



PROGRAMMES : LLB, BCOM LAW, BA LAW, BA PPE,
BA INTERNATIONAL STUDIES

SUBJECT : INTRODUCTION TO LEGAL STUDIES

CODE : IRS 0000 / ILS41Y0

DATE : SUMMER EXAMINATION
DECEMBER 2016

DURATION : (X-PAPER) 08:30 – 11:30

WEIGHT : 50:50

TOTAL MARKS : 120

EXAMINER : MR WA BOWLES
MS KB MOKOENA

MODERATOR : MRS ES FOURIE

NUMBER OF PAGES : 7 PAGES

INSTRUCTIONS : QUESTION PAPERS MUST BE HANDED IN WITH
ANSWER SCRIPTS.

INSTRUCTIONS

1. DO NOT SPEND TOO MUCH TIME ON ONE QUESTION AND ANSWER ONLY WHAT HAS BEEN ASKED.
 2. PAY ATTENTION TO THE MARK ALLOCATION OF EACH QUESTION AND PLAN YOUR ANSWERS ACCORDINGLY.
 3. ANSWER ALL QUESTIONS. READ ALL QUESTIONS CAREFULLY AND ANSWER COMPREHENSIVELY.
 4. YOU MAY ANSWER YOUR QUESTIONS IN ANY ORDER. PLEASE ENSURE THAT YOU CLEARLY INDICATE THE QUESTIONS THAT YOU ARE ANSWERING IN YOUR ANSWER SCRIPT(S).
 5. YOU ARE REQUIRED TO GIVE YOUR ANSWERS TO SHORT AND LONG QUESTIONS IN PARAGRAPH FORM AND WITH HEADINGS WHERE APPLICABLE.
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QUESTION 1

Translate each of the following Latin terms:

- 1.1 *locus classicus*;
- 1.2 *volenti non fit iniuria*;
- 1.3 *qualitate qua*;
- 1.4 *mero motu*;
- 1.5 *pater est quem nuptiae demonstrant*;
- 1.6 *ex abundanti cautela*;
- 1.7 *error in corpore*;
- 1.8 *boni mores*;
- 1.9 *de minimis non curat lex*;
- 1.10 *res iudice / iudicata*.

[10]

QUESTION 2

Jeff is in court facing charges of assault. The charges have been laid against Jeff by Thabo, who alleges that while they were both having a night out at a local nightclub, Jeff was with his girlfriend and he spotted Thabo speaking to her and trying to buy her a drink. Jeff approached Thabo and an argument ensued. Eventually it escalated and Jeff wrapped a chain he had in his pocket around his hand and punched Thabo in the

face. This fight was observed by the nightclub manager, Mondli, who had to call the doormen to break up the fight and escort the two men out of the club.

You are the defence attorney for Jeff. As part of your trial preparation, answer the following questions:

- 2.1 Define the crime of assault with regard to its unique criminal elements. (4)
- 2.2 Identify the type of evidence that the following would qualify as and motivate your answer:
 - 2.2.1 the chain that Jeff used;
 - 2.2.2 the observation of the fight by the nightclub manager, Mondli. (2 x 2 = 4)
- 2.3 You have advised Jeff to plead not guilty to all the charges. Indicate whether Jeff is obliged to give a plea explanation in regard to the charges and explain what a plea explanation is. (3)
- 2.4 Jeff further informs you that he was drunk on the night that the fight occurred and that, when sober, he would never get into a fight with anybody as he is a generally peaceful man. He wishes to lead evidence of his good character. You advise him that character evidence is only permitted in certain circumstances because, as a rule, it is inadmissible evidence. Provide three (3) circumstances in which character evidence would be admissible in court. (3)

[14]

QUESTION 3

Distinguish between the following concepts:

- 3.1 accusatorial and inquisitorial court proceedings; (4)
- 3.2 competency of a witness and compellability of a witness; (4)
- 3.3 a personal right and a personality right; (2)
- 3.4 *essentialia* and *naturalia* in a contract; (3)
- 3.5 parliamentary sovereignty and constitutionalism; (4)
- 3.6 the master of the high court and the family advocate; (5)
- 3.7 a founding affidavit and an answering affidavit; (4)

- 3.8 a plea and a replication; (4)
- 3.9 summary judgment and default judgment; and (2)
- 3.10 a plea and a replication. (2)
- [34]**

QUESTION 4

You are an attorney in a successful legal practice. You have just employed a candidate attorney who approaches you to consult concerning the following:

