



<b><u>FACULTY</u></b>	:	LAW
<b><u>DEPARTMENT</u></b>	:	PRIVATE LAW
<b><u>CAMPUS</u></b>	:	APK
<b><u>MODULE</u></b>	:	LAL9X0C LAW AND LANGUAGE
<b><u>SEMESTER</u></b>	:	SECOND
<b><u>TEST</u></b>	:	NOVEMBER EXAM

<b><u>DATE</u></b>	:	28 October 2021	<b><u>SESSION</u></b>	:	Online
<b><u>ASSESSOR(S)</u></b>	:	Dr. M van Eck			
<b><u>MODERATOR</u></b>	:	Prof. B. Kuschke (UP)			
<b><u>DURATION</u></b>	:	5 hours	<b><u>MARKS</u></b>	:	100
<b><u>OPENING TIME</u></b>	:	08h30	<b><u>CLOSING TIME</u></b>	:	13h30

**NUMBER OF PAGES:** 10 PAGES (INCLUDING THIS PAGE)

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**INSTRUCTIONS:**

1. The question paper and the answer sheet will be loaded onto Blackboard under "*Exam Paper*" in the section called "*Exam*".
2. To complete the assessment, you should use the answer sheet that has been loaded onto Blackboard to answer the questions. All answer sheets should be saved (named) with your surname and initials with the words "Exam" in the file name. For example, "*Your Surname Initials Exam*".
3. All answers sheets must include:
  - Your surname and initials; and
  - Your student number.
4. If the answer sheet does not contain your details to sufficiently identify you, then it cannot be marked.

5. All answers must be submitted **BEFORE** the closing time by emailing the answers to the following email address: [mmvaneck@uj.ac.za](mailto:mmvaneck@uj.ac.za) as a MS Word Document.
6. Take note of the following:
- You should only send through one answer sheet. If more than one answer sheet is received, then the first answer sheet that was received will be viewed as the submission and all other answers and answer sheets will be disregarded.
  - Late submissions will not be marked, and no extensions or late submissions will be permitted. Therefore, it is your responsibility to ensure that your answers are emailed and received on time.
7. By participating in this test, you are deemed to have accepted the below rules of conduct and declaration:

**EXPECTED CONDUCT AND DECLARATION FOR PARTICIPATING IN THIS TEST**

You are reminded that this test is subject to the rules and policies of the University and the Faculty, and that the normal academic integrity rules apply. Your answers must be a true and honest reflection of your knowledge and understanding of the work. This means that:

- You must act honestly and with integrity when answering this test. Your answers must reflect your own knowledge and understanding of the work. You should use key terms specific to the Law and Language module to answer the questions, but answers must be explained in your own words.
- You may **not** ask for assistance from another student, non-student or any person whatsoever to answer this test or to help you complete your answers in any way.
- You may **not** use or consult any information, tips or guidance that another student, non-student or any person whatsoever provides to answer this test or to help you complete your answers in any way.
- You may **not** provide assistance to another student to answer this test in any way whatsoever.
- You may **not** look at, view or participate in any way in WhatsApp Groups, emails, other online communication devices (or in person) with other students while completing this test.
- You may **not** copy material from the textbook, lecture slides, case law, journals or the internet in whole or in part to answer the questions to this test.

By submitting your answers you are deemed to have confirmed your understanding of the above expected conduct and also the below declaration for participating in this test.

**DECLARATION**

**I hereby confirm that the answers I have submitted are my own work (which reflects my own knowledge and understanding). I have not received assistance from another student (or anyone else) in answering this test and I have not provided any other student with assistance in answering this test.**

8. Good luck with the test.

## **INSTRUCTIONS**

- 1 Answer all of the questions in the answer sheet.
- 2 All answers must use appropriate plain language principles (e.g. grammar, spelling, paragraphs, headings etc.) and be presented in a logical structure.
- 3 All answers should provide a detailed explanation of the applicable law, rules and authority.
- 4 Read Annexure A and Annexure B that are attached to this test paper before answering the questions.

