



PROGRAM : NATIONAL DEGREE
B ACC

SUBJECT : **INTRODUCTION TO LAW 100**

CODE : **INL 100**

DATE : SUMMER EXAMINATION
JANUARY 2018

DURATION : **16:00 - 18:00**

TOTAL MARKS : 100

EXAMINERS : MS M PILLAY AND MR G BOUWERS

MODERATOR : PROFESSOR DS DE VILLIERS

NUMBER OF PAGES : **5 (FIVE)** PAGES INCLUDING THE COVER PAGE

INSTRUCTIONS : WRITE LEGIBLY
NUMBER YOUR ANSWERS CAREFULLY

QUESTION 1

[23]

Zara relocates from Cape Town on 1 May 2017 because she has just landed a job at a prestigious consulting firm in Johannesburg. She needs to purchase a reliable motor vehicle so that she can travel safely to work and to visit clients on behalf of her employer. She visits a second-hand car dealership situated in Auckland Park on 1 June 2017. As luck would have it, the owner, Jack, is the salesperson on duty. She informs Jack of her current situation and he shows her a beautiful black convertible with very low mileage priced at R500 000. He tells her that it has never been involved in any accidents and that it has been for all its services. Zara really loves the car but the price is too steep. She tells Jack that she will think about it. She goes home and later that evening texts Jack. She tells him that she is willing to pay R400 000 for the vehicle. Jack reads the sms but does not reply. Jack replies via email on 2 June 2017 and states that he is not interested in selling the car for that price. Zara visits the dealership on 3 June 2017 and begs Jack to sell the car to her for R425 000. Jack informs her that he will sell it for nothing less than R450 000. Zara screams with delight and is very happy with her purchase. She transfers the money immediately. They agree that delivery will take place on 5 June 2017.

- 1.1 Identify the legal object and subjective right in the above scenario and provide a reason for your answer. (3)
- 1.2 Explain where and when the above contract comes into being. (5)
- 1.3 Fully discuss who may be described as the debtor and as the creditor in this contract of sale. (4)
- 1.4 The contract is reduced to writing and the parties sign it on 3 June 2017.
 - 1.4.1 Jack's name is indicated incorrectly as Zack on the contract. Discuss the effect of this mistake on the validity of the contract. (3)
 - 1.4.2 Zara has heard that "contracts which have been reduced to writing may not be amended". Is this statement correct? Discuss fully. (3)
- 1.5 On 6 August 2017, while Zara is driving on the highway, the engine blows. This is as a direct result of the car never having been serviced. Zara is furious that Jack lied to her. She calls you in tears, and knowing that you study INL 100, asks for your advice. She does not want the car anymore and wants her money back. Advise Zara whether she is able to claim return of her money and on what grounds. Discuss fully. (5)

QUESTION 2

[16]

Eli and Lily have been dating for three years. Lily plans a surprise birthday party for Eli. She orders an ice-cream cake from a renowned bakery. The owner of the bakery, Kim, reassures Lily that the cake will be made according to her specifications: three layers of chocolate ice-cream topped with fresh cream and fresh strawberries. Lily insists that no nuts may be used in the preparation of the cake because Eli is allergic to nuts. They agree that the cake needs to be delivered by 17h00 on 30 October 2017, so that it is on the table when Eli arrives at 17h30. Kim insists that a 50% deposit of R500 must be paid, which Lily promptly does. The balance needs to be paid upon delivery.

- 2.1 The ice-cream cake is delivered on 30 October 2017 at 17h00. However, much to Lily's anger, the cake is completely different to what she had ordered. It is a peanut-butter ice-cream cake topped with fresh cream and almonds. She refuses to accept the cake. Kim is very upset. She thinks that Lily is being unreasonable. Kim feels that the cake that she delivered could have been eaten by the guests, and wants the remaining payment. Lily approaches you for advice. She refuses to pay the balance and wants to claim return of her deposit. Explain fully. (4)
- 2.2 Assume that Kim refuses to pay back the deposit. Lily decides to institute action. Identify and fully discuss the pleadings that Kim will have to draft in the matter. (4)
- 2.3 Assume that at the time of discussing the order and concluding the contract, Kim was very drunk, having earlier consumed a full bottle of vodka. Discuss the validity of contract in view of this fact. (3)
- 2.4 Assume that the ice-cream cake was made according to Lily's specifications. While on route to be delivered, a taxi driver skips a red traffic light and crashes into the bakery's vehicle. As a result of the collision, the cake is destroyed. Advise Lily whether she may be able to institute action against Kim for non-delivery. (5)

