



<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 (SUPPLEMENTARY)

<u>DATE</u>	TBA	<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 Supplementary Assessment" 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 Supplementary Assessment" 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 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. 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 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.”

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

Indicate which of the following statements are true:

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

QUESTION 2

Vanessa lives in Johannesburg and sends an email on 6 June 2010 to Bontle offering to sell her one of a kind silver bracelet for R750. Vanessa also states that Bontle will be required to make payment of the purchase price and collect the bracelet by the end of the week. Bontle, who lives in Pretoria, sends an email to Vanessa on 8 June 2010 accepting the offer without qualification.

Assume for the purchases of this question that all emails are received on the same day they were sent.

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

- (a) At Johannesburg on 6 June 2010.
- (b) At Pretoria on 6 June 2010.
- (c) At Johannesburg on 8 June 2010.
- (d) At Pretoria on 8 June 2010.

QUESTION 3

Zara own two different types of cell phones and wants to sell one of them to Lerato. Zara thinks she is selling the iPhone and Lerato thinks that she is buying the Samsung.

This is an example of a(n):

- (a) *Error in negotio.*
- (b) *Error in corpore.*
- (c) *Error in persona.*
- (d) *Error in Substantia.*

QUESTION 4

Party A buys a stud bull from Party B after Party B told Party A that the bull was fertile. If Party B knew that the bull was infertile when he sold it to Party A, then it would be considered to be a(n):

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

QUESTION 5

The statement “*This house is a desirable residence for family and it is well built*” is an example of which of the following pre-contractual misstatements:

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

QUESTION 6

Section 5 of the General Laws Amendments Act 50 of 1966 requires the following formalities for executionary donations:

- (a) The agreement must be in writing and signed by both of the parties.

- (b) The agreement must be in writing and signed by the donor.
- (c) The agreement must be in writing.
- (d) The agreement must be written, signed by the parties and registered within 3 months of signature.

QUESTION 7

In *Magna Alloys and Research (SA) (Pty) Ltd v Ellis*:

- (a) The court favoured freedom of contract.
- (b) Applied an objective test to determine the validity of a restraint of trade contract.
- (c) The court favoured sanctity of contracts.
- (d) Found that a time-bar clause was not per se unconstitutional or against public policy.

QUESTION 8

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

QUESTION 9

The *exceptio non adimpleti contractus* is a defence available only in relation to the following type of contracts:

- (a) Unilateral contracts.
- (b) Contracts of donation.
- (c) Pactum de contrahendo.
- (d) Reciprocal contracts.

QUESTION 10

Party A and Party B sign a lease agreement on 12 April 2018. Shortly thereafter the parties renegotiate the terms of the lease agreement, and they sign a new lease agreement on 16 April 2020. This would be an example of:

- (a) Merger.
- (b) Release.
- (c) Cession.
- (d) Novation.

SUB-TOTAL: SECTION A

[10]

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

Consider the following cartoon:



(Source: <http://qccartoon.com>)

The cartoon seems to imply that contingency fees are beneficial for attorneys but inherently unfair to clients. Do you agree? Your answer should include a full explanation of how contingency fee agreements operate in South Africa, and use appropriate authority to substantiate your answer. (5)

[5]

QUESTION 2

Camilla's husband, Bongani, has recently taken out life insurance. In terms of the insurance contract, the insurer would pay Camilla R1,000,000 upon the death of Bongani.

Camilla and Jabu have identified a clever plan to make some quick money. Camilla proposes that Jabu kill Bongani and Camilla will pay Jabu half of the proceeds of the insurance (being R500,000).

Jabu agrees to this arrangement, thinking that he can make some quick and easy money, but insists on Camilla paying a deposit of R30,000 up front. After having received the deposit, Jabu refuses to kill Bongani.

Camilla is furious and wants to cancel the contract and claim restitution of performance, as well as damages. She approaches you for advice.

Answer the following question:

- 2.1 Is there a valid contract between Camilla and Jabu? Answer "YES" or "NO" and provide reasons for your answer. (2)
- 2.2 What remedies are available to Camilla? In answering this question provide a detailed explanation of the legal theory relevant to the set of facts. Your answer should not exceed 400 words in length. (8)

[10]

QUESTION 3

On 12 May 2018, Mr Ndlovu concludes a contract with Siphile Dladla. In terms of the contract the parties have concluded, Siphile will attend to the landscaping of Mr Ndlovu's garden at Mr Ndlovu's home in Linden, Johannesburg and, in return, Mr Ndlovu will pay to Siphile the sum of R3,200. The contract further provides that Siphile will begin the landscaping work on 13 June 2018 and that Siphile will complete the landscaping work by 15 June 2018. Mr Ndlovu pays Siphile the sum of R1,600 immediately, and the parties agree that the balance of the amount due (R1,600) will be paid to Siphile on completion of the agreed landscaping.