## **QUESTION 1**

Your client, Mr. Zulu, received a letter from Affordable Food for All (Pty) Ltd as set out in “Annexure A” to this test paper. A few days later, your client receives the contract in “Annexure B”. Your client has no experience in contractual matters and approaches you for advice.

Assume for the purposes of this question that the contract in “Annexure B” is signed by the contracting parties on the date set out in the testimonium provision.

### **Answer the following questions:**

- 1.1 Provide a comprehensive analyses of the way consensus was achieved in the contract in Annexure B by providing a complete discussion of the mechanisms the drafter employed in the contract to establish consensus, and how the provisions in the contract would establish the date and place of when the contract was concluded. (20)
- 1.2 Discuss how your answer in question 1.1 (above) would be different if the following clause was included in the contract in Annexure B:  
  
*“This Agreement is capable of being executed separately as counterparts, and will be considered together as a sole memorial of the agreement between the parties.”* (5)
- 1.3 Identify and explain the mechanisms used by the drafter of the contract in Annexure B to resolve internal contextual ambiguity within the text. Explain fully and provide your personal view as to the effectiveness of each of the mechanisms that you have identified and discussed. (20)
- 1.4 Your client would like to avoid any amendments of the contract in Annexure B by email or other electronic means. Advise your client whether this is possible, and (if so) identify any necessary amendments that may be required in the contract. In doing so, propose the wording to the clauses that should be incorporated into an addendum to make the necessary changes (if any) based on your advice to your client. (20)
- 1.5 Your client recently moved to the Eastern Cape to start a cattle farming business under the licence extended in terms of the contract in Annexure B, however, he was under the impression that Affordable Food for All (Pty) Ltd would provide him with a R500,000 start-up loan as mentioned in the letter in Annexure A. The contract in Annexure B makes no mention of such a loan. Advise your client whether he can insist that Affordable Food for All (Pty) Ltd extends such a loan on the strength of Annexure A.(5)
- 1.6 Assume for the purpose of this question 1.6 that your client is unhappy about the advice you provided in question 1.5 (above), and wants to terminate the contract in Annexure B. Explain the legal position on whether your client is entitled to do so, by providing reasons for your answer. (6)

- 1.7 Assume for the purpose of this question 1.7 that your client succumbs to Covid-19 and dies. Advise the executor of your client's estate on the legal position with specific reference as to whether the contract in Annexure B has terminated. (3)
- 1.8 Assume for the purposes of this question 1.8 that the Consumer Protection Act 68 of 2008 applies to the contract in Annexure B. Discuss the following:
- (i) Any relevant sections to the contract in Annexure B on which you should advise your client affecting the validity and enforceability of the contract, or that may impact your client's risk profile.
  - (ii) Identify types of practical techniques that a drafter may employ to give effect to the requirements of those applicable sections you have identified in terms of the Consumer Protection Act 68 of 2008. (17)
- 1.9 The drafter of the contract in Annexure B has attempted to draft the contract in plain language to meet the requirements of section 22 of the in the Consumer Protection Act 68 of 2008. Identify:
- (i) 2 examples by ways of which the drafter successfully achieves plain language in Annexure B (and your reasons for this); and
  - (ii) 2 examples of how and why the drafter was unsuccessful in employing plain language in Annexure B, your reasons for this and your suggestions to achieve plain language in the circumstances. (4)

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<b>TOTAL:</b>	<b>[100]</b>
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## ANNEXURE A

20 January 2021

To: Mr. T. Zulu  
7 Lucky Street, Casino Boulevard, Fourways

Dear Mr. Zulu,

**RE: LETTER OF INTENT TO INVEST IN NEW BUSINESS VENTURE**

We are most excited about the most recent proposal you made at our offices on 15 January 2021. Your experience in sustainable farming in the organic food sector of South Africa aligns well with our future business strategies in the agricultural sector of the country. On this basis, we would like to further discuss extending a franchise licence to you.

