



<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 SEMESTER
<u>TEST</u>	:	JUNE ASSESSMENT

<u>DATE</u>	5 June 2020	<u>SESSION</u>	:	Electronic
<u>ASSESSOR(S)</u>	Dr. MM van Eck			
<u>MODERATOR</u>	Prof MM Watney			
<u>DURATION</u>	3 hours	<u>MARKS</u>	:	70

NUMBER OF PAGES: 8 PAGES (INCLUDING THIS PAGE)

INSTRUCTIONS:

1. The question paper and the answer sheet will be loaded onto Blackboard under "June Assessment (5 June 2020)" in the section called "Tests, Exams and Assessment".
2. There are two sections to this test paper. Section A, being multiple choice questions and Section B, being written questions. Answer both Section A and Section B in the answer sheet.
3. Use the answer sheet to complete your answers, and complete your surname, initials and student number on the answer sheet. In instances where you are (for some reason) unable to open, use or complete the answer sheet, then you may use another Microsoft Word Document, PDF or a Scanned Copy / Photo of your answers.
4. Your answers must be loaded onto Blackboard as an "assignment" on Blackboard under "June Assessment (5 June 2020)" in the section called "Tests, Exams and Assessment". You will have 3 hours to complete the test, and your answers must be submitted within the allotted timeframe.

5. 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. In 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".

6. Good luck with the test.

SECTION A

MULTIPLE CHOICE QUESTIONS

INSTRUCTIONS

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

QUESTION 1

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. Unless we hear from you within 3 (three) days, we will assume that you have accepted our offer."

The email sent from XYZ (Pty) Ltd is an example of:

- (a) Negative option marketing in terms of section 31 of the Consumer Protection Act 68 of 2008
- (b) Bait marketing in terms of section 30(1) of the Consumer Protection Act 68 of 2008.
- (c) The consumer's right to rescind the contract during the cooling-off period in terms of section 16 of the Consumer Protection Act 68 of 2008.
- (d) Catalogue marketing in terms of section 32(1) of the Consumer Protection Act 68 of 2008.

QUESTION 2

Gloria owns a small hairdressing salon in central Johannesburg and obtains hair products from a supplier called Glorious Hair (Pty) Ltd located in Edenvale. Glorious Hair (Pty) Ltd values Gloria's business and sends via post on 5 August 2017 an offer to discount the price on hair conditioners by 20%, but the offer is only open for acceptance for twenty

days. Gloria 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 Johannesburg on 10 August 2017.
- (b) At Johannesburg on 12 August 2017.
- (c) At Edenvale 10 August 2017.
- (d) At Edenvale on 12 August 2017.
- (e) At Johannesburg on 16 August 2017.

QUESTION 3

Tebogolo is the owner of two vacant lands, being plot A and plot B. Tebogolo intends to sell plot A, and Bontle is interested in purchasing the vacant land of plot A. Upon inspecting the property Tebogolo's estate agent incorrectly indicates that plot B is for sale. Tebogolo and Bontle subsequently enter into a written sale agreement and a dispute arises as to which plot of land was sold.

This is an example of a(n):

- (a) *Error in negotio.*
- (b) *Error in persona.*
- (c) *Error in corpore.*
- (d) *Error in substantia.*
- (e) *Error in motive.*

QUESTION 4

Party A buys a stud bull from Party B after Party B told her that the bull was fertile. If Party B honestly believed the stud bull was fertile but a reasonable person would have been aware that the bull was infertile then it is considered to be a(n):

- (a) Innocent Misrepresentation.
- (b) Fraudulent Misrepresentation.
- (c) Knowledgeable Misrepresentation.
- (d) Negligent Misrepresentation.

QUESTION 5

The statement "*This car is the best buy you'll ever make*" is an example of, which of the following pre-contractual misstatements:

- (a) *Dicta et promissa.*
- (b) Warranty.
- (c) Opinion / prediction.
- (d) Puffery (*Simplex Commendatio*).

QUESTION 6

Section 6 of the General Laws Amendments Act 50 of 1966 requires the following formalities for a deed of surety:

- (a) The agreement must be in writing and signed by both the creditor and the surety.
- (b) The agreement must be in writing and signed by all the parties, the creditor, the principal debtor and the surety.
- (c) The agreement must be in writing and signed by the surety.
- (d) The agreement must be in writing and signed by the creditor.

