 12, 13, 14, 15 and 16 for those specific questions.
  6. This paper has been drafted to be completed within 2 hours. All the questions add up to a mark of 80. HOWEVER, YOU HAVE BEEN GIVEN 3 HOURS WITHIN WHICH TO COMPLETE THE EXAM PAPER BECAUSE IT IS BEING ANSWERED ONLINE. ACCESS TO THE PAPER WILL THEREFORE END AT 11H30, IRRESPECTIVE OF WHAT THE EXAM TIMER INDICATES.
  7. You have been granted 3 attempts to complete the exam, in the event that you have connectivity issues.
  8. VERY IMPORTANT: WHEN ANSWERING THIS EXAM PLEASE BEHAVE WITH INTEGRITY AND HONESTY. PLEASE ANSWER THE EXAM QUESTIONS WITHOUT OBTAINING ADVICE OR ASSISTANCE OF ANY KIND FROM ANOTHER PERSON, SINCE THIS WILL CONSTITUTE DISHONEST BEHAVIOUR.
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**PART A**

**QUESTION 1-9 (Multiple Choice)**

**[18]**

1. Indicate which of the following statements apply in respect of *litis contestatio*:

- A. The plaintiff is *dominus litis*.
- B. The defendant must defend the matter and apply for the court date so that he can defend himself in court and avoid paying damages.
- C. It means that the matter has been fully described in the pleadings sent by the parties.
- D. The matter will be enrolled as a rule *nisi* because other parties might object to the admission.

**Options**

- a. A and C only
- b. C and D only
- c. B, C and D only
- d. A and D only
- e. B and C only
- f. All of the above options are correct (A-D) (2)

2. Which of the following statements are true in respect of the law of the Republic of South Africa:

- A. In South Africa, the judge in a civil matter actively participates in the court process.
- B. Where a party to civil court proceedings is unhappy with the judgment, they may approach a higher court for a review of the matter should the party be of the opinion that there was an irregularity in respect of the process followed.
- C. The purpose of a replying affidavit is to allow the applicant to comment on the respondents answering affidavit.
- D. Substantive law is that part of the law which determine the content and meaning of the different legal rules.

**Options**

- a. B, C and D only
- b. A, B and D only
- c. B and D only
- d. A, B and C only
- e. All of the above options are correct (A-D)
- f. None of the above options are correct (A-D) (2)

3. Harry would like to purchase a ring for his girlfriend Sally, from Tasha, the jeweller. He goes into the store and chooses a beautiful 2-carat diamond yellow gold ring. He tells Tasha that he intends on proposing to his girlfriend that evening. He takes the ring and

agrees to eft the purchase price later that evening. He's so excited that he forgets to pay Tasha. He goes to meet Sally and proposes. Sally declines to marry Harry. She tells him that he simply is not handsome enough and that she has fallen in love with Jason, her martial arts instructor. Harry is very upset. He visits Tasha at her store early the next morning. He throws the ring on the counter and says that he doesn't need it anymore and that he will not pay Tasha for the ugly ring. He storms out of the store. Which of the statements below will apply to this set of facts:

- A. Harry may cancel the contract because he is heartbroken and has no need for a ladies ring.
- B. Harry's actions constitute repudiation.
- C. Sally can insist that Harry honour the agreement to pay for the ring.
- D. Harry does not need to pay for the ring, due to error in motive.

**Options**

- a. B and C only
- b. A and D only
- c. B, C and D only
- d. A and B only
- e. All of the above options are correct (A-D) (2)
- f. None of the above options are correct (A-D)

4. Which of the following statements are true in respect of legislation as a source of law in South Africa:

- A. Parliament is able to pass legislation when the law no longer corresponds to the needs of modern society.
- B. The government may first draft a green paper which presents various policy options on a particular topic, which is published for public comment.
- C. A bill may be introduced in the National Assembly for a first reading.
- D. A bill becomes an act once the Presents assents to it.

**Options**

- a. All of the above options are correct (A-D)
- b. B and D only
- c. A and C only
- d. B, C and D only
- e. A, B and D only
- f. None of the above options (A-D) (2)

5. A prosecution will only be instituted if a *prima facie* case is made out against the accused. In this regard, which test must be met?

