



<b><u>FACULTY</u></b>	:	LAW
<b><u>DEPARTMENT</u></b>	:	PRIVATE LAW
<b><u>CAMPUS</u></b>	:	APK
<b><u>MODULE</u></b>	:	KOR0000/LCT41Y0 LAW OF CONTRACT
<b><u>SEMESTER</u></b>	:	SECOND SEMESTER
<b><u>TEST</u></b>	:	NOVEMBER EXAM (SPECIAL)

<b><u>DATE</u></b>	:	17 January 2022	<b><u>SESSION</u></b>	:	Online
<b><u>ASSESSOR(S)</u></b>	:	Dr. M van Eck			
<b><u>MODERATOR</u></b>	:	Prof J Barnard (UP)			
<b><u>DURATION</u></b>	:	4 hours	<b><u>MARKS</u></b>	:	70
<b><u>OPEN TIME</u></b>	:	08h00	<b><u>CLOSE TIME</u></b>	:	12h00

**NUMBER OF PAGES:** 12 PAGES (INCLUDING THIS PAGE)

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**INSTRUCTIONS:**

1. The question paper and the answer sheet will be loaded onto Blackboard under “*Special Exam*” in the section called “*Tests, Exams and Assessment*”.
2. To complete the assessment, you should use the answer sheet that has been loaded onto Blackboard to answer the questions. All answer sheets should be saved (named) with your surname and initials with the words “Special Exam” in the file name. For example, “*Your Surname Initials Special Exam*”.
3. All answers sheets must include:
  - Your surname and initials; and
  - Your student number.
4. If the answer sheet does not contain your details to sufficiently identify you, then it cannot be marked.

5. All answers must be submitted **BEFORE** the closing time by emailing the answers to the following email address: [mmvaneck@uj.ac.za](mailto:mmvaneck@uj.ac.za) as a MS Word Document.
6. Take note of the following:
  - You should only send through one answer sheet. If more than one answer sheet is received, then the first answer sheet that was received will be viewed as the submission and all other answers and answer sheets will be disregarded.
  - Late submissions will not be marked, and no extensions or late submissions will be permitted. Therefore, it is your responsibility to ensure that your answers are emailed and received on time.
7. By participating in this test, you are deemed to have accepted the below rules of conduct and declaration:

#### **EXPECTED CONDUCT AND DECLARATION FOR PARTICIPATING IN THIS TEST**

You are reminded that this test is subject to the rules and policies of the University and the Faculty, and that the normal academic integrity rules apply. Your answers must be a true and honest reflection of your knowledge and understanding of the work. This means that:

- You must act honestly and with integrity when answering this test. Your answers must reflect your own knowledge and understanding of the work. You should use key terms specific to the Law of Contract module to answer the questions, but answers must be explained in your own words.
- You may **not** ask for assistance from another student, the tutor, non-student or any person whatsoever to answer this test or to help you complete your answers in any way.
- You may **not** use or consult any information, tips or guidance that another student, non-student or any person whatsoever provides to answer this test or to help you complete your answers in any way.
- You may **not** provide assistance to another student to answer this test in any way whatsoever.
- You may **not** look at, view or participate in any way in WhatsApp Groups, emails, other online communication devices (or in person) with other students while completing this test.
- You may **not** copy material from the textbook, lecture slides, case law, journals or the internet in whole or in part to answer the questions to this test

By submitting your answers you are deemed to have confirmed your understanding of the above expected conduct and also the below declaration for participating in this test.

#### **DECLARATION**

**I hereby confirm that the answers I have submitted are my own work (which reflects my own knowledge and understanding). I have not received assistance from another student (or anyone else) in answering this test and I have not provided any other student with assistance in answering this test.**

8. This test paper consists out of two parts:
  - Part A consists out of 20 multiple-choice questions of 1 mark each. There is only one correct option for the multiple-choice questions. Answer these questions by typing the correct answer into the answer sheet e.g. "a", "b", "e" etc.
  - Part B is written questions. Following the instructions of each question and complete your answers
9. Good luck with the test.

