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**COMMERCIAL LAW II**

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**Revision Questions &**  
**Memo**

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**STUDY UNIT 1****QUESTION 1**

Thabo borrows Modise's bicycle to compete in a race sponsored by the company for which he works. Thabo wins the race and decides to become a professional cyclist. Therefore, without returning the bicycle to Modise, he offers to buy it from him for R3 000. Modise accepts the offer and Thabo pays him there and then.

What kind of delivery takes place in the above set of facts?

1. actual delivery
2. **delivery with the short hand**
3. symbolic delivery
4. delivery with the long hand
5. *constitutum possessorium*

**QUESTION 2**

Which ONE of the following actions can the purchaser use if the merx has a defect which does not render it completely useless?

1. **the *actio quanti minoris***
2. the *actio redhibitoria*
3. the *rei vindicatio*
4. the *actio empti*

**QUESTION 3**

Choose ONE of the options provided below to complete the sentence CORRECTLY:

Ownership in movable property passes .....

1. when the sale is concluded.
2. **when the thing sold (*merx*) is delivered to the purchaser.**
3. when the sale is complete (*perfecta*).
4. when the risk of accidental loss or damage passes to the purchaser.

**QUESTION 4**

Consider the following statements:

1. John agrees to deliver his farm 'Willows' to Peter in exchange for Peter's farm 'The Oaks'.
2. John agrees to deliver his farm 'Willows' to Peter against payment of R1,5 million. ✓

3. John agrees to deliver a game farm of Peter's choice against payment of R1,5 million.<sup>4</sup>
4. John agrees to deliver his farm Willows' to Peter against payment of a price to be determined by the Land Bank.

Indicate in which statements VALID CONTRACTS OF SALE were concluded:

1. only 1 and 2
2. only 1 and 3
3. only 1 and 4
4. only 2 and 3
5. only 2 and 4

### QUESTION 5

Which ONE of the following contracts of sale is perfecta?

1. Mark buys a dog from Peter. Mark may choose anyone of Peter's five dogs.
2. Mark buys Peter's flock of sheep at R400 a sheep.
3. Mark agrees with Peter to buy his house provided Mark obtains a loan from the bank.
4. **Mark agrees with Peter to buy his BMW car for R15 000, which amount will be paid over a period of twelve months.**

### QUESTION 6

Rina and Pat enters into an agreement that Pat will use Rina's car for a period of one month to deliver milk to his customers as he has started a dairy. After a period of two weeks Pat realises the importance of having his own car and makes an offer to buy Rina's car. They agree on terms and Pat buys the car.

Which form of delivery took place?

1. delivery with the long hand
2. symbolic delivery
3. **delivery with the short hand**
4. *constitutum possessorium*

### QUESTION 7

Which ONE of the following statements is CORRECT?

1. In a contract of sale the seller agrees to deliver the *merx* in exchange for the purchase price.
2. The *merx* is only definite or ascertainable if it is corporeal.
3. In a warranty against eviction the seller undertakes to preserve the *merx* until delivery to the purchaser.

4. The only remedy for a defect which is so material as to render the *merx* useless or less useful for the purpose for which it was bought, is the *actio redhibitoria*.

### QUESTION 8

Zandi borrows a Commercial Law textbook from her roommate, Gina. Zandi uses this book to prepare for her examination. After Zandi has passed all her first year subjects she decides to sell her textbooks. She also sells the Commercial Law textbook to Ahmed for R10.

Indicate the CORRECT statement.

1. No valid contract of sale was concluded between Zandi and Ahmed since Zandi was not the owner of the textbook.
2. A valid contract of sale was concluded between Zandi and Ahmed, and ownership passed to Ahmed.
3. A valid contract of sale was concluded between Zandi and Ahmed, but ownership did not pass to Ahmed.
4. Ahmed will be able to rely on the warranty against latent defects should Gina claim the book from him.

### QUESTION 9

Consider the following requirements:

1. Agreement on the purchase price ✓
2. Agreement regarding a warranty against latent defects ✓
3. Agreement about the *merx* ✓
4. Agreement that the *merx* be delivered ✓

Which of the above are the essential characteristics of a contract of sale?

1. only 2 and 3
2. **only 1 and 3**
3. only 1 and 4
4. only 2 and 4

### QUESTION 10

Zoli goes to Mapale Cafe to buy a tin of fish. After taking the money, Johan, the shop owner, who is behind the counter takes the fish from the shelf behind him and gives it to Zoli.

Which form of delivery took place?

1. Delivery with the short hand
2. Delivery with the long hand
3. Symbolic delivery
4. **Actual delivery**

**QUESTION 11**

Joan, who is in Johannesburg, buys six bottles of scarce red wine from Patrick, the owner of a prominent wine estate in Stellenbosch, at R140 a bottle. The bottles of wine are to be transported to Johannesburg by a courier company. Joan has given security for the payment of the purchase price.

What is the position if four of the six bottles of red wine are broken in a motor-car accident caused by another motorist on road to Johannesburg?

1. Joan and Patrick are released from their respective obligations.
2. **Joan is obliged to pay the full purchase price, even though she will receive two bottles of wine only.**
3. Joan can claim a reduction of the purchase price.
4. Patrick is obliged to replace the four bottles of wine that broke.

**QUESTION 12**

Which one of the following statements is correct?

1. Movables are transferred by way of registration on the name of the purchaser in the Deeds Office.
2. The risk of accidental damage to the *merx* passes from the seller to the purchaser when the purchaser becomes the owner.
3. **A purchaser who wants to claim because of a latent defect in the *merx* must prove that he or she was unaware of the defect when the contract was concluded.**
4. The seller can transfer ownership of the *merx* to the purchaser even if he or she is not the owner of the *merx*.

**QUESTION 13**

Semitsi, a farmer, wants to purchase land from Vice, on which he wishes to grow potatoes. Vice offers to sell the land to Semitsi at R300 000, and he gives Semitsi five days in which to decide whether to accept the offer. A deed to alienate land is concluded between them within three days. Semitsi now wants to terminate the contract of sale of the land.

Indicate the correct statement regarding the purchaser's right to terminate a deed of alienation of land.

1. Semitsi can terminate the contract of sale since he intends growing potatoes on the land.
2. **Semitsi cannot terminate the contract of sale because the purchase price exceeds the amount of R250 000.**
3. Semitsi can terminate the contract of sale because he is exercising an option which was open for at least

**QUESTION 14**

Michael, the purchaser, and Lucy, the seller, enter into a contract for the sale of a time share.

Which one of the following statements is CORRECT regarding their contract?

1. The contract between Michael and Lucy may be either in writing or orally.
2. Michael and Lucy may agree that Lucy will not be liable if Michael is evicted.
3. Michael may bind himself to agree if Lucy later wishes to transfer her obligations to someone else.
4. **The contract between Michael and Lucy must contain particulars of the property, such as its ownership and any mortgages or bonds over it.**

**QUESTION 15**

Wim has borrowed Beth's bicycle to travel to work. Wim enjoys cycling and he decides to buy the bicycle from Beth. Beth agrees that Wim may buy the bicycle from her for an amount of R300. Wim continues to use the bicycle and at the end of the month Wim pays the purchase price into Beth's account.

Which one of the following forms of delivery has occurred:

1. **delivery with the short hand**
2. no delivery has taken place
3. *constitutum possessorium*
4. symbolic delivery

**QUESTION 16**

Consider the following statements:

1. consensus regarding the purchase price
2. consensus regarding the *merx*
3. consensus regarding the date and time of delivery
4. consensus regarding the intention of passing ownership

Which of the above are the *essentialia* of the contract of sale:

1. **only 1 and 2**
2. only 1 and 3
3. only 2 and 4
4. only 3 and 4

**QUESTION 17**

Thabo buys a microwave from Trompies, a manufacturer, for R1 500. Trompies is aware that the grilling button does not work properly but he does not tell Thabo about it. Thabo grills a chicken for five minutes according to the instructions contained in the manual she received from Trompies. The chicken is completely burnt and the smoke damages Thabo's white walls.

Which ONE of the following statements is INCORRECT?

1. Due to Trompies's misrepresentation, Thabo will be able to institute the *actio empti* for the damage she has suffered.
2. As the manufacturer and seller of the microwave, Trompies will be liable for all the damage Timbo has suffered.
3. **Thabo may claim only for the defective microwave and not for the chicken and the damaged walls as well.**
4. Since the microwave can perform other functions, Thabo may keep it and claim a reduction of its purchase price.

**QUESTION 18**

CC Properties and Power Local Council conclude a contract of alienation in terms of which CC Properties buys a piece of land from Power Local Council. CC Properties takes occupation of the land but transfer does not take place. The contract of alienation is terminated.

Consider the following forms of compensation:

1. Reasonable compensation for the occupation, use and enjoyment of the land.
2. Reasonable compensation for necessary expenditure incurred for the preservation or improvement of the property.
3. Reasonable compensation for any improvement effected with the express or implied consent of the owner, if the market value of the land was enhanced by the improvement.
4. Compensation for any damage to the property caused intentionally or negligently by the purchaser or any person for whose actions he or she may be liable.

Which of the above may be recovered by CC Properties (the purchaser) when the contract is terminated?

1. only 1 and 2
2. only 1 and 4
3. only 3
4. only 2 and 4
5. **only 2 and 3**

**QUESTION 19**

Mrs Westbrook wants to buy shares to the value of R195 000 in the Rhino Ridge share block scheme where she plans to establish the head office of her new import and export company.

Which ONE of the following statements regarding share block schemes is CORRECT?

1. Ownership of the particular part of the share block scheme will pass to Mrs Westbrook when she purchases the shares.
2. The only formalities regarding the contract of sale in terms of which shares in a share block scheme are bought are that the share which is bought and the price need to be specified.
3. Mrs Westbrook and the other members of the scheme may not appoint any of the directors of the share block company because only the developers may appoint directors.
4. **Mrs Westbrook has a statutory right to terminate the contract within five working days.**

**QUESTION 20**

Sue, who is renting Sam's house, agrees to buy the house. Sue gives security for the payment of the purchase price, and Sam hands the keys of the house to Sue.

Which one of the following statements is correct?

1. Ownership passed from Sam to Sue because symbolic delivery took place – Sam handed the keys to Sue.
2. Ownership passed from Sam to Sue because *possessorium* took place – Sue retained possession of the property.
3. Ownership does not pass from Sam to Sue, because Sue has not paid the purchase price.
4. **Ownership does not pass from Sam to Sue, because registration has not yet taken place.**

**QUESTION 21**

Michael, the purchaser, and Lucy, the seller, enter into a contract for the sale of a time share unit.

Which ONE of the following statements is CORRECT regarding their contract?

1. The contract between Michael and Lucy may be concluded either in writing or orally.
2. Michael and Lucy may agree that Lucy will not be liable if Michael is evicted from the unit.



3. Michael may bind himself in advance to agree if Lucy later wishes to transfer her obligations to someone else.
4. **The contract between Michael and Lucy must contain particulars of the property, such as its ownership and any mortgages or bonds over it.**

### QUESTION 22

Which ONE of the following statements is CORRECT?

Which of the following things can constitute the subject of a valid contract of sale between two parties:

1. a child
2. **a claim**
3. cocaine

### QUESTION 23

Angus selects and buys 20 personal computers from PC (Pty) Ltd on Friday. He arranges to pick up the computers on Monday. The computers Angus selected are set aside in a storeroom. Angus and PC agree that the price for the computers will be R60 000. During the weekend, lightning strikes the storeroom in which the computers are kept. The computers are completely destroyed.

Which ONE of the following statements is the MOST CORRECT?

1. **Angus will still have to perform in terms of the contract, but he is not entitled to receive 20 other computers.**
2. All the contractual obligations are terminated because of supervening impossibility of performance.
3. PC has committed breach of contract in the form of *mora debitoris*.
4. PC is obliged to replace the destroyed computers with another 20 computers.

### QUESTION 24

Which ONE of the options provided below will complete the following sentence CORRECTLY?

the fact that a contract of sale is perfecta means that .....

1. the purchaser acquires ownership of the *merx*.
2. the seller and the purchaser are released from their respective obligations.
3. **the risk of accidental damage to, or loss of, the *merx* passes to the purchaser**
4. if the *merx* is accidentally damaged or lost before delivery takes place, the seller bears the loss

**QUESTION 25**

Monti wants to buy 20 bags of flour from "Bread Mills".

Which ONE of the following will NOT qualify as an acceptable purchase price?

1. **200 loaves of bread**
2. R4 000 00
3. an amount determined by Lerry, a financial adviser
4. R25.00 per bag of flour

**QUESTION 26**

Andy rebuilds a "Mini" motorcar. Due to the difficulty in obtaining a fanbelt for the car, he uses a nylon stocking instead. He then sells it "as is" ("voetstoots") to Sam, a student with no knowledge of cars. On Sam's way home the stocking melts, and the resultant overheating causes severe damage to the engine.

Which ONE of the following statements is CORRECT?

1. Sam has a claim against Andy, because an implied warranty against latent defects is read into every contract of sale, notwithstanding the inclusion of an "as is" ("voetstoots") clause.
2. **Sam has a claim against Andy because Andy knew about the defect, and is therefore not able to rely on the "as is" ("voetstoots") clause.**
3. Sam has no claim against Andy because the warranty against latent defects was excluded by stating that the "Mini" is sold "as is" ("voetstoots").
4. Sam has no claim against Andy, because Andy's concealment of the use of a nylon stocking does not amount to misrepresentation.

**QUESTION 27**

Which ONE of the following statements regarding credit agreements subject to the Credit Agreements Act 75 of 1980 is INCORRECT?

1. **Credit agreements may be concluded orally.**
2. Credit agreements must contain certain minimum information.
3. A term in a credit agreement that limits the seller's liability for misrepresentation, is invalid.
4. The purchaser enjoys a statutory right to terminate the contract within five days of its conclusion, where the credit agreement is concluded on the initiative of the seller and signed on premises other than the seller's ordinary business premises.

## STUDY UNIT 2

### QUESTION 1

Thomas wishes to let one of his farms to his son, Themba.

Which ONE of the following terms may be included in the contract of lease?

1. A term in which Themba agrees to pay his father twenty percent of the profit of his (Themba's) liquor store as rent. -
2. A term giving Themba the rent-free use of the farm.
3. A term giving Themba the permanent use and enjoyment of the farm.
4. A term which allows Themba to conduct a brothel on the farm.
5. A term giving Themba use and enjoyment of the farm till Thomas's death.

### QUESTION 2

Choose ONE of the options provided below to complete the sentence CORRECTLY:

The person to whom immovable property subject to an existing lease has been alienated is bound by such lease unless .....

1. the lessee defaults on the rent.
2. **the term of the lease is twenty years and it has not been registered against the title deed of the property.**
3. the property has been donated to him.
4. the person to whom the property has been alienated decides to cancel the lease.

### QUESTION 3

Koos a mechanic rents a house from Jonah. Koos and Jonah sign a two-year contract of lease in terms of which Koos is prohibited from using the house for business purposes without Jonah's prior consent. Without Jonah's knowledge Koos converts the house into a workshop to repair cars. Koos' neighbours are alarmed about his business activities and the potential decrease in the value of their houses. When they complain to Jonah, he sells the house to Furie.

Indicate the CORRECT statement:

1. **Furie will be bound to the contract of lease with Koos due to the maxim 'huur gaat voor koop'.**
2. Furie will not be bound to the contract of lease with Koos if he was not aware of the existence thereof at the time when ownership of property passed to him.

3. To recover arrear rent, Furie may attach and sell Jonty's cars which had been brought to Koos for repairs, even though Jonty had informed Furie that he was the owner of the cars.
4. To recover arrear rent, Furie may attach and sell a television set that belongs to Koos, but is in the possession of Gert, a friend of Koos.
5. Furie may not sue Koos for breach of the lease agreement, since the contract of lease was concluded between Koos and Jonah, and not between Koos and Furie.

