



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

<u>DATE</u>	:	TBA	<u>SESSION</u>	:	Electronic
<u>ASSESSOR(S)</u>	:	Dr. MM van Eck			
<u>MODERATOR</u>	:	Prof N Grové (UP)			
<u>DURATION</u>	:	4 hours	<u>MARKS</u>	:	70
<u>OPEN TIME</u>	:	TBA	<u>CLOSE TIME</u>	:	TBA

NUMBER OF PAGES: 13 PAGES (INCLUDING THIS PAGE)

INSTRUCTIONS:

1. The question paper and the answer sheet will be loaded onto Blackboard under "*November Supplementary Exam*" in the section called "*Tests, Exams and Assessment*".
2. There are two parts to this assessment, being Section A (multiple choice questions) and Section B (written questions). Both sections must be answered.
3. 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 "Nov Supp Exam" in the file name. For example, "[*Your Surname, Initials*] Nov Supp Exam".
4. 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.
5. 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).
6. If the answer sheet does not contain your details (e.g. their name, surname and student number) to identify you sufficiently, then it cannot be marked.
7. 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).
8. 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.
9. You may not seek assistance of a fellow student or the tutor. You may not use any part of another student's answers to complete this assessment. You are reminded that all relevant rules and policies of the University and the Faculty apply to this test. With regard to the assessment, the standard 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".**
10. Good luck with the test.

SECTION A
MULTIPLE CHOICE QUESTIONS

INSTRUCTIONS

- 1 Answer all of the questions on the answer sheet by indicating the correct statement.
- 2 There is only one correct statement in each question.
- 3 Each question counts 1 mark.

QUESTION 1

Indicate which of the following statements are incorrect in the judgement of *Bock v Duburoro Investments (Pty) Ltd* 2003 4 All SA 103 (SCA):

- (a) A term in an agreement of pledge, which provides for the private sale of the pledged article in the possession of the creditor, is valid provided it does not prejudice the rights of the debtor unduly.
- (b) *Pactum commissorium* in the context of a pledge is an agreement that, if the pledgor defaults, the pledgee may keep the security as his/her own property. Such an agreement void.
- (c) *Pactum commissorium* in the context of a pledge is an agreement that, if the pledgor defaults, the pledgee may keep the security as his own property. Such an agreement is valid.
- (d) The *quasi*-conditional sale whereby the creditor may, upon default, take over a pledge at a fair price. An agreement to this effect is valid and is comparable to a *lex commissoria* or forfeiture clause.

QUESTION 2

A customer walks into a stationery shop and offers to buy 20 pencils at R1.75 each. At which moment does the sale become *perfecta*?

- (a) When the shop owner accepts the offer unconditionally.
- (b) When the shop owner takes 20 pencils from a pack of 100.
- (c) When the customer pays for the pencils.
- (d) When the shop owner hands the pencils over to the customer.
- (e) When the customer leaves the shop.

QUESTION 3

A clause which provides that the pledgee can keep the pledged object as the owner thereof under the circumstances where the pledger fails to satisfy the secured debt is called a:

- (a) *Pactum commissorium*.
- (b) *Pactum de non litis*.
- (c) *Parate executie*.
- (d) *Parate mortgage*.
- (e) *Pactum de non cedendo*.

QUESTION 4

The warranty against eviction in a contract of purchase and sale is an example of a(n):

- (a) *Essentialia*.

- (b) *Incidental*ia.
- (c) *Natural*ia.
- (d) Condition.

QUESTION 5

Which one of the following clauses in a contract of pledge, will be invalid?

