



<u>FACULTY</u>	:	LAW
<u>DEPARTMENT</u>	:	PRIVATE LAW
<u>CAMPUS</u>	:	APK
<u>MODULE</u>	:	INC9X1C INTERPRETATION OF CONTRACTS
<u>SEMESTER</u>	:	FIRST SEMESTER
<u>TEST</u>	:	JUNE EXAM (TEST PAPER 1)

<u>DATE</u>	:	As per timetable	<u>SESSION</u>	:	As per timetable
<u>ASSESSOR(S)</u>	:	Prof P. O'Brien (UJ) & Dr. M van Eck (UJ)			
<u>MODERATOR</u>	:	Prof. B Kuschke (Akademia)			
<u>DURATION</u>	:	5 hours	<u>MARKS</u>	:	75

NUMBER OF PAGES: 14 PAGES (INCLUDING THIS PAGE)

INSTRUCTIONS:

1. Write your surname, initials and student number and answer all the questions in the answer sheet provided.
2. Write neatly and legibly.
3. Answer sheets must be handed in alphabetically.
4. Your answers must be substantiated in detail and carefully formulated.
5. This is an open-book examination. You may use any materials but are not allowed to share information with other students.
6. You must in all instances where possible provide a comparative perspective (i.e., refer to the law of other countries or to international instruments).
7. Carefully read the set of facts below and the documents in **Appendix 1** and **Appendix 2** to answer the questions in this test paper.
8. Wishing you every success with the test!

SET OF FACTS

As the only person in the family who has an LLB qualification, your family expects from you to assist family members with their legal problems. (This advice must be given free of charge, of course!) You are told that your 92-year-old aunt, Zandile Mahlangu (Zandile), has a problem with her accommodation of a flat (perhaps rather a cottage) situated on the property of her daughter-in-law, Lerato Mahlangu (Lerato). Since you want to be thoroughly prepared for the meeting with the family, you ask that copies of any documentation they have be sent to you beforehand.

You receive the two documents attached to this test paper as “**Appendix 1**” and “**Appendix 2**” hereto. (Errors, if any, in the appendices are not a result of typing errors or poor proof reading by the examiners.)

On reading the two documents, you see that both have the heading “AGREEMENT OF LEASE (RESIDENTIAL)”. You immediately see that the two documents are almost identical, with two exceptions.

- The first document in **Appendix 1** was signed by you aunt, Zandile, and your late uncle Sipho Mahlangu, the latter whose funeral you attended quite a number of years ago.
- The second document in **Appendix 2** was signed only by your aunt, Zandile. Clause 7.5 of the first document in **Appendix 1** has been omitted from the second document in **Appendix 2**.

You see that the two documents are dated 1 December 2011 and 1 December 2014 respectively. This is the first time that you have seen these documents: you were still at school when they were signed.

On meeting the family, you see how old and frail your aunt Zandile has become over the years. During the meeting, you get to understand the saying that when one gets old, people talk about you, rather than to you. You, of course, understand the constitutional rights of your aunt as an older person and the protection afforded to her by the Older Persons Act, 2006. Your aunt actually does not do any talking. The talking is done firstly by her grandson, who is currently an education student. He is staying in the flat with her, taking care of her. Secondly, another of your aunts who is about 20 years younger than your aunt Zandile, provides additional information.

From what they tell you, you make the following consultation notes for yourself:

- Mr Sipho Mahlangu (your late uncle) and Mrs Zandile Mahlangu (your aunt) were married in community of property.
- During 2010/2011 Sipho and Zandile decided that it was time to sell their house and move to a smaller property. Using identity numbers you calculate that Sipho and Zandile were both older than 80 years at that time.
- Sipho and Zandile considered various options, including purchasing a cottage in a retirement village, or a smaller property. They determined their needs to be for two bedroom and two bathrooms, with a living area and kitchen facility.