#### QUESTION 4

Indicate the INCORRECT statement regarding the 'huur gaat voor koop' doctrine:

1. The doctrine only applies to the leasing of immovable property.
2. **All rental which was in arrear and which was owed by the tenant to previous owner (the seller), at the time of alienation, accrues to the new owner (purchaser).**
3. The purchaser is bound by the lease that exists in respect of the property at the time of alienation.
4. The tenant is bound by the lease that exists in respects of the property at the time of alienation.
5. The purchaser will not be bound by the doctrine if the tenant neglects to pay the rent.

#### QUESTION 5

Which ONE of the following statements is CORRECT?

1. **If Dina, the lessee, elects to remain in occupation of the seriously defective property, she may claim a reduction of rent.**
2. If Sam, the lessee, elects to remain in occupation of the seriously defective property, he may refuse to pay the rent.
3. If Vic, the lessee, cancels the contract because the leased property is seriously defective, he will not be liable for rent from the date of cancellation, notwithstanding the fact that he elects to remain in occupation.
4. If Ken, the lessee, effects repairs to the seriously defective property he may claim the estimated cost of the repairs as a reduction of rent.

#### QUESTION 6

Francis, a rich young entrepreneur, leases his penthouse in Cape Town to Miss Spoilt. Miss Spoilt fails to pay Francis the rent for two months. Francis acquires what is known as the landlord's hypothec:

Indicate the INCORRECT statement:

1. The landlord's hypothec is a tacit hypothec and arises automatically and immediately when Miss Spoilt falls in arrears with her rent.

2. The hypothec is of no force and effect until Francis makes an attachment of goods.
3. **The landlord's hypothec extends not only to the Miss Spoilt's movables on the leased premises, but also to her other movables, irrespective of where they are kept.**
4. The hypothec is operative only when and for as long as the rent is in arrears.

### QUESTION 7

It is the end of the year 2000 and Brown must vacate the flat which he has been renting from Tiger Estate for the past two years in terms of a lease agreement. The kitchen has burnt out, Brown alleges that the damage was caused by lightning. The damage was actually caused by an electric fault in Brown's fridge which Brown knew about, but ignored. Tiger Estate wants Brown to repair the flat.

Choose the CORRECT statement.

1. Tiger Estate is entitled to have Brown's movable property attached.
2. **Brown is obliged to repair the damage.**
3. The damage must be repaired by Tiger Estate.
4. Brown may effect the repairs and claim damages from Tiger Estate.

### QUESTION 8

Indicate the INCORRECT statement regarding the 'huur gaat voor koop' doctrine:

1. The doctrine only applies to the leasing of immovable property.
2. The purchaser is bound by the lease that exists in respect of the property at the time of alienation.
3. The tenant is bound by the lease that exists in respect of the property at the time of alienation.
4. The purchaser will not be bound by the doctrine if the tenant neglects to pay the rent.
5. **All rental which was in arrear and which was owed by the tenant to the previous owner (the seller), at the time of alienation, accrues to the new owner (purchaser).**

### QUESTION 9

Barny rents an office complex from City Offices. The Gauteng Provincial Government decides to expropriate the property in order to tear down the building and build a national road over the property. Barny writes a letter to the Gauteng Provincial Government to inform them of the existing contract of lease. The authorities go ahead with the expropriation and Barny refuses to evacuate the offices.

Which ONE of the following would be the CORRECT advice to give Barney?

1. The Gauteng Provincial Government is bound to the contract of lease existing at the time of expropriation because of the application of the maxim 'huur gaat voor koop'.
2. **The Gauteng Provincial Government is not bound by the contract of lease because the maxim 'huur gaat voor koop' applies only where there is a succession of rights.**
3. The Gauteng Provincial Government is bound to the contract of lease existing at the time of expropriation because it was aware of the existence of the contract of lease.
4. The Gauteng Provincial Government is not bound by the contract of lease because the maxim 'huur gaat voor koop' applies only to long leases of immovable property.

### QUESTION 10

Greg and Pat enter into an agreement that Greg will make use of Pat's store to sell stationery.

Which one of the following terms may the parties include in their contract of lease?

1. Greg may use Pat's store and Greg need not pay the rent as they are friends.
2. Greg may use Pat's store for any other purpose as long as he keeps the store in good condition.
3. Greg may use the store permanently because Pat does not intend using it for business again.
4. **Greg may pay Pat twenty percent of the profit he makes from the store every month as rent.**

### QUESTION 11

Lebo stays in a house which he leases from Thato. He sublets part of the house to his friend Lesego. The house is only one kilometre away from the house where Mary, Lebo's girlfriend, stays. She likes visiting and sleeping over at Lebo's house over weekends. Lebo used all the money he had, including the rent Lesego paid him, to spoil Mary with expensive gifts on Valentine's day. He even gave her some of his belongings, which he intends replacing in the near future. It is the end of the month and Lebo is unable to pay his rent.

Choose the CORRECT statement:

1. Thato may attach all movable property on the leased premises including Lesego's.
2. Thato may attach all movable property which belongs to Lebo including those that he gave to Mary.
3. **Thato may attach all Lebo's movable property present on the leased premises at the time that the rent is in arrear.**

4. Thabo may attach all movable property belonging to Lebo, Lesego and Mary.

### QUESTION 12

Choose the CORRECT statement:

1. If a property already leased, is sublet, it implies that a contract arises between the original lessor and the sublessee.
2. A contract of lease is automatically terminated by the death of the lessor or the lessee.
3. The purchaser of property in respect of which a contract of lease is in existence, assumes any obligation owing by the lessor to the lessee, if such obligation arose prior to the date of sale.
4. **The lessee who effected repairs on a defective object, has to prove, when claiming reduction of rent that the repairs were effected after the lessor failed to respond to a demand to have them done.**

### QUESTION 13

Which one of the following agreements meets the requirements for a valid contract of lease?

1. Siphso will make use of Thabo's garage but only if Thabo's car is not in the garage.
2. Siphso may, if he wishes, destroy Thabo's garage and build a new one to his liking.
3. Siphso will in return for using Thabo's garage, transport Thabo's child to school.
4. **Siphso may make use of only the garage door to advertise his business.**

### QUESTION 14

In which one of the following instances will Molopo not be held liable for breach of a contract of lease.

1. Mosoma must vacate the house he is leasing from Molopo, because Molopo wishes to accommodate his visitors there over the weekend.
2. **Mosoma must vacate the house he is leasing from Molopo, as it has been damaged by lightning.**
3. Mosoma must vacate the house he is leasing from Molopo, because he is evicted by Molopo's brother, Papi who claims to have inherited it from their parents.

### QUESTION 15

Indicate the INCORRECT statement:

1. **The maxim "huur gaat voor koop" pertains to the lease of movable and immovable property.**
2. The maxim "huur gaat voor koop" arose from considerations of equity.
3. The maxim "huur gaat voor koop" means that the person to whom property has been alienated is bound by a contract of lease which exists in respect of that property.
4. The maxim "huur gaat voor koop" means that the lessee acquires a real right to the property.
5. The maxim "huur gaat voor koop" applies only if the purchaser is aware of the contract of lease when the property passed to her.

### QUESTION 16

Solwazi and Tangeni agree that Solwazi will lease his tobacco farm to Tangeni. Gazza, the previous lessee, whose lease contract has expired, refuses to vacate the farm.

Which ONE of the following statements is the MOST ACCURATE?

1. Since there is still tobacco on the farm which must be harvested, Gazza may rely on the maxim "huur gaat voor koop" to prevent Solwazi from evicting him.
2. It is Tangeni's duty to evict Gazza, because he is now entitled to protect his possession.
3. It is Tangeni's duty to evict Gazza, because Tangeni has a personal right against Gazza to claim possession of the farm.
4. **It is Solwazi's duty to evict Gazza, because Tangeni only has a personal right against Solwazi to claim possession of the farm.**

### QUESTION 17

Which ONE of the following agreements meets the requirements for a valid contract of lease?

1. **Sipho may make use of only the garage door to advertise his business.**
2. Sipho may, if he wishes, demolish Thabo's garage and build a new one to his liking.
3. Sipho will in return for using Thabo's garage, transport Thabo's child to school.
4. Sipho will make use of Thabo's garage but only if Thabo's car is not in the garage.

### QUESTION 18

Which ONE of the following statements is INCORRECT?

1. The Rental Housing Act 50 of 1999 provides that a landlord must, if requested thereto by a tenant, reduce the lease to writing.



2. The Rental Housing Act 50 of 1999 provides for the establishment of a Rental Housing Tribunal to address complaints by landlords and tenants.
3. **The Rental Housing Act 50 of 1999 provides that the landlord is under no obligation to furnish a tenant with a written receipt for all payments received, even if requested thereto by the tenant.**

### QUESTION 19

Berry, a motivational speaker, rents a room from Dusty to use as a consultation room. Berry and Dusty agree about the rent but forget to discuss the date on which the rent must be paid. Berry's consultations go well for the first-two weeks until Dusty's son, Tutu, brings some items into the room alleging that his father gave him permission to use part of the room as a tuck-shop.

Which ONE of the following statements is CORRECT?

1. Dusty has performed his duty to deliver the room to Berry by merely putting the room at Berry's disposal.
2. There is no contract of lease between Berry and Dusty because they did not agree about the date of payment of the rent.
3. **There is a contract of lease between Berry and Dusty because they have agreed about the rent to be paid by Berry.**
4. Berry has a duty to ensure that he (Berry) is not disturbed from using and enjoying the room during the period of the lease.

### QUESTION 20

In which ONE of the following instances did assignment take place?

1. **Mpho leases his house to Maco. Maco agrees with Sam to take over the lease of the house.**
2. Mpho leases his house to Maco. Maco transfers his rights to the house to his friend, Rando.
3. Mpho leases his house to Maco. Maco later leases one room of that house to Sam.

### QUESTION 21

Which ONE of the following statements is INCORRECT?

1. The maxim "huur gaat voor koop" arose from considerations of equity.
2. **The maxim "huur gaat voor koop" pertains to the lease of movable and immovable property.**
3. The maxim "huur gaat voor koop" means that the person to whom property has been alienated is bound by a contract of lease which exists in respect of that property.
4. The maxim "huur gaat voor koop" means that the lessee acquires a real right to the property.

5. The maxim "huur gaat voor koop" applies only if the purchaser is aware of the contract of lease when the property is passed to him or her.

### QUESTION 22

Pete rents a house from Stuart for R1 000 per month. The roof of the main bedroom starts to leak when it rains. Pete is now obliged to sleep in another bedroom.

Which one of the following statements is CORRECT?

1. Pete is entitled to refuse to pay rent.
2. If Stuart refuses to repair the roof, Pete is entitled to have the roof repaired and to claim a reduction of the rent on the grounds of such reparation.
3. The defect is not material and Stuart is therefore not obliged to have the roof repaired.
4. **Stuart is entitled to maintenance of the house in a fit condition and Pete is therefore obliged to have the roof repaired.**

### QUESTION 23

Thomas wishes to let one of his farms to his son, Thabo. Thabo intends making substantial improvements to the farm.

Which one of the following terms may be included in the contract of lease?

1. A term which gives Thabo the permanent use and enjoyment of the farm.
2. A term stipulating that Thabo is not obliged to pay any rent.
3. **A term stipulating that Thabo will pay his father a determined share of the yield of the mealy harvest as rent.**
4. A term which denies Thomas the right to prescribe to Thabo what he may do on the farm.

### QUESTION 24

Arnold and Betserai agree orally that Arnold will lease his vineyards to Betserai on condition that Betserai will give 10 percent of the grapes produced by him to Arnold.

Which one of the following statements is CORRECT?

1. No contract of lease will come into being, because the amount of the rent is not certain or ascertainable.
2. No contract of lease will come into being, because the rest must sound in money that is the lessee must compensate the lessor with money.
3. **No contract of lease will come into being if it is agreed that Betserai's stay on the farm is permanent.**

4. No contract of lease will come into being, because the agreement relates to immovable property and is not embodied in a written document.

### QUESTION 25

Which one of the following statements is CORRECT?

1. **No formalities are required for the conclusion of a valid contract of lease.**
2. A long lease can be described as a lease which has been entered into for a period of not less than five years.
3. The Rental Housing Act 50 of 1999 is aimed at the protection of lessors against exploitation and victimisation by lessees.
4. The Formalities in respect of Leases of Land Act 18 of 1969 provides that a long lease must be registered.

### QUESTION 26

Tau leases his house to Trot. Tau and Trot agree that their contract of lease will come to an end when Tau's son, Tito comes back from Belgium.

A year after conclusion of the agreement, Tito comes back from Belgium.

Which ONE of the following forms of termination of lease will take place?

1. **The lease agreement will be terminated by effluxion of time because its existence depends on the occurrence of a specified event.**
2. The lease agreement will not be terminated by effluxion of time because it was not known when the event will take place.
3. The lease agreement will be terminated by notice because the contract is for an indefinite period.
4. The lease agreement will not be terminated by notice because the parties did not mention in their contract that the contract will be terminated by notice.

### QUESTION 27

Which ONE of the following statements regarding the contract of lease is INCORRECT?

1. The contract of lease normally gives rise to obligations of a continuing nature.
2. **The rent may consist of monetary compensation or any other thing which the parties may agree upon.**
3. As soon as the lessee of immovable property falls into arrears with his rent, the lessor acquires a hypothec over all movables belonging to the lessee situated on the property.

4. In terms of the maxim "huur gaat voor koop" the owner of the immovable property is prevented from transferring rights to another which have already been transferred to a lessee.

### QUESTION 28

Joe leases his house to Fiona for R1 800 per month. The rental includes payment in respect of water and electricity consumption. The power supply to the house is cut off because Joe did not pay the account in respect of water and electricity. At the end of the month, Fiona refuses to pay the rent. She alleges that she has suffered damage because all the meat in her freezer was spoilt when the power supply was cut off.

Which ONE of the following statements is INCORRECT!

1. Fiona is liable for the rent until she vacates the property.
2. Fiona is entitled to claim a reduction in the rent.
3. Joe is liable for the damages suffered by Fiona when the meat was spoiled.
4. **Joe is entitled to summarily sell any movable property in the flat in order to recover the outstanding rent.**

### QUESTION 29

Lerato hires a flat from her friend Dikeledi. The lease is not for a fixed period and Lerato has to pay a monthly rental to Dikeledi. Since crime is high in urban areas, Lerato installs a security gate at the front door of the flat. A year after the commencement of the lease, Lerato becomes aware that Dikeledi does no longer have a valid title to the flat.

Which ONE of the following statements regarding the termination of a contract of a lease is CORRECT?

1. Although the installation of a security gate is a useful improvement, Lerato will not be entitled to remove it before she vacates the flat, since it is for the safety of future tenants.
2. Lerato may terminate the contract of lease, since Dikeledi, who is the lessor, does not have a title to the flat.
3. Lerato may terminate the contract by giving Dikeledi notice of termination which will only become effective if it comes to the actual knowledge of Dikeledi.
4. **If Lerato dies as a result of heart failure, the contract of lease between her and Dikeledi will automatically terminate.**

### QUESTION 30

Ken leases his citrus farm Mooirivier, to Sarel for a period of twelve years in exchange for 10% of the crop produced each season. Ken and Sarel sign a written lease agreement, but the lease is not registered against the farm's title deed.

Which ONE of the following statements is CORRECT?

1. The contract of lease is invalid because the rent is not a determinable amount in money.
2. The contract of lease is invalid because a long lease must be registered against the title deed of the property in order to be binding.
3. **The contract of lease is valid because rent that consists of a share' of the fruit of the farm amounts to valid rent.**
4. The contract of lease is invalid because the lease period exceeds ten years.

### QUESTION 31

Peter rents a house from Richard for a year. After three months, Sarah offers to buy the house. She knows about the existence of the contract of lease. Richard sells the house to her.

Which ONE of the following statements is INCORRECT?