## PART A

### QUESTION 1 - MULTIPLE CHOICE QUESTIONS

#### **QUESTION 1.1**

The following clause is found in a contract:

Any and all disputes related to this agreement, including any civil or criminal claims that may originate from or be connected to this agreement shall be resolved by means of arbitration. Arbitration will held in Johannesburg, South Africa and will be regulated in terms of the rules and procedures established by the Arbitration Federation of South Africa (AFSA)

Indicate which one of the following statements is most correct:

- (a) The above arbitration clause is included in the main contract (in which the above arbitration clause is found) to the benefit of the contracting parties. Therefore, either party may unilaterally elect to avoid the arbitration process by providing notice.
- (b) A contracting party may avoid the arbitration process may applying to court for an interdict preventing the other contracting party from relying on the arbitration clause.
- (c) A contracting party may, by showing good cause, apply to the court for an order to avoid a dispute from being referred to arbitration.
- (d) Arbitration clauses are generally invalid in our law as they circumvent a contracting party's Constitutional right to seek redress from the courts. Therefore, the above arbitration clause is invalid.

#### **QUESTION 1.2**

Dudu pledges her car as security for a short-term loan. The agreement of pledge contains the following clause:

Should the Pledgor, for any reason whatsoever, fail to make the timeous payment of the loan, then the Pledgee may sell the pledged item immediately without being first required to first approach the courts for an appropriate order to do so. Any amount exceeding the outstanding loan will be repaid to the Pledgor.

Indicate which one of the following statements is most correct:

- (a) According to *Bock v Dubororo Investments (Pty) Ltd* 2004 (2) SA 242 (SCA), the clause would generally be considered void.
- (b) According to *Bock v Dubororo Investments (Pty) Ltd* 2004 (2) SA 242 (SCA), the clause would generally be considered valid.
- (c) According to *Bock v Dubororo Investments (Pty) Ltd* 2004 (2) SA 242 (SCA), the clause would generally be considered voidable.
- (d) According to *Bock v Dubororo Investments (Pty) Ltd* 2004 (2) SA 242 (SCA), the clause would generally be considered unenforceable.

#### **QUESTION 1.3**

Ayanda owns an iMac that is worth R56,000 and decides to insure the computer with Reliable Insurers. Ayanda insures the iMac for R28,000 and pays a premium of R280 a month. The insurance contract contains the following average clause:

*Where immediately prior to its loss or damage the market value of property insured hereunder is greater than the sum for which the property is insured, the insured shall be deemed to be his own insurer for the difference and the insurer's liability shall be limited to that sum of loss that bears the same proportion to the amount of the loss or damage, as the sum insured bears to the aforesaid value.*

One evening the geyser in Ayanda's flat bursts and the iMac sustains water damage to the amount of R14,000.

How much may Ayanda recover from Reliable Insurers?

- (a) R28,000.
- (b) R14,000.
- (c) R7,000.
- (d) R56,000.

#### **QUESTION 1.4**

Tanusha (the tenant) and the Renting Company (the landlord) entered into a written contract of lease, wherein Tanusha must pay R3,500 of rent per month for the duration of the lease. Tanusha fails to pay 4 months of the rental, totalling an amount of R14,000.

Indicate which one of the following statements is most correct:

- (a) The Renting Company will have a debtor's / creditor's lien to recover the outstanding rental from Tanusha.
- (b) The Renting Company will have a hypothec over all movable property at the leased premises that is owned by Tanusha.
- (c) The Renting Company will have a hypothec over all movable property at the leased premises that is owned by Tanusha and any third parties regardless of the length of time that goods are stored at the leased premises.
- (d) The Renting Company will have a hypothec over all movable property at the leased premises that is owned by Tanusha and will never, under any circumstances have a lien over third party goods stored at the leased premises.

