



<u>FACULTY</u>	: Law
<u>DEPARTMENT</u>	: Private Law
<u>CAMPUS</u>	: APK
<u>MODULE</u>	: Cyberlaw/CRL41YO
<u>SEMESTER</u>	: Second
<u>EXAM</u>	: Supplementary examination 2019

<u>DATE</u>	: January 2019	<u>SESSION</u>	:
<u>ASSESSOR(S)</u>	: Prof MM Watney		
<u>MODERATOR</u>	: Prof S Nel (UNISA)		
<u>DURATION</u>	: 2 hours	<u>MARKS</u>	: 80

NUMBER OF PAGES: 7 PAGES (INCLUDING THIS PAGE)

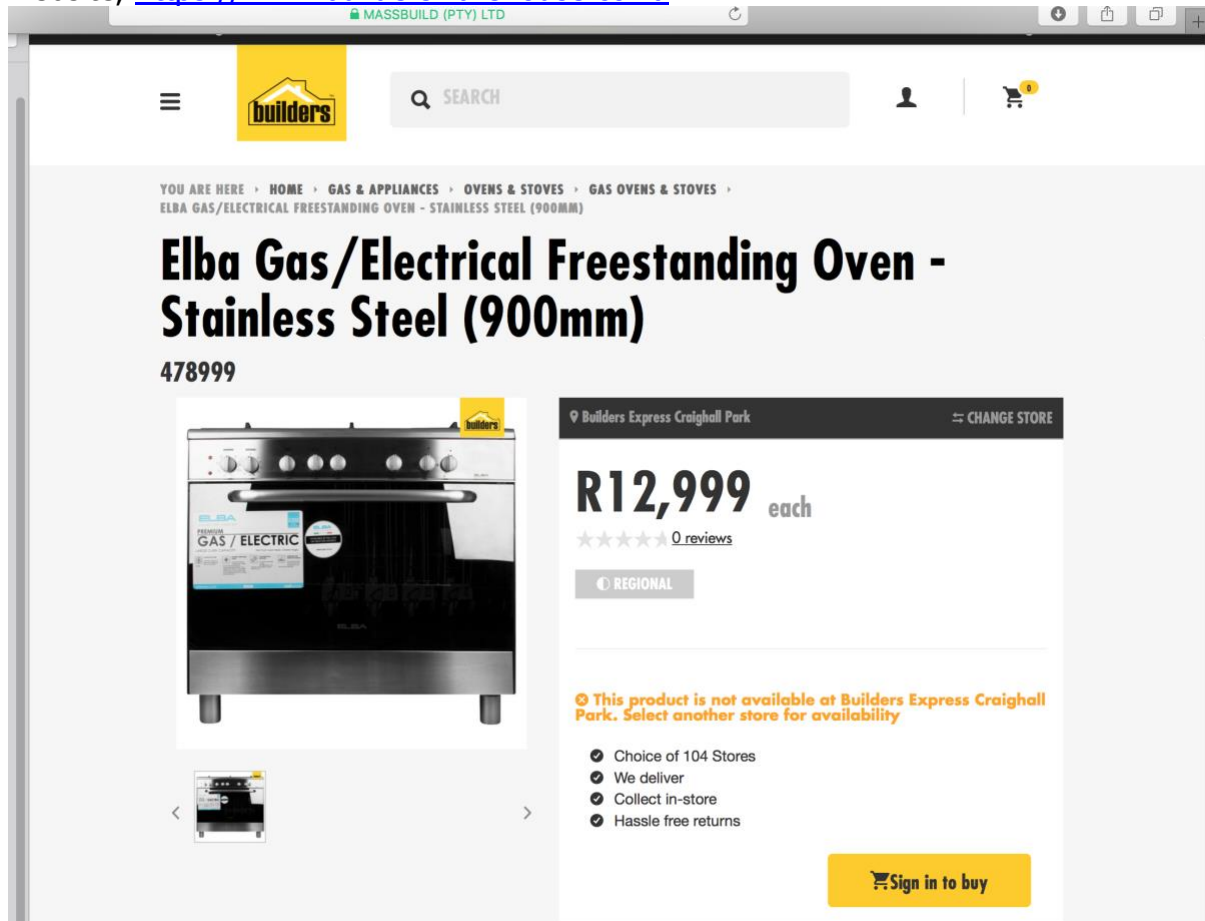
INSTRUCTIONS:

1. PLEASE WRITE YOUR SURNAME, INITIALS AND STUDENT NUMBER ON THE ANSWERING PAPER.
2. Please answer all the questions on the answering paper.
3. The answering paper must be handed in alphabetically.
4. The question paper is handed in separately to the answering paper.
5. Good luck with the examination.

QUESTION 1

SET OF FACTS

A consumer wants to buy a new oven from Builders Warehouse. He accesses the website, <https://www.builderswarehouse.co.za>



You represent the supplier.

Answer the following questions

- 1.1 Define the term “Internet” and indicate in which legislation the term is defined. (3)
- 1.2 Indicate the domain name with specific reference to the trademark. (3)
- 1.3 Assume a consumer bought the oven but then found another oven elsewhere for a cheaper price. May the consumer cancel the purchase? Advise the supplier with reference to legislation. (5)

Assume a consumer initially purchased the oven for R129. Normally it would be R12 999. The consumer later returned to the website and purchased more ovens. Over a period of three days the consumer purchased 10 ovens and paid a total of R1 290.