- As both were advanced in years, Sipho and Zandile recognised that one or both of them might need a caregiver at some stage in future. That is why they needed a second bedroom and bathroom. A second bedroom would also have provided them with the opportunity to take in a lodger should they have needed additional income.
- They recognised that the cottage needed to be designed to take the physical constraints of elder persons into account. They visited a number of retirement villages and had a look at the accommodation on offer for older people. They incorporated the ideas in the design of their future accommodation.
- At the same time, their son, Peter Mahlangu (Peter), got married for a second time. He married out of community of property. Peter wanted to contribute to the purchase of a house for his new spouse, Lerato, but he had no money following his divorce from his first wife. The discussions proceeded as follows:
 - Sipho would advance his son Peter an amount of R150,000 (one hundred and fifty thousand Rand) to contribute to payment of the purchase price of a property for Lerato.
 - Sipho and Zandile would build a flat/cottage on the property at their expense. In return, each of them would be entitled to stay there until their respective deaths. All that they would be required to pay, was a contribution to the water and electricity consumption.
- Sipho and Zandile then had a free-standing cottage constructed at their expense and in accordance with their requirements on Lerato's property. They paid R600,000 for what turned out to be 74 square metre flat/cottage adjacent to the main house. It complied with their requirements.
- The flat was built after the transfer of the property had been registered in the name of Lerato. At the time of registration of transfer into her name, a first mortgage bond was also registered over the property in favour of Capitec Bank.
- Your aunt Zandile appears to have signed the second document (**Appendix 2**) after the death of her husband (your late uncle Sipho). She cannot recall having signed it.
- Since your aunt Zandile is so frail, her grandson is fulfilling the role of a caregiver at the moment and staying in the second bedroom.
- Peter and Lerato are in the process of getting divorced. Lerato has for some time now told your aunt Zandile that she must leave the property.
- Lerato has recently sent your aunt Zandile advertisements for rental units available in the area. Lerato appears to have never even viewed any of the rental units herself; nor has she even telephoned the rental agents. Lerato has, however, seized upon the word *suitable* and made it clear that firstly, any additional costs for a unit suitable for more than one person, must be borne by your aunt. Secondly, she (Lerato) will under no circumstances conclude the lease: she will merely assist your aunt to sign the lease agreement. Thirdly, she takes the point that your aunt's grandson has not obtained qualifications as a caregiver and does not qualify to occupy such a position.

QUESTION 1

Do you think that the documents in **Appendix 1** and **Appendix 2** were drafted by someone with a considerable level of legal knowledge?

In answering this question, you should:

- (i) Make reference to and discuss the relevant legal principles and authority as well as any common-sense issues observable from the documents in **Appendix 1** and **Appendix 2**.
- (ii) Indicate how your observations will impact on your approach in interpreting the documents in **Appendix 1** and **Appendix 2**.
- (iii) Refer to legal principles of both South African law and, and where relevant, foreign legal principles from a comparative perspective. (10)

[10]

QUESTION 2

Considering the principles of interpreting contracts and other relevant factors, how would you respond to your instructions that your aunt, Zandile, cannot recall having signed the second document? (3)

[3]

QUESTION 3

According to Cornelius, it is necessary to classify a document according to certain criteria so as to reveal the nature of the document.

How would you classify the documents in **Appendix 1** and in **Appendix 2**? Your answer should also indicate whether or not you agree with the header of the documents "*AGREEMENT OF LEASE (RESIDENTIAL)*". (7)

[7]

QUESTION 4

You are told that Lerato has recently adopted the view that your aunt Zandile's grandson is not entitled to live in the flat, and that only your aunt Zandile may reside in the flat. Is Lerato's view correct?

In answering this question, you should also consider whether:

- (i) your answer would be different if the identity of the caregiver was different; and
- (ii) discuss whether your aunt's grandson (who has no qualifications as a caregiver) may or may not fulfil the role of caregiver. (5)

[5]

QUESTION 5

Are the documents in **Appendix 1** and **Appendix 2** the sole memorial of the agreement between the parties (e.g., Sipho, Zandile and Lerato)?

In answering this question, you should:

- (i) indicate and discuss the legal position of both situations, e.g., if the documents in **Appendix 1** and **Appendix 2** are the sole memorial of the

agreement between the parties; and if the documents in **Appendix 1** and **Appendix 2** are not the sole memorial of the agreement between the parties; and

- (ii) refer to legal principles of both South African law and, and where relevant, foreign legal principles from a comparative perspective. (15)

[15]

QUESTION 6

Compare and consider the legal status of the documents in **Appendix 1** and **Appendix 2**? Discuss fully. (5)

[5]

QUESTION 7

What would your response be to Lerato's views regarding her obligations to provide accommodation to your aunt Zandile when Lerato sells the house?

