



<u>FACULTY</u>	:	LAW
<u>DEPARTMENT</u>	:	PRIVATE LAW
<u>CAMPUS</u>	:	APK
<u>MODULE</u>	:	KOR0000/LCT41Y0 LAW OF CONTRACT
<u>SEMESTER</u>	:	FIRST SEMESTER
<u>TEST</u>	:	JUNE EXAM (TEST PAPER 3)

DATE : As per timetable **SESSION** : As per timetable

ASSESSOR(S) : Dr. M van Eck (UJ)

MODERATOR : Prof J. Carlitz (UJ)

DURATION : 2 hours **MARKS** : 60

NUMBER OF PAGES: 15 PAGES (INCLUDING THIS PAGE)

INSTRUCTIONS:

1. Write your surname, initials and student number on the answer sheet on page 2 of this document.
2. Answer all the questions in the answer sheet provided. If you require more space for your answer, you may use the additional space at the back of the paper. However, please indicate clearly the question that you are answering if you are using the back of the paper.
3. Write neatly and legibly.
4. Answer sheets must be handed in alphabetically.
5. Wishing you every success with the test!

ANSWER SHEET (JUNE EXAM PAPER)

INFORMATION TO BE COMPLETED BY THE STUDENT

Surname	
Initials	
Student Number	

ADMINISTRATION

TO BE COMPLETED BY THE LECTURER

Mark	/ 60	Percentage	%
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Q 1	Q 2	Q 3	Q 4	Q 5	Q 6	Q 7	Q 8

FEEDBACK

Work on the following aspects (areas of improvement) for the next assessment:

<input type="checkbox"/>	Identifying legal issue(s) – this is linked to sound theoretical knowledge and reading of the question.
<input type="checkbox"/>	Theoretical knowledge of the theory – often requires a more detailed and thorough knowledge of the material.
<input type="checkbox"/>	Better understanding of the theory.
<input type="checkbox"/>	Application of the law to the facts / application of theory.
<input type="checkbox"/>	Knowledge of legal principles of case law and/or legislation.
<input type="checkbox"/>	Structure of legal argument and answer (as well as language).
<input type="checkbox"/>	Reading set of facts in the questions more carefully.
<input type="checkbox"/>	Remember to answer what is being asked.
<input type="checkbox"/>	Avoid making assumptions that are not in the facts of the question.

QUESTION 1

Explain what is meant with the term 'release' in the context of a contract. (2)

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[Mark: ____ / 2]

QUESTION 2

Kgomotso's husband, Bongani, has recently taken out life insurance. In terms of the insurance contract, the insurer would pay Kgomotso R5,000,000 (five million rand) upon the death of Bongani.

Kgomotso and Jabu (a good friend of Kgomotso) have identified a clever plan to make money. Kgomotso proposes that Jabu kill Bongani and Kgomotso will pay Jabu half of the proceeds of the insurance, being R2,500,000 (two and a half million Rand).

Jabu agrees to this arrangement, thinking that he can make some quick and easy money, but insists on Kgomotso paying a deposit of R70,000 (seventy thousand Rand) up front to cover his expenses such as a shovel, body bag and cleaning material. After having received the deposit, Jabu refuses to kill Bongani.

Kgomotso is furious and wants to cancel the contract and claim restitution of performance, as well as damages from Jabu. She approaches you for advice.

Answer the following questions:

2.1 Is there a valid contract between Kgomotso and Jabu? Answer "YES" or "NO" and provide reasons for your answer. (2)

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[Mark: ____ / 10]

QUESTION 3

The editors of your prescribed textbook for the law of contract module have highlighted possible strategies to decolonise the law of contracts. They identify two possible approaches but mention that each approach has certain shortcomings. Discuss the proposals made by Hutchison & Pretorius and their possible shortcomings as well as any suggestions that you may have to decolonise contract law. (4)

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QUESTION 4

Consider the following legal principles that are provided for in legislation:

- A. Gambling activities performed under licenced gambling activities.
- B. All contractual provisions must be drafted in plain language.
- C. The supplier may not promote any goods or services on the basis that the goods or services are to be supplied unless the consumer declines the offer.
- D. Prohibition against forms of 'unconscionable conduct'.
- E. A person who offers to supply any goods that have been reconditioned, rebuilt or remade and bear the trademark of the original producer must indicate this on the goods.
- F. A contract entered into with a minor who is unemancipated.
- G. A supplier may not advertise goods or services as being available at a specified price in a manner that may result in consumers being misled or deceived.

Match the legal principle (above) with the correct section of the relevant piece of legislation (listed in the below column), also indicate whether a breach of legal principle will result in a valid, invalid (or void), voidable or unenforceable contract. The first entry in the table is given as an example of how to complete the answer. (8)

Complete the letter of the formality (listed above) e.g, A, B, C etc.	Consequence (e.g., it is either valid, void, invalid, voidable or unenforceable or a combination of these options)	Case
A	Valid	Section 16 of the National Gambling Act 7 of 2004
.....	Section 39(1)(b) of the Consumer Protection Act 68 of 2008.

