



<u>FACULTY</u>	:	LAW
<u>DEPARTMENT</u>	:	PRIVATE LAW
<u>CAMPUS</u>	:	APK
<u>MODULE</u>	:	KOR0000/LCT41Y0 LAW OF CONTRACT
<u>SEMESTER</u>	:	FIRST
<u>TEST</u>	:	JUNE ASSESSMENT

<u>DATE</u>	:	4 June 2020	<u>SESSION</u>	:	Electronic
<u>ASSESSOR(S)</u>	:	Dr. M van Eck			
<u>MODERATOR</u>	:	Prof M Watney			
<u>DURATION</u>	:	3 hours	<u>MARKS</u>	:	60
<u>OPEN TIME</u>	:	14h00	<u>CLOSE TIME</u>	:	17h00

NUMBER OF PAGES: 9 PAGES (INCLUDING THIS PAGE)

INSTRUCTIONS:

1. The question paper and the answer sheet will be loaded onto Blackboard under “*June Exam (4 June 2021)*” 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 “June Exam” in the file name. For example, “*Your Surname, Initials June Exam*”.
3. You should use the answer sheet, however, if there are unavoidable circumstances in which you experience a challenge with opening or completing the answer sheet then you may submit your answers in another MS Word Document, PDF, or in the body of an email.
4. All answers (irrespective of how it is submitted) must include:
 - The date of the assessment;

- Your surname and initials;
 - Your student number; and
 - Your ID number (this is optional, but it assists in identification if there is a typo).
5. If the answer sheet does not contain your details (e.g. your name, surname and student number) to sufficiently identify you, then it cannot be marked.
6. All answers must be submitted **BEFORE** the closing time by emailing the answers to the following email address: mmvaneck@uj.ac.za as either a:
- An PDF attachment (preferred);
 - MS Word Document; or
 - Written out in the body of the email.
7. 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.
8. You may not seek assistance of a fellow student or the tutor. You may not use any part of another students answers to complete this assessment. You are reminded that all relevant rules and policies of the University and the Faculty applies to this test. With regard to the assessment, the normal academic integrity rules apply. For example, this means that you cannot cut-and-paste material other than your own work as answers for this assessment.

By undertaking this online assessment, you will be deemed to have made the following declaration:

"I certify that my submitted answers are entirely my own work and that I have neither given nor received any unauthorised assistance in this assessment item".

9. Good luck with the test.

READ AND FOLLOW THE BELOW INSTRUCTIONS

- 1 Read Annexure A that is attached to this test paper before answering the questions. The facts set out in Annexure A relates to question 1 of this test paper.
- 2 Answer all of the questions in the answer sheet.
- 3 You may not copy-and-paste from prescribed material or the internet. If an answer contains copied material, then the answer will be penalised (in part or in whole). Rather use your own words to answer the question.
- 4 Follow the instructions regarding the word count for questions. Any part of the answer that exceeds the prescribed word count will not be marked.
- 5 Only use prescribed material and authority (prescribed textbook, case law, legislation, journal articles etc.) in answering the questions.

QUESTION 1

Chit-Chat (Pty) Ltd is leader in the provision of call centre services, online networking and social media advertising in South Africa. Chit-Chat (Pty) Ltd spends a lot of time, money and resources in training their employees in their unique business offerings to the market. The estimated training costs are R10,000 (ten thousand Rand) per employee. All employees of Chit-Chat (Pty) Ltd has access to various sensitive and proprietary information of the company.

Your client, Jabu, signed the contract in Annexure A to this test paper. Your client has been employed by Chit-Chat (Pty) Ltd for the last 6 (six) months and earns R4,500 (four thousand five hundred Rand) a month.

You client recently received an offer of employment from one of Chit-Chat (Pty) Ltd's competitors. Your client is concerned that if she accepts the offer of employment from the competitor that she would be in breach of the contract in Annexure A.

Answer the following questions:

- 1.1 Advise your client as to the validity of clause 2.2 of the contract in Annexure A, and use appropriate prescribed authority to substantiate your answer. Your answer may not exceed 550 words. (15)
- 1.2 What is the typical name for clause 2.3 of the contract in Annexure A? (2)
- 1.3 Assume for the purposes of this question that your client breaches the contract in Annexure A. Advise your client on the validity, rules and application of clause 2.3 of the contract in Annexure A. Your answer should critically discuss, with specific reference to prescribed authority and the manner in which the court may adjust these types of clauses. Your answer may not exceed 300 words. (7)

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QUESTION 2

Chit-Chat (Pty) Ltd provides some of its core services to one of its clients, Dramatic Fashion Accessories (Pty) Ltd. Dramatic Fashion Accessories (Pty) Ltd has an annual turnover of R500,000 and total assets of R300,000.