As part of our Black Empowerment Initiatives, we are also willing to discuss extending to you a R500,000 (five hundred thousand Rand) interest-free loan to assist you with your start-up capital for the running of the franchise. However, we must stress that any such investment will be subject to us successfully negotiating the final terms of our agreement, and also having the franchise agreement recorded in a formal written contract, which must be signed by both you and ourselves.

We trust this is in order and look forward to exploring in strengthening our future business relationship further.

Yours faithfully,

*Signature*

Dudu Dlamini  
Chief Executive Officer  
Affordable Food for All (Pty) Ltd

**AGREEMENT**

Affordable Food for All (Pty) Ltd  
(**"Franchisor"**)

And

Mr. T. Zulu  
(**"Franchisee"**)

**WHEREAS:** the Franchisor has a Business System for the purpose of establishing and operating a cattle farm and is the owner of certain Intellectual Property rights used together with the Business System;

**AND WHEREAS:** the Franchisee desires to establish and operate the business of a cattle farm in the Eastern Cape and for this purpose to use the Franchisor's Business System and Intellectual Property rights;

**AND WHEREAS:** the Franchisor hereby licenses such use subject to the terms and conditions of this agreement.

**AND WHEREAS:** the Parties hereby incorporate by reference all provisions in terms of regulation 2 of the Consumer Protection Act 68 of 2008.

**1. DEFINITIONS**

Unless otherwise determined by the context, the following words will bear the following meanings:

- 1.1 **"Agreement"** means this agreement and all documents, annexures and schedules attached thereto;
- 1.2 **"Business System"** means the system of operating a cattle farm devised and originated by the Franchisor and recorded in the Operating Manual, and includes any improvements or variations made to the Business System;
- 1.3 **"Commencement Date"** means 7 seven days after the Signature Date;
- 1.4 **"Franchised Business"** means the business of the establishment and operation of cattle farm conducted in accordance with the Business System using the Intellectual Property;
- 1.5 **"Copyright"** means all rights of Copyright whether existing now or in the future in and to the Business System; the fixation of the Know-how, whether incorporated in the Business System or in any other documentation;
- 1.6 **"Goodwill"** means the Goodwill arising out of the use of the Business System and the Intellectual Property by the Franchisor and all its Franchisees, including the Franchisee;
- 1.7 **"Intellectual Property"** includes, but is not limited to the any designs, Know-how, Copyright, goodwill, Trade Marks, trade secrets and patents;
- 1.8 **"Know-how"** includes all confidential technical and commercial information relating to the operation of the existing Business System, including, without limitation, information contained in other documents together with unrecorded information known to individuals who are office bearers or employees of the Franchisor;
- 1.9 **"Parties"** means the Franchisor and Franchisee and **"Party"** means either one of them;
- 1.10 **"Premises"** means the location of the cattle farm where the Franchisee will operate;
- 1.11 **"Signature Date"** means the date of the Party signing last in time;

- 1.12 **“Termination Date”** means the date that this Agreement terminates howsoever and for whatsoever reason;
- 1.13 **“Territory”** means Eastern Cape, South Africa; and
- 1.14 **“Trade Marks”** means the registered and unregistered Trade Marks listed on Annexure “C”, together with such other registered and unregistered Trade Marks which the Franchisor may adopt and designate for use in connection with the Franchised Business from time to time.

## 2. **DURATION OF LICENCE**

- 2.1 The Franchisor hereby grants to the Franchisee a licence for the duration of this Agreement to operate the Franchised Business from the Premises strictly in accordance with the terms and conditions of this Agreement.
- 2.2 The licence will start with effect from the Commencement Date and terminate on the Termination Date unless otherwise terminated in accordance with the provisions of this Agreement.