A few days later the supplier refused to deliver the goods. According to the supplier the consumer bought the goods from a hidden web store that was not supposed to be visible to the public. The advertised specials were for illustrative purposes only.

The supplier alleged that their terms and conditions cover them in the event of incorrect pricing.

The consumer wants the supplier to deliver the goods which were purchased online. The supplier offers the consumer a gift voucher. The supplier also indicated to the consumer that the prices were significantly lower than the normal selling price and that they cannot deliver the items as the reasonable person would have noticed that there was a pricing error.

Discuss critically the following issues with reference to the given set of facts:

1.4 Debate critically whether the supplier must deliver the goods at the advertised price with reference to the following:

1.4.1 When will an automated B2C contract will come into existence? Discuss by referring to statutory provisions. (7)

1.4.2 Is the advertised price binding? (4)

[11]

Assume Builders Warehouse forgot to renew its domain name and it was purchased by someone else by means of drop-catching. Builder's Warehouse approaches the buyer in an attempt to buy the domain name back but the "new" owner wants an excessive amount of money for the domain name. Builders Warehouse decides to

make use of Alternative Dispute Resolution as was the case in another drop-catching case.

Discuss the following issues with reference to the given set of facts:

1.5.1 Alternative Dispute Resolution (ADR); and (5)

1.5.2 Relevant case law. (4)

[9]

1.6 Assume that the employee at Builders Warehouse responsible for the domain name registration was annoyed when he was reprimanded for not registering the domain name and resigned by means of an email. The next day he regrets his hasty decision and argues that a contract cannot be cancelled by means of an email. Advise briefly with reference to case law. (3)

[34]

QUESTION 2

SET OF FACTS

A photographer exhibits his work on a website. He arranges the web pages with a list of picture titles which are short phrases such as "Johannesburg city skyline", "Abandoned car next to N1 highway" and "Melrose Arch". Each title is a hypertext link, clicking on the text opens a window in which a corresponding photograph is displayed. While surfing the web, the photographer comes upon a similar site. He is shocked to find that some of his photographs are reproduced mixed in with photographs from the magazine. The magazine has a hyperlink to his photographic website.

The photographer asks you for legal advice pertaining to copyright violation.

Discuss critically whether the magazine violated the photographers copyright. In your answer refer to *Moneyweb v Media24 Ltd* 2016 3 ALL SA 193 (GJ).

[10]

QUESTION 3**SET OF FACTS**

In August 2018 public clinics in the City of Johannesburg moved from paper-based patient forms and documents to a digital system designed to transform service operations. In June 2018 Johannesburg mayor, Parks Tau promised in his State of the City address that patient records at fifteen clinics in Soweto will go live on the digital system. The system was announced in 2017 at an e-health conference when the city said it plans to have all patient records at clinics and hospitals completely digitised and hosted on a streamlined system by next year, at a cost of R300 million.

In 2017 and 2018 there were many reports of ransomware attacks on clinics and health organizations. Kaspersky Lab (Cybersecurity Company) reported in 2018 approximately 45 000 attacks in almost 99 countries worldwide which included United Kingdom, Ukraine, Egypt, Italy, China, Russia and India. For example, in 2017 many hospitals, specifically walk-in clinics in England were victims of ransomware attacks in which instances the hospital could not access the personal information of patients and provide medical care.

Critically advise the clinics in respect of the following issues:

- 3.1 Protection of personal information with reference to the relevant legislation, the kind of information protected and the 8 conditions that must be adhered to for the processing of the personal information in an electronic medium. (10)
- 3.2 Outline briefly the legal position in the case of a data breach that resulted from, for example, a ransomware incident. (6)

[16]

QUESTION 4

SET OF FACTS

In September 2018 the Minister of Home Affairs, Malusi Gigaba, instructed attorneys to institute legal action against Ms Redi Tlhabi for defamation of character. In a series of tweets Tlhabi took aim at Gigaba and said his domestic arrangements were the reason for his department's change of heart.



Thabi tweeted: "Is it not true that you were livid when a cousin of your ex-wife travelled with your daughter Lerato, whilst your wife was in Cuba? Upon finding out, you laid charges of kidnapping even though you knew your ex-wife's cousin very well and your daughter was quite happy with her. "You had a personal issue of your ex-wife making travel arrangements with your daughter without your consent, so you decided "I'll sort this problem out?" You implemented untested regulations, claiming to address child trafficking? Have your regulations brought child trafficking down?"

Tlhabi accused Gigaba of ignoring expert advice and evidence against the 2014 visa requirements after he told Radio702 that the South African tourism industry had been having "pedestrian growth" and was not going to see overnight results due to repealing the draconian visa rules.

The tourism industry has lost billions in revenue since the implementation of new regulations in 2014 requiring children travelling to and from South Africa to carry an unabridged birth certificate and foreign travellers seeking to obtain visas to South Africa to apply in person and provide biometric data.

You must provide legal advice with reference to the following aspects:

4.1 Provide a brief legal opinion pertaining to the dismissal of an employee for communication misconduct outside the workplace. In your answer refer to one relevant case. (8)

4.2 Discuss critically the admissibility of the tweets as evidence in a possible criminal trial. (12)

[20]

TOTAL: 80