Chit-Chat (Pty) Ltd and Dramatic Fashion Accessories (Pty) Ltd entered into a written contract of services in which Chit-Chat (Pty) Ltd would assist Dramatic Fashion Accessories (Pty) Ltd in establishing an online presence, and provide an online networking and social media

advertising services in order to expand Dramatic Fashion Accessories (Pty) Ltd global footprint.

The terms of the contract are as follows:

- (i) The contract would start on 1 April 2018, and will continue for a period of 24 (twenty four) months.
- (ii) Chit-Chat (Pty) Ltd will provide to Chit-Chat (Pty) Ltd the following services:
 - a. Chit-Chat (Pty) Ltd will establish an online presence for Dramatic Fashion Accessories (Pty) Ltd by opening up accounts on Facebook, Twitter and Instagram.
 - b. Chit-Chat (Pty) Ltd will from time to time make posts on these online platforms and advertise the business of Dramatic Fashion Accessories (Pty) Ltd widely.
 - c. On 15 July 2018, Chit-Chat (Pty) Ltd will arrange for a press briefing to launch a new product line of Dramatic Fashion Accessories (Pty) Ltd.
- (iii) Dramatic Fashion Accessories (Pty) Ltd must pay R5,000 per month to Chit-Chat (Pty) Ltd for the services provided.
- (iv) If Dramatic Fashion Accessories (Pty) Ltd does not pay the service on time, Chit-Chat (Pty) Ltd is entitled to charge interest at a rate of 10% per annum on any outstanding amounts.
- (v) If any party breaches the contract and fails to rectify such a breach within a reasonable time, then the innocent party may cancel the contract with 2 (two) days' notice.

Answer the following questions:

- 2.1 Explain, with reference to authority, whether the Consumer Protection Act 68 of 2008 would apply to the set of facts. Your answer may not exceed 200 words (5)
- 2.2 Assume for the purposes of this question that Dramatic Fashion Accessories (Pty) Ltd does not pay the service fees of R5,000 for the month of August 2019 and Chit-Chat (Pty) Ltd is forced to take out a loan to cover its costs. The loan will cost Chit-Chat (Pty) Ltd R2,000 in bank charges. What type of breach would Dramatic Fashion Accessories (Pty) Ltd have committed? Give reasons for your answer. (2)
- 2.3 What remedies would Chit-Chat (Pty) Ltd have if Dramatic Fashion Accessories (Pty) Ltd committed the breach in question 2.2 (above)? Give reasons and a full explanation for your answer. Your answer may not exceed 200 words. (6)
- 2.4 Assume for the purposes of this question that there is no breach of the contract but on 5 October 2018, your client wishes to terminate the agreement with Chit-Chat (Pty) Ltd before its expired date. Advise your client as to whether the contract may be terminated before the expiry of the 24 (twenty four) month period. (3)

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QUESTION 3

Chit-Chat (Pty) Ltd (the tenant) signs a lease agreement with the Renting Company (Pty) Ltd (the landlord), in which Chit-Chat (Pty) Ltd would lease a premises from the Renting Company (Pty) Ltd for an indefinite period of time.

The lease agreement also requires the payment of rental to the value of R15,000 per month, and includes the following clause:

The rental of R15,000 (fifteen) thousand Rand will increase at 10% (ten percent) annually for the duration of the lease.

Your client, the Renting Company (Pty) Ltd, is concerned that the lease does not meet all the requirements for a valid contract and approaches you for advice.

Answer the following questions:

3.1 Critically analyse the validity of the contract with particular reference to:

- (i) the indefinite duration of the lease; and
- (ii) the escalation of the rental amount.

You should include the common law position, case law and the position of the Consumer Protection Act 68 of 2008 insofar as it may be relevant to the answer. Your answer may not exceed 350 words (7)

3.2 Assume for the purposes of this question that the Renting Company would like to ensure that all amendments to the contract of lease are made in writing and signed by both the Renting Company (Pty) Ltd and Chit-Chat (Pty) Ltd for any such amendments would be valid.

What is the name of the clause that you would recommend to be included in the contract of lease to address the Renting Company's (Pty) Ltd's concerns? (1)

3.3 What authority would you use to support the validity of the clause you should have identified in question 3.2 (above)? Provide the full name(s) of all the relevant authority used in answering this question. (2)

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QUESTION 4

Identify for each of the following set of facts what type of mistake occurred.