- 4.1 Your candidate attorney is to take a “fit and proper” test to determine if she is a fit and proper person to practice in the attorneys’ profession. She wants to know what characteristics she should possess in order to be regarded as a fit and proper person. Provide her with four (4) characteristics that she would need in order to be seen as a fit and proper person. (4)
- 4.2 Explain what the difference is between an attorney’s business account and an attorney’s trust account. In addition, indicate what an attorney has to consider ethically when administering both accounts and what the consequence is for an attorney who has been found to mismanage funds in a trust account. (5)

[9]

QUESTION 5

“South Africa has a well-organised, well-established and sophisticated court structure to deal with the large number of civil and criminal cases in the country. The various courts serve and reflect the needs of the diverse South African community.”

Meintjies-van der Walt et al *Introduction to South African Law* (2009) 134.

Taking into consideration the excerpt above, answer the following questions:

- 5.1 Provide three (3) objectives that the *Superior Courts Act*, 2013 has as its aims for the current South African court system. (3)
- 5.2 Identify the court that is best suited to hear the following matters. Please only provide one court per matter and remember to be specific when referring to the correct division of the magistrates’ court.
- 5.3.1 A treason case.

- 5.3.2 A motor vehicle manufacturing plant is seeking an interdict to stop its employees from embarking on strike action.
- 5.3.3 The Gauteng Legislature would like to have its new Constitution certified.
- 5.3.4 Leslie is claiming damages from Linda in the amount of R200 000 as Leslie alleges that Linda defamed him in an online posting on Facebook.
- 5.3.5 A dispute between the Department of Labour and the Department of Justice and Constitutional Development.
- 5.3.6 Thabang is in court facing charges of fraud, as he was evading payment of his e-tolls by using fake registration plates on his motor vehicle. The court has decided to fine him R300 000 on conviction.
- 5.3.7 Angela's claim for damages as a result of defamation was dismissed in the Gauteng Local Division. She now wishes to take the matter on appeal.

(7)

[10]

QUESTION 6

- 6.1 Provide a table of the different functionaries that exercise legislative, executive and judicial authority at national, provincial and local level. (7)
- 6.2 Write a short note on the special majorities that are required to amend section 1 of the Constitution, a right in the bill of rights and any other part of the Constitution. (6)

[13]

QUESTION 7

- 7.1 Mark has worked for Molefe Investments as an investment advisor for 5 years. He is later accused of fraud and an internal disciplinary hearing takes place where he is found guilty of fraud. Before this, Mark was previously accused of stealing money from a colleague's handbag, but was not dismissed because he explained that he was the only breadwinner at home and had been battling to make ends meet. Mark is married with three children and also supports his mother and grandmother. In considering what the appropriate sanction will be for Mark, identify the factors that the employer will need to consider. Include in

- 7.2 Explain how a court would go about determining whether or not an individual is an employee or an independent contractor. (10)
- 7.3 Define what is meant by a strike in terms of the Labour Relations Act.
- 7.4 Write a short note indicating the requirements for a secondary strike to be lawful in terms of the Labour Relations Act. (4)
- [25]**

QUESTION 8

Choose the most correct answer

8.1 An Independent Contractor is obliged to:

- a) Perform specified work within a reasonable or specified time.
- b) Obey instructions relating to the manner in which she performs her work.
- c) Work for the employer for at least 40 hours per week.
- d) Be at work at a time specified by the employer.

8.2 Following an unfair dismissal, an employee is entitled to be reinstated unless:

- a) He or she does not wish to return to work.
- b) It will be impractical for the employee to return to work.
- c) The circumstances of the dismissal are such that continued employment will be intolerable.
- d) All of the above.

8.3 The two legs upon which a fair dismissal will rest are:

- a) Equal constitutional rights and equality.
- b) Substantive and procedural fairness.
- c) *The Basic Conditions of Employment Act 75 of 1997* and the *Labour Relations Act 66 of 1995*.
- d) All of the above.

8.4 South Africa's Labour laws have their basis in which section of the Constitution?

- a) Section 1.
- b) Section 7.
- c) Section 23.
- d) Section 29.

- b) Section 7.
- c) Section 23.
- d) Section 29.

8.5 The *Labour Relations Act 66 of 1995* applies to:

- a) All workers.
- b) Only members of the South African National Defence Force.
- c) All employees.
- d) Only previously disadvantaged workers.

[5 x 1 = 5]

TOTAL MARKS: 120