QUESTION 7

Party A offers a car for sale to Party B at a price of R40,000. Party B would like to buy the car but is not sure if she can raise the money to do so. She needs time to consider the offer and is concerned that Party A might withdraw the offer and sell the car to someone else. They agree that Party A would give Party B three days to raise the money and Party A would not withdraw the offer during this time.

This is an example of:

- (a) A right of pre-emption / right of first refusal.
- (b) An option.
- (c) A contract of preference.
- (d) A real right.

QUESTION 8

Party A (the tenant) rents a property from Party B (the landlord). Six months later Party A buys the property from Party B and becomes the owner. Party A now becomes the owner and the landlord. This is an example of:

- (a) Merger.
- (b) Compromise.
- (c) Set-off.
- (d) Prescription

QUESTION 9

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 finalising the negotiation of a formal agreement. Shortly after signing the letter of intent, Edward decides 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 true:

- (a) 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.
- (b) 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.
- (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) 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 10

A load of imported cars are lost overboard on a shipping vessel during a storm. The cargo is still intact at the bottom of the sea.

What type of impossibility best describes this scenario?

- (a) It is factually possible but it is practically impossible.
- (b) It is practical impossible but physically impossible.
- (c) It is factually possible and objectively impossible.
- (d) It is legally impossible and subjectively impossible.

SUB-TOTAL: SECTION A

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**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.

QUESTION 1

Sindile and Jared have been planning their wedding for over a year and had in 2019 confirmed a booking for a wedding venue at Parktown with a company called, Wonderful Wedding Venues, for their wedding that would be held on 1 April 2020. Wonderful Wedding Venues calls Sindile and Jared on 27 March 2020 to advise them that they (Wonderful Wedding Venues) cannot provide the wedding venue on 1 April 2020 because they are a non-essential service provider and, as such, cannot provide the venue or their catering services for the duration of the National Lockdown.

Sindile and Jared are obviously upset and are unsure what to do or what their rights may be under the contract with Wonderful Wedding Venues.

Answer the following questions:

- 1.1 Will Wonderful Wedding Venues be obliged to perform their contractual obligations under the circumstances? Give reasons for your answer. (3)
- 1.2 Would your answer be different if the National Lockdown occurred at the time the contract was concluded? Answer "YES" or "NO" and explain your answer. (2)

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QUESTION 2

Adele is the owner of a Hyundai 1.10 Grand, 2016 model, which she wants to sell. The car's market value is R100 000 but because Adele needs money quickly she is willing to sell the car for R80 000. A friend of Adele introduces her to Thabo, who is interested in buying the car. After extensive negotiations the parties (Adele and Thabo) agree to the following terms:

- (i) Thabo will buy the Hyundai 1.10 Grand 2016 model ("car") from Adele.
- (ii) Thabo will pay Adele a purchase price of R80 000 for the car on or before 27 March 2018.
- (iii) Any late payment will attract interest at a rate of 10%.
- (iv) Adele will deliver the car to Thabo's house in Centurion on 27 March 2018.
- (v) Adele has, during the negotiations, guaranteed that the car is in good working condition without any defect.

Answer the following questions:

- 2.1 Assume for the purposes of this question that Thabo does not pay Adele the R80 000 on 27 March 2018. What form of breach did Thabo commit and what remedies are available to Adele in these circumstances? (5)
- 2.2 Assume for the purposes of this question that after having received delivery of the car, Thabo discovers that the car has faulty brakes. What form of breach did Adele commit? (2)

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QUESTION 3

Letsego (the client) is the owner of a small farm that specialises in growing and selling various fruits. Letsego is in the need of transportation services that would collect the fruit from Letsego's farm and deliver the fruit to the local market. Letsego identifies a company called Deliveries R Us (Pty) Ltd (the service provider) to provide the transportation services. After some negotiations the parties (Letsego and Deliveries R Us (Pty) Ltd) enter into a written transportation contract.

The contract contains the following clauses:

Clause 3:

"This contract will commence on 1 January 2020 and will continue for a period of 6 (six) months."

Clause 13

"In the event that the Service Provider fails to fulfil its duties under this contract and fails to remedy such a breach within 14 (fourteen) days after having been requested to do so, then the Client shall have the right (together with any other rights that the Client may have in law) to cancel the contract with written notice to the Service Provider."