- A. If the prosecutor believes that the allegations are proved on a balance of probabilities.

- B. Whether a reasonable person will, at first glance, form the opinion that there is sufficient evidence to prove the case.
- C. The guilt of the accused must be the only reasonable inference to be drawn from the facts.
- D. The prosecutor believes that the guilt of the accused is beyond a reasonable doubt.

**Options**

- a. B only
- b. B, C and D only
- c. C and D only
- d. A and B only
- e. All of the above options are correct (A-D)
- f. None of the above options are correct (A-D) (2)

6. When deciding whether the accused must remain in custody until the date of his trial, or whether he should be released, the court takes the following into account:

- A. The age of the accused.
- B. Will the accused attend the trial?
- C. Will the accused possibly commit an offence before the trial and will the accused interfere with witnesses?
- D. The severity of the offence.

**Options**

- a. B, C and D only
- b. A, B and C only
- c. B and C only
- d. A, C and D only
- e. All of the above options are correct (A-D)
- f. None of the above options are correct (A-D) (2)

7. In some instances, a court will visit a particular place or area where an accident or a crime took place. The evidence that this produces, constitutes which form of evidence?

- A. Electronic evidence.
- B. Oral evidence and real evidence.
- C. Documentary evidence.
- D. Real evidence.
- E. Direct evidence and real evidence.

**Options**

- a. D only
- b. B only
- c. B and C only
- d. A and D only
- e. E only
- f. None of the above options are correct (A-E) (2)

8. The principles of natural justice are based on two rules: *audi alteram partem* and *nemo iudex in sua causa*. *Audi alteram partem* implies the following:

- A. The tribunal must be free from any discriminatory motives.
- B. Someone suspected of misconduct must be informed of the charge against him.
- C. The tribunal must listen to both sides.
- D. A person must be afforded a reasonable opportunity to answer to the charges.

**Options**

- a. B, C and D only
- b. A, B and C only
- c. A and B only
- d. B and D only
- e. All of the above options are correct (A-D)
- f. None of the above options are correct (A-D) (2)

9. Sam is ordered to pay a fine of R400 000. Which court has the ability to make such an order?

- A. The District Division of the Magistrate's Court.
- B. The High Court.
- C. The Regional Division of the Magistrate's Court.
- D. The Small Claims Court.

**Options**

- a. B and C only
- b. A, B and C only
- c. C and D only
- d. B only
- e. All of the above options are correct (A-D)
- f. None of the above options are correct (A-D) (2)

**PART B**

**QUESTION 10**

**[14]**

Candy is a wedding and event planner. Her business has suffered greatly due to Covid-19. People just don't want to have big functions anymore, due to the Coronavirus. She has had to sell her warehouse; all the stock that she owns ( tablecloths, decorations, fairy-lights, crockery and cutlery etc, all valued at R500 000), as well as her 2 bakkies. She also decides to rent a smaller house.

Two months after moving into her smaller home, she starts to feel very depressed. The lockdown restrictions have been lifted, and so she decides to buy some alcohol to drown her sorrows. Her drinking habit spirals out of control, and she is soon addicted to alcohol. She is very violent and often loses her temper, and this behaviour is so much worse when she is drunk.

Her neighbour, Hetta, is a very gentle old lady. Hetta owns 3 dogs. Her dogs bark very often, but Hetta doesn't hear them because her hearing is bad due to her old age. On 25 September 2020, Hetta's dogs bark incessantly for 2 hours. Candy had been drinking the previous evening and has a horrendous hangover. As a result, Candy loses her temper. She feels that she has "had enough". She takes her baseball bat, walks into Hetta's garden and starts hitting Hetta's vintage car. She smashes all of the window's and dents the vehicle all over. She then starts smashing Hetta's door with the bat. Hetta starts screaming and crying. Candy then shouts obscenities at her and leaves.

Hetta is understandably upset and calls her nephew, Fanie, who is also an attorney.