- (a) *"In the event of default, the pledgee will be entitled to sell the pledged item out-of-hand, without intervention by the courts."*
- (b) *"In the event of default, the pledged item will become the property of the pledgee against payment of a fair price."*
- (c) *"In the event of default, the pledged item will automatically become the property of the pledgee."*
- (d) *"The pledgee is entitled to use and enjoy the pledged item while it remains in his possession."*

QUESTION 6

Arbitration agreements have been described as "*self-contained contract collateral or ancillary to the main agreement*" and can be a separate agreement or included as part of the main agreement. Indicate which one of the following statements is correct:

- (a) In instances where the main agreement is cancelled, the arbitration agreement remains intact.
- (b) In instances where the main agreement is found to be *void ab initio*, the arbitration will also not survive the main agreement.
- (c) In instances where the main agreement is terminated by agreement by the contracting parties, the arbitration agreement will also not survive the main agreement.
- (d) All of the above statements are correct.

QUESTION 7

Which one of the following, is not a long lease for purposes of Section 1 of the Formalities in respect of Leases of Land Act 18 of 1969?

- (a) *"The period of this lease is 15 years from date of occupation."*
- (b) *"This lease will run for the duration of the natural life of the tenant's spouse."*
- (c) *"The initial period of this lease is 2 years, which may be extended at the choice of the tenant for an additional 4 years."*
- (d) *"The initial period of this lease is 6 years, which may be extended at the choice of the tenant for an additional 7 years."*

QUESTION 8

What are the formalities required for a valid suretyship?

- (a) The suretyship must be embodied in a written document signed by or on behalf of the surety.
- (b) The suretyship must be embodied in a written document signed by or on behalf of the surety and the creditor.
- (c) The suretyship must be embodied in a written document signed by or on behalf of the surety, the creditor and the principal debtor.
- (d) The suretyship must be embodied in a written document signed by or on behalf of the surety in front of two witnesses.

- (e) None of the above. There are no formalities required for a valid suretyship.

QUESTION 9

The purpose of the Rental Housing Act 50 of 1999 is:

- (a) To promote the constitutional right of access to adequate housing.
- (b) To provide for the renting of commercial property in a manner that is fair and accessible.
- (c) To promote access to agricultural land.
- (d) To protect against unfair discrimination in the leasing of movable assets.

QUESTION 10

Indicate which one the following statements is incorrect in the judgement of *Durban's Water Wonderland (Pty) Ltd v Botha* 1998 JOL 4271 (A):

- (a) The courts *a quo* erred in accepting Respondents' averment that the disclaimer notices were ambiguous.
- (b) The court found that the language used was capable of only one meaning that the Appellant would not be liable for injury under any circumstances.
- (c) The court found that the language used in the indemnity was capable of more than one meaning and therefore the court had to apply the rules of interpretation to confine the words to their proper limits.
- (d) The court found that the Appellant did whatever was reasonably sufficient to bring the disclaimer to the notice of patrons. Respondents were therefore bound by its terms.

QUESTION 11

In *Bhikhagee v Southern Aviation (Pty) Ltd* 1949 4 All SA 164 (E) the court found that:

- (a) The defendant was bound to the terms in the document because when the defendant signed the document he voluntarily took on the risk of what was contained in the document.
- (b) The company had misled the defendant.
- (c) The defendant was not aware of the printing on the back of the document.
- (d) The company and the defendant had a verbal agreement that had waived the terms on the ticket.

QUESTION 12

Indicate which of the following statements are incorrect in the judgement of *Afrox Healthcare Bpk v Strydom* 2002 4 All SA 125 (SCA):

- (a) It was argued that the indemnity clause went further than was acceptable in its protection against negligence, but the court held that where the language in a contract is too wide, the court would confine it to the proper limits.
- (b) It was argued that the indemnity clause went further than was acceptable in its protection against negligence and the court stated that it could not confine the language of the clause to the proper limits because of the principle of privity of contract.
- (c) The court dismissed the Respondent's argument and held the Respondent's bound to the contract.
- (d) Both statements (b) and (c).

QUESTION 13

What is the position if the insured under a life insurance contract commits suicide?

- (a) Cover is excluded, unless the parties agreed otherwise.
- (b) Cover is excluded, regardless of the provisions of the agreement.
- (c) Cover is included, unless the parties agreed otherwise.
- (d) Cover is included, regardless of the provisions of the agreement.