On the morning of 26 May 2018, Mr Ndlovu receives a message on his cell phone from Siphile Dladla. Siphile tells Mr Ndlovu in this message that he (Siphile) has been asked to undertake extensive work at the Kirstenbosch Botanical Gardens in Cape Town, for which work Siphile will be paid very handsomely. Siphile informs Mr Ndlovu in his message that Siphile will be leaving Johannesburg for Cape Town on 9 June 2018 and that he will not be returning to Johannesburg until 6 July 2018. Siphile ends his message with a promise to attend to the landscaping of Mr Ndlovu's garden on 7 and 8 July 2018.

Answer the following questions:

- 3.1 What form of breach of contract has Siphile Dladla committed? Explain your answer fully. (2)
- 3.2 Assume, for the purposes of this question 3.2, that Siphile Dladla arrives at Mr Ndlovu's property on the morning of 13 June 2018, and carries out the landscaping work. Unfortunately, Siphile destroys four of Mr Ndlovu's lemon trees while he works. Explain whether, under these circumstances, Siphile Dladla has breached his contract with Mr Ndlovu. (2)

[4]

QUESTION 4

Jack (the tenant) signs a lease agreement with the Renting Company (the landlord). As part of the agreement, Jack is required to pay a deposit of R5,000 which the Renting Company may use if Jack fails to make payment of the rental.

The contract contains the following clauses:

Clause 3:

*"This Agreement shall start on 1 July 2019 and shall continue for 6 (six) years from that date ("**Initial Period**")."*

Clause 4:

"The Landlord offers the Tenant the right to renew this Agreement after the Initial Period for another 6 (six) years on the same terms and conditions set out in this Agreement. This offer will remain open for acceptance for the duration of the Initial Period."

Clause 10:

"In the event that the Tenant fails to fulfil his duties under this contract and fails to remedy such a breach within 5 (five) days after having been requested to do so, then the Landlord may cancel the Agreement with written notice to the Tenant."

Clause 11:

"In the event that the Agreement is cancelled for whatsoever reason, then the Tenant will lose his deposit and will not be able to reclaim the deposit or claim restitution from the Landlord for whatsoever reason."

Clause 25:

"No party shall be liable to perform if performance cannot be rendered, or is delayed due an act of God or any unforeseen event outside the reasonable control of the parties."

Clause 26:

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

Clause 33:

"The Landlord may, in its sole discretion, terminate the lease for any reason and at any time. The Tenant may, however, not terminate the lease and would be bound to the lease for the duration of the Agreement."

Answer the following questions:

- 4.1 Consider clause 4 of the contract between Jack and the Renting Company. What specific form of valid contract which contemplates the conclusion of another, future contract is of relevance to this set of facts? (Provide the name). (2)
- 4.2 Assume for the purposes of this question 4.2 that the Renting Company breaches clause 4 of the lease agreement. What remedies would Jack have should he decide to uphold the contract? (3)
- 4.3 What is the Latin term that is used to describe the type of clause included as clause 10 of the contract between Jack and the Renting Company? (2)
- 4.4 Why do you think the Renting Company would include clause 10 into the contract? Use legal principles to substantiate your answer. (3)
- 4.5 Consider clause 11 of the contract between Jack and the Renting Company. Is this clause 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. (5)
- 4.6 Consider clause 25 of the contract between Jack and the Renting Company. What would this clause be called? (2)
- 4.7 Consider clause 26 of the contract between Jack and the Renting Company and explain to Jack the purpose of the clause in the contract. Your answer should include the following:
 - (i) Identify the type of clause (give the name of the clause).
 - (ii) The reason why such a clause would likely be included in a contract.
 - (iii) Explain, with reference to authority, whether this clause is considered valid under South African contract law.

Your answer must not be longer than 250 words (5)
- 4.8 Provide an example of when the enforcement of clause 26 in the contract could be considered against public policy? (2)

- 4.9 Assume for the purposes of this question 4.9 that the Landlord relies on clause 33 and terminates the lease with 24 hours' notice. Jack feels that this is inherently unfair and approaches you for advice. Provide a detailed exposition of the law relating to both the fairness of the clause and the fairness of the Landlord exercising their contractual powers. Use relevant authority to substantiate your answer. Your answer must not be longer than 500 words. (10)

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QUESTION 5

Lindiwe is the owner of a local hair salon, which has been in operation in her local community for the last six 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.

As at 29 May 2015 Jameson owed Lindiwe R2,000 for haircuts which was due and payable. Since 29 May 2015 Jameson had not paid anything to Lindiwe. On 30 May 2020, Lindiwe approaches you for legal advice.

Answer the following questions:

- 5.1 In certain circumstances, contractual obligations may terminate by operation of law. Which type of termination by operation of law applies in the set of facts? (Provide the name only). (2)
- 5.2 Can Lindiwe recover the R2,000 from Jameson? Answer "YES" or "NO" and provide reasons for your answer. Use relevant authority to substantiate your answer. Your answer must not be longer than 250 words. (5)

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SUB-TOTAL: SECTION B

[60]

TOTAL MARKS

70