.....	Section 40 of the Consumer protection Act 68 of 2008.
.....	Section 30 of the Consumer Protection Act 68 of 2008
.....	Section 31 of the Consumer Protection Act 68 of 2008

[Mark ____ / 8]

QUESTION 5

Tanesha is the owner property which she leases to Mpho. Mpho operates his business from the premises he leases from Tanesha. On 3 October 2015, Tanesha (as the landlord) and Mpho (as the tenant) conclude a written lease agreement. The terms of the lease agreement are as follows:

- (i) The lease will start on 3 October 2015 and will continue for a duration of 10 years.
- (ii) The tenant will pay the landlord an amount of R15,000 (fifteen five thousand Rand) per month as rent for the duration of the agreement.
- (iii) At the expiry of the lease the tenant will have the option to purchase the leased property from the landlord at its market-related price at the time.

Three months later the parties re-negotiate some of the terms of the lease agreement, and Tanesha instructs her attorney to draft an addendum to reflect the changes to the agreement. The addendum mistakenly also amends the duration from 10 years to 5 (which was never agreed to between the contracting parties).

Tanesha notices the mistake regarding the duration of the lease agreement but keeps quiet and does not tell Mpho of the error (because Tanesha would benefit commercially from a shorter lease period). Mpho signs the addendum without being aware of the changes made to the duration of the lease agreement and only noticed the change to the duration of the lease later.

The contracting parties argue the following:

- Tanesha argues that as Mpho signed the addendum, Mpho created the impression that he (Mpho) had agreed to the terms of the addendum and is therefore bound to the addendum.
- Mpho argues that the addendum should be rectified to reflect the true agreement between the contracting parties.

Is the addendum that Mpho signed valid? Your answer should also include whether Tanesha and Mpho's arguments would likely be successful or not. Use appropriate authority to substantiate your answer.

You may assume, for the purposes of this question, that the Consumer Protection Act 68 of 2008 does not apply. (13)





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[Mark ____ / 13]

QUESTION 6

Thandeka is the owner of an iPad 2018 Pro, which she wants to sell. The iPad's market value is R30,000 (thirty thousand Rand) but because Thandeka needs money quickly she is willing to sell the iPad for R15,000 (fifteen thousand Rand). A friend of Thandeka introduces her to Dudu, who is interested in buying the iPad. After extensive negotiations the parties (Thandeka and Dudu) agree to the following terms:

- (i) Dudu will buy the iPad from Thandeka, which will be a silver colour.
- (ii) Dudu will pay Thandeka a purchase price of R15,000 for the iPad on or before 27 March 2018;
- (iii) Any late payment will attract interest at a rate of 10%.
- (iv) Thandeka will deliver the iPad to Dudu's house in Centurion on 27 March 2018.
- (v) Thandeka has, during negotiations, guaranteed that the iPad is in good working condition without any defect.

Answer the following questions:

- 6.1 Assume for the purposes of this question that Dudu does not pay Thandeka the R15 000 on 27 March 2018. What form of breach did Dudu commit? Briefly explain your answer. (1)

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- 6.2 Assume for the purposes of this question that Dudu does not pay Thandeka the R15 000 on 27 March 2018. Identify which remedies are available to Thandeka in these circumstances. (4)

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- 6.3 Assume for the purposes of this question that after having received delivery of the iPad, Dudu discovers that the iPad has a faulty battery, and the iPad is in the wrong colour. What form of breach did Thandeka commit? Briefly explain your answer. (1)

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- 6.4 Assume for the purposes of this question that Dudu spends R5,000 to fix the faulty battery on the iPad. Advise Dudu what type of the damages he could claim from Thandeka and briefly explain your answer. (2)

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6.5 Explain the difference between general damages and special damages. (2)

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6.6 Explain when the remedy of *exceptio non adimpleti contractus* can be used. (2)

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QUESTION 7

Sigmund, who owns a trucking company, delivers packages across South Africa. Sigmund signed a contract with one of his clients. In terms of this contract, Sigmund agrees to a penalty for late delivery of any packages.

