



**PROGRAM** : NATIONAL DEGREE  
*BACC*

**SUBJECT** : **INTRODUCTION TO LAW 100**

**CODE** : **INL 100**

**DATE** : WINTER EXAMINATION  
JUNE 2016

**DURATION** : 14:00 - 16:00

**TOTAL MARKS** : 100

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**EXAMINERS** : MS M PILLAY AND MR G BOUWERS

**MODERATOR** : MRS E FOURIE

**NUMBER OF PAGES** : 4 (FOUR) PAGES INCLUDING THE COVER PAGE

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**INSTRUCTIONS** : WRITE LEGIBLY  
NUMBER YOUR ANSWERS CAREFULLY

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### **QUESTION 1**

Distinguish between the following terms:

- |     |  |             |
|-----|--|-------------|
| 1.1 | separate judgment and minority judgement;        | (2)         |
| 1.2 | common law and custom;                           | (2)         |
| 1.3 | substantive law and adjective law;               | (2)         |
| 1.4 | <i>ratio decidendi</i> and <i>obiter dicta</i> ; | (2)         |
| 1.5 | appeal and review;                               | (2)         |
| 1.6 | plea and replication;                            | (2)         |
| 1.7 | action proceedings and application proceedings.  | (2)         |
|     |  | <b>[14]</b> |

### **QUESTION 2**

Roman law developed over an estimated 1300 years. It can be divided into different periods having regard to changes in both their social and political spheres. Name these periods. **[3]**

### **QUESTION 3**

The *Corpus Iuris Civilis* consisted of 4 parts. List any 3. **[3]**

### **QUESTION 4**

Identify and explain the 6 subjective rights in the scenario below:

Lauren is an 18 year-old student who studies at the University of Johannesburg. She does not have a lot of money and decides to purchase her textbooks second-hand from other students. On 10 March 2016 she enters into a contract of sale with Robert. She agrees to purchase his Commercial law textbook which she needs for the subject "Introduction to law". On 12 March 2016 she pays Robert and takes delivery of the textbook. On 14 March 2016 while driving home Lauren is hijacked. Alan, the hijacker, throws Lauren out of her car and drives away. The textbook is in the car. As luck would have it, the hijacker and two of his friends actually need the Commercial law textbook as it is prescribed for one of the courses that they are studying. Alan happily makes copies of the entire book for each of his friends. Alan is subsequently apprehended and instead of admitting his guilt he tells the police that Lauren is an evil person who paid him to steal her car so that she can institute an insurance claim. (Please number each identification separately.) **[12]**

### **QUESTION 5**

Identify the type of capacity to act in each of the following and provide a reason for your answer:

- |     |   |            |
|-----|---|------------|
| 5.1 | Sally, a 5 year-old inherits her father's assets upon his death.                    | (2)        |
| 5.2 | Owen concludes a contract of sale for his car after consuming 3 bottles of tequila. | (2)        |
| 5.3 | Jason, a 16 year-old musician wants to marry his 18 year-old girlfriend.            | (2)        |
| 5.4 | Tessa is a 22 year-old schizophrenic who wants to sell her house.                   | (2)        |
|     |   | <b>[8]</b> |

## **QUESTION 6**

Stephan and John are involved in a physical altercation at a nightclub on 10 April 2015. On 26 April 2015, Stephan who knows that John plays cricket every Sunday at The Circle Sports Club, loads his firearm and goes down to the field where John is scheduled to play. Upon arrival, Stephan walks up to John, aims his firearm at John's head and pulls the trigger. As a result of Stephan's actions, John suffers major head trauma and dies on route to the hospital. With regard to these facts answer the following questions:

- 6.1 Discuss whether Stephan has fulfilled the first element of a crime? (3)
- 6.2 What are the defences that excludes unlawfulness, and will Stephan be able to rely on any one of them? Discuss fully. (5)
- 6.3 Stephan acted with actual intention (*dolus directus*) when he knowingly and willingly pointed a firearm at John and pulled the trigger. Identify, discuss and provide an example of the other forms of intention. (8)
- 6.4 Stephan is arrested on the charge of murder and is brought before court. The case is subsequently postponed to a later date for trial. Must Stephan remain in custody until the date of the trial? (Your answer should include the factors that will be taken into account in determining whether he should be kept in custody). (8)
- 6.5 Identify and discuss the onus of proof in a criminal trial. (2)
- 6.6 What will the parties involved in this matter be known as? (2)
- 6.7 Stephan is apprehensive about disclosing certain facts to you. As his legal representative, you explain the principle of legal professional privilege. Briefly discuss three other forms of privilege. (6)
- 6.8 You are the legal representative of the accused. Explain the possibility of a plea agreement to your client, outlining the requirements, procedure and implications attached to a plea agreement. (7)
- 6.9 Stephan's trial commences on the 10 May 2016. The State has tendered a variety of evidence in order to prove the guilt of the accused. In each instance below name the type of evidence that is being tendered and state whether it is generally admissible:
  - 6.9.1 The evidence of witness B who testifies that his friend Susan, told witness B that she had seen Stephan leaving his house with a gun. (2)
  - 6.9.2 Witness C testifies that she saw Stephan shoot John with the gun. (2)
  - 6.9.3 Witness D (a barman at The Circle Cricket Club) testifies that he saw Stephan walking through the club house with a gun on his waist. He further testifies that he heard a single gunshot a few minutes later. (2)
  - 6.9.4 The alleged murder weapon is handed in as evidence. (2)

- 6.9.5 Witness E testifies that Stephan has a short temper and discusses a previous occasion where Stephan was involved in a road rage incident. (2)
- 6.10 Stephan is convicted of the crime of murder. The court must now decide on an appropriate sentence. What is this phase of the proceedings called and explain how it proceeds? (6)
- 6.11 When determining the appropriate sentence, what three aspects, as set out in *S v Zinn* 1969 2 SA 537 (A), must the presiding officer take into account. (3)
- [60]**

**TOTAL:** **[100]**

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