1. **Sarah has to compensate Peter for improvements he made to the house during the first three months of the lease because the improvements are to her advantage as the owner.**
2. If the property on which Richard's house stands was expropriated by the State and not sold, Peter could not have held the State bound to the lease.
3. Sarah would be bound by the lease only if she had knowledge or deemed knowledge of the existence of the lease when she concluded the contract of sale.
4. Although Sarah did not conclude a contract of lease with Peter, she may not evict him but must abide by the lease which Peter concluded with Richard.

### QUESTION 32

Choose ONE of the options provided below to complete the following sentence CORRECTLY.

In terms of the maxim "huur gaat voor koop", a person who" .....

1. **buys immovable property is bound to any short-term contract of lease existing in respect of the property at the time of its alienation, and of which he was aware or deemed aware.**
2. lets out immovable property, may not sell that property before the contract of lease has expired.
3. buys immovable property, is bound to any long lease existing in respect of the property.
4. expropriates immovable property, is bound to any contract of lease existing in respect of the property.

**QUESTION 33**

Which ONE of the following statements is CORRECT?

1. **No formalities are required for the conclusion of a valid contract of lease.**
2. A long lease can be described as a lease which has been entered into for a period of not less than five years.
3. The Rental Housing Act 50 of 1999 is aimed at the protection of lessors against exploitation and victimisation by lessees.
4. The Formalities in respect of Leases of Land Act 18 of 1969 provides that a long lease must be registered.

**STUDY UNIT 3****QUESTION 1**

In the case of non- indemnity insurance.....

1. **the insurer undertakes to pay the insured or the beneficiary a fixed sum of money if the event insured against takes place.**
2. the insurer undertakes to make good any damage which the insured may suffer.
3. the insurer undertakes to pay a fixed sum of money at the expiry of a fixed period.
4. the existence of an insurable interest is not required.

**QUESTION 2**

The essentialia of a contract are those characteristics which distinguish it from other types of contracts.

Which ONE of the following is an essentialia of the insurance contract?

1. **an undertaking by the insured to pay a premium.**
2. an undertaking by the insured to recover compensation only once.
3. an undertaking by the insured not to insure the same risk-object with other insurers ..
4. an undertaking by the insured to give correct answers in the application form.

**QUESTION 3**

Mali buys a car for R100 000. Mali thinks that if the car is insured with more than one insurer, he will be able to recover more than his total loss. Mali insures the car for its value of R100 000 with both Ajax Insurance Company and Fuji Insurance Company. His car is hijacked and not recovered.

Choose the CORRECT statement.

1. Mali will be able to claim R200 000 from the two insurance companies.
2. Mali can insure with only one insurance company.
3. **Mali may choose to claim R100 000 from only one of the insurers.**
4. Mali cannot claim from two insurers for the same risk-object.

#### QUESTION 4

Consider the following:

1. an element of risk
2. an element of uncertainty
3. an element of chance
4. an interest in an arbitrary event

Which of the above are characteristics of both insurance and wagering contracts?

1. 1, 2, 3 and 4
2. only 1 and 4
3. only 2, 3 and 4
4. only 1 and 3
5. **only 1, 2 and 3**

#### QUESTION 5

Sam buys a flat for R100 000. It is a bargain since the flat was worth R130 000 at the time of the sale. Sam suspects that the value of the flat may increase in future and insures it for R150 000. During the currency of the insurance the flat burns down. The flat was worth R140 000 at the time of the accident.

Which ONE of the following amounts may Sam claim against the insurer?

1. R100 000
2. R130 000
3. **R140 000**
4. R150 000

#### QUESTION 6

Which ONE of the following statements is CORRECT?

1. An insurer's right to repair includes the right to substitute the damaged risk-object with a similar second hand object.
2. **An insured may obtain insurance for a larger amount than what is necessary to secure full compensation.**
3. The right of subrogation means that the insured should first claim compensation from the third party who has caused the damage.
4. A valued policy means that the policy will increase in accordance with the rate of inflation.

**QUESTION 7**

Which ONE of the following is NOT an *essentiale* of the insurance contract?

1. an insurable interest.
2. **payment of the premium.**
3. a particular uncertain future event upon which the insurer's obligation to pay depends.
4. an undertaking by the insurer to pay a sum of money or its equivalent.

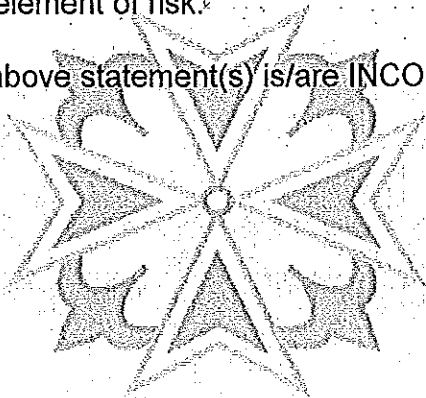
**QUESTION 8**

Consider the following statements about insurance and wagering contracts.

1. Both have an element of uncertainty. ✓
2. Both are contracts of chance. ✓
3. Both are unenforceable in court. ✓
4. Only a wagering contract is unenforceable in court.
5. Both contain an element of risk. ✓

Which of the following above statement(s) is/are INCORRECT?

1. 1 only
2. 2 and 4
3. 4 and 5
4. 3 and 4 only
5. 3 only

**QUESTION 9**

Which ONE of the following statements is CORRECT regarding the insured's duty to disclose?

1. **The insured must before the conclusion of the contract disclose all material facts which he or she might be aware of.**
2. If the insured does not comply with his duty to disclose, the contract will be void.
3. The insurer can only dispute the contract if the insurer makes a positive misrepresentation.
4. The insured must disclose all facts which he is aware of, that is, all material and non material facts to the insurer.

**QUESTION 10**

Mpho has insured his car with PP Insurance Company. The car is involved in an accident caused by Lebo's negligent driving. PP Insurance Company pays for the repairs and it now wants to enforce a claim for reimbursement against Lebo.



Which one of the following is relevant in the context of the facts given above?

1. a valued policy
2. **subrogation**
3. excess
4. clause average

### QUESTION 11

Jog buys a car, which is valued at R55 000, Jog insures his car with Happiness Insurance Company for R45 000. The car is involved in an accident and is damaged beyond repair. Now Jog wants the insurance company to compensate him for the loss he suffered.

Choose the CORRECT statement:

1. Jog may succeed in his claim for the value of the car (R55 000).
2. **Jog may succeed in his claim for the insured value (R45 000) of the car.**
3. Jog will not succeed with his claim because the insured amount was lower than the value of the car.
4. Jog will not succeed with his claim on the basis of misrepresentation because he did not insure the car for its actual value.

### QUESTION 12

Delia insures her car, valued at R40 000, for R40 000 with insurer Abbi Ltd, R30 000 with insurer Yuba Ltd and R20 000 with insurer Lulu Ltd. R20 000 damage is caused to the car in a collision caused by Pete's negligence.

Indicate the correct statement.

1. Delia may claim R20 000 from Abbi Ltd, R20 000 from Yuba Ltd and R20 000 from Lulu Ltd - in other words a total of R60 000.
2. Delia may choose from which insurer she will claim R20 000. That insurer will then have the right of subrogation against the other insurers.
3. Delia may claim R20 000 from each insurer as well as R20 000 from Pete.
4. The insurer that compensates Delia may enforce her (Delia's) claim against Pete in his (the insurer's) own name.
5. **Delia may recover her total loss pro rata from each of the insurers concerned.**

### QUESTION 13

Choose the only correct statement about the duty of good faith:

1. **It relates to the right of the insurer to receive correct and complete information about material facts relating to the risk.**

2. It relates to the right of the insurer to claim compensation or recourse against the third party in the name of the insured,
3. It relates to the insurer's undertaking to make good the damage which the insured may suffer through the occurrence of the event insured against.
4. It relates to the insurer's undertaking to pay the insured or the beneficiary a fixed sum of money if the event insured against takes place.

#### QUESTION 14

Tutu entered into a life and disability policy with Giant Life Insurance. This happened a month after Tutu had applied for a discharge as a police official because he is suffering from major depression. In a proposal form which Tutu personally completed there was a question whether Tutu had at any stage suffered from any kind of depression. Tutu answered that question with a simple "No". Tutu now wants to claim from Giant Insurance.

Indicate the incorrect statement.

1. Giant Life Insurance may refuse to pay the claim because of Tutu's misrepresentation.
2. Giant Life Insurance may terminate the contract because of non-disclosure by Tutu.
3. **The policy is void because the misrepresentation was likely to have affected the assessment of risk.**
4. This life insurance policy is voidable because of a breach of a duty of good faith by Tutu.

#### QUESTION 15

On his way home from work Brian is involved in a collision. He reports the accident to his insurance company and they duly inform him that they choose to repair his car rather than to compensate him. He also has to pay R1 000 because he bears a proportion of the loss himself. The insurance company also informs him that he has no choice but to comply, as these terms were agreed to in the insurance contract he concluded with the company two years before.

Advise Brian of his possible legal position by choosing the CORRECT option below:

1. Even if the parties to an insurance contract agreed thereto, the insurance company may not legally obligate Brian to have the car repaired instead of compensating him, nor have him pay a certain amount in order to bear a portion of the loss himself.
2. There is no principle in insurance law that allows the insurance company to have the insured pay a certain amount in order to bear a proportion of the loss himself.

3. If the parties to an insurance contract agreed thereto, the insurance company may have the insured pay a certain amount in order to bear a proportion of the loss himself and may reserve the right to have the risk-object repaired, instead of compensating the insured.
4. There is no principle in insurance law that allows the insurance company to reserve the right in an insurance contract to have the risk-object repaired, instead of compensating the insured.

### QUESTION 16

Which ONE of the following statements is INCORRECT?

1. An insurance broker is the agent of the insured and therefore acts under the mandate of the insured.
2. An insurance broker may sell the products of different insurers as he or she is not tied to any insurer.
3. An insurance agent is the agent of the insurer and therefore acts under the mandate of the insurer.
4. **An insurance agent who completes the proposal form incorrectly, while being aware of the true facts, makes the insurer liable.**

### QUESTION 17

Selby borrows R200 000 from Lala to start a business. Lala insures Selby's life with Shalom Insurance Company for an amount equivalent to the debt. In terms of their insurance agreement, Shalom Insurance Company will pay Lala an amount of R200 000 if Selby dies.

Which ONE of the following statements is CORRECT?

1. The contract between Lala and Shalom Insurance Company amounts to indemnity insurance and the actual amount payable will only be determined on Selby's death.
2. **The contract between Lala and Shalom Insurance Company amounts to non-indemnity insurance and if Selby dies Lala will get the predetermined amount of R200 000.**
3. The existence of an insurable interest is not required where the life of another person is insured.
4. The agreement between Lala and Shalom Insurance Company is invalid because the law does not allow a person to insure another person's life.

### QUESTION 18

On the 10<sup>th</sup> of August Lina concludes an agreement with the SSQ Insurance Company in terms of which the company undertakes to compensate Lina for the damage that she might suffer if the house that she inherited from her father, should be damaged by fire. She will pay a monthly premium of R200

and the first premium will be due on the 31<sup>st</sup> of August. On the 20<sup>th</sup> of August the house is completely burnt down.

Which one of the following statements is CORRECT?

1. **As a valid contract of insurance came into existence of the 10<sup>th</sup> of August, SSQ is bound to compensate Lina for any damage she has suffered.**
2. A valid contract of insurance will only come into existence when the first premium is paid by Lina.
3. Although a valid contract of insurance was concluded on the 10<sup>th</sup> of August, Lina will only be covered by the contract when the first premium has been paid.
4. As the house was destroyed in the fire, Lina cannot prove the value thereof, and consequently loses her claim against SSQ.

### QUESTION 19

Which one of the options provided below will complete the following statement correctly?

In the case of non-indemnity insurance .....

1. **The insurer undertakes to pay the insured or the beneficiary a fixed sum of money if the event insured against takes place.**
2. The insurer undertakes to make good the damage which the insured may suffer.
3. The insurer undertakes to pay a fixed sum of money at the expiry of a fixed period.
4. The existence of an insurable interest is not required

### QUESTION 20

Complete the following sentence with ONE of the options given below.

In an insurance contract an uncertain event insured against is known as .....

1. an insurable interest
2. **a risk**
3. an excess clause
4. subrogation

### QUESTION 21

Soller insures his house with Ajax Insurers. The house was built in 1919 and certain additional rooms were added in 1959. In the application form Soller stated that the house was 40 years old.

Which one of the following statements is CORRECT?

1. Some of the rooms were built in 1959 and Soller's disclosure is therefore materially true.
2. **Soller is not supposed to know when the house was built and he can therefore not be deemed to know the exact date. The reasonable man test will exonerate Soller.**
3. Ajax Insurers may rescind the contract on the basis of Soller's misrepresentation.
4. Soller's premiums will automatically be increased to reflect the higher risk.

### QUESTION 22

Insurable interest means that .....

1. the insurer must have an interest in the non-occurrence of the uncertain event.
2. **the insured must have an interest in the non-occurrence of the uncertain event.**
3. .... the insurer must have a financial interest in the non-occurrence of the uncertain event.

### QUESTION 23

Which ONE of the following is an *essentiale* of the insurance contract?

1. payment of a premium by the insured.
2. payment of an amount of money by the insurer.
3. uncertainty whether the event upon which payment by the insurer is made dependent, will ever occur.
4. **the existence of an insurable interest.**

### QUESTION 24

Which ONE of the options provided below will complete the following sentence CORRECTLY?

In indemnity insurance the insurer undertakes to .....

1. pay the insured or beneficiary a fixed sum of money if the event insured against takes place.
2. pay the premium.
3. **make good the damage which the insured may suffer through the occurrence of the event insured against.**

**QUESTION 25**

A month after he applied for discharge from the Police Force as a result of depression, Tutu took out a life and disability policy with Giant Life Insurance. When Tutu completed the proposal form he answered no to the question whether he had suffered from depression at any stage in his life. Tutu now wants to claim in terms of the policy.

Which ONE of the following statements is INCORRECTLY?

1. Giant Life Insurance may refuse to pay the claim because of Tutu's misrepresentation.
2. **The policy is void because the misrepresentation was likely to have affected the assessment of risk.**
3. Giant Life Insurance may terminate the contract because of non-disclosure by Tutu.
4. The insurance policy is voidable because of the breach of the duty of good faith by Tutu.

**QUESTION 26**

Lebo buys a car for the amount of R60 000. She decides to save money and insures the car with Big Man Insurance Company for an amount of R45 000.

This is an example of .....

1. an excess clause.
2. a subrogation clause.
3. **underinsurance.**

**QUESTION 27**

Which ONE of the options provided below will complete the following sentence CORRECTLY?

In indemnity insurance the insurer undertakes to .....

1. pay the insured or beneficiary a fixed sum of money if the event insured against takes place.
2. pay the premium.
3. **make good the damage which the insured may suffer through the occurrence of the event insured against.**

**QUESTION 28**

Which ONE of the following is NOT an *essentiale* of the insurance contract?

1. an insurable interest
2. **payment of the premium**

3. a particular uncertain future event upon which the insurer's obligation to pay depends
4. an undertaking by the insurer to pay a sum of money or its equivalent

### QUESTION 29

Abel fully insures his new car against hijacking with two insurance companies, MBA Insurance Company and Bean Insurance Company. The value of his car at the time of the conclusion of the insurance contracts is R60 000. Abel's car is hijacked.

Which ONE of the following statements is INCORRECT?

1. **Abel may claim only R30 000 from one insurance company.**
2. Abel may claim R30 000 from each of the insurance companies.
3. Abel may claim R60 000 from one insurance company.

### QUESTION 30

Which ONE of the following statements regarding insurance brokers and agents is CORRECT?

1. An insurance agent is the agent of the insured and is mandated by the insured to obtain insurance coverage for him or her.
2. **In terms of the Long-term Insurance Act an agreement whereby the insured agrees that the insurer's agents will be exempted from liability for any omission is valid.**
3. Where an insurance agent, while being aware of the true facts, completes the proposal form incorrectly, the insurer will be held liable.
4. The Financial Advisory and Intermediary Services Act does not codify the law relating to insurance intermediaries (brokers and agents).