QUESTION 14

What are the formalities required for the conclusion of a valid contract of insurance?

- (a) None. There are no statutory formalities required.
- (b) The contract must be in writing.
- (c) The contract must be in writing and signed by the insured.
- (d) The contract must be in writing and signed by the insured and the insurer.

QUESTION 15

Khutso owns a boat and insures her boat for R125,000 (one hundred and twenty-five thousand Rand) from TNT Insurers (Pty) Ltd. One day, whilst on the river, a jet ski strikes Khutso's boat; the boat is completely destroyed. It was later established that the person riding the jet ski was drunk. Khutso successfully claims and receives the R125,000 (one hundred and twenty-five thousand Rand) from the drunk driver.

Which of the following statements are most correct?

- (a) Khutso may not claim an additional amount from TNT Insurers (Pty) Ltd.
- (b) Khutso may claim R125,000 from TNT Insurers (Pty) Ltd because of she has an insurance policy with TNT Insurers (Pty) Ltd.
- (c) TNT Insurers (Pty) Ltd may also claim R125,000 from the drunk driver through the operation of subrogation.
- (d) Khutso must pay the R125,000 to TNT Insurers (Pty) Ltd.

QUESTION 16

Edward Nkozi recently decided to open his own business and needs capital to fund this new venture. He approaches a financial institution (bank) to obtain the necessary loan. The financial institution (bank) is only willing to provide the funding if Edward's business partners, Sanesh and Douglas stand suretyship for the loan.

The following is an extract of what is 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 the written loan agreement with the Creditor."

Edward does not honour the terms of the loan agreement, and Financial Investments (Pty) Ltd now wants to recover the outstanding amount of R100,000 from Sanesh and Douglas.

Indicate which one of the following statements is correct:

- (a) Sanesh and Douglas are both proportionately (equally) liable to Financial Investments Company (Pty) Ltd.
- (b) The maximum amount that the Financial Investments (Pty) Ltd can recover from Douglas is R50,000 (being his proportionate share).
- (c) 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.
- (d) 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 the amount that he overpaid from Douglas.

QUESTION 17

Mzizi rents a house from Meagan. Mzizi wakes up one morning to discover that the geyser in the house has burst during the night. He immediately consults the Yellow Pages and calls a plumber to fix the problem. The plumber arrives, repairs the geyser and presents Mzizi with a bill for R2,500 (two thousand five hundred Rand). Mzizi asks the plumber to also paint the bedroom in an olive green because Mzizi prefers that colour. The plumber paints the bedroom for R800. Mzizi pays the bill of R2,500 for the repair of the geyser as well as the R800 for having painted the bedroom. Mzizi later that day demands to be reimbursed for the R3,300 from Meagan.

Which of the following statements is correct?

- (a) The repair of the geyser would be considered a necessary expense and Meagan is required to reimburse Meagan the R2,500 but Meagan would not be required to pay R800 for painting of the bedroom as it would be considered a luxurious expense.
- (b) The repair of the geyser would be considered a useful expense and Meagan is not required to reimburse Meagan the R2,500 and Meagan would not be required to pay R800 for painting of the bedroom as it would be considered a luxurious expense.
- (c) The repair of the geyser would be considered a necessary expense and Meagan is required to reimburse Meagan the R2,500 and Meagan would also be required to pay R800 for painting of the bedroom as it would be considered a useful expense.
- (d) Mzizi may not claim any amounts from Meagan, as Meagan never agreed to any of the expenses.

QUESTION 18

What best describes instances where the insured may terminate the contract of insurance and receive a certain amount from the insurer (which is normally less than the premiums paid to date):

- (a) Endowment insurance.
- (b) Subrogation.
- (c) Excess.
- (d) A surrender value.

QUESTION 19

The maxim *eiusdem generis* means:

- (a) If one matter is expressly included, other similar matters not expressly mentioned are excluded.
- (b) A word must be read in context.
- (c) General words refer to things that are similar to specific things that are mentioned.