## 3. **ROYALTIES**

- 3.1 The Franchisee will on or before the Commencement Date pay the Franchisor the sum of R20,000 by way of an initial payment for the rights granted in terms of this Agreement and for the equipment, advice, assistance and training given by the Franchisor to enable the Franchisee to establish the Franchised Business.
- 3.2 Subject to clause 3.1, the Franchisee will be responsible to pay the Franchisor 10% of all revenue earned per month for the duration of this Agreement as monthly royalty payments.
- 3.3 Except as otherwise provided herein, all payments which are required to be made by the Franchisor in terms of this Agreement will be made without deduction or demand and free of bank charges to such address within the Republic of South Africa as may be stipulated by the Franchisor.

## 4. **DUTIES OF THE FRANCHISOR**

- 4.1 Provided that all fees referred to in clause 3 (above) is paid in fully and on time, the Franchisor will:
- 4.1.1 disclose the Business System to the Franchisee and make available the Intellectual Property rights licensed to the Franchisee in terms of this Agreement;
  - 4.1.2 deliver to the Franchisee the items necessary for the first month's operations of the Franchised Business;
  - 4.1.3 advise the Franchisee of the following matters relating to the establishment of the Franchised Business on the Premises:
    - 4.1.3.1 the design, use and land preparation of the Premises;
    - 4.1.3.2 suitable building, equipment, use of land, technology usage and maintenance;
    - 4.1.3.3 sources of supply of equipment, technology and maintenance services;
  - 4.1.4 disclose improvements and developments in the Business System to the Franchisee and will provide free of charge further training to the Franchisee and other persons engaged in the conduct of the Franchised Business as the Franchisor considers necessary.
  - 4.1.5 make available to the Franchisee all services and facilities which the Franchisor makes available to its other Franchisees.

- 4.1.6 assist the Franchisee in procuring supplies, services and equipment necessary for the operation of the Franchised Business and will pass on to the Franchisee any trade discounts obtained from suppliers; and
- 4.1.7 will not operate or license another to operate the Franchised Business within the Territory.

## 5. OBLIGATIONS OF THE FRANCHISEE

### 5.1 The Franchisee will:

- 5.1.1 operate the Franchised Business strictly according to the Business System and any written specifications and directions as may be laid down or given by the Franchisor;
- 5.1.2 have the right to use, and agrees to use, the Trade Marks in relation to the Franchised Business provided the Franchisee conducts the Franchised Business strictly according to the terms of this Agreement and the Business System;
- 5.1.3 be responsible for entering into contracts with suppliers and contractors and for ensuring that the terms of such contracts are performed timeously;
- 5.1.4 ensure that the Franchised Business conforms with other Franchised Businesses operated in accordance with the Business System;
- 5.1.5 protect and promote the Goodwill associated with the Franchised Business and all Goodwill generated by the conduct of the Franchised Business will inure to the benefit of the Franchisor.
- 5.1.6 not do, cause or permit anything to be done which may adversely affect the Intellectual Property or the Franchisor's rights in the Intellectual Property. The Franchisee will bring to the attention of the Franchisor any infringement or threatened infringement of the Intellectual Property which may come to its attention;
- 5.1.7 give all reasonable assistance to the Franchisor to enable the latter to further or defend its rights in the Intellectual Property;
- 5.1.8 not advertise or conduct promotional or marketing activities without the prior written approval of the Franchisor;
- 5.1.9 will not engage directly or indirectly in any capacity in any other business venture which is in the nature of the Franchised Business, without the prior written consent of the Franchisor;
- 5.1.10 will obtain any and all statutory licences required to conduct the Franchised Business; and
- 5.1.11 comply in the conduct of the Franchised Business with all applicable laws, by-laws and regulations of any competent authority.