#### **QUESTION 1.5**

Zippy Transport is an international public carrier that transports goods over the border into the SADEC regions. One day, whilst travelling over the Mozambique border, Zippy Transport swerves out of the way to avoid a negligent driver from hitting the truck but this results in the truck rolling down the bank of the highway. As a result, all the goods Zippy Transport transported was destroyed.

Indicate which one of the following statements is most correct:

- (a) Zippy Transport was not negligent in these circumstances and will not be held liable for the loss of the goods.
- (b) Zippy Transport will be held liable in all circumstances for the loss of the goods although there was no negligence on the part of Zippy Transport.
- (c) Zippy Transport will have limited defences to escape liable for the loss of the goods, including proving a *casus fortuitus*, negligence on the part of the customer or defects in the goods that were transported.
- (d) Zippy Transport will only be held liable if it can be proven that the loss of the goods was because of Zippy Transport's fault and if *casus fortuitus* can be proven.

#### **QUESTION 1.6**

The following term is found in a written contract of insurance:

The insured hereby confirms that for the duration of the insurance contract there will be no combustible or flammable material stored at the premises.

The term would be described as a(n):

- (a) Affirmative warranty.
- (b) Promissory warranty.

- (c) Resolutive condition.
- (d) Time clause.

### **QUESTION 1.7**

The following clause is found in a credit agreement:

The surety hereby waives her common law defences of *exceptio erroris calculi* and *exceptio non causa debiti*.

Indicate which one of the following statements is most correct:

- (a) The clause is an *incidentalia* that amends the common law position. In these instances, the clause would be considered valid.
- (b) The clause is an *incidentalia* which cannot amend the *naturalia* of the contract. In these instances, the clause would be considered invalid.
- (c) The clause, although an *incidentalia*, would be found unlawful in terms of section 89 of the National Credit Act. In these instances, the clause would be considered invalid.
- (d) The Minister has prescribed, in terms of section 90(2) of the National Credit Act, that the *exceptio erroris calculi* and *exceptio non causa debiti* may not be waived in a credit agreement.
- (e) Section 89 of the National Credit Act permits the exclusion of *exceptio erroris calculi* and *exceptio non causa debiti* in a credit agreement.
- (f) Statements (a) and (e) are correct.

### **QUESTION 1.8**

A credit agreement may only be enforced by the courts if (indicate which one of the following statements is most correct):

- (a) A section 129(1)(a) notice has been delivered 10 days prior without a response, and the consumer is in default for 20 business days or longer
- (b) The consumer is in default for 20 business days or longer without a response to any form of repayment demands from the credit provider.
- (c) The credit provider approaches the court within the prescription period of 3 years and issued a section 129(1)(a) notice within the 3-year period.
- (d) If the consumer is not found to be over-indebted, a section 129(1)(a) notice was issued, and the consumer is in default for at least 10 business days.

### **QUESTION 1.9**

Phumela purchases a scooter from Sanele for R30,000. Sanele is to deliver the scooter to Phumela on 1 August 2021 but fails to do so for no good reason. Phumela leaves the scooter outside the premises (unguarded with the keys in the ignition). A few days later, the scooter is stolen.

Indicate which one of the following statements is most correct:

- (a) The scenario will not affect Sanele's common law duty of safe-keeping, and he will only be liable for the loss of the scooter because of his intentional or negligent action.
- (b) Sanele has a common law duty of safe keeping but because he is in *mora creditoris*, Sanele will only be liable for the loss of the scooter as a result of his negligent actions.
- (c) The contract is *perfecta* and as such the risk passed to Phumela, who is responsible for the loss of the scooter.
- (d) Sanele is in *mora debitoris* and as such he will be liable for all damages incurred (irrespective of his negligence or fault).