### QUESTION 31

Which ONE of the following statements is INCORRECT?

1. The Long-term and Short-term Insurance Acts contain some provisions which provide a measure of protection for those who conclude insurance contracts.
2. A party under an instalment sales transaction is often required by the creditor to make available an insurance policy or benefits under a policy to protect the interests of the creditor in the event that proper performance does not take place.
3. **A creditor to a contract who requires the debtor to make available an insurance policy to protect the interests of the creditor in the event that proper performance does not take place, must give prior written notice to the debtor of the choices available to the debtor.**

4. Where a creditor requires a debtor to provide security in the form of an insurance policy, to protect the interests of the creditor in the event that proper performance does not take place, the debtor must make an existing policy available.

#### STUDY UNIT 4

#### QUESTION 1

Ted Bundy can only be described as a 'problem person'. Ted works as a dispatcher at Mr Conservative courier service. Ted steals money out of the envelopes to buy drugs which he then uses during tea time, resulting in Ted dispatching only some of the packages because he dozes off every now and then. In reaction to complaints from Ted's co-worker who sees him stealing, using drugs and sleeping during working hours, Mr Conservative immediately dismisses Ted.

Choose ONE of the options provided below to complete the sentence CORRECTLY:

Ted's dismissal is .....

1. automatically unfair because he did not receive any warnings prior to his dismissal.
2. **procedurally unfair because he was not given an opportunity to state his case or prepare a response.**
3. fair due to his incapacity to do his work.
4. fair because he contravened valid and reasonable rules of his employer.

#### QUESTION 2

Indicate the INCORRECT statement regarding the individual contract of employment:

1. The employer is obliged to remunerate the employee even if the employer does not supply the employee with work.
2. **People who do work for other people, irrespective of the type of work which they do, are necessarily employees.**
3. The Labour Relations Act 66 of 1995 does not apply to members of the National Defence Force, the National Intelligence Agency and the South African Secret Service.
4. An employer can dismiss an employee for poor work performance on condition that the dismissal is substantively and procedurally fair
5. The Commission for Conciliation, Mediation and Arbitration, the Labour Court and the Labour Appeal Court are bodies that resolve disputes arising from labour matters.



**QUESTION 3**

Consider the following statements regarding the contract of employment:

1. The contract of employment is reciprocal in nature.
2. The *essentialia* of the contract of employment are the right to control and subordination.
3. The *essentialia* of the contract of employment are work and remuneration.
4. The *naturalia* of the contract of employment requires the employee to place his or her labour potential at the disposal of the employer.
5. The *naturalia* of the contract of employment are work and remuneration.

Which of the above statement(s) is/are CORRECT?

1. only 1 and 2
2. only 3
3. only 2 and 5
4. **only 1 and 3**
5. only 2

**QUESTION 4**

Indicate the INCORRECT statement:

1. An employee must be received into service by his/her employer.
2. **An employee must be given work to do.**
3. An employee must be given safe working conditions.
4. An employee must be paid remuneration.

**QUESTION 5**

The Labour Relations Act 66 van 1995 lays the foundation for the statutory requirement that a dismissal for misconduct must be substantively fair.

Which ONE of the following requirements in this regard is INCORRECT?

1. There must be a reason for the dismissal.
2. The reason for the dismissal must be a fair reason.
3. **The employee must be given the reason for the dismissal.**
4. The reason for the dismissal must relate to the conduct of the employee.

**QUESTION 6**

Popo is suffering from a terminal illness. He works as the driver at Hot Bread Bakery delivering bread to local stores. Hot bread Bakery knew about Popo's illness. While on sick leave, Popo dies.

Choose ONE of the options provided below to CORRECTLY complete the sentence:

The contract of employment is terminated .....

1. by notice as the employer knew about his illness and therefore his ultimate death.
2. by agreement as the employer allowed Popo to go on a sick leave before his death.
3. **on grounds of impossibility of performance as Popo will no longer be able to perform his work.**
4. on completion of the agreed task as Popo will no longer be able to perform his work.

### QUESTION 7

Which ONE of the following is NOT a source of individual employment law?

1. The Constitution of the Republic of South Africa 108 of 1996
2. The Labour Relations Act 66 of 1995
3. **Customary Law**
4. Common Law

### QUESTION 8

The Labour Relations Act 66 of 1995 specifies who bears the onus in disputes regarding alleged unfair dismissals.

Consider the following statement(s) in this regard:

1. The employer must establish the existence of the dismissal and prove that it was fair.
2. The employee must establish the existence of the dismissal.
3. The employer must establish the existence of the dismissal.
4. The employee must prove that the dismissal was fair.
5. The employer must prove that the dismissal was fair.

Which of the following statement(s) is are CORRECT?

1. 1 only
2. 2 only
3. 3 only
4. 3 and 4 only
5. **2 and 5 only**

### QUESTION 9

Which ONE of the following dismissals would NOT constitute an automatically unfair dismissal in terms of the Labour Relations Act 66 of 1995?

1. Annah, a senior manager of Fast Food CC, is dismissed by Fast Food CC after she informs them that she is pregnant.
2. **Lindiwe is employed in the catering department of Fast Food CC. She is dismissed when she, together with the majority of all employees of Fast Food CC, participate in an unprotected strike for better wages at the corporation's headquarters in Gauteng.**
3. Thandi is employed to run one of the branches of Fast Food CC in the Northern Province. Thandi is dismissed when she indicates her intention to join the Catering and Allied Workers Union in that province.
4. Iman is a driver for Fast Food CC. He is not a member of the union because he is a conscientious objector. Iman is dismissed when he refuses to do the work of Godfrey, the night driver for home deliveries. Godfrey is participating in a protected strike for better overtime conditions.

### QUESTION 10

The Labour Relations Act 66 of 1995 allows dismissal of an employee due to incapacity.

Consider the following factors:

1. nature of incapacity.
2. likelihood of recovery.
3. consultation with the employee.
4. attempting to find a solution to the problem.
5. the effect of the disability on other employees.

Which of the above factors are considered relevant to substantive fairness were a dismissal is based on incapacity?

1. 1, 2 and 3 only
2. **1, 2 and 5 only**
3. 2, 3 and 4 only
4. 3, 4 and 5 only

### QUESTION 11

Choose the correct statement:

1. Employees who normally work on Sundays have to be paid at the normal rate of remuneration.
2. The Basic Conditions of Employment Act prescribes how much an employee is to be paid.
3. An employer may sue employees for damages caused as a result of a protected strike.
4. **Employees who take part in a protected strike may be dismissed for misconduct or reasons based on operational requirements.**

### QUESTION 12

Nancy, an employee at Cross Roads Supermarket, has just returned to work after maternity leave. A few days after her return, she is approached by her manager who wants Nancy to start working night shift. Nancy tried to explain to the manager that she will have problems if she works night shift because she is breastfeeding her baby, but the manager insists that she works night shift. Having realised that she will never reach an agreement with her manager, Nancy decides to resign.

Which one of the following is correct?

1. **This is a constructive dismissal.**
2. This is selective re-employment.
3. This is an automatically unfair dismissal.
4. This is a fair dismissal based on operational reasons

### QUESTION 13

Indicate the correct statement:

The law of unfair dismissal is regulated by .....

1. the common law.
2. the Employment Equity Act 55 of 1998
3. the Basic Conditions of Employment Act 75 of 1997.
4. **the Labour Relations Act 66 of 1995.**
5. the Constitution of the Republic of South Africa 108 of 1996.

### QUESTION 14

Whilst on his way to deliver bread at one of the local stores, Beri, the driver at B & B Bakery is involved in an accident. Molebo's car is badly damaged as a result of the accident caused by Beri's negligent driving. Molebo wants B & B Bakery to repair his car.

Consider the following:

1. The employee must have acted in the course of or scope of his or her duties.
2. The employee must not have been competing with his or her employer.
3. The employee must have been promoting the business of his or her employer.
4. The employee must by his or her conduct have committed an unlawful act.

Which of the above options is/are not required for vicarious liability?

1. only 2
2. only 4

3. 2 and 3
4. 1 and 4

### QUESTION 15

Indicate the correct statement.

1. The provisions of the Basic Conditions of Employment Act (BCEA) may not be deviated from in any manner.
2. Labour legislation covers all the people who perform work for employers.
3. **A collective agreement concluded about terms and conditions of employment varies any individual contract of employment.**
4. Collective agreements are less important than the individual contract of employment.

### QUESTION 16

Joe is employed by Unisa as a driver. On his way to collect exam scripts from one of Unisa's learning centres Joe's car collides with another car and as a result of the accident Joe loses his leg.

Which one of the following is not a guideline that Unisa has to use before terminating Joe's employment?

1. Is Joe capable of performing the work?
2. Is there any other suitable work available for Joe?
3. Is there a required standard which Joe failed to meet?
4. **Is it possible to adapt Joe's work circumstances?**

### QUESTION 17

Josephine is employed by Mandla. Consider the following instances:

1. Josephine has a fixed-term contract of employment for twelve months. The contract has previously been renewed twice, but Mandla refuses to renew it for a third time.
2. Josephine's contract of employment was terminated by Mandla because Josephine was pregnant and Mandla could not afford to employ Josephine while she was on maternity leave.
3. Mandla was forced by an economic recession to retrench 20 employees, including Josephine. When the economy improved, Mandla re-employed Josephine and ten other employees.
4. Josephine terminated her contract of employment with Mandla because one of her co-employees continuously harassed her sexually. Although she had spoken to Mandla about this, he had done nothing to stop it.

Which of the above instances would constitute a dismissal in terms of the definition of dismissal in the Labour Relations Act 66 of 1995?

1. only 1 and 2
2. only 2, 3 and 4
3. only 1, 2 and 3
4. only 2 and 4
5. **only 1, 2 and 4**

### QUESTION 18

Collective bargaining is the bargaining between an employer on the one hand and a trade union on the other hand. It is one of the mechanisms used to improve the terms and conditions of employment of employees. Which ONE of the following statements regarding the law applicable to collective bargaining is INCORRECT?

1. The law seeks to promote collective bargaining.
2. The law seeks to lay down certain rules for the collective bargaining process.
3. **The law prescribes what the outcome of collective bargaining should be.**
4. The law recognises, as a point of departure that if employees stand together as a trade union, the power between employees and employers will be more equal.

### QUESTION 19

In May 2002, Koos employs Zwai. The contract of employment does not indicate how much Zwai is to be paid. Neither is there any collective agreement that establishes minimum standards of employment in their industry. Koos makes monthly deductions from Zwai's salary for overalls and the tools he is given. Zwai is unhappy about his salary and terminates the contract in the middle of September 2002.

Which ONE of the following statements is INCORRECT?

1. Since the agreement between Koos and Zwai does not provide for the, payment of remuneration, Koos must pay Zwai a reasonable wage.
2. Koos may only deduct money for overalls and tools from Zwai's salary if there is an agreement to that effect between him and Zwai.
3. According to the general rule "no work, no pay", Koos does not have to pay Zwai, if Zwai fails to perform in terms of the contract.
4. Koos may pay Zwai's salary partly in cash and partly in benefits.
5. **Koos must pay Zwai for the whole month of September because Zwai rendered at least some service in September.**

### QUESTION 20

Lekoto (Pty) Ltd manufactures and sells iron window frames. Lekoto does however not provide employees with gloves and helmets for protection when they weld. Nkwe, the newly appointed foreman, wants to join Victory Trade

Union, one of the unions recruiting in Lekoto. Lekoto threatens to demote Nkwe, if he joins Victory Trade Union.

Which ONE of the following statements is CORRECT?

1. Lekoto (Pty) Ltd does not have a duty to provide the employees with gloves and helmets when they are working under unsafe working conditions.
2. **Nkwe may exercise his right of freedom of association by joining Victory Trade Union without fear of being victimised.**
3. If Victory Trade Union organises a protected strike for its members against the working conditions in Lekoto (Pty) Ltd some of the employees could be dismissed for taking part in the strike.

### QUESTION 21

An employee has a common law duty to act in good faith.

In which ONE of the following instances will Gladys breach this common law duty?

1. Gladys was employed at JC Mechanics as a mechanic for many years. He now uses the knowledge he acquired during his employment at JC Mechanics at his own tune-up centre.
2. Gladys is employed at JC Mechanics as a mechanic. During weekends Gladys occasionally repairs the taxi's of his friend, Big Joe, free of charge.
3. Gladys is employed at JC Mechanics as a mechanic. After hours Gladys works as a cashier at Big Joe's night-club.
4. **Gladys is employed at JC Mechanics as a mechanic. During lunch time Gladys repairs cars for customers at prices lower than those charged by JC Mechanics.**

### QUESTION 22

Consider the following dismissals:

1. A dismissal relating to Tina's pregnancy.
2. A dismissal relating to Tina's gender.
3. A dismissal relating to Tina's inappropriate conduct at the office.

Disputes regarding which of the above dismissals will be referred to the Labour Court when attempts to reconcile or resolve the dispute have failed?

1. Only 2 and 3
2. Only 1 and 3
3. **Only 1 and 2**

**QUESTION 23**

Which one of the options provided below will complete the following sentence correctly?

An employee may be expected to work overtime provided that the overtime is .....

1. **accordance with an agreement, limited in time, and paid at one and a half time's the employee's normal remuneration.**
2. In accordance with company policy, limited in time, and paid at the employee's normal remuneration.
3. On specific request of the employer, and paid at twice the employee's normal remuneration.
4. In accordance with company needs, with no predetermined limitation in time, and paid at the employee's normal remuneration plus forty percent.

**QUESTION 24**

Which ONE of the following is the BEST DESCRIPTION of a contract of employment?

1. A contract by which a person renders completed services against payment of a gross amount of money, and where the person receiving the services is not entitled to control and supervise the performance of the work.
2. A contract in terms of which one person makes his or her labour potential available to another person.
3. **A contract in terms of which one person places his or her labour potential at the disposal and under the control of another person in exchange for some form of remuneration.**
4. A contract in terms of which one person makes his or her labour potential available to an employer free of charge.

**QUESTION 25**

Employer Yoyo employs employee Zak because he thinks that Zak, who is in the habit of giving his surname as Grootboom, is a coloured person. Upon discovering that Zak's real surname is in fact Mthimkhulu, Yoyo immediately tells Zak that his services are no longer required and that he must vacate the premises forthwith.

Which form of dismissal is this?

1. a constructive dismissal
2. a procedurally unfair dismissal
3. a substantively fair dismissal
4. a substantively and procedurally unfair dismissal
5. **an automatically unfair dismissal**



**QUESTION 26**

Jacob is an employee at the Dosti company in terms of a fixed-term contract. Dosto, the manager of Dosti company, tells Jacob not to worry about looking for a new job as his contract will be renewed. The company dismissed Jacob in accordance with his contract of employment. Jacob maintains that his dismissal amounts to an unfair labour practice.

Which ONE of the following statements is CORRECT?

1. Jacob can approach the High Court.
2. **Jacob can approach the CCMA.**
3. As Jacob's dismissal was lawful, Jacob has no remedy at law.

**QUESTION 27**

Which ONE of the following statements is CORRECT?

1. An independent contractor does not enjoy the protection of the Labour Relations Act 66 of 1995 with regards to his/her unfair dismissal.
2. Affirmative action is an unfair discrimination against an employee who is overlooked in favour of another and is therefore in conflict with the provisions of the Constitution of the Republic of South Africa 108 of 1996.
3. In terms of the Basic Conditions of Employment Act 75 of 1997 an employer is obliged to give a pregnant woman paid leave for the period commencing four weeks before and eight weeks after the expected date of her confinement.
4. **Employees of the South African Police Service are excluded from the provisions of the Labour Relations Act 66 of 1995.**

**QUESTION 28**

Due to severe headaches employee Herman is continually on sick leave and is seldom able to complete his work on time. His employer, Coen, wants to get rid of Herman. He retrenches Herman together with four other employees. After a month he re-employs the other four employees, but not Herman.

