



<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>	:	FIRST
<b><u>TEST</u></b>	:	JUNE ASSESSMENT (SUPPLEMENTARY)

<b><u>DATE</u></b>	:	<b>TBA</b>	<b><u>SESSION</u></b>	:	Electronic
<b><u>ASSESSOR(S)</u></b>	:	Dr. M van Eck			
<b><u>MODERATOR</u></b>	:	Prof. M Watney			
<b><u>DURATION</u></b>	:	3 hours	<b><u>MARKS</u></b>	:	60
<b><u>OPEN TIME</u></b>	:	<b>TBA</b>	<b><u>CLOSE TIME</u></b>	:	<b>TBA</b>

**NUMBER OF PAGES:** 7 PAGES (INCLUDING THIS PAGE)

---

**INSTRUCTIONS:**

1. The question paper and the answer sheet will be loaded onto Blackboard under “*June Supplementary Exam (July 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 Supp Exam” in the file name. For example, “*Your Surname, Initials June Supp 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](mailto: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 questions 1 and 2 in 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 penalized (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**

Nonthanhla Investment Brokers (Pty) Ltd is a company that specialises in lending money and providing funding solutions to various small businesses. Gnat & Flies (Pty) Ltd specialises in fumigation and pest control.

Nonthanhla Investment Brokers (Pty) Ltd and Gnat & Flies (Pty) Ltd enter into a written loan agreement as set out in Annexure A in this test paper.

After negotiations, Nonthanhla Investment Brokers (Pty) Ltd verbally agrees with Gnat & Flies (Pty) Ltd to waive (release) the last three instalments of the loan (being an amount of R750,000). However, a few months later Nonthanhla Investment Brokers (Pty) Ltd argues that the verbal agreement between Gnat & Flies (Pty) Ltd is not valid because it does not comply with the formalities set out clause 4.2 of the contract in Annexure A.

Assume for the purposes of this question that the Consumer Protection Act 68 of 2008 does not apply.

Answer the following questions:

- 1.1 In which instances would a verbal waiver not be considered to be in breach of clause 4.2 of the contract in Annexure A? Explain briefly. (3)
- 1.2 Is Nonthanhla Investment Brokers (Pty) Ltd correct in stating that the verbal waiver is not valid as it does not comply with clause 4.2 of the contract in Annexure A? Explain briefly. (2)
- 1.3 Identify and provide the typical name of clause 4.2 of the contract in Annexure A. (2)
- 1.4 On 4 July 2018 Nonthanhla Investment Brokers (Pty) Ltd sends Gnat & Flies (Pty) Ltd the following email:

Dear Mr G. Hartley,

After our discussion earlier today, we are pleased to let you know that we are willing to amend the Loan Agreement as follows:

- You will have an additional 12 months to repay the Loan (this being 24 months in total).
- Your monthly repayment amount will reduce from R250,000 per month to R220,000.

Let us know if you are in agreement.

Sincerely,

T. Shabalala

Director of Nonthanhla Investment Brokers (Pty) Ltd

On 5 July 2018 a director of Gnat & Flies (Pty) Ltd responds via email to Nonthanhla Investment Brokers (Pty) Ltd as follows:

Dear Ms T. Shabalala,

We have received your email of 4 July 2018, and we agree to the amendment to the Loan Agreement.

Sincerely,

G. Hartley

Director of Gnat & Flies (Pty) Ltd.

Explain whether the email correspondence would validity amend the loan agreement in terms of the formalities set out in clause 4.2 of the contract in Annexure A. Use appropriate prescribed authority to substantiate your answer. Your answer may not exceed 550 words. (15)

[22]

## **QUESTION 2**

During April 2020, Gnat & Flies (Pty) Ltd falls on hard times due to the National Lockdown and is unable to operate its pest control business. As a result Gnat & Flies (Pty) Ltd cannot (due to its subjective, personal financial circumstances) repay the monthly loan repayment of R220,000 per month for the months of April and May 2020. Other pest control businesses in the industry have, however, been able to make good on their payment obligations.

Answer the following questions:

- 2.1 Gnat & Flies (Pty) Ltd believes that the National lockdown made it impossible for it to perform and should be excused from making payment for the period of the hard-lockdown. Is Gnat & Flies (Pty) Ltd correct? Give reasons for your answer. (3)
- 2.2 What is the Latin name for clause 3.1 in the contract in Annexure A? Provide the full Latin name, and ensure that the term is correctly spelt. (2)
- 2.3 Assume for the purposes of this question that Gnat & Flies (Pty) Ltd is, in fact, in breach of the loan agreement and its failure to make payment is not classified as an impossibility of performance. What remedies would Nonthanhla Investment Brokers (Pty) Ltd have? Explain your answer. (4)
- 2.4 Gnat & Flies (Pty) Ltd's defence against the breach of contract is that the contract in Annexure A is unreasonable and unfair, specifically as clause 3.1 only allows Gnat & Flies (Pty) Ltd 7 (seven) days to rectify a breach of the contract, which would (if enforced) result in the collapse of Gnat & Flies (Pty) Ltd's business. Gnat & Flies (Pty) Ltd believes that enforcing clause 3.1 would impact its Constitutional rights to earn a living and practice its trade.