## 6. INDEMNITY

Notwithstanding any other provision found in this Agreement or in any other document, the Franchisor will under no circumstances whatsoever be liable to the Franchisee for any indirect, special or consequential losses whatsoever and will also not be liable to the Franchisee for any losses as a result of the Franchisor's gross negligence. Without limiting the generality of the aforementioned provision, the Franchisee will indemnify the Franchisor and keep it indemnified against all claims of whatever nature, unless otherwise specified in law, whether real or imagined, criminal or civil, together with any legal fees and costs incurred by the Franchisor, arising out of the establishment and operation of the Franchised Business by the Franchisee.



## 7. ASSIGNMENT

- 7.1 The rights and obligations of the Franchisee are personal and may not be ceded, assigned, let or otherwise disposed of in any manner whatsoever without the prior written consent of the Franchisor.
- 7.2 The Franchisee may not sell the Franchised Business without the prior written consent of the Franchisor.

## 8. TERMINATION

- 8.1 The Franchisor may terminate this Agreement on written notice to the Franchisee in the event of:
  - 8.1.1 the Franchisee fails to pay to the Franchisor, by the due date, any sum due to the Franchisor in terms of this Agreement;
  - 8.1.2 the Franchisee breaching any term of this Agreement (all of which are declared to be material) and failing so to pay or to remedy the breach within 14 days of written notice by or on behalf of the Franchisor, calling upon the Franchisee to make payment or remedy the breach complained of;
  - 8.1.3 if the Franchisee commits an act of insolvency or is sequestrated or is placed under a provisional or final winding-up or judicial management order or if the Franchisee makes an assignment for the benefit of his creditors, or fails to satisfy or take steps to have set aside any judgment taken against the Franchisee, within seven days after such judgment has come to the notice of the Franchisee; and
  - 8.1.4 if any material change occurs in the management, ownership or control of the Franchised Business or of the Franchisee otherwise than in accordance with the provisions of this agreement.
- 8.2 If the Franchisee is a natural person, on the death of the Franchisee this Agreement will automatically terminate.

## 9. DOMICILIUM CITANDI ET EXECUTANDI

- 9.1 The parties choose as their *domicilium* address for all purposes including the service of court process the following:
  - 9.1.1 Franchisor at 666 Holloween Drive, Hilbrow, Johannesburg
  - 9.1.2 Franchisee at 7 Lucky Street, Casino Boulevard, Fourways
- 9.2 A party may change its *domicilium* address by 7 days written notice to the other party.
- 9.3 Every notice, consent or other communication required or permitted hereunder from either party will be in writing. It will be sufficiently given or transmitted if and when: (i) hand-delivered to the other party at its *domicilium* address, or at such other address as the party may have designated in writing; (ii) transmitted by means of a telefax to the addressee's telefax number and for which telefax an acknowledgement has been received; or (iii) deposited in the mail, duly registered with postage prepaid for prompt delivery and addressed to the other party at its *domicilium* address, or at such other address as the addressee may have designated in writing. A notice deposited in the mail in terms of this sub-clause will be deemed to have been delivered on the fourth business day after the date of posting.

## 10. GENERAL

- 10.1 No waiver by a party of any breach, failure or default in performance by the other party, and no failure, refusal or neglect by a party to exercise any right hereunder or to insist upon strict compliance with or performance of the other party's obligations under this agreement, will constitute a waiver of the provisions of this agreement and a party may at any time require strict compliance with the provisions of this agreement.

- 10.2 This Agreement constitutes the entire agreement between the parties on the subject. No amendment or other modification of this agreement will be valid or binding on a party hereto unless reduced to writing and executed by both parties.
- 10.3 This Agreement will be governed in accordance with the laws of South Africa.
- 10.4 All the provisions of this Agreement will be separate and severable and no provision will be affected by the invalidity of any other provision of this Agreement.

Signed and executed at Hillbrow on this 25 January 2021

Witnesses:

1

2

*(Signatures of witnesses)*

*(Signature of franchisor)*

Signed and executed at Fourways on this 1 February 2021

Witnesses:

1

2

*(Signatures of witnesses)*

*(Signature of franchisee)*