### **QUESTION 1.10**

Sasha owns a small hairdressing salon in Germiston and obtains hair products from a supplier called Glorious Hair (Pty) Ltd located in Edenvale. Glorious Hair (Pty) Ltd values Sasha's business and sends via post on 2 August 2017 an offer to discount the price on hair conditioners by 10%, but the offer is only open for acceptance for twenty days. Sasha receives the offer on 10 August 2017 and responds by sending her acceptance of the offer via post on 12 August 2017. Glorious Hair (Pty) Ltd receives the acceptance on 16 August 2017.

Indicate the time (which date) and the place (the location) the contract was concluded:

- (a) At Germiston on 10 August 2017.
- (b) At Edenvale 10 August 2017.
- (c) At Edenvale on 12 August 2017.
- (d) At Germiston on 16 August 2017.
- (e) At Germiston on 12 August 2017.

### **QUESTION 1.11**

Edward and John have been good friends and want to enter into an agreement in which Edward would refer work to John in exchange for the payment of a commission. Edward and John intend to negotiate a formal agreement, however, decide to sign a letter of intent in the interim that would be subject to the finalisation of the negotiation of a formal agreement. Shortly after signing the letter of intent, Edward decides to withdraw from the negotiations. John is upset and wants to hold Edward to the letter of intent.

Indicate which one of the following statements is most correct:

- (a) Edward may not withdraw from the negotiations as all the requirements for a valid contract is present, and therefore Edward is bound to the letter of intent.
- (b) The letter of intent is generally considered to lack *animus contrahendi* (serious intention to contract) and, therefore, Edward and John are not contractually bound to the terms of the letter of intent.
- (c) Edward and John had the serious intention to contract when signing the letter of intent, and therefore had the necessary *animus contrahendi*. Edward is bound to the terms of the letter of intent.
- (d) The letter of intent contains all the requirements of a valid contract, being consensus, contractual capacity, compliance with formalities, legality, being possible to perform and is also certain. Therefore, Edward is bound to the terms of the letter of intent.
- (e) It does not matter whether there was *animus contrahendi* (serious intention to contract). As Edward and John signed the letter of intent, it is sufficient to create legal obligations.

### **QUESTION 1.12**

ABC (Pty) Ltd is a small general store located in Durban that sells groceries and household items to the public. ABC (Pty) Ltd has an annual turnover of R250 000. One of ABC (Pty) Ltd's suppliers is XYZ (Pty) Ltd.

On 17 April 2012, ABC (Pty) Ltd receives an email from XYZ (Pty) Ltd which reads as follows:

XYZ (Pty) Ltd has introduced a new line of soft drinks and would like to offer you 1 000 units at a promotional price of R5 per unit.

ABC (Pty) Ltd places an order of 1 000 units from XYZ (Pty) Ltd.

Indicate which one of the following statements is most correct:

- (a) As the email from XYZ (Pty) Ltd is direct marketing, ABC (Pty) Ltd has the right to rescind the contract during the cooling-off period in terms of section 16 of the Consumer Protection Act 68 of 2008.

- (b) There is a valid contract as the requirements for an offer and acceptance have been fully complied with, but because it was not in writing and signed by both parties the contract is not valid in terms of the Consumer Protection Act 68 of 2008.
- (c) The contract between ABC (Pty) Ltd and XYZ (Pty) Ltd is voidable, and ABC (Pty) Ltd can set it aside because the requirement of consensus is defective.
- (d) There is no valid contract between ABC (Pty) Ltd and XYZ (Pty) Ltd as the requirements for a valid acceptance of an offer has not been satisfied.

### **QUESTION 1.13**

Terry returned from the pub one night only to find his house robbed. Several items were taken, including the television, laptop and the gold pocket watch that Terry's father had given him. The gold pocket watch has great sentimental value, and he places an advert in the local newspaper stating that he would pay R1,000 reward for anyone that provides information that leads to the recovery of the golden pocket watch.

Harry, who is unaware of the offer of reward, provides information to the police which eventually leads to the recovery of the golden pocket watch and the arrest of the thieves.