In answering this question, you should consider:

- (i) the current legal position adopted when interpreting the documents in **Appendix 1** and **Appendix 2**; and
- (ii) the issues that you would have to raise in a letter to Lerato in response to the advertisements that Lerato has sent to your aunt Zandile. (10)

[10]

QUESTION 8

If Lerato persists with the view that she is only obliged to provide a one-bedroomed flat with one bathroom to your aunt Zandile, would your aunt, or you on behalf of your aunt, be able to cancel the agreement between your aunt Zandile and Lerato?

In answering this question, you should consider:

- (i) the basis on which the agreement may (or may not) be cancelled;
- (ii) the risks if your aunt purports to cancel the agreement under these circumstances; and
- (iii) the legal position of your aunt if she lawfully cancels the agreement. (7)

[7]

QUESTION 9

If Lerato sells the house, will the purchaser of the house be bound by the document(s) in **Appendix 1** and/or **Appendix 2**? Consider all relevant legal principles and all possible alternatives that may be applicable. (8)

[8]

QUESTION 10

Consider clause 7.5 of the document in **Appendix 1** that has been omitted from the document in **Appendix 2**. How would this clause be interpreted?

In answering this question, you should consider and discuss:

- (i) the relevant rules of interpretation; and

- (ii) whether one may infer from omitting clause 7.5 from the document in **Appendix 2**, that the parties' rights and duties (if any) arising from the provisions have terminated. (5)
- [5]**

TOTAL:	[75]
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TOTAL MARKS	75
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AGREEMENT OF LEASE (RESIDENTIAL)

Between:

**Lessor: Lerato Mahlangu
(the Lessor)**

and

**Lessee: Sipho Mahlangu and Zandile Mahlangu
(The Lessees)**

1. LEASE OF PREMISES

The Lessor hereby lets to the Lessee who resides, subject to the terms and conditions, set out in this agreement the following premises:

A two bedroom adjacent cottage situated at 110 Main Street, Windsor.

2. INTERPRETATION AND DEFINITION:

- 2.1 The clause headings of this Agreement are inserted for reference purposes and shall in no way govern or affect the interpretation thereof.
- 2.2 Unless the context indicates a contrary intention an expression which denotes any gender includes the other genders, a natural person, a juristic person and vice versa, the singular includes the plural and vice versa.
- 2.3 Unless inconsistent with the context, the expressions set forth below shall bear the meanings assigned to them.

2.3.1 Commencement Date: on the 1 st day of December 2011 and. enduring till passing away (death) of Siphso Mahlangu and Zandile Mahlangu.

2.3.2 There is ZERO Monthly Rental payable for the premises, as the building for the dwelling was paid for in full by the LESSEE.

2.3.4 Domicilia and Notices

The parties hereby choose *domicilium citandi et executandi* for all purposes under this Agreement at the addresses set out below (not being a post box or post restante).

LESSOR AND LESSEE : 110 MAIN STREET, WINDSOR

Any notice given by or either Party in terms of this Agreement shall be given in writing and shall be delivered by hand to a responsible person present at or sent by facsimile transmission or prepaid registered post to the domicilium chosen by the addressee in terms of this Agreement and whereupon it shall be deemed to have been received when so delivered or faxed or 4 (four) business days after being so sent by post.

3. COMMENCEMENT AND PERIOD

The lease of the Premises is entered into for the period of "permanent" commencing on the Commencement Date (as stipulated in Clause 2.3.1) whereafter this Lease shall continue as a permanent tenancy, terminable by the death of both LESSEE's.

4. USE OF PREMISES

The Premises shall only be used for private residential purposes and no other purpose whatsoever.

5. RENTAL

The monthly rent payable by the Lessee to the Lessor for the hire of the Premises is the sum of R ZERO as they paid in full for the building of the dwelling.

6. MUNICIPAL SERVICES (WATER & ELECTRICITY)

The Lessee shall pay a flat rate of R500 per month in respect of electricity and water consumption during the Lease Period. The Lessor shall be entitled to increase the municipal services amount equal to such increase as imposed by the municipality from time to time.