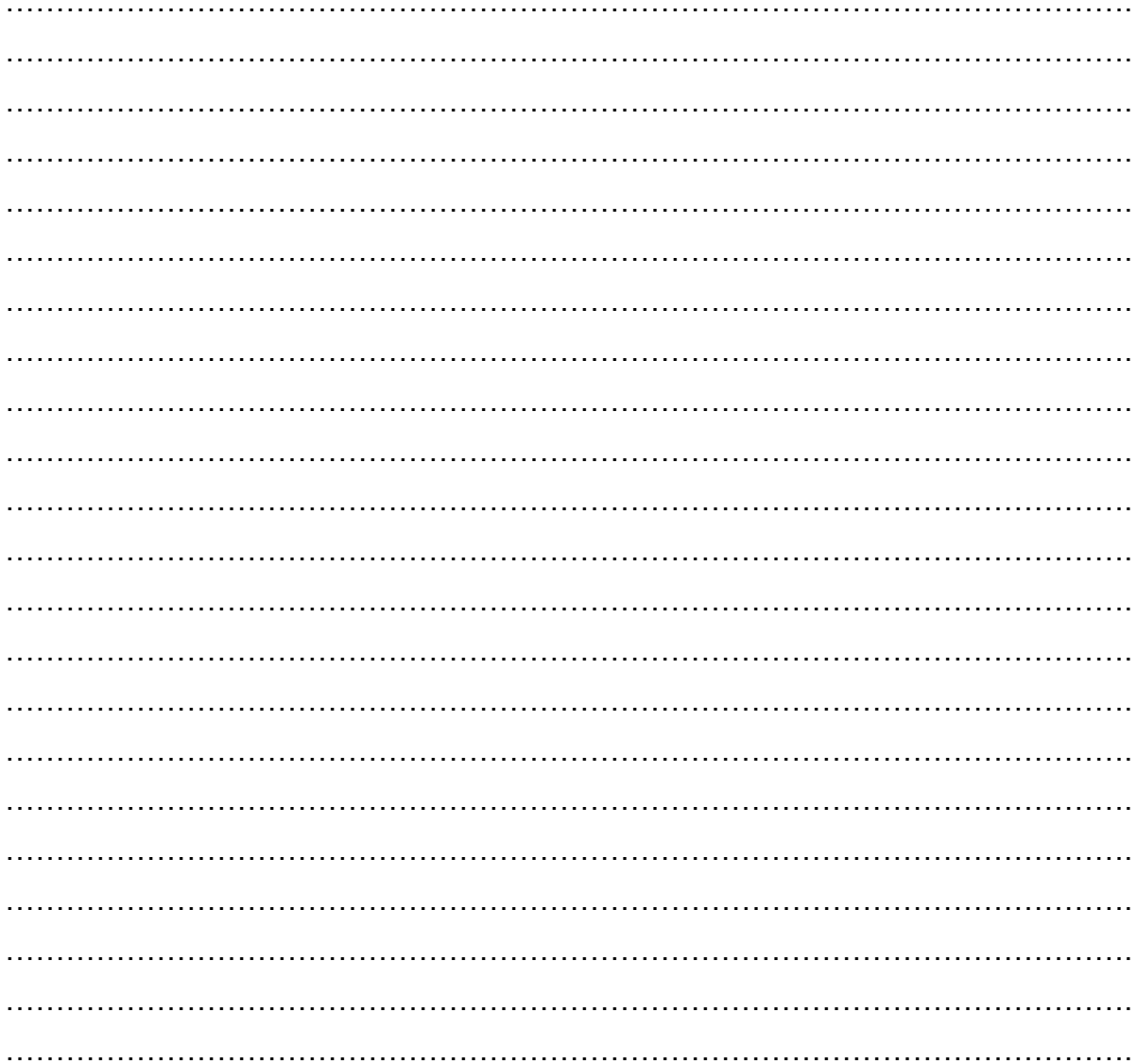
Sigmund is uncertain as to the validity of the penalty clause in the contract. Provide an explanation of:

- (i) The general purpose of including penalty clauses in a contract;
- (ii) The possible types of penalty clauses recognised under the Conventional Penalties Act 15 of 1962;
- (iii) The manner in which the Conventional Penalties Act 15 of 1962 regulates penalty clauses, including any powers of the court. (5)

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QUESTION 8

A friend, Lucile, introduces Antonio to a company called Supreme Investments (Pty) Ltd that has an investment opportunity with guaranteed returns of 20% on any capital invested in the scheme. Antonio sees an opportunity to make money quickly and signs the investment agreement with Supreme Investments (Pty) Ltd in which Antonio agrees to make a capital deposit of R5,000,000 into the scheme. Antonio sells his family home in Bedfordview Johannesburg at its market value and pays Supreme Investments (Pty) Ltd the proceeds.

Daisy approaches you for advice.

Answer the following questions:

- 8.1 Assume Daisy does not have sufficient money to pay for your legal services and suggests that you take her case on a “no-win-no-fee” basis. Identify the type of agreement that you would enter into with Daisy. (1)

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- 8.2 What piece of legislation regulates the agreement you should have identified in question 8.1 (above)? Give the full and correct name of the statute. (1)

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- 8.3 Did Antonio have contractual capacity to enter into the sale of property agreement when he sold his home in Bedfordview? Answer “YES” or “NO” and use authority to support your answer. (2)

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- 8.4 What statutory formalities must be complied with for a valid sale of property? Refer to authority to support your answer. (2)

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TOTAL:	[60]
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TOTAL MARKS	60
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