



**FACULTY OF LAW (AUCKLAND PARK CAMPUS)**

**SUBMISSION OF FINAL EXAMINATION PAPERS**  
**JUNE/JULY 2017**

**MODULE NAME:** Law of Contract

**MODULE CODE:** 103 0000 / LCT4140

**LECTURER (S):** Mrs Kern

**HEAD OF DEPARTMENT:** Prof Whitney

**EXIT MODULE: YES/ NO** Yes

**FOR EXIT MODULES:**  
**EXTERNAL MODERATOR:** \_\_\_\_\_

**EXTERNAL MODERATOR FORM ATTACHED:** \_\_\_\_\_

**INSTRUCTIONS:**

1. How many of the following items will be required per student?

Examination script (4 pages) 2

Scanner sheet \_\_\_\_\_

Other (please specify) \_\_\_\_\_

2. How many students are still attending lectures (with a view to the number of examination papers required)? 385

**SIGNATURE OF LECTURER:** [Signature]

**DATE:** 19/07/2017

**SIGNATURE AS HEAD OF  
DEPARTMENT  
(AS INTERNAL MODERATOR)**

M. M. Whitney

**DATE:** 1/06/2017

**FOR ADMINISTRATIVE PURPOSES:**

**Noted:** \_\_\_\_\_

**Date:** \_\_\_\_\_



**UNIVERSITY OF JOHANNESBURG**

**KINGSWAY CAMPUS**

**FACULTY OF LAW**

**JUNE 2017**

**SUBJECT NAME:** LAW OF CONTRACT

**SUBJECT CODE:** KOR0000 / LCT41Y0

**DURATION:** 2 HOURS

**MARKS:** 60

**EXAMINER:** MRS K M KERN

**THIS PAPER RUNS TO 4 PAGES.**

---

**INSTRUCTIONS:**

- 1. Answer the questions in the answer book/s provided.**
  - 2. Please write neatly. Marks will be deducted for untidy and illegible handwriting.**
-

## **QUESTION 1**

Distinguish between *error in corpore* and *error in substantia* as forms of mistake under the common law.

(4)

[4]

## **QUESTION 2**

Mr Dube and Mrs Makola negotiate the purchase by Mrs Makola of Mr Dube's house in Uvongo, KZN.

During the negotiations, Mr Dube tells Mrs Makola that the house stands on prime beach-front property and that, as a result, the house is worth approximately R5,500,000.

Following further negotiations, Mr Dube and Mrs Makola conclude a written contract for the sale and purchase of the house, in terms of which Mrs Makola agrees to pay to Mr Dube a purchase price of R5,100,000 for the house.

Answer the following questions:

- 2.1 Assume, for the purposes of this question 2.1, that what Mr Dube told Mrs Makola regarding the quality of the land on which the house is built is untrue, and that Mrs Makola later discovers that the actual market value of the house is only R3,700,000. Mrs Makola approaches you for advice, telling you, her attorney, that she would certainly not have purchased the house from Mr Dube had she known the true quality of the land on which the house is built and had she known the house's true value. Mrs Makola would like to claim damages from Mr Dube. What amount of damages is Mrs Makola entitled to claim from Mr Dube? Provide only the amount (in Rand). (2)
- 2.2 Assume, for the purposes of this question 2.2, that what Mr Dube told Mrs Makola regarding the quality of the land on which the house is built is untrue, and that Mrs Makola later discovers that the actual market value of the house is only R3,200,000. Mrs Makola approaches you for advice, telling you that, had she known the true value of the house, she would have been prepared to pay Mr Dube only R3,000,000 for the house. According to *De Jager v Grunder* 1964 (1) SA 446 (A), what is the test or formula that a court will apply in order to calculate the sum of damages that Mrs Makola is entitled to claim from Mr Dube? (2)
- 2.3 Assume, for the purposes of this question 2.3, that Mr Dube warranted in the written contract that the house, as a result of its prime location, is worth R5,500,000. Mrs Makola later discovers that the true market value of the holiday home is only R3,700,000. Mrs Makola approaches you for advice. What amount of damages is Mrs Makola entitled to claim from Mr Dube under the circumstances? Provide only the sum (in Rand). (2)

[6]

### **QUESTION 3**

On 12 May 2017, Mr Ndlovu concludes a contract with Mr Siphile Dladla.