7. TERMINATION

- 7.1 This Agreement shall be in force until the passing away (death) of the LESSEE's (both Sipho Mahlangu and Zandile Mahlangu).
- 7.2 Should the marriage between the LESSOR (Lerato Khumalo and Peter Khumalo) be terminated, the LESSEE's have full right to continue residing on the property until their death.
- 7.3 Should the LESSORS have an untimely death, this Agreement will be continued until the passing away (death) of the LESSEE's.
- 7.4 Should the main dwelling 110 Main Street, Windsor, be disposed of (sold) before the passing away of the LESSEE's, the LESSOR will be responsible to provide suitable accommodation of a similar standard to the LESSEE.
- 7.5 Should the main dwelling 110 Main Street, Windsor be disposed of (sold) due to the passing away of the LESSEE's, a portion of the profits from the sale of the main dwelling must be made available to provide suitable accommodation of a similar standard to the LESSEE

8. GENERAL

Should two or more persons sign this Agreement of Lease as Lessors or Lessees, the said persons shall be jointly and

severally liable in solidum for the due performance of the Lessees or Lessors obligations, as the case may be, in terms of this Lease.

9. ACCEPTANCE

The Lessor and the Lessee acknowledge that they have read and understood the contents of this Agreement of Lease, and that all queries relating thereto have been raised with and explained to them by the Agent.

SIGNED BY THE LESSOR AT Windsor ON THIS 1ST DAY OF DECEMBER 2011.

LESSOR: _____

WITNESS:

[Signature of Mrs Lerato Mahlangu and signature of witness affixed).

SIGNED BY THE LESSEE AT Windsor ON THIS 1ST DAY OF DECEMBER 2011.

LESSEE: _____

LESSEE:

WITNESS:

[Signatures of both Sipho Mahlangu and Zandile Mahlangu each signing as LESSEE and signature of witness affixed]

AGREEMENT OF LEASE (RESIDENTIAL)

Between:

**Lessor: Lerato Mahlangu
(the Lessor)**

and

**Lessee: Zandile Mahlangu
(The Lessee)**

1. LEASE OF PREMISES

The Lessor hereby lets to the Lessee who resides, subject to the terms and conditions, set out in this agreement the following premises:

A two bedroom adjacent cottage situated at 110 Main Street, Windsor.

2. INTERPRETATION AND DEFINITION:

- 2.1 The clause headings of this Agreement are inserted for reference purposes and shall in no way govern or affect the interpretation thereof.
- 2.2 Unless the context indicates a contrary intention an expression which denotes any gender includes the other genders, a natural person, a juristic person and vice versa, the singular includes the plural and vice versa.
- 2.3 Unless inconsistent with the context, the expressions set forth

below shall bear the meanings assigned to them.

2.3.1 Commencement Date: on the 1 st day of December 2011 and. enduring till passing away (death) of Sipho Mahlangu and Zandile Mahlangu.

2.3.2 There is ZERO Monthly Rental payable for the premises, as the building for the dwelling was paid for in full by the LESSEE.

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The monthly rent payable by the Lessee to the Lessor for the

hire of the Premises is the sum of R ZERO as they paid in full for the building of the dwelling.

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8. GENERAL

Should two or more persons sign this Agreement of Lease as Lessors or Lessees, the said persons shall be jointly and severally liable in solidum for the due performance of the Lessees or Lessors obligations, as the case may be, in terms of this Lease.

9. ACCEPTANCE

The Lessor and the Lessee acknowledge that they have read and understood the contents of this Agreement of Lease, and that all queries relating thereto have been raised with and explained to them by the Agent.

SIGNED BY THE LESSOR AT Windsor ON THIS 1ST DAY OF DECEMBER 2014.

LESSOR: _____ WITNESS:

[Signature of Mrs Lerato Mahlangu and signature of witness affixed).

SIGNED BY THE LESSEE AT Windsor ON THIS 1ST DAY OF DECEMBER 2014.

LESSEE: _____ WITNESS:

[Signatures of Mrs Zandile Mahlangu and signature of witness affixed]