Clause 14:

"The Parties agree that time is of the essence for the full and complete performance of the Service Provider under the terms of this contract. Therefore, if the Service Provider fails to deliver the fruit on time, then the Service Provider will be liable to pay the Client R1,000 for every hour that the delivery is delayed."

Clause 15:

"The Parties agree that the Service Provider must bring any claim that the Service Provider may have against the Client within 90 days from the date of the claim occurring, failing which the Service Provider shall not be entitled to bring any claim against the Client whatsoever."

Clause 33:

"This contract may not be varied or amended unless the Parties have agreed to the variation or amendment in writing and having had the variation or amendment signed by both Parties."

Answer the following questions:

- 3.1 What is the Latin term that is used to describe the type of clause included as clause 13 of the contract between Letsego and Deliveries R Fast (Pty) Ltd? (2)
- 3.2 Why do you think Letsego would include clause 13 into the contract? Use legal principles to substantiate your answer. (3)

- 3.3 Consider the clause included as clause 14 of the contract between Letsego and Deliveries R Fast (Pty) Ltd. Is this clause valid and enforceable under South African contract law? Your answer should include an explanation of how the clause operates in the South African law as well as relevant authority to substantiate your answer. Your answer must not be longer than 250 words in length. (5)
- 3.4 Consider the clause included as clause 15 of the contract between Letsego and Deliveries R Fast (Pty) Ltd. What would this clause be called? (2)
- 3.5 Again, consider the clause included as clause 15 of the contract between Letsego and Deliveries R Fast (Pty) Ltd. Advise Letsego whether the clause is valid in South African contract law and use relevant authority to substantiate your answer. Your answer must not be longer than 500 words in length. (10)
- 3.6 Consider the clause included as clause 33 of the contract between Letsego and Deliveries R Fast (Pty) Ltd and explain to Letsego the purpose for having included the clause in the contract. Your answer should include the following:
- (i) Identify the type of clause (give its name).
 - (ii) The reason why such a clause would likely be included in a contract.
 - (iii) Explain, with reference to relevant case law, whether this clause is considered valid, void, voidable or unenforceable under South African contract law.
- Your answer must not be longer than 250 words in length. (5)
- 3.7 Provide an example of when the enforcement of clause 33 in the contract could be considered against public policy? (1)
- 3.8 Assume for the purposes of this question that Letsego is concerned that her employees, which have specific knowledge of Letsego's business, may leave her employ and be poached by one of her competitors. This would have devastating consequence to her business. To prevent this from happening, she wants to include the following clause in the employment contracts with her employees:
- "The Parties agree that the employee shall not, at any time after the employee's employment terminates for whatsoever reason (and for an indefinite period of time), operate or engage (whether directly or indirectly) in any business or occupation which competes with the business of Letsego in any area in the country of South Africa as a whole."*
- Advise Letsego whether this clause is valid? Use relevant authority to substantiate your answer. Your answer must not be longer than 500 words in length. (10)

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QUESTION 4

Lindiwe is the owner of a hair salon, which has operated in central Johannesburg for the last three years. Jameson (who is a registered plumber) is one of Lindiwe's best and most loyal customers. Lindiwe has, over the years, agreed that Jameson can pay for his haircuts on a monthly basis.

On 30 May 2020, whilst Jameson was at the hair salon for a haircut, one of the pipes bursts. Lindiwe is desperate and asks Jameson, being a qualified plumber, to fix the burst pipe. Jameson fixes the plumbing at the hair salon and three days later sends Lindiwe an invoice of R500 for professional services rendered.

Lindiwe does not believe that she needs to pay Jameson the R500 because Jameson already owes Lindiwe R2,000 for the month of May's haircuts at the time of the burst pipe. Lindiwe approaches you for advice.

Answer the following questions:

- 4.1 In certain circumstances, contractual obligations may terminate by operation of law. Which type of termination by operation of law applies to the set of facts? (Provide the name and the reason for your answer). (2)
- 4.2 Is Lindiwe required to pay Jameson R500 for fixing the plumbing at the hair salon? Answer "YES" or "NO", provide reasons for your answer and discuss any requirements that must be met. (8)

[10]

SUB-TOTAL: SECTION B

[60]

TOTAL MARKS

70