- (d) If one matter is expressly regulated the opposite applies to opposite matters.

QUESTION 20

The following clause appears in an insurance contract concluded between Mrs Ndlovu and BDF Insurers:

“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 which bears the same proportion to the amount of the loss or damage, as the sum insured bears to the aforesaid value.”

This clause is known as a(n):

- (a) Disclosure clause.
- (b) Average clause.
- (c) Under-insurance clause.
- (d) Double-insurance clause.
- (e) Contribution clause.

SUB-TOTAL: SECTION A**[20]**

SECTION B

WRITTEN QUESTIONS

INSTRUCTIONS

- 1 Answer all of the questions in the answer sheet.
- 2 Following the instructions on the word count for questions.
- 3 Read Annexure A that is attached to this test paper before answering the questions.

QUESTION 1

Gugulethu is the owner of a farm which specialises in growing and selling seasonal tomatoes. Gugulethu wishes to appoint Just-In-Time-Couriers (Pty) Ltd as a supplier to transport the tomatoes to Gugulethu’s customer who owns various retail shops in Gauteng. Just-In-Time-Couriers presents Gugulethu with a written contract as set out in Annexure A to this test paper.

The following provisions are still outstanding and being negotiated between Gugulethu and Just-In-Time-Couriers (Pty) Ltd:

- (a) Gugulethu is concerned that Just-In-Time-Couriers (Pty) Ltd may cede their rights in the contract to a third party.
- (b) Gugulethu requires a clause in the contract to identify the place where notices must be sent and received.
- (c) Just-In-Time-Couriers (Pty) Ltd wants the contract to include a condition suspending the operation of the contract until a deed of surety is signed by Gugulethu’s husband, Edward, within 14 (fourteen) days from the date that contract in Annexure A is signed.

Should this condition not be fulfilled within the time period, then the contract would be *void* with no force or effect.

- (d) Just-In-Time-Couriers (Pty) Ltd wants all disputes to be referred to arbitration instead of the court processes.

Answer the following questions:

- 1.1 What are the *essentialia* of the type of contract set out in Annexure A? (4)
- 1.2 What are the typical names of the clauses that would be included in the contract in Annexure A in order to address the concerns listed in paragraphs (a) to (d)? If there is a Latin name for the clause, include in your answer both the Latin and English names. (4)
- 1.3 Draft the clauses you have identified in question 1.2. You may supplement any factual elements that are not found in the set of facts. (11)
- 1.4 Explain to your client in which matters arbitration may not be used to resolve a dispute between the contracting parties? Also, provide an example. (3)
- 1.5 What mechanism exists to resolve a deadlock or dispute between arbitrators? Explain briefly. (2)
- 1.6 Gugulethu instructs Just-In-Time-Couriers (Pty) Ltd to deliver 1,000 bags of tomatoes to her customer, but shortly after Just-In-Time-Couriers (Pty) Ltd picks up the bags of tomatoes Gugulethu and her customer has a disagreement. Gugulethu immediately phones Just-In-Time-Couriers (Pty) Ltd to stop the delivery. Assume for the purposes of this question that the sale between Gugulethu and her customer is a cash sale. Advise Gugulethu whether she can stop the delivery? (4)
- 1.7 Would your answer to question 1.6 be different if the contract of sale between Gugulethu and her customer was a credit sale? Explain briefly. (2)
- 1.8 Gugulethu wants to expand her business and approaches the People's Bank to take out a loan for R250,000 (two hundred and fifty thousand Rand). The People's Bank is willing to advance the loan to Gugulethu, provided that they are provided with security for the loan.

Gugulethu advises you that:

- Her cousin, Felicia, owes her (Gugulethu) R300,000 (three hundred thousand Rand). Gugulethu is willing to transfer her rights in the loan but requires her rights to be transferred back to her upon payment of the loan to the People's Bank.
- She does not own any fixed property.
- She is not willing to use any of her movable property as security.
- No one is willing to stand-in personally for her liabilities.