Which ONE of the following statements is CORRECT?

1. Herman's dismissal was fair because he was dismissed for incapacity due to ill-health.
2. Herman's dismissal was fair because he was dismissed for operational requirements.
3. Herman was not dismissed because there is no duty on an employer to re-employ former employees after retrenchment.
4. **Herman's dismissal was unfair because, although an employer may dismiss an employee for incapacity, he may not retrench such an employee.**

**QUESTION 29**

Which ONE of the following common law ways of terminating a contract of employment lawfully, has been changed by the statutory provisions of the Labour Relations Act 66 of 1995 regarding unfair dismissal?

1. termination on the completion of an agreed period or task
2. **termination by notice**
3. termination on the insolvency of the employee
4. termination by mutual agreement of the parties

**QUESTION 30**

Ben drives transport trucks for Country Wide Haulage CC and his job is to transport goods. Ben drives negligently and Michael is hit and injured. Ben is too poor to compensate Michael for his damage. Michael can claim his damage from Country Wide Haulage CC if .....

1. Ben was on his way to Brits in the North West Province with a load of goods.
2. a valid contract of service existed between Ben and Country Wide Haulage CC.
3. Ben was on his way to a party in his own car.
4. the accident took place when Ben was on his way to bank the money of Country Wide Haulage CC because the office clerk was off sick.
5. Michael was on duty when the accident took place.

Which of the above statements are CORRECT?

1. only 1, 2 and 5
2. only 2, 3 and 4
3. only 1, 3 and 5
4. **only 1 and 2**
5. only 1, 2 and 5

**QUESTION 31**

The Labour Relations Act and the Basic Conditions of Employment Act provide a presumption, which an employer can rebut, that a person is an employee of that employer if one or more of seven factors are present.

In which ONE of the following instances will such a presumption apply?

1. Paulina has been working as a domestic worker for Mrs Dube every Tuesday from 8 o'clock to 3 o'clock for the past year.
2. Sam works as gardener for Mr Van Zyl for 8 hours per week, but Sam can choose the time and day of the week he wishes to work.
3. Msini is paid R116 400.00 annually as carpenter at Vilikazi's Woodworks.

4. Peter is Mr Radebe's driver, and Mr Radebe supplies the car, Peter's uniform, petrol and pays for maintenance of and services for the car.

### QUESTION 32

Which of the following are regarded as sources of individual labour law?

1. The common law
2. The Constitution of the Republic of South Africa 108 of 1996
3. The Employment Equity Act 55 of 1998
4. The Basic Conditions of Employment Act 75 of 1997
5. The Labour Relations Act 66 of 1995

1. only 2 and 5
2. only 1 and 3
3. **1, 2, 3, 4 and 5**
4. only 1 and 4

### QUESTION 33

Donald is an employee of Miracle Bakery. Donald is also a member of Toyitoyi Trade Union, a registered union. The union and Miracle Bakery conclude an agreement in terms of which employees in Donald's category are entitled to a minimum salary of R3 000 per month. Donald's contract of employment provides for a salary of R2 500 per month.

Which ONE of the following statements is INCORRECT?

1. The agreement entered into between Toyitoyi Trade Union and Miracle Bakery is termed a collective agreement.
2. Donald cannot be paid less than R3 000 per month because the agreement concluded between Toyitoyi Trade Union and Miracle Bakery supercedes the agreement between Donald and Miracle Bakery.
3. **Donald and Miracle Bakery are free to decide on Donald's salary, even if it is less than that provided for in the collective agreement.**
4. Collective agreements as sources of terms and conditions of employment are more important than individual contracts of employment.

### QUESTION 34

Whilst on his way to deliver bread at one of the local stores, Beri, the driver at B & B Bakery is involved in an accident. Molebo's car is badly damaged as a result of the accident caused by Beri's negligent driving. Molebo wants B & B Bakery to repair his car.

Consider the following statements regarding vicarious liability:

1. The employee must have acted in the course or scope of his or her duties.
2. The employee must not have been competing with his or her employer.
3. The employee must have been promoting the business of his or her employer.
4. The employee must by his or her conduct have committed an unlawful act.

Which of the above is/are NOT requirements for vicarious liability?

1. only 2
2. only 4
3. **2 and 3**
4. 1 and 4

### QUESTION 35

An employee has a common law duty to act in good faith.

In which ONE of the following instances will Gladys breach this common law duty?

1. Gladys was employed at JC Mechanics as a mechanic for many years. He now uses the knowledge he acquired during his employment at JC Mechanics at his own tune-up centre.
2. Gladys is employed at JC Mechanics as a mechanic. During weekends Gladys occasionally repairs the taxi's of his friend, Big Joe, free of charge.
3. Gladys is employed at JC Mechanics as a mechanic. After hours Gladys works as a cashier at Big Joe's night-club.
4. **Gladys is employed at JC Mechanics as a mechanic. During lunch time Gladys repairs cars for customers at prices lower than those charged by JC Mechanics.**

### STUDY UNIT 5 out

#### QUESTION 1

Which of the following are the two inherent requirements for the existence of copyright in a work?

1. artistic quality and capability of being distinguished
2. literary quality and originality
3. registration and artistic quality
4. **material embodiment and originality**

#### QUESTION 2

Which one of the following will be considered to be an invention and will consequently be patentable.

1. Murphy, a nuclear physicist, develops a new mathematical method of calculating nuclear energy and wants to patent it.
2. Justerini composes a wonderful opera, and wants to patent it before it falls into the wrong hands.
3. Brooks by accident discovers that a rare flower's pollen cures severe cases of acne. Brooks wants to patent his discovery as soon as possible.
4. Pimm develops a unique pyramid scheme that he believes will make him rich. He wants to patent this business scheme as soon as possible so that he can start making money.
5. **Chivas invents a new machine that is able to harvest grapes without damaging them. He wants to patent his machine as soon as possible.**

### QUESTION 3

"The use of a trade mark which use falls within the limitations entered in the register against the trade mark"

Of what would the abovementioned phrase be an example?

1. an indirect trade mark infringement
2. a direct trade mark infringement
3. **no trade mark infringement**
4. a trade mark infringement that will lead to deregistration

### QUESTION 4

Hilton is the owner of South Africa's favourite fast food franchise, Mr Take Out. Hilton sells a franchise to M Snowman for R 700 000. With Hilton's first visit to the new Mr Take Out, Hilton discovers that Mr Snowman is selling a large range of products, including homemade cookies and sweets that is not part of the set Mr Take Out menu. Hilton is scared that this will have a negative impact on the reputation of his franchise. Mr Snowman is adamant that he paid a lot of money for the franchise, and that it is within his rights to sell related product in order to boost his turnover.

Advise Hilton on his rights in terms of a standard franchise agreement, by indicating the correct statement of the law.

1. **In terms of the restraints of trade on the franchisee generally found in franchise contracts, Mr Snowman may be obliged to carry on business only in certain products and services and may therefore not sell products that are not part of the set menu.**
2. In terms of the general franchising principles Mr Snowman may sell related products, as long as he does not change the nature of the commodities (fast food) or the nature of the business system.
3. As long as Mr Snowman pays the royalties he owes Hilton in terms of the franchising agreement as well as a percentage of the profits on the

other products he sells, he still has continuing use of the right granted in the franchise agreement.

4. Hilton may resale from the franchise contract on the ground of breach of contract, but Mr Snowman will still be able to make use of the trade marks and other intellectual property which were licensed to him, for the term specified in the contract.

### QUESTION 5

Sam, an architect, has designed a building and prepares the building plan (drawing).

Indicate the CORRECT statement:

1. Copyright protection for the drawing exists, provided Sam has incorporated some artistic skills in the drawing.
2. **Copyright protection for the drawing arises automatically and Sam does not need to take any action in this regard.**
3. Copyright protection for the drawing will exist once Sam has registered its copyright protection.
4. Copyright protection for the drawing exists only if Sam has incorporated some aesthetic features in the drawing.

### QUESTION 6

The company Sweet Tooth (Pty) Ltd wants to register the mark "Fresh and Tasty" as the trademark for their new line of popcorn.

Which one of the following statements is correct?

1. **"Fresh and Tasty" will not be registrable as a trademark because the words are "likely to deceive or cause confusion", because the public will not be able to associate the mark with the product (popcorn).**
2. "Fresh and Tasty" will not be registrable as a trademark because the mark must be "capable of distinguishing" the goods (popcorn) in respect of which it is registered, from similar products (popcorn) of other manufacturers.
3. "Fresh and Tasty" will be registrable as a trademark, as long as there is no mark already registered which is well known in the Republic of South Africa and which is "identical or similar" to the mark "Fresh and Tasty".
4. "Fresh and Tasty" will be registrable as a trademark, because it is a mark that is "a bona fide description or indication of the quality and value or other characteristics of goods or services".

### QUESTION 7

Mafa Store enters into a franchise agreement with Toronto, a big cellular phone company. In terms of the agreement Mafa Store will sell Toronto

cellular phones and accessories in accordance with Toronto's operations manual.

Which ONE of the following terms is NOT likely to be included in the agreement between Mafa Store and Toronto?

1. Mafa Store must allow Toronto to carry out inspections and investigations which it may consider necessary at all reasonable times.
2. **Mafa Store may induce trained employees from Toronto's other franchisees to terminate their employment and take up employment with Mafa Store.**
3. Mafa Store is obliged to use Toronto's get up.
4. Mafa Store will be the sole Toronto franchisee in a specified area.

### QUESTION 8

Which ONE of the following describes "goodwill" the MOST ACCURATELY in the context of franchising?

1. Goodwill is the strict operational requirements of a specific franchise according to the prescriptions, methods, and standards laid down by the franchisor after the conclusion of the agreement.
2. Goodwill is the tool used to enforce uniformity, and the maintenance of standards within a specific franchise network, as well as the tool to ensure that the network operates as an economic unit.
3. Goodwill is the term used to describe the act whereby the franchisor grants the franchisee a license to use the intellectual property of the franchisor, while the franchisor remains its rightful owner.
4. **Goodwill is the benefit and advantage of a good name, reputation and connections of a business, which can enjoy a more or less permanent existence only within the context of that enterprise.**

### QUESTION 9

Which ONE of the following statements is CORRECT?

1. The franchisee may license other persons to use the franchisor's trade marks.
2. The franchisee is not obliged to use the franchisor's trade marks.
3. The franchisee becomes the owner of the franchisor's trade marks,
4. The franchisee may alter the franchisor's trade marks.
5. **The franchisee is obliged to use the franchisor's trade marks.**

### QUESTION 10

Which ONE of the following statements regarding franchising agreements is CORRECT?

1. **The franchisee obtains a right to operate the franchisor's business system.**

2. The franchisor transfers ownership of the business system to the franchisee.
3. The franchisor and the franchisee are joint owners of the business system.
4. Ownership of the business systems vests in the Franchise Association of Southern Africa.

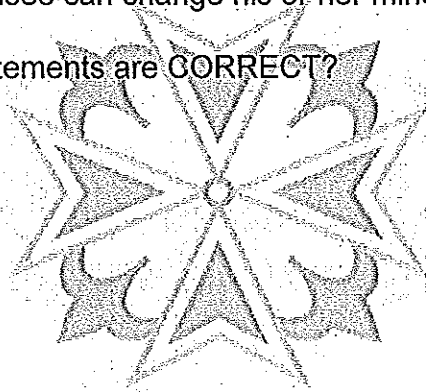
### QUESTION 11

Consider the following statements regarding franchising:

1. The relationship between the franchisor and franchisee is contractual in nature.
2. The franchisor acquires the right to use intellectual property belonging to the franchisee.
3. Restraints of trade are usually placed on the franchisor and the franchisee.
4. Franchising gives rise to ongoing obligations.
5. All franchise agreements must provide for a "cooling off" period during which the franchisee can change his or her mind.

Which of the above statements are **CORRECT**?

1. 1, 2, 3, 4, and 5
2. Only 1, 2 and 3
3. **Only 1, 3 and 4**
4. Only 2, 4 and 5
5. Only 3, and 5



### QUESTION 12

Which **ONE** of the following is **INCORRECT**?

1. **A registered trade mark covers all goods and services of the proprietor.**
2. A drawing which has no artistic quality whatsoever may be protected by copyright.
3. A patent affords the proprietor monopoly rights in respect of the invention.
4. Secret information must have commercial value in order to be protected as a trade secret.

### QUESTION 13

Simon wants to franchise his beauty care salon. Simon has been operating his business under the trade mark "Glowing Galore". His trade mark consists of the words "Glowing Galore" and a drawing of a swinging monkey. Simon developed a secret slimming gel from the marula fruit, which he has been selling in large quantities to clients for the past ten years.



Which ONE of the following statements is CORRECT?

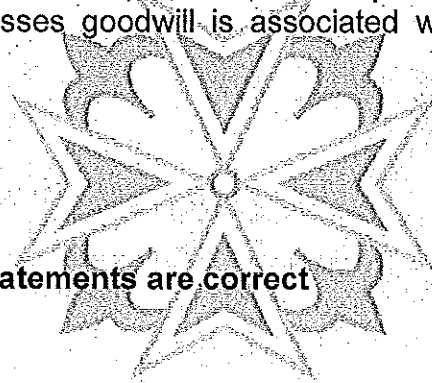
1. **Simon must first register his trade mark before he can draw up a main franchise agreement.**
2. Simon must first register copyright in the drawing before he can draw up a main franchise agreement.
3. Simon must first register the know-how in respect of the slimming gel before he can draw up a main franchise agreement.
4. None of the above are correct.

#### QUESTION 14

Which of the following statement(s) regarding goodwill is/are CORRECT?

1. A Goodwill can be described as the benefit and advantage of a good name, reputation and connections of a business.
2. Goodwill is formed by, amongst other things, the location and reputation of the business and the personality of the entrepreneur.
3. C Goodwill represents that part of the value of a business that is greater than the value of the individual components of the business.
4. In some businesses goodwill is associated with a specific name or trademark.

1. only 1 and 2
2. only 2,3 and 4
3. only 3
4. only 2
5. **all the above statements are correct**



#### QUESTION 15

"Franchising offers someone who has developed a certain business system the opportunity to make the system and the use of the ..... developed in connection with the business system available to others, in exchange for payment."

Which ONE of the concepts from the list below will complete the sentence above CORRECTLY?

1. immovable property
2. **intellectual property**
3. movable property
4. investment property

#### QUESTION 16

Which ONE of the following statements is CORRECT?

In terms of a franchise agreement the franchisor .....

1. sells a business system to the franchisee whereafter the franchisee may manage the business system as the franchisee sees fit.
2. **allows the franchisee to use the intellectual property of the franchisor, while the franchisor remains the rightful owner.**
3. sells the goodwill of his franchise to the franchisee, whereafter the goodwill of the franchise will accrue to the franchisee.

### QUESTION 17

Mr Chancer buys a Chicking Good Chicken franchise from Mr Rooster. Mr Rooster is very strict on the maintenance of standards, and strives towards the uniformity of his franchises. The franchise agreement provides that franchisees must buy the chickens they use from Magnificent Chicken, because their chickens are particularly succulent and always fresh. On the insistence of his wife, and because it is cheaper, Mr Chancer decides to buy his chickens from his brother-in-law, Mr Kiepie.

Which ONE of the following statements is CORRECT?

1. Mr Chancer may buy chickens wherever prefers.
2. **Mr Chancer may be forced to buy chickens from Magnificent Chicken.**
3. Mr Chancer may claim a reduction in royalties payable because of the unfair restriction on the choice of suppliers.

### STUDY UNIT 6

### QUESTION 1

Which of the following forms of dispute resolution results in a settlement which is NOT reached by the parties themselves?

1. **arbitration**
2. negotiation
3. mediation

### QUESTION 2

Choose ONE of the options provided below to complete the sentence INCORRECTLY:

A High Court can make an order setting aside an arbitration award where .....