**Answer the following questions: (Pay attention to your language, leave a line between your answers, and number your answers correctly)**

- 10.1 Identify 3 legal objects, together with their corresponding subjective rights, and provide a reason for your answer. (6)
- 10.2 The total damage to the car and the door is R 250 000. Hetta feels that she should be compensated for this since she has no insurance. Candy feels that Hetta is to blame since she allowed her dogs to bark and that her anger and behaviour is justified. She tells Hetta that any "reasonable person" would have reacted the way that she did. Will Hetta be able to institute action against Candy for the result of her violent behaviour. Fully discuss the reason why and how Hetta may be able to institute action, the way in which same may be instituted, as well as the documents that Hetta will have to send to Candy to inform her of this. (Please note that your answer will be marked as a whole. If you merely type in the information that you think is relevant, no marks will be given. Your answer needs to read as advice, follow a logical structure, and be concise. Correct spelling and punctuation will also be taken into account.) (8)

**QUESTION 11**

**[12]**

Read the following provisions and identify whether they are suspensive or resolute in nature, as well as whether they are conditions or time-clauses. You need to provide reasons for each of your identifications.

- 11.1 Henry divorces his wife and moves in with his much younger girlfriend, Stacy. His son, Caleb, doesn't like Stacy. He feels that his father is easily manipulated by her. He asks his father to sign a contract with Stacy, stating that she may only reside in the house until such time that Caleb graduates from university. (4)
- 11.2 Henry agrees to pay Stacy R 300 000 within one month after the death of his ex-wife. (4)
- 11.3 Annie and John would like to buy a larger house. They enter into an agreement with the seller to buy his house. They agree that this sale is subject to John convincing his Dad to lend him R 2million. (4)

**QUESTION 12**

**[6]**

Draft a comprehensive question/set of facts to which the following is the answer:

- 1. This is Breach of contract
- 2. By way of prevention of performance
- 3. The contract may be cancelled
- 4. Since specific performance is no longer possible
- 5. And damages may be claimed by the creditor

**(Please note that your answer will be marked as a whole. If you merely type in the information that you think is relevant, no marks will be given. Your answer needs to read as an actual, logical question. It must make sense and be concise. Correct spelling and punctuation will also be taken into account.)**

**PART C**

**QUESTION 13**

**[7]**

**Please number your answers correctly and answer in sequence. This section will be marked as a whole. Only click on submit once you have completed ALL the questions (13.1 – 13.3).**

Fikile, a mother of two, and pregnant with her third child, intends to safeguard some of her assets for the future enjoyment of her children. However, she does not have the time or desirability to manage those assets. Knowing that you are familiar with different forms of business, she approaches you for guidance. In this regard, answer the following:

- 13.1 What type of business would you advise Fikile to form? (1)
- 13.2 What will Fikile be known as in this particular form of business? (1)



- 13.3 Fikile asks for your advice on the essential elements in forming this business. (5)

**QUESTION 14** [5]

John, Jonny and Jonah run a successful logistics business, Point-to-Point (CC). However, in recent months, John doubts whether Jonah is still committed to the business. Jonah has been late to client meetings, absent from work and generally disinterested in the activities of the business. John believes that Jonah should cease to be a member of the business. What are the grounds for an order from the court to this effect? (Refer to the applicable legislative provision).

**QUESTION 15** [6]

In terms of the South African Constitution, both the National Assembly and the National Council of Provinces must approve in principle national bills. These bills may be adopted through one of three processes, depending on the nature of the bill. These include ordinary bills not affecting provinces, ordinary bills affecting provinces, and finally, bills amending the Constitution. What three levels (or threshold) of requirements are needed for amendments to different parts of the Constitution?

**QUESTION 16** [12]

**Please number your answers correctly and answer in sequence. This section will be marked as a whole. Only click on submit once you have completed ALL the questions (16.1 – 16.4).**

Paul believes that his constitutional right is being violated as his place of employment (a media company) refuses to publish his article on the basis that it may incite violence. He approaches the court to enforce his right. With regard to the above scenario, answer the following:

- 16.1 What right in the Bill of Rights is in question? (2)
- 16.2 Which generation of rights does the right in question 8.1 fall into? (Provide a detailed discussion thereof). (5)
- 16.3 What 3 (three) requirements will the court take into account in deciding whether a right in the Bill of Rights may be limited? (Refer to the particular section in the Constitution). (4)
- 16.4 The court concludes that the article, if published, is likely to incite violence. What is the most appropriate remedy that the court will grant? (1)

**TOTAL:** [80]

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