What type of security would you suggest Gugulethu provide to the People's Bank in these circumstances? Briefly explain your answer. (3)

- 1.9 What is the difference between a pledge and the form of security you should have identified in question 1.8? (8)

1.10 What type of credit agreement would the loan between Gugulethu and the People's Bank be in terms of the National Credit Act? (2)

1.11 What is the size of the credit agreement that you identified in question 1.10 (above)? (2)

1.12 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 this in relation to the legal principles established in relevant prescribed case law. (5)

[50]

SUB-TOTAL: SECTION B

[50]

TOTAL MARKS

70

MEMORANDUM OF AGREEMENT

Entered into between

Gugulethu Madiseng
ID Number: 8307020000040387

("Client")

and

Just-in-Time-Couriers (Pty) Ltd
Registration Number: 21345/23455/27

("Supplier")

1. PREAMBLE

The Client specialises in the growing and selling of tomatoes and is an exclusive provider of tomatoes to one of the large retail chains in South Africa. The Client wishes to utilise the Supplier's services to transport the tomatoes from the Client's farm to the various outlets in Gauteng.

NOW THEREFORE the Parties agree as follows:

2. INTERPRETATION AND DEFINITION

2.1 In this Agreement:

- 2.1.1 expressions in the singular include the plural, and the other way round;
- 2.1.2 words and phrases indicating natural persons also refer to juristic persons, and the other way round;
- 2.1.3 pronouns of any gender include the corresponding pronouns of the other gender; and
- 2.1.4 clause headings appear in this Agreement for purposes of reference only and must not influence the proper interpretation of the subject matter.

2.2 Unless the context indicates the contrary, the following words will have the following meaning:

- 2.2.1 "**Agreement**" means this agreement with all annexures and schedules attached thereto;
- 2.2.2 "**Delivery Address**" means the address where the tomatoes are to be delivered, as set out in the order.
- 2.2.3 "**Client**" means Gugulethu Madiseng with ID number 8307020000040387, having her place of residence at 1 Rose Street, Parkdown, Johannesburg
- 2.2.4 "**Order**" means the order that the Client will provide the Supplier for the transportation of the tomatoes; and
- 2.2.5 "**Supplier**" means Just-in-Time-Couriers (Pty) Ltd with registration number 21345/23455/27 having its place of business at 10 Butcher Road, Johannesburg.

3. DURATION

This Agreement will start on 1 January 2019 and will continue for 12 (twelve) months thereafter.

4. SERVICES

- 4.1 The Client will from time to time provide the Supplier with an Order.
- 4.2 The Order will include:
 - 4.2.1 The Delivery Address.
 - 4.2.2 The date upon which the tomatoes must be ordered.
- 4.3 The Supplier must ensure that the tomatoes are delivered on time and in accordance with the Order.

5. **BREACH**

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):

- 5.1 claim for specific performance and damages; or
- 5.2 cancel the agreement and claim damages.

6. **WHOLE AGREEMENT**

- 6.1 This is the entire agreement between the parties on the subject.
- 6.2 Neither party relies on 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.
- 6.3 No variation or consensual cancellation of this Agreement will be of any force unless reduced to writing and signed by both parties.

7. **NON-WAIVER**

- 7.1 No extension of time or indulgence must be interpreted as a waiver (giving away) of any right in terms of this lease that one party may have against the other.
- 7.2 The failure of either party to comply with any non-material provision of this lease will not excuse the other party from performing its obligations fully and on time.

SIGNED at **Johannesburg** on **1 January 2019** in the presence of the undersigned witnesses

Witnesses:

1

2

(Signatures of witnesses)

(Signature of Client)

SIGNED at **Johannesburg** on **1 January 2019** in the presence of the undersigned witnesses

Witnesses:

1

2

(Signatures of witnesses)

(Signature of Supplier)