Explain, with reference to relevant prescribed case law, the correctness of Gnat & Flies (Pty) Ltd's views and whether Gnat & Flies (Pty) Ltd's defence would be successful. Your answer may not exceed 350 words. (5)

[14]

### **QUESTION 3**

The following clause is found in a short-term insurance contract:

The Insured shall institute any claims against Insurance Company within 48 (forty eight) hours from the date the claim arose. The Insured shall have no remedies or any claim against Insurance Company whatsoever should the Insured bring a claim outside the aforementioned 48 (forty eight) hour time period.

Answer the following questions:

- 3.1 What is the typical name for the above clause in the short-term insurance contract? (2)
- 3.2 Is the clause valid? Your answer must include the principles and test set out by leading prescribed authority to substantiate your answer. Your answer may not exceed 350 words. (12)

**[14]**

### **QUESTION 4**

On 8 April 2017, Tshepo meets Siswe at a braai held at the home of a mutual friend. During a 15-minute long conversation, the parties (Tshepo and Sizwe) discuss the fact that Tshepo is looking to sell his car. Siswe verbally offers to buy the vehicle from Tshepo, and Tshepo verbally confirms that he accepts Siswe's offer.

The parties agree that the vehicle will be delivered by Thsepo to Siswe at Siswe's home on 12 April 2017, and that Siswe will pay the price agreed on for the vehicle, in cash, before Thsepo hands over the vehicle's keys.

On 12 April 2017, as agreed, Thsepo arrives at Siswe house, driving a 2008 model Hyundai Getz. Siswe sees the Getz and indicates to Thsepo that he (Siswe) believed that he had purchased a 2008 model BMW 320i from Thsepo on 8 April 2017, and not a 2008 Hyundai Getz.

Siswe refuses to pay over the purchase price to Thsepo, saying that he is not interested in the Getz since he was expecting a BMW. Thsepo is upset. He informs Siswe that the contract between the parties' stands and that Siswe is contractually liable to pay over the agreed purchase price.

Answer the following questions:

- 4.1 Identify and discuss the type of mistake has occurred in the set of facts and how it may impact the validity of the contract. If there is more than one type of mistake this must be identified and discussed. Your answer may not exceed 100 words. (4)
- 4.2 Which theory might be used for a court hold Siswe contractually bound to pay the purchase price for the vehicle over to Thsepo? (2)
- 4.3 Name the theory on which Siswe should attempt to rely in order to avoid contractual liability of the contract concluded between Siswe and Thsepo? (2)
- 4.4 What will Siswe need to prove to avoid contractual liability in terms of the theory you should have identified in your answer to question 4.3 above? (2)

**[10]**

---

<b>TOTAL:</b>	<b>[60]</b>
---------------	-------------

---

<b>TOTAL MARKS</b>	<b>60</b>
--------------------	-----------

**LOAN AGREEMENT**

Entered into between

**Nonthanhla Investment Brokers (Pty) Ltd**

Reg No: 8/307/0200/07

**("Lender")**

and

**Gnat & Flies (Pty) Ltd**

Reg No: 27/080808/07

**("Borrower")**

## 1. INTRODUCTION

The Borrower specialises in fumigation and pest control and requires certain equipment to fulfil this business function. The Borrower requires additional money to fund its operation. The Lender is an investment broker and is willing to lend certain amount of money to the Lender.

**NOW THEREFORE** the Parties agree as follows:

## 2. LOAN

2.1 The Lender hereby agreed to lend to the Borrower an amount of R3,000,000 (three million Rand) for the Borrower to fund its business operations ("**the Loan**").

2.2 The Lender deposit the Loan into the Borrower's bank account 3 (three) days from the date this agreement is signed.

2.3 The Borrower will repay the Lender the Loan in 12 equal monthly instalments, commencing on 1 February 2018.

2.4 The Lender is entitled, in addition to the Loan, a fee of 3% of the Loan per month.

## 3. BREACH

3.1 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 any other rights in law) cancel the agreement.

3.2 If the Borrower fails to make payment of the Loan within the agreed times, then the Lender may charge 12% interest on the Loan.

## 4. GENERAL PROVISIONS

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

4.2 No variation of this Agreement will be of any force unless reduced to writing and signed by both of the contracting parties.

SIGNED at ..... on ..... in the presence of the undersigned witnesses

Witnesses:

1

2

(Signatures of witnesses)

(Signature of Lender)

SIGNED at ..... on ..... in the presence of the undersigned witnesses

Witnesses:

1

2

(Signatures of witnesses)

(Signature of Borrower)