By using the authority of *Bloom v The American Swiss Watch Company* 1915 AD 100 indicate which one the following statements is true:

- (a) There was a valid offer and acceptance, and Harry is entitled to claim the reward from Terry.
- (b) Although Harry was the first person to respond to the offer, he was not aware of the offer of reward at the time of providing the information and therefore could not have accepted the offer. Harry is not entitled to claim the reward from Terry.
- (c) Harry was the first person to consciously respond to the offer of reward and Harry is entitled to claim the reward from Terry.
- (d) Terry cannot make an offer of reward to the public and as the offer is defective, Harry is not entitled to accept the offer or claim the reward.

### **QUESTION 1.14**

Party B threatens to burn down Party A's house if Party A does not lend him R10,000. Party A believes that the threat is real and agrees to lend Party B R10,000. The contract would be:

- (a) Valid but voidable.
- (b) Invalid.
- (c) Void.
- (d) Invalid and void.

### **QUESTION 1.15**

Party A decides to start jogging. He goes to the nearest sports warehouse and buys a pair of shoes without telling the salesperson about his plans. That evening, he discovers that the shoes are not suitable for jogging but are in fact lifestyle shoes. His remedy is the following:

- (a) Party A may cancel the agreement and return the shoes, because the salesperson knew that they were unsuitable for jogging, but deliberately failed to inform him.
- (b) Party A may cancel the agreement and return the shoes, because the seller was a dealer who professed expert knowledge of sport equipment to the public.
- (c) Party A may cancel the agreement and return the shoes, because they are not suitable for the purpose for which he bought them.
- (d) Party A has no remedy, because the shoes have no defects.
- (e) Party A may claim a reduction of the purchase price because he would have paid less if he knew that the shoes were not suitable for jogging.

### **QUESTION 1.16**

Edward recently decided to open his own business. To do so, he needs capital and approaches a financial institution (bank) to obtain the necessary loan to finance his new business. The financial institution (bank) advises that the necessary funding will only be provided if Edward's business partners, Sanesh and Douglas stand suretyship for the loan.

The following is an extract of what was signed by Sanesh and Douglas.

*"We, Sanesh Naidoo and Douglas Adams ("**the Sureties**") hereby bind ourselves as sureties jointly and severally (in solidum) to the benefit of the Financial Investments (Pty) Ltd ("**the Creditor**") in respect of R100,000 (one hundred thousand Rand) that was lent to Edward Nkozi ("**the Debtor**") under and in terms of a written loan agreement with the Creditor (a copy of which is attached to this document)."*

Edward does not honour the terms of the loan agreement with the financial institution (bank), who now wishes to recover the outstanding amount of R100,000 (one hundred thousand Rand) from Sanesh and Douglas.

Indicate which one of the following statements is most correct:

- (a) Sanesh and *Douglas* are both proportionately (equally) liable to Financial Investments Company (Pty) Ltd.
- (b) Sanesh and *Douglas* are each liable for the full amount of R100,000 to Financial Investments (Pty) Ltd, but the Finance Company (Pty) Ltd can only claim from one of them and not from the other.
- (c) Sanesh and *Douglas* are each liable for the full amount of R100,000 to Financial Investments Company (Pty) Ltd, and should Sanesh pay the Financial Investments (Pty) Ltd more than his proportionate share, then Sanesh will be able to recover such an amount from *Douglas*.
- (d) The maximum amount that the Financial Investments (Pty) Ltd can recover from *Douglas* is R50,000 (being his proportionate share).
- (e) The Financial Investments Company (Pty) Ltd must claim from both Sanesh and *Douglas* jointly (as a collective) and may not claim from either of them individually.

### **QUESTION 1.17**

Phumlani wants to buy a painting that belongs to Tiro and instructs Angela to negotiate and buy the painting on her behalf. Angela has the mandate to agree to purchase the painting for a maximum purchase price of R15,000. After negotiating with Tiro, Angela agrees to a purchase price of R30 000.

Which one of the following statements is incorrect?