QUESTION 3

[12]

Juan and Luke, who happen to be neighbours, have never seen eye-to-eye. One night, while hosting a party, Juan was confronted by Luke for playing his music too loud. The confrontation quickly turned into a physical altercation resulting in Juan sustaining multiple injuries. Two weeks later, Juan, still seething from the altercation, attacks Luke from behind with a baseball bat. As a result of the attack, Luke suffers head trauma and dies almost immediately after the attack. With regard to the following scenario, answer the following questions:

- 3.1 What are the defences that excludes unlawfulness, and will Juan be able to rely on any one of them? (4)
- 3.2 Juan acted with actual intention (*dolus directus*) when he knowingly and willingly attacked Luke from behind. Identify, discuss and provide an example of the other forms of intention. (8)

QUESTION 4

[10]

Juan's trial commences on the 14 June 2018. The State must try to prove beyond a reasonable doubt that Juan is guilty as charged. The State has tendered a variety of evidence in order to prove the guilt of the accused. In each instance, name the type of evidence that is being tendered and whether it is generally admissible:

- 4.1 Witness A testifies that she saw Juan attack Luke with a baseball bat. (2)
- 4.2 The alleged murder weapon is handed in as evidence. (2)
- 4.3 Witness B testifies that his friend John, told witness B that he had seen Juan purchasing a baseball bat a week before the incident. (2)
- 4.4 Witness C testifies that Juan has a short temper and references a previous occasion where Juan had verbally abused her. (2)

- 4.5 Witness D testifies that Juan's baseball bat was found near the crime scene. (2)

QUESTION 5

[16]

- 5.1 The procedure for establishing a company is outlined in the Companies Act 71 of 2008. The Companies Act distinguishes between incorporation, which is affected by the actions of the incorporators, and registration, which is affected by the Companies and Intellectual Property Commission (CIPC) as soon as practically possible after the act of incorporation has been perfected. In this regard, discuss:
- 5.1.1 The process of incorporation; and (3)
- 5.1.2 The process of registration (3)
- 5.2 S 164 of the companies Act 71 of 2008 provides for an independent remedy for dissenting shareholders. The remedy is referred to as a dissenting shareholder's appraisal right – that is, the right of a dissenting shareholder to require the company to pay fair value of its shares in exchange for the shares. In exercising the appraisal rights in terms of s 164, fully discuss the 5 (five) step procedure that a dissenting shareholder must follow. (5)
- 5.3 Complete the following sentences:
- 5.3.1 A company is a profit company whose MOI prohibits the offering of its shares to the public and restricts the transferability of its shares. (1)
- 5.3.2 A company is a profit company that is either listed as a public entity or is owned by a municipality. (1)
- 5.3.3 A company is a profit company whose shares may be offered to the public and are freely transferable. (1)
- 5.3.4 A trust is formed on the death of the founder of the trust. (1)
- 5.3.5 A trust is formed during the lifetime of the founder of the trust. (1)

QUESTION 6

[5]

In terms of the South African Constitution, both the National Assembly and the National Council of Provinces must in principle approve national bills. These bills may be adopted through one of three processes, depending on the nature of the bill. These include, ordinary bills not affecting provinces, ordinary bills affecting provinces, and finally, bills amending the Constitution. What three levels (or threshold) of requirements are needed for amendments to different parts of the Constitution? (5)

QUESTION 7

[4]

What remedies may be granted by a court when a right in the Bill of Rights has been violated or threatened. (4)

QUESTION 8

[3]

The rights contained in the Bill of Rights cannot function absolutely. In this regard, what requirements that must be met before a right in the Bill of Rights may be limited? (3)

TOTAL:

[100]