Note, your answer should name all the types of mistakes that may be relevant to the set of facts, list their impact on the contract and give reasons for your answer. Where applicable, use any prescribed case law to substantiate your answer.

4.1 Sarjay is the owner of a unit in a sectional title scheme (known as unit 1). Sarjay's estate agent misrepresents to a potential buyer (Nonhlanhla) that the unit was only one of two units in the sectional title scheme and that Sarjay had a right to veto any subdivision of the other unit (known as unit 2). On the strength of this representation Nonhlanhla enters into a contract of sale with Sarjay. In truth, permission had already been provided for the subdivision of unit 2 and that unit 2 had already been subdivided. The misrepresentation made by Sarjay's estate agent was innocent as she had simply forgotten about the previous subdivision of unit 2. Your answer may not exceed 100 words. (3)

4.2 Sasha, an illiterate retiree, signs a deed of suretyship in which she would make good any debts her son (Victor) may have to the bank, if Victor fails to make payment of the loan he has with the bank. Sasha, when signing the deed of suretyship was under the impression that she was signing a document to transfer one of her properties to her son, Victor, and did not know that she was signing a deed of suretyship. Sasha would never have signed the deed of suretyship if she knew the truth of the nature of the document. Your answer may not exceed 100 words. (4)

4.3 Godfrey is the owner of two pieces of land (called plot A and plot B) and instructs his estate agent to sell the piece of land at plot A. The estate agent places an advertisement in a local newspaper. Frita, having seen the advertisement, is very interested in purchasing the piece of land. She (Frita) contacts the estate agent to

arrange viewing of the piece of land. While viewing the piece of land the estate agent points out to Frita plot B as the property being sold. Frita and Godfrey enter into a contract, but are mistaken about the piece of land that is being sold and purchased.
Your answer may not exceed 100 words. (3)

[10]

TOTAL

[60]

TOTAL MARKS

60

MEMORANDUM OF AGREEMENT

Entered into between

Jabu Joe Shabalala

ID Number: 8307020000040387

(“Employee”)

and

Chit-Chat (Pty) Ltd

Registration Number: 92110/3436/09/27

(“Employer”)

1. INTRODUCTION

The Employer is an industry leader in the call centre environment and has invested significant time and money in its employees. For this reason, the Employer requires the Employee (as a condition of their employment) to agree to the terms set out in this agreement.

NOW THEREFORE the Parties agree as follows:

2. RESTRAINT OF TRADE

2.1 The Employer has extensive investment into the call centre training, and the Employees is (as part of the Employee's conditions of service) required to receive training in call centre and business operations of the Employer ("**Training**"). The Training is unique business operations and contained proprietary information of the Employer.

2.2 For this reason and to protect the interest and goodwill of the Employer, after the termination of the Employee's employment with the Employer (for whatsoever reason) the Employee is prohibited from taking up employment in any business that competes with the Employer within the boundaries of South Africa for a period of 10 (ten) years.

2.3 Should the Employee breach the provisions of clause 2.2 (above) then, without prejudice to any other rights the Employer may have, the Employee will (in addition to any damages) be required to pay the Employer R100,000 for any breach of this agreement.

3. BREACH

In addition to any rights that a party may have in clause 2.3 (above), if either party breaches any term of this agreement and fails to rectify such a breach within 7 (seven) days after having been requested to do so, then the other Party may (without limiting their rights):

3.1 claim for specific performance and damages; or

3.2 cancel the agreement and claim damages.

4. WHOLE AGREEMENT

4.1 This is the entire agreement between the Parties on the subject matter.

4.2 Neither party relies in entering into this agreement upon any warranties, representations, disclosures or expressions of opinion which have not been incorporated into this agreement as warranties or undertakings.

4.3 No variation or consensual cancellation of this agreement will be of any force unless reduced to writing and signed by both of the contracting parties.

5. NON-WAIVER

5.1 No extension of time or indulgence must be interpreted as a waiver (giving away) of any right in terms of this agreement that one party may have against the other.

- 5.2 The failure of either party to comply with any non-material provision of this agreement will not excuse the other party from performing its obligations fully and on time.

SIGNED at on in the presence of the undersigned witnesses

Witnesses:

1

2

(Signatures of witnesses)

(Signature of Employer)

SIGNED at on in the presence of the undersigned witnesses

Witnesses:

1

2

(Signatures of witnesses)

(Signature of Employee)