- (a) Phumlani will not be bound to the agreement of purchase and sale that Angela negotiated with Tiro.
- (b) Phumlani will be bound to the agreement of purchase and sale that Angela negotiated with Tiro.
- (c) Angela will be liable to compensate Tiro for any losses due to the contract not having been concluded.
- (d) Tiro's damages, which she may claim from Angela, will be measured according to Tiro's positive interest.

### **QUESTION 1.18**

Party A decides to sell his cell phone that is worth R5,000. Party A agrees that Party B will pay R2,000 in cash and also give Party A a Samsung tablet worth R3,000 in exchange for the cell phone. The parties have not clearly indicated what type of contract they intended to conclude.



Indicate what contract exists between Party A and Party B:

- (a) A contract of sale.
- (b) A contract of barter.
- (c) A contract of lease.
- (d) A security agreement
- (e) A contract of exchange.

#### **QUESTION 1.19**

Part A leases a farm from Party B for a period of 12 years. After 11 years, Party B sells the farm to Party C, who demands that Party A vacates the property immediately. Which one of the following statements describes Party A's position best?

- (a) Party A is protected under the 'huur gaat voor koop' rule and may remain in occupation until the lease expires.
- (b) Party A must vacate the property immediately.
- (c) Party A may claim specific performance of the lease agreement from Party B.
- (d) Party A is entitled to enforce the lease agreement against Party C, but only if the agreement was registered in the deeds office.

#### **QUESTION 1.20**

Jamie insures his motorcycle from ABC Insurers for R25,000. One day, whilst driving, Jamie's motorcycle is struck by a drunk driver of a car, and Jamie's motorcycle is destroyed. If Jamie successfully claims the R25,000 from the drunk driver and R25,000 from ABC Insurers, then:

- (a) Jamie is entitled to receive payment from both the drink driver and ABC Insurers.
- (b) ABC Insurers had taken on the risk of insuring the motorcycle and does not have the right claim an amount from the drunk driver.
- (c) ABC Insurers can recover R25,000 from Jamie because of the principle of indemnity and subrogation.
- (d) Such conduct would constitute repudiation of the policy.

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**SUB-TOTAL FOR PART A****[20]**

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### **PART B (WRITTEN ANSWERS)**

#### **QUESTION 2**

Consider the following:

- Possible reduction of rent.
- *Par delictum* rule.
- *Restitutio in integrum*.
- Restitution clause.
- *SA Forestry Co Ltd v York Timbers Ltd* [2004] 4 ALL SA 168 (SCA).
- Section 39(1)(a) of the of the Consumer Protection Act 68 of 2008.
- *Shatz Investments (Pty) Ltd v Kalovyrynas* 1976 (2) SA 545 (A).
- Standard average clause.
- *Pactum de non cedendo*.
- A time-bar clause.

Which one of the above points correctly matches the statements listed below? Write out your answer in the answer sheet. For example, if the concept "*pactum de non cedendo*" matches with statement 2.1, then you should write down *pactum de non cedendo* as your answer:

- 2.1 The remedy for the tenant where a leased property is partially destroyed because of a *vis major*. (1)
- 2.2 A term can only be implied into a contract if it is considered good law in general. (1)
- 2.3 To claim special damages, the parties must show that they contemplated such a loss could result from a breach. (1)
- 2.4 Restitution cannot take place where two parties are equally morally guilty. (1)
- 2.5 A contractual remedy that is both an action and a defence. (1)
- 2.6 A clause reading: "*The purchaser must bring any claim that the purchaser may have against the seller within 90 days from the date of the claim occurring, failing which the purchaser shall not be entitled to bring any claim against the seller whatsoever*". (1)

[6]

### **QUESTION 3**

Vis walks into a pawn shop where he sees a rare 1981 collectable coin, which is worth R250,000. After negotiating with the manager of the pawn shop, the parties agree that the pawn shop will sell the coin to Vis provided that:

- Vis would only have to pay for the coin in 30 days after deliver; and
- Vis would pay the purchase price by means of a post-dated cheque.