1. the award has been improperly obtained
2. the arbitration tribunal has committed a gross irregularity in conducting the arbitration proceedings
3. the arbitration tribunal has exceeded its powers
4. **the arbitrator has failed to use all reasonable speed in entering on and proceeding with the reference and making an award.**

**QUESTION 3**

Which ONE of the following disputes is subject to arbitration?

1. A dispute relating to the legitimacy of a child.
2. A dispute relating to the custody of children in divorce proceedings.
3. **A dispute relating to defective performance in terms of a contract.**
4. A dispute relating to the validity of the arbitration agreement.

**QUESTION 4**

Which ONE of the following persons is NOT competent to refer a dispute arising from the contract described in the distractors to arbitration?

1. A minor over the age of seven who concludes a contract whereby he or she receives only rights but not duties.
2. A company representative who has been authorised to conclude contracts on behalf of the company.
3. **A minor over the age of seven who concludes a contract whereby he or she acquires both rights and duties.**
4. A person who acquires rights from a contract through cession.

**QUESTION 5**

Which ONE of the options below would NOT be a CORRECT option to complete the statement below?

A High Court may, on application of a party to the reference after due notice to the other party, set aside " the arbitration award where .....

1. a member of the arbitration tribunal has misconducted him/herself in relation to his/her duties as an arbitrator or umpire.
2. one of the parties to the dispute has not been given notice of the proceedings.
3. one of the parties to the dispute has not been given the opportunity to lead evidence.
4. **a minority of members of the arbitration tribunal refuse to sign the award.**

**QUESTION 6**

Choose ONE of the options provided below to CORRECTLY complete the sentence:

The appointment of an arbitrator or an umpire can be set aside or terminated .....

1. by anyone of the parties.
2. **only with the consent of all the parties, subject to certain exceptions.**

3. under no circumstances.
4. after the prescription of the statutory probation period prescribed in the Arbitration Act 42 of 1965.

### **QUESTION 7**

Choose the one option that best describes mediation.

Mediation is a process .....

1. **where parties to a dispute make use of the assistance of another person, who makes suggestions, raise counter proposals, provides advice or uses his or her powers of persuasion to enable parties to com to an agreement.**
2. in terms of which the parties to a dispute agree to refer the dispute to a third party with the intention that the third party will determine the dispute by making an award that binds the parties to the dispute.
3. whereby the State, or private persons and institutions, make use of the courts to grant relief when, person fails to comply with a legal rule, subject to the provision that the contravention of that legal rule does not constitute a criminal offence.

### **QUESTION 8**

Schwab Building Contractors and Dewar Architects concluded a contract during January. One of the clauses in the contract state that any dispute arising between the two parties will be resolved by way of arbitration. A dispute between the parties arises during March

Which one of the following statements pertaining to the source of the powers of the arbitration tribunal the parties will appoint, is correct.

1. **The source of the powers of the arbitration tribunal is the Arbitration Act 42 of 1965 because the act assigns certain specific powers to arbitration tribunals.**
2. The source of the powers of the arbitration tribunal is the contract in terms of which the parties agreed to resolve any dispute by way of arbitration.
3. The source of the powers of the arbitration tribunal is founded upon duties imposed and the rights conferred on the tribunal by the High Court upon application.

### **QUESTION 9**

Two companies, Big Value (Pty) Ltd and Small Profits (Pty) Ltd, concluded an arbitration agreement in terms of which any dispute between the companies will be settled by way of arbitration.

Which one of the following statements is incorrect?

1. A court may at any time on application by any of the two companies, on good cause shown, set aside the arbitration agreement.
2. The arbitration agreement between the two companies cannot be terminated except by the consent of both the parties thereto, or unless the agreement otherwise provides.
3. A court may order that any particular dispute between the two companies referred to in the arbitration agreement must not be referred to arbitration.
4. **The arbitration agreement may be terminated unilaterally by anyone of the two companies without the consent of the other, unless the agreement provides otherwise.**

### QUESTION 10

Barney is an ambitious 15-year-old businessman. He is involved in various business initiatives, amongst others the buying and distribution of dangerous explosives. Barney's dad who is his guardian refuses to assist Barney in the conclusion of the various contracts, as he feels Barney should concentrate on his schoolwork.

On the above set of facts which of the following disputes, if any, are subject to arbitration?

1. Milo and Barney conclude a contract in terms of which Barney buys 99 rucksacks from Milo. Milo denies the validity of the contract which is subject to an arbitration clause.
2. Barney demands a ruling that he is emancipated and accordingly doesn't need his father's consent as guardian to contract freely.
3. Barney is arrested and accused of the unlawful trade and distribution of unauthorised explosives. Barney wants to be discharged as soon as possible.
4. **Not one of the above disputes is subject to arbitration.**

### QUESTION 11

A High Court has certain general powers in relation to a reference under an arbitration agreement.

Which one of the following statements is INCORRECT?

A High Court may, on application by any party, make orders in respect of:

1. security for costs
2. the giving of evidence by affidavit
3. **granting leave to appeal to the High Court**
4. discovery of documents and interrogatories

**QUESTION 12**

Indicate the INCORRECT statement:

A High Court can make an order setting aside an arbitration award where ....

1. the award has been improperly obtained.
2. **the arbitrator has failed to use all reasonable speed in entering on and proceeding with the reference and making an award.**
3. the arbitration tribunal has exceeded its powers.
4. the arbitration tribunal has committed a gross irregularity in conducting the arbitration proceedings.

**QUESTION 13**

Arbitration is a method for the settling of disputes.

Indicate the CORRECT statement:

1. **An arbitrator's award can be made an order of court.**
2. Arbitration is frequently used for disputes relating to building contracts, matrimonial causes and insurance policies.
3. A party who is unhappy with the arbitrator's award, has the right to appeal to a court.
4. Arbitration can be voluntary or compulsory and can only be heard by the courts.

**QUESTION 14**

Which ONE of the following statements is CORRECT?

The appointment of an arbitrator or an umpire can be set aside or terminated .....

1. by any of the parties.
2. under no circumstances.
3. **only with the consent of all the parties, subject to certain exceptions.**
4. after the prescription of the statutory probation period prescribed in the Arbitration Act 42 of 1965.

**QUESTION 15**

Choose ONE of the options provided below to complete the following sentence CORRECTLY.

An agreement may contain a reference to arbitration to determine the .....

1. validity of that agreement.
2. mental condition of a person.

3. **damages payable in respect of a breach of that agreement.**
4. **guilt of a person accused of theft.**

### QUESTION 16

Arbitration is a method for the settling of disputes.

Which one of the following statements is correct?

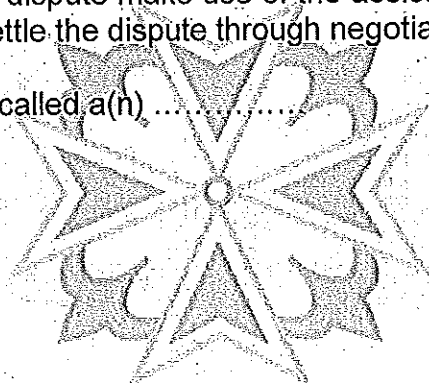
1. Arbitration can be voluntary or compulsory and can only be heard by the courts.
2. Arbitration is frequently used for disputes relating to building contracts, matrimonial causes and insurance policies.
3. A party who is unhappy with the arbitrator's award, has the right to appeal to a court.
4. **An arbitrator's award can be made an order of court.**

### QUESTION 17

Sometimes parties to a dispute make use of the assistance of another person in order to attempt to settle the dispute through negotiation.

This person is typically called a(n) .....

1. Umpire
2. **Mediator**
3. Negotiator
4. Arbitrator



### QUESTION 18

Consider the following statements regarding negotiation:

1. Negotiation is a dynamic interactive process.
2. Negotiation requires that the negotiator wins at all costs.
3. Negotiation is solely concerned with satisfying the other party's needs.
4. There are often conflicting interests in negotiation.

Which of the following statement(s) is/are correct?

1. Only 1, 3 and 4
2. Only 1 and 3
3. **Only 1 and 4**
4. Only 2 and 4

### QUESTION 19

Which ONE of the following statements is CORRECT?

1. **If the validity of a contract containing an arbitration clause is challenged, the dispute must be decided by the court, not by arbitration.**
2. A High Court can set aside an arbitration award with the consent of one of the parties thereto.
3. An arbitration award is only valid and enforceable after it has been confirmed by a High Court.
4. The award of an arbitrator is not final, but is subject to appeal.

### QUESTION 20

Consider the following statements regarding the general powers of the High Court in relation to arbitration proceedings.

1. The court can make an order regarding security for costs.
2. The court can make an order regarding the giving of evidence by way of affidavit.
3. The court can set aside any award given by the arbitration tribunal, on application by any party to the reference, once proper notice has been given to the other party.
4. The court can make an order that the time within which the arbitration tribunal must make an award be extended, if good cause is shown.

Which of the above statement/s is/are CORRECT?

1. **1, 2, 3 and 4**
2. only 1, 2 and 4
3. only 2 and 3
4. only 1

### QUESTION 21

Certain parties are involved in a contractual dispute regarding the first multi-million rand virtual reality theme park in Cape Town called "Cyber Cape 1".

Which ONE of the following parties will NOT have the capacity to have the dispute referred to arbitration?

1. Mr Marley, a Jamaican businessman who has no assets in South Africa.
2. Mrs List, a very wealthy widow whose husband died six months ago
3. **Thebogo, a sixteen year old computer whiz-kid**
4. Prince Naseem, a billionaire's son with prodigal tendencies.

### QUESTION 22

Christi and Joe concluded a contract in terms of which Christi bought exclusive mohair garments and carpets from Joe. Joe failed to deliver the stock as agreed. Christi proceeds with arbitration proceedings against Joe in terms of an arbitration clause in the contract.



Which ONE of the following statements is INCORRECT?

Arbitration is a process .....

1. whereby not only the substantive rights of Christi and Joe are determined but also by which an arbitrator takes a decision that will bind both of them.
2. **which not only offers expert and expeditious adjudication but also a right of appeal to the courts if either Christi or Joe is unhappy with an arbitrator's award.**
3. which not only allows for Christi and Joe to select an arbitrator who is mutually acceptable, but also to choose the rules of arbitration that must apply.

### QUESTION 23

Which of the following matters are NOT subject to arbitration?

1. only matters relating to the status of a person.
2. only criminal matters and matters in respect of any matrimonial cause.
3. only criminal matters and matters relating to the status of a person.
4. only matters relating to the status of a person, criminal matters and matters in respect of matrimonial causes.
5. **matters relating to the status of a person, criminal matters, matters in respect of matrimonial causes and disputes regarding the validity of the contract containing the arbitration clause.**

### QUESTION 24

Which ONE of the following statements is INCORRECT?

A High Court can make an order setting aside an arbitration award where .....

1. the award has been improperly obtained.
2. the arbitration tribunal has committed a gross irregularity in conducting the arbitration proceedings.
3. the arbitration tribunal has exceeded its powers.
4. **the arbitrator has failed to use all reasonable speed in entering on and proceeding with the reference and making an award.**

### QUESTION 25

Which ONE of the options provided below will complete the following sentence CORRECTLY?

The appointment of an arbitrator or an umpire can be set aside or terminated .....

1. by any of the parties.
2. **with the consent of all the parties.**
3. under no circumstances.
4. after the prescription of the statutory probation period prescribed in the Arbitration Act 42 of 1965.

### QUESTION 26

Arbitration is a method for the settling of disputes.

Which ONE of the following statements is CORRECT?

1. Arbitration can be voluntary or compulsory and can only be heard by the courts.
2. Arbitration is frequently used for disputes relating to building contracts, matrimonial causes and insurance policies.
3. A party who is unhappy with the arbitrator's award, has the right to appeal to a court.
4. **An arbitrator's award can be made an order of court.**

### STUDY UNIT 7

#### QUESTION 1

Choose ONE of the options provided below to complete the sentence CORRECTLY:

Where a representative contracts on behalf of a principal, the law of agency provides that a legal relationship comes into being between .....

1. the representative and the third party.
2. **the principal and the third party.**
3. the principal and the representative.

#### QUESTION 2

Ratification is the validation by a person of a juristic act concluded on his or her behalf by another who did not have the authority to do so.

Indicate the CORRECT statement:

1. The person who seeks to ratify another's juristic act must first get the consent of the other parties to the transaction.
2. Ratification can only be express.
3. Ratification is only valid from the moment of ratification.
4. **The effect of ratification is that after ratification a direct juristic tie comes into existence between the third party and the principal.**

**QUESTION 3**

The authority of an agent can be terminated in different ways: In which ONE of the following instances will Max possess authority after the occurrence mentioned has taken place?

1. Max was authorized to act on behalf of his employer. His employment is terminated for misconduct.
2. Joy authorized Max to use her tuck shop until the end of 1999. The year 1999 has come to an end.
3. **Max is the guardian of George, a twelve year old boy. George celebrates his thirteenth birthday.**
4. The house which Max was authorised to sell, is destroyed by fire.

**QUESTION 4**

Indicate the CORRECT statement:

1. A principal who does not exist cannot be represented .
2. The identity of the principal does not necessarily have to be made known by the representative.
3. In the case where the third party knows that the representative is acting on behalf of a principal but does not know who the principal is, the principal is known as an 'unnamed principal'.
4. The terms 'unnamed principal' and 'undisclosed principal' must be distinguished from one another because they have different legal meanings.
5. **All of the above-mentioned statements are correct.**

**QUESTION 5**

Choose ONE of the options provided below to complete the sentence CORRECTLY:

There is a fiduciary relationship between the principal and his or her agent. As a result of this relationship the agent owes the principal a duty of good faith.

This duty entails that the agent .....

1. must keep the property of the principal separate from his or her own property.
2. may not misuse confidential information flowing from the fiduciary relationship with the principal until the agency relationship has been terminated.
3. must act with a high degree of care and skill.
4. **must disclose to the principal any profit resulting from the relationship with the principal.**

**QUESTION 6**

Choose ONE of the options provided below to CORRECTLY complete the sentence:

Where representative contracts on behalf of a principal, the law of agency provides that a legal relationship comes into being between .....

1. the representative and the third party.
2. **the principal and the third party.**
3. the principal and the representative

**QUESTION 7**

Indicate which statement is INCORRECT

1. Ratification can be express or tacit.
2. Ratification is a unilateral juristic act.
3. **Ratification is only valid from the moment of ratification, that is, it is not retroactive.**
4. If the specific act is not ratified, the person whose affairs have been managed may incur liability based on unjustified enrichment.

**QUESTION 8**

In which ONE of the following cases will the agent NOT incur personal liability?

1.  The agent acts under a false impression, created by the principal, that he or she has authority.
2.  **The agent acts for an undisclosed principal.**
3. The agent specifically warrants that he or she has the necessary authority.
4. The agent tacitly warrants that he or she has the required authority.

**QUESTION 9**

Choose one of the options below to correctly complete the following sentence:

The person on whose behalf a juristic act is performed is called .....

1. a mandatory
2. a mandator
3. **a principal**
4. a representative

**QUESTION 10**

Which one of the following is not a requirement for *estoppel*?

1. The third party must have acted to his or her detriment on the basis of the representation.
2. **The third party should have known that the agent was not authorised to conclude juristic acts,**
3. The principal must have represented to the third party that the agent had authority to act on his or her behalf
4. The representation should have been of such a nature that it could reasonably have been expected to, mislead the third party.

### QUESTION 11

Indicate which one of the following statements is INCORRECT:

1. A principal which does not exist cannot be represented.
2. The identity of the principal does not necessarily have to be made known by the representative,
3. **In the case where the third party knows the representative is acting on behalf of a principal but does not know who the principal is, the principal is known as an "undisclosed principal".**
4. The terms "unnamed principal" and "undisclosed principal" must be distinguished from one another because they have different technical definitions.

### QUESTION 12

Which of the following acts or events result in the restriction or termination of authority?