In terms of the contract, Siphile will attend to the landscaping of Mr Ndlovu's garden at Mr Ndlovu's home in Greenside, Johannesburg and, in return, Mr Ndlovu will pay to Siphile the sum of R3,900. The contract further provides that Siphile will begin the landscaping work on 13 June 2017 and that Siphile will complete the landscaping work by 15 June 2017. Mr Ndlovu pays Siphile the sum of R1,950 immediately, and the parties agree that the balance of the amount due will be paid to Siphile upon completion of the agreed landscaping.

On the morning of 26 May 2017, Mr Ndlovu receives a message on his cellphone 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. Siphile informs Mr Ndlovu in his message that Siphile will be leaving Johannesburg for Cape Town on 9 June 2017 and that he will not be returning to Johannesburg until 6 July 2017. Siphile ends his message with a promise to attend to the landscaping of Mr Ndlovu's garden on 7 and 8 July 2017.

Answer the following questions:

- 3.1 What form of breach of contract has Siphile Dladla committed? Explain your answer. (2)
- 3.2 Assume that Mr Ndlovu is a friend of yours. Mr Ndlovu is unhappy with the situation and asks you to advise him. Advise Mr Ndlovu as to the options that are available to him under the circumstances. (4)
- 3.3 Assume, for the purposes of this question 3.3 only, that Siphile Dladla arrives at Mr Ndlovu's property on the morning of 13 June 2017, and carries out the landscaping work. Unfortunately, Siphile uproots and destroys four of Mr Ndlovu's prized lemon trees while he works. Explain whether, under these circumstances, Siphile Dladla has breached his contract with Mr Ndlovu. (2)
- 3.4 Name, without discussing, the three *ex lege* remedies for breach of contract. (3)
- [11]**

### **QUESTION 4**

Discuss the different forms of *impossibility of performance* that are relevant to the law of contract, by:

- 4.1 identifying the three primary forms of impossibility; and (3)
- 4.2 explaining the effect or impact on a contract of each form of impossibility you have identified. (3)
- [6]**

### **QUESTION 5**

Discuss the judgment of the appeal court in *Magna Alloys and Research (SA) (Pty) Ltd v Ellis* 1984 4 SA 874 (A). Do not discuss the facts of the case. (10)

**[10]**

## **QUESTION 6**

Manisha and Jay enter into a written contract with Fences R Us Proprietary Limited, a company that specialises in designing and constructing gates and fences.

In terms of the contract, Fences R Us undertakes to build a fence around Manisha's and Jay's home, for an agreed fee. The contract states that the fence will be completed by no later than 1 July 2017.

The contract between Manisha and Jay and Fences R Us includes (inter alia) the following three specific clauses (clauses 15, 16 and 19), which read as follows:

*"Clause 15: Manisha and Jay shall be entitled to cancel this contract on the provision of five business days' notice of such cancellation, in writing, to Fences R Us."*

*"Clause 16: No variation of the terms of this contract will be binding on the parties unless such variation is expressly agreed to in writing between the parties."*

*"Clause 19: For every calendar day that Fences R Us is late in completing the fence beyond 1 July 2017, Fences R Us shall pay to Manisha and Jay an amount of R1,000."*

Answer the following questions:

- 6.1 What is the Latin term that is used to describe the type of clause included as clause 15 of the contract between the parties? (2)
- 6.2 What is the purpose of the type of clause you have identified in your answer to question 6.1 above? (2)
- 6.3 Consider the clause included as clause 19 of the contract between Manisha and Jay and Fences R Us. Is this clause enforceable under South African law? Discuss. (5)
- 6.4 What would you call the type of clause that has been included in the contract as clause 16? (2)
- [11]**

## **QUESTION 7**

Zano applies for and successfully obtains a loan from ABC Bank Limited. Clause 12 of the loan agreement entered into between Zano and ABC Bank Limited reads as follows:

*"B Bank shall be entitled to vary the interest rate payable on the loan from time to time, by means of written notice of any such variation to A."*

Is Clause 12 of the loan agreement valid under South African law?

Discuss this with reference to the historical development of South African law in relation to this point. Your answer should also refer to applicable legislation. (12)

**[12]**

---

**TOTAL**

**[60]**