Vis hands the manager at the pawn shop the cheque and walks away with the rare coin in his pocket.

Who is the owner of the coin? Explain fully. (5)

[5]

### **QUESTION 4**

Nelson is the owner of a piece of property in Braamfontein. Zama is very interested in purchasing Nelson's property in Braamfontein but needs to take out a loan from the bank to do so, which can take up to 90 days. Zama sends Nelson an offer to purchase that includes the following clause:

The offeror hereby offers to sell the property to the offeree on the terms and conditions set out in this document, which offer is irrevocable for a period of 90 days. This offer may be accepted by the offeree at any time during this 90-day period.

Answer the following questions:

- 4.1 The set of facts provided above contemplates the possible conclusion of a contract between Nelson and Zama in the future. What is the Latin name given to contracts which contemplate the conclusion of other, future contracts? (2)
- 4.2 What specific form of valid contract which contemplates the conclusion of another, future contract is of relevance to this set of facts? (1)
- 4.3 Assume for the purpose of this question 4.3 that Nelson receives another offer from a third party, Dudu, and sells the property to Dudu before the expiry of the 30 (thirty) day period. What remedies would Zama have if she decides to uphold the contract? (2)
- 4.4 Would your answer in question 4.3 (above) be different if the property had already been transferred to Dudu? Indicate "YES" or "NO" and provide the reasons for your answer. (2)

- 4.5 What other form of valid contract which contemplates the conclusion of another, future contract can you name? (1)
- 4.6 Discuss how the two contract forms you should have identified in your answers to questions 4.2 and 4.5 above differ from one another. (2)

[10]

### **QUESTION 5**

Theo is the owner of a special coin collection. Phumela wants to buy Theo's coin collection and asks Ayanda to negotiate and buy the coin collection on Phumela's behalf. Ayanda is mandated not to pay more than R5,000 for the coin collection. After, meeting with Theo, Ayanda agrees to a purchase price of R12,000.

Do you think that Phumela would be liable for the R12,000? Explain your answer fully. Your answer should not be more than 500 words in length. (11)

[11]

### **QUESTION 6**

The following clause is included in a written contract:

The parties agree that the interpretation rule that states that an ambiguous term will be interpreted against the drafter of the contract, will not apply in this agreement.

Identify the interpretation rule to which the above clause relates and explain the possible purpose for including the above clause in a contract. (3)

[3]

### **QUESTION 7**

Your client insists including the following clause in the contract:

*In casu*, the contracting parties forthwith agree that the laws of the Republic of South Africa shall at all times, and without any exception, regulate the terms of this Agreement, and the contracting parties shall consent, and hereby provides such consent in terms of section 45 of the Magistrate's Courts Act 32 of 1944, that all disputes hereinafter occurring and arising out of, or connected to this Agreement shall be resolved by the magistrate's court.

Assume that the Consumer Protection Act 68 of 2008 applies.

Answer the following questions:

- 7.1 Identify the type of clause (its typical name) and the possible reason for your client wishing to include the clause in the contract. (3)
- 7.2 Briefly discuss the legal principles, relevant factors and best practices to take into account in the drafting of a clause in plain language, and redraft (in other words amend or change) the above clause so to make sure it is in plain and understandable language for a consumer. (7)

[10]

### **QUESTION 8**

Gugulethu leases the farm on which she grows her crops of tomatoes from the Landlord Company (Pty) Ltd. As part of the verbal contract of lease, Gugulethu pays the Landlord

Company (Pty) Ltd 10% of her crops of tomatoes every year for the right to use and enjoy the leased premises.

Is this a valid form of rental payment in a contract of lease? Explain fully. (5)  
[5]

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<b>SUB-TOTAL PART B:</b>	<b>[50]</b>
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<b>TOTAL MARKS</b>	<b>70</b>
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