1. The raising of *estoppel*.
2. The principal who granted authority to the representative is declared insolvent. ✓
3. Ratification of the authority by the principal.
4. The employer (principal) dismisses his employee (representative) as a result of misconduct. ✓

1. 1, 2, 3 and 4
2. **only 2 and 4**
3. only 1 and 4
4. only 2 and 3
5. only 1 and 3

### QUESTION 13

Keith concludes an agreement in his own name with Shaun without informing Shaun that he is acting as Lydia's agent. Shaun is unaware of Lydia's existence.

Which one of the following statements is correct?

1. **Lydia is an undisclosed principal and may come to the fore and claim that Shaun is liable to her.**
2. If Lydia comes to the fore, Shaun is liable only to Keith because he was not aware of Lydia's existence at the time of conclusion of the contract.
3. Shaun will be liable to Lydia only if Lydia ratifies the agreement.
4. Shaun may cancel the agreement as soon as he becomes aware of Lydia's existence.

#### QUESTION 14

Khomotso and Stanford, an estate agent, enter into a contract in terms of which Stanford undertakes to sell a poultry farm on behalf of Khomotso. They agree that if Stanford succeeds in selling the property, Khomotso will pay him thirty per cent of the selling price as commission. Their contract also provides that Khomotso will not be liable for expenses incurred during the execution of the task. Due to financial problems, Stanford's estate is sequestered before the property is sold.

Which one of the following statements is correct?

1. There is no need for Khomotso to pay Stanford commission, since a contract of mandate is a gratuitous undertaking to perform a task.
2. The contract between Khomotso and Stanford is invalid, since it excludes Khomotso's liability for expenses incurred during the execution of the task.
3. The contract between Khomotso and Stanford is terminated because Stanford's estate is sequestered.
4. **Khomotso may only revoke the authority for a legally acceptable reason, otherwise the revocation itself may amount to breach of contract.**

#### QUESTION 15

Which of the following acts or events result in the restriction or termination of authority?

1. The raising of *estoppel*.
  2. The insolvency of the principal who granted authority.
  3. Ratification of the authority by the principal.
  4. The dismissal of the employee (representative) by the employer (principal) as a result of misconduct.
- 
1. 1, 2 3 and 4
  2. **only 2 and 4**
  3. only 1 and 3
  4. only 2 and 3
  5. only 1 and 4

**QUESTION 16**

Ratification is one way in which the lack of an agent's representative capacity can be cured.

Which ONE of the following statements is INCORRECT?

1. Ratification can be express or tacit.
2. **Ratification is a bilateral juristic act.**
3. Ratification operates retroactively from the moment the agreement concerned was concluded between the agent and the third party.
4. The person who ratifies must have knowledge of the particular juristic act which is being ratified.

**QUESTION 17**

Olive imports olive oil to South Africa. Olive authorises Jack to buy olive oil on his behalf. The first time Jack goes overseas to purchase olive oil, he notices that dates are very cheap and realises that Olive would make a large profit by selling the dates in South Africa. He buys one shipload dates on behalf of Olive.

Which ONE of the following statements is CORRECT?

1. Olive will not be liable for the payment of the purchase price of the dates, since Jack acted outside the scope of his authority when he bought the dates.
2. Olive would be liable for the payment of the purchase price of the dates, since he falsely created the impression that Jack indeed had the authority to act on his behalf.
3. Jack will be personally liable for the payment of the purchase price of the dates, because he (Jack) falsely created the impression that he had the necessary authority to buy the dates.
4. **Olive would be liable for the payment of the purchase price, but he will have a right of recourse against Jack for the payment of the purchase price.**

**QUESTION 18**

Which ONE of the following statements regarding expenses incurred by the mandatory during the execution of the mandate is INCORRECT?

1. **The contract of mandate is gratuitous and there is no need to compensate the mandatory for any expenses.**
2. The mandatory must be indemnified in respect of a liability which may arise from the execution of the mandate.
3. The mandatory must be reimbursed for all expenses incurred in good faith.
4. The parties may agree to exclude the obligation of the mandator to compensate the mandatory for expenses incurred.

3. Ratification operates retroactively from the moment the agreement concerned was concluded between the agent and the principal,
4. There is no need for the person who ratifies to have knowledge of the particular juristic act which is being ratified.

### QUESTION 26

William Wealth resides in Gauteng and wishes to build a holiday home on a stand he owns at Richman's Bay. He appoints Bright Barry as agent to arrange for the building of the house on his behalf.

Which ONE of the following actions may Bright Barry take in his capacity as agent?

1. He may appoint an architect to draw up the building plans without informing the architect that he, Bright Barry, is acting on behalf of someone else.
2. **He may appoint a builder who, in his opinion, will do the best work at the most reasonable price.**
3. He may come to an arrangement with the builder that the builder will purchase all the required building materials from BB Building Supplies CC of which Bright Barry is the only member.
4. Bright Barry may appoint Sparkling Pools to build a pool next to the house.

### QUESTION 27

Which ONE of the following statements is CORRECT?

1. A representative can act for a principal who does not exist.
2. **The identity of the principal does not necessarily have to be made known by the representative.**
3. In the case where the third party knows that the representative is acting on behalf of a principal but does not know who the principal is, the principal is known as an "undisclosed principal".
4. The terms "unnamed principal" and "undisclosed principal" have the same meaning and need not be distinguished from each other.

### QUESTION 28

Josh and Mark conclude a contract of mandate in terms of which Mark will deliver milk on behalf of a dairy shop belonging to Josh for an agreed remuneration. A week after the conclusion of the contract, Josh expresses his dissatisfaction with Mark's truck. Josh complains that the truck is much smaller than Mark indicated. Josh's estate is sequestrated. Mark is killed in an accident.

Which ONE of the following statements is INCORRECT?

1. The contract of mandate is terminated when Mark dies.



2. The contract of mandate is terminated when Josh's estate is sequestrated.
3. **The contract of mandate is terminated when Josh revokes the mandate.**
4. The contract of mandate is terminated when Josh pays Mark his remuneration.

### QUESTION 29

Which ONE of the following statements is CORRECT?

1. **A sub-agent may be authorised to perform a juristic act for the principal.**
2. An agent may never be given power to delegate by the principal.
3. In the case of delegation it is not important whether performance of an act by an agent requires a particular skill or expertise.

### QUESTION 30

In which ONE of the following relationships does representative capacity come about by AGREEMENT?

1. guardian and minor
2. director and company
3. curator and insane person
4. **farmer and auctioneer**

### QUESTION 31

Which ONE of the following is NOT a requirement for *estoppel*?

1. The third party must have acted to his or her detriment on the basis of the representation.
2. **The third party must have known that the agent was not authorised to conclude juristic acts.**
3. The principal must have represented to the third party that the agent had authority to act on his or her behalf.
4. The representation must have been of such a nature that it could reasonably have been expected that the third party would be misled.

### QUESTION 32

Sally instructs Koos to negotiate with Maggie for the purchase of Maggie's property for an amount of R200 000. Two days later Koos reports to Sally that Maggie will not sell for less than R300 000. Sally later learns that Koos has bought the land for himself for R150 000.

Which ONE of the following statements is CORRECT?

1. Koos exceeded his authority by purchasing the land for himself.

2. Sally may ratify the sale of the land by Maggie to Koos.
3. **Sally may sue Koos for breach of good faith.**

## STUDY UNIT 8

### QUESTION 1

Sue is involved in a business venture with Lea. The business manufactures and sells jumping castles. The jumping castle market is very volatile. Sue and Lea want to make a profit out of their joint venture, but they are worried that they are running a risk of losing their personal possessions, should the business fail.

Indicate which ONE of the following forms of business enterprise will be the most suitable for Sue and Lea:

1. a partnership
2. a sole proprietorship
3. **a close corporation**
4. an association not for gain

### QUESTION 2

Which ONE of the following forms of business enterprise has its membership limited to ten?

1. **a close corporation**
2. a private company
3. a partnership
4. a public company

### QUESTION 3

Dr Cuthbert, a very wealthy and experienced practitioner, decides to start a medical practice with Dr Anderson who has just graduated from medical school. They decide to form a partnership.

Which ONE of the following facts would prevent a partnership from coming into being between Dr Cuthbert and Dr Anderson.

1. The two doctors conclude an oral contract of partnership after agreeing to all the essential elements.
2. **Dr Cuthbert undertakes not to ever share in the profits of the partnership as he is already a wealthy man and actually only wants to support Dr Anderson.**
3. Dr Cuthbert undertakes to contribute R150 000 in cash to the partnership, while Dr Anderson, because of his poor financial position, undertakes to contribute his services, knowledge and skill.

**QUESTION 4**

Choose the CORRECT statement.

1. The risks and liabilities of a sole proprietorship are borne by the business and not by an individual who conducts this form of business.
2. The capacity of a partner to a partnership to act individually and without the collaboration of the other partners concerning any legal act relating to the administration of the partnership may never be restricted.
3. The company's estate is assessed together with the estate of individual members.
4. **The continued existence of a trust is not affected by any change of trustees.**

**QUESTION 5**

Themba and Pete are partners in cattle farming. Their partnership agreement does not contain any provision regarding the capacity of the partners to bind co-partners in contracts concluded with outsiders. While Pete is overseas, Charles offers Themba a good price for two cows and a bull.

Which ONE of the following statements is CORRECT?

1. **Themba has the authority to sell the cattle to Charles.**
2. Themba does not have the authority to sell the cattle without the co-operation of his partner.
3. Themba may sell the cattle to Charles, provided Pete is informed of the transaction.
4. Themba may only sell the cattle if he makes a profit in which Pete will also share.

**QUESTION 6**

Which ONE of the following forms of business enterprise does NOT have the advantage that its members' liability is usually limited?

1. a close corporation
2. **a partnership**
3. a co-operative society
4. a private company
5. a public company

**QUESTION 7**

A group of twenty five auditors meet at a holiday resort in Gauteng to consider forming a partnership. They agree about the contribution each one of them would make to the partnership. Some of the partners want the partnership to build schools, and others want it to build bridges.

What issue needs to be addressed before the requirements for a partnership will be satisfied?

1. The parties need to reduce the number of prospective partners to less than twenty.
2. The parties need to put the agreement in writing.
3. The parties must stipulate the exact amount each member must contribute.
4. **The parties must determine a common interest.**

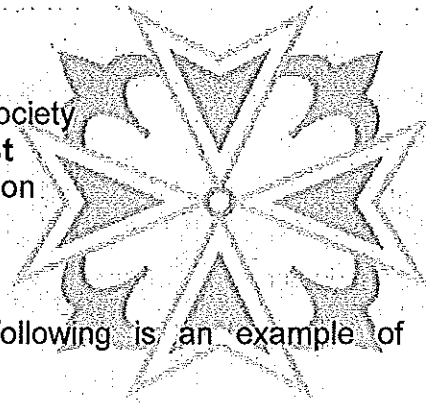
### QUESTION 8

Consider the following characteristics of a business enterprise:

- it is not a separate legal person
- no restriction is placed on the time it may exist
- it can be in either a public or private form

Indicate which form of business enterprise meets all the above requirements.

1. a company
2. a partnership
3. a co-operative society
4. **a business-trust**
5. a close corporation



### QUESTION 9

Which ONE of the following is an example of a company limited by guarantee?

1. **an incorporated association not for gain**
2. a company with a share capital
3. a public company
4. a private company

### QUESTION 10

Which of the following forms of business enterprise do not create a separate legal entity?

1. a partnership
2. a private company
3. a close corporation
4. a business trust

1. only 1 and 3
2. only 2 and 3
3. only 4
4. only 3

5. only 1 and 4

### QUESTION 11

Indicate the CORRECT statement:

1. A public company must have at least seven directors
2. A private company may not have more than 40 members.
3. A partnership may never have more than 20 members.
4. **A close corporation may not have more than 10 members.**
5. A business trust may not have more than 10 beneficiaries.

### QUESTION 12

Which ONE of the following requirements is a basic requirement (*essentiale*) of a partnership?

1. mutual mandate
2. the obligation to share in the net loss
3. **the expectation to share in the net profit**
4. the proportion in which the net profit is divided
5. the proportion in which the assets are divided upon dissolution

### QUESTION 13

In which ONE of the following forms of business enterprise is membership limited to ten?

1. partnership
2. a private company
3. **a close corporation**
4. a public company

### QUESTION 14

Which ONE of the following statements is CORRECT?

The company offers investors the following advantage:

1. The liability of members is limited to a maximum of R10 000.
2. The company's continued existence depends on the number of people who remain members of the company.
3. **Investments in the company are transferable.**

### QUESTION 15

Which one of the following statements is INCORRECT?

1. In principle, a close corporation may have only natural persons as members.
2. A close corporation's membership is limited to ten.
3. The internal relations amongst members of a close corporation can be regulated in an association agreement.
4. **The shares in a close corporation are freely transferable.**

### QUESTION 16

Which one of the following statements is correct?

1. The name of a public company must end with the words '(Proprietary) Limited' or an abbreviation thereof.
2. **A public company must have at least seven members.**
3. A public company may not have more than fifty members.
4. A public company is created by the registration of a founding statement, which must contain certain information.

### QUESTION 17

The articles of association of a company provide that the directors shall be jointly and severally liable for the debts of the company which are or were contracted during their periods of office.

What will the last word(s) in the name of this company be?

1. **Incorporated**
2. Limited
3. (Proprietary) Limited
4. "CC"

### QUESTION 18

Which of the following forms of business enterprise create a separate legal entity?

1. a partnership
2. a private company
3. a close corporation
4. a business trust

1. only 1
2. only 1 and 4
3. **only 2 and 3**
4. only 3

### QUESTION 19

Tristram, Moodley, Soekie and Ramgobin conclude an agreement in terms of which they agree to run a business for the repair of small electrical

appliances. The object is to make a profit. Tristam will be responsible for managing the business and doing the repairs and Moodley will allow the business to operate rent-free from premises which he owns. Soekie will be employed as a receptionist in the business at a salary of R1 500 per month and agrees not to draw her salary until the business makes a profit. As soon as the business makes a profit she will receive her salary plus any arrears. Ramgobin will contribute R5 000 to the business but it is agreed that R2 500 must be repaid to him after the business has been operational for one year, irrespective of whether the business is profitable or not.

Which ONE of the following statements is the MOST CORRECT?

1. **A valid partnership agreement has not been concluded between the parties because Soekie has not made, or has not agreed to make, a contribution to the business.**
2. A valid partnership agreement has not been concluded between the parties because Moodley has not made, or has not agreed to make, a contribution to the business.
3. A valid partnership agreement has not been concluded between the parties because Tristam has not made, or has not agreed to make, a contribution to the business.
4. A valid partnership agreement has not been concluded between the parties because Ramgobin has not made, or has not agreed to make, a contribution to the business.

#### **QUESTION 20**

Selomo and Lesley, two labour law practitioners, decide to register their consultation business as a close corporation.

Which ONE of the following statements is CORRECT?

1. Selomo and Lesley cannot both be agents of the close corporation in relation to third parties.
2. Selomo and Lesley's rights with regard to the management of the business will be determined by the contribution each one of them made for the formation of the corporation.
3. **Selomo and Lesley must each contribute money, property or services to start the business.**
4. Selomo and Lesley must add the abbreviation "(Proprietary) Limited" to the name of their close corporation.

#### **QUESTION 21**

Timothy and Philly want to start a business and have to decide which form of business enterprise to adopt. They feel that the chosen enterprise should have the following characteristics:

- it should have the benefit of limited liability
- legal and natural persons should be eligible for membership

- the number of its beneficiaries should not be limited

Which ONE of the following forms of business enterprise would best suit their needs?

1. a partnership
2. a business trust
3. a close corporation
4. **a private company**

### QUESTION 22

Mabitsi and six of his friends decide to start a company. The business of the company will be to build houses and sell them. In the articles of association they incorporate a clause which requires a director to get approval from the board of directors before concluding a contract which exceeds R50 000. Mabitsi, one of the directors, buys a hotel from Maele for R100 000 without prior approval, but tells Maele that, because of time constraints he could not wait for approval from the board. A contract of sale is concluded.

Which ONE of the following statements is CORRECT?

1. The transaction concluded by Mabitsi is invalid since it is beyond the scope of the company's business.
2. The company will be liable for Mabitsi's act.
3. **Maele may not rely on the Turquand rule since he knew that authorisation had not been given for the transaction.**

### QUESTION 23

Which ONE of the following statements is CORRECT?

1. The doctrine of constructive notice applies to close corporations.
2. Interest in a close corporation is expressed in shares.
3. A close corporation may have more than ten members.
4. **Every member of a close corporation may represent the corporation in carrying out its business.**

### QUESTION 24

Jacky, Nelly and Lenny want to start a business. They agree that Jacky and Nelly will each contribute R20 000, while Lenny will contribute R30 000. They want to operate their business in the form of a partnership, but are not sure about their duties and rights as partners.

Which ONE of the following statements regarding the rights and duties of partners is CORRECT?



Pg 314

235

1. If one of the partners fails to deliver his or her contribution to the partnership the other partners may use the *actio pro socio* to force him or her to deliver such contribution.
2. Each partner is entitled to share equally in the profits of the partnership.
3. Each partner is entitled to participate in the management of the partnership in proportion to the contribution he or she made to the partnership.
4. The partners may use the assets of the partnership for personal aims.

**QUESTION 25**

Which ONE of the following statements is CORRECT?

1. The only responsibility of a company secretary in a public company is to keep company records.
2. A public company may have only one director and he or she will form the board of directors.
3. **The essence of a director's fiduciary duty is that he or she should act bona fide in the interest of the company.**
4. The extent of a director's duty of care and skill depends only on the nature of the company's business.

**QUESTION 26**

Which ONE of the following is NOT a requirement for the creation of a business trust?

1. The trust assets and trust beneficiaries must be readily ascertainable.
2. It must be possible to define the object of the trust with reasonable certainty.
3. The founder of the trust must have the serious intention of creating a trust.
4. **The object of the trust must be to protect and preserve the trust assets.**

**QUESTION 28**

Which ONE of the following statements is CORRECT?

1. The name of a public company must end with the words "(Proprietary) Limited" or an abbreviation thereof.
2. **A public company must have at least seven members.**
3. A public company may not have more than fifty members.
4. A public company is created by the registration of a founding statement, which must contain certain information.

**QUESTION 28**

Which ONE of the following is a natural consequence (a naturale) of a partnership contract?

1. The partnership should be formed in the common interest of the partners.
2. **The main object of the partnership must be to make profit.**
3. In the absence of a provision to the contrary, losses are shared in the same proportion as profits.

### QUESTION 29

Which ONE of the following statements is CORRECT?

The company as form of business enterprise offers investors the following advantage:

1. The liability of members is limited to a maximum of R10 000.
2. Its continued existence depends on the number of people who remain members of the company.
3. **Investments in the company are transferable.**

### QUESTION 30

Which ONE of the following statements is CORRECT?

1. A close corporation does not exist separately from its members.
2. A close corporation is created by the registration of a memorandum of association.
3. **The internal relations amongst members of a close corporation can be regulated in an association agreement.**
4. The shares in a close corporation are freely transferable.

### STUDY UNIT 9

#### QUESTION 1

The Competition Act 89 of 1998 provides for an independent competition authority.

Indicate which bodies the competition authority comprise of by choosing the correct option below.

The independent competition authority comprises of .....

1. a Competition Ombuds Office and a Competition Tribunal.
2. a Competition Investigations Board, a Competition Commission and a Competition Tribunal.
3. **a Competition Commission, a Competition Appeal Court and a Competition Tribunal.**
4. a Competition Appeal Court, a Competition Ombuds Office, and a Competition Investigations Board.

**QUESTION 2**

Chris and Benni are the only two cigar manufacturers in South Africa, In an expensive advertising campaign Benni promotes his cigars as being of a superior quality because his cigars are made of genuine imported Cuba tobacco and are sold all over the world, which is not true. Because of the negative impact on the sales of his own brand of cigars, Chris exposes Benni's claims as being untrue.

Benni now wants to claim damages from Chris, because he says Chris directly interfered with his goodwill.

Which one of the following statements is correct?

1. Although Benni interfered with Chris's goodwill by making untrue statements in his advertising campaign, Chris should have approached the courts for relief, instead of unlawfully exposing the untruths, and may therefore be liable for damages.
2. Chris may be held liable for exposing the untruths of Benni's advertising because Benni's capacity to attract custom has been threatened with impairment by disparagement or dilution of the reputation of advertising value of Benni's advertising image.
3. Chris will not be liable because he acted in accordance with the competition principle in terms of which he (Chris) may infringe a rival trader's goodwill by exposing the untruths, provided no great imbalance exists between the benefit it entails for Chris and the prejudice it causes Benni.
4. **Although Chris interfered with Benni's goodwill directly by exposing the untruths, he will not be liable because he (Chris) did not act wrongfully, as he was only defending himself against the direct infringement of his goodwill by Benni.**

**QUESTION 3**

The private law of competition deals with the delict of wrongful causing of patrimonial loss,

Which one of the following actions is significant in respect of the law of unlawful competition:

1. the action for pain and suffering
2. the *actio iniuriarum*
3. **the *actio legis Aquiliae***
4. the *actio quanti minoris*

**QUESTION 4**

..... takes place where the advertising marks or image of an entrepreneur are misappropriated in order to advertise one's own performance. Here one is not concerned with the distinguishing value of trade names, trade marks and

service marks. It is the advertising value of images as advertising signs which is relevant. The competitor is not creating the impression that his or her goods are the same, or connected with the rival's good, but is using the recognition which the performance of that rival enjoys in order to establish a reputation for his or her own performance.

Which one of the following the words or phrases will complete the paragraph correctly?

1. Leaning on
2. Piracy
3. Passing off
4. Rivalry

### QUESTION 5

Indicate which one of the following is a requirement for the granting of an interdict in cases related to unlawful competition:

1. criminal sanction
2. **wrongfulness**
3. justification
4. damage

### QUESTION 6

Bob, the owner of a successful pizza restaurant, Zip, decides to expand his business to South Africa. Zip is known world-wide as an instant-pizza restaurant. Bob concludes a franchise contract with Maxi, and she opens Zip pizza restaurant in Johannesburg. Tim, an entrepreneur, owns an instant-food trolley, from which he prepares and sells pizzas as well as hamburgers. For the past month, Tim has been parking his trolley right in front of Maxi's restaurant. Maxi is very upset as she has noticed that many of her regular clients are now buying their lunch from Tim. Tim calls his business "Zap".

Which ONE of the following statements is the MOST ACCURATE?

1. Bob has transferred his right to goodwill to Maxi and can take no action against Tim.
2. Maxi may have Tim's trolley confiscated in terms of the Maintenance and Promotion of Competition Act 96 of 1979.
3. Maxi may tell all her clients that Tim's pizzas are prepared unhygienically.
4. Bob and Maxi cannot take any action against Tim as Tim's business is named after his dog, "Zap-Zap", who loves pizza.
5. **Tim's conduct amounts to an infringement of Bob's right to goodwill.**

### QUESTION 7

Lehlabile Electric Express advertises on a local radio station that it sells quality electrical appliances which are imported from Japan. The goods are in fact manufactured locally. This advertisement has drawn the interest of the people to Lehlabile Electric Express and as a result Rethabile Appliances is no longer doing well. Rethabile Appliances then decides to make its own advert which states "Unlike our competitors, our appliances are genuinely imported from Japan."

On which ONE of the following grounds of justification may Rethabile Appliances rely?

1. necessity
2. private defence
3. **maintenance of public interest**

### QUESTION 8

Complete the following sentence with ONE of the options given below.

Public competition law is concerned with .....

1. the protection of the individual or private interests of the competitors themselves.
2. the prohibition of a competitor from committing or continuing with a wrongful act.
3. the justification of acts which are apparently infringing the right of another.
4. **the legal rules which are directed at the maintenance and promotion of competition.**

### QUESTION 9

Which ONE of the following statements is the MOST ACCURATE?

1. Under the South African law of delict, three actions are available for unlawful competition, namely the action for pain and suffering, the *actio iniuriarum* and the *actio legis Aquiliae*.
2. **The limits of a right to goodwill are established with reference to the competition principle, as well as to the criterion of reasonableness.**
3. A person who is not a competitor but who assists, aids or abets a competitor to commit unlawful competition, may be liable under the *actio iniuriarum*.
4. Wrongfulness in the context of unlawful competition lies in the infringement of a competitor's personal / rights.

4. Fergi's conduct is not unlawful because the public has an interest in forming a true image of the relative merits of a competitor's performance.

### QUESTION 16

Which ONE of the following options below will complete the following sentence CORRECTLY?

A restraint of trade agreement is .....

1. always void and unenforceable.
2. **in principle valid and enforceable.**
3. void and unenforceable because it is contrary to public policy or the public interest.
4. in principle unenforceable.

### QUESTION 17

Which ONE of the options provided below will complete the following sentence CORRECTLY?

Public competition law is concerned with .....

1. the protection of the individual or private interests of the competitors themselves.
2. the prohibition of a competitor from committing or continuing with a wrongful act.
3. **the legal rules which are directed at the maintenance and promotion of competition.**
4. the prohibition of restraint of trade agreements.

### QUESTION 18

Maxi opens a pizza restaurant in Johannesburg called Zip. Tim, an entrepreneur, owns an instant-food trolley, from which he prepares and sells pizzas and hamburgers. For the past month, Tim has been parking his trolley right in front of Maxi's restaurant. Maxi is very upset as she has noticed that many of her regular customers are now buying their lunch from Tim. Tim calls his business "Zap" and has a sign "Zap" on his trolley.

Which ONE of the following statements is CORRECT?

1. Maxi may have Tim's trolley confiscated in terms of the Competition Act 89 of 1998.
2. Maxi may tell all her clients that Tim's pizza's are prepared unhygienically.
3. Maxi cannot take any action against Tim as Tim's business is named after his dog, "Zap-Zap", who loves pizza.

4. Tim's conduct amounts to an infringement of Maxi's right to goodwill.

### QUESTION 19

Which ONE of the following statutes (acts) is a source of protection of public law of competition?

1. The Trade Marks Act
2. The Business Names Act
3. The Companies Act
4. **The Competition Act**

### QUESTION 20

In which ONE of the following cases will Mapogo General Dealer directly infringe the goodwill of its rival, Ditau Supermarket?

1. Mapogo General Dealer doubles its turnover because it reduces the price of its items by ten percent and as a result Ditau Supermarket loses valuable customers.
2. **Mapogo General Dealer uses Ditau Supermarket's motto, "Try us first", and colours, to advertise its own furniture.**
3. Mapogo General Dealer organises members of the community to boycott Ditau Supermarket in return for a ten percent discount on a bag of mealie meal.

### STUDY UNIT 10

#### QUESTION 1

Which ONE of the following types of real security must be registered to exist?

1. a hypothec
2. a pledge
3. **a mortgage bond**
4. a lien

#### QUESTION 2

The surety is allowed to compel the creditor to recover as much as possible of the due debt from the principal debtor, before proceeding against the surety.

Which ONE of the following common-law privileges would the surety enjoy in this instance?

1. the benefit of division
2. **the benefit of excussion**
3. the benefit of cession of actions

### QUESTION 3

Zandile owes Lynn R5 000. Lynn on the other hand owes Robyn R4 000 for a painting she bought from her. Robyn demands security for Lynn's debt. Lynn cedes her claim against Zandile for R5 000 to Robyn.

Which ONE of the following statements is INCORRECT?

1. The above-mentioned set of facts is a good illustration of security given by way of cession in *securitatem debiti*.
2. During the existence of the cession Lynn will have no claim against Zandile for payment of the R5 000.
3. Lynn is entitled to have her claim against Zandile ceded back when she pays Robyn the debt of R4 000 in full.
4. **Before Lynn pays Robyn for the painting, Zandile pays the R5 000 to Robyn. In terms of the cession Robyn is entitled to the full R5 000.**

### QUESTION 4

In which ONE of the following cases does Pat have a lien over Roy's property?

1. **Pat won't give Roy his radio because Roy does not want to pay Pat for repairing the radio.**
2. Pat took possession of all the movable property belonging to Roy after Roy failed to pay the rent at the end of the month in terms of a rental agreement.
3. Roy gave his computer to Pat as security for money he has borrowed from Pat.

### QUESTION 5

Choose the CORRECT statement:

1. The pledgee does not obtain a real right by delivery of the pledged object.
2. *Constitutum possessorium* is a valid means of delivery of the pledged object in the case of a pledge.
3. The pledgee retains real security even if possession of the pledged object is lost.
4. **Even without delivery of the pledged object the pledge may be valid as between the pledgor and the pledgee.**

### QUESTION 36

A party to a contract can require security from the other party to ensure performance of the latter's obligations. Security can be either real or personal.



Which ONE of the following is an example of personal security?

1. suretyship
2. pledge
3. mortgage bond
4. lien

### QUESTION 7

Which ONE of the following statements dealing with a contract of suretyship is INCORRECT?

1. **A valid contract of suretyship may be in writing or be concluded orally.**
2. More than one person may render themselves liable for the same principal debt and become known as co-sureties.
3. The surety cannot be liable for more than the principal debt.
4. The contract of suretyship is automatically terminated when the principal obligation is terminated.

### QUESTION 8

Which ONE of the following statements is INCORRECT?

1. A mortgage bond must be registered in the Deeds Office in the form of a bond deed in order to be lawful.
2. A mortgage bond is similar to a pledge, save that whereas the subject-matter of a pledge is movable property that of a mortgage bond is immovable property.
3. **A mortgage bond creates a real right for the benefit of the mortgagor and it is not possible for the mortgagee to register further bonds over the same property.**
4. A mortgage bond may secure an existing or a future debt, or a combination of the two.

### QUESTION 9

Which one of the following statements is correct?

1. A contract of suretyship will be void if it is not signed by or on behalf of the principal debtor.
2. **A contract of suretyship will be void if it is not signed on behalf of the surety.**
3. A contract of suretyship may be terminated only in writing.
4. A surety may rely on the personal defences which may be at the disposal of the principal debtor.
5. A contract of suretyship is terminated by the death of the principal debtor.

**QUESTION 17**

Which ONE of the following ways of attaining security is NOT an example of real security?

1. pledge
2. mortgage bond
3. hypothec
4. **surety**

**QUESTION 18**

Muchaneta borrowed R20 000 from Christopher. Nonzenzele and Sikhumbuzo signed as sureties for Muchaneta's liability to Christopher. Nonzenzele signed as "surety and co-principal debtor". Muchaneta's estate is sequestrated and Christopher claims the R20 000 from Nonzenzele in terms of the contract of suretyship.

Which ONE of the following statements is CORRECT?

1. Nonzenzele can raise the defence of excussion and compel Christopher first to recover as much of the debt as possible from Muchaneta.
2. Nonzenzele can raise the defence of division and demand that Christopher divide his claim between Nonzenzele and Sikhumbuzo.
3. **Christopher is entitled to claim the R20 000 directly from Nonzenzele.**
4. Since Muchaneta's estate has been sequestrated, Christopher has no remedy.

**QUESTION 19**

Which one of the following statements is correct?

1. The pledgee does not obtain a real right by delivery of the pledged object.
2. *Constitutum possessorium* is a valid means of delivery of the pledged object in the case of a pledge.
3. The pledgee retains real security even if possession of the pledged object is lost.
4. **Even without delivery of the pledged object the pledge may be valid as between the pledgor and the pledgee.**

**QUESTION 20**

Consider the following characteristics of a form of real security:

- it arises by agreement followed by registration
- it must be registered by the Registrar of Deeds
- it is a means of creating real security over movable property

Which ONE of the following forms of real security has the above characteristics?

1. Mortgage bond
2. **Notarial bond**
3. Pledge
4. Lien

### QUESTION 21

Which of the following are forms of real security?

1. pledge
2. mortgage bond
3. surety
4. hypothec

1. only 1 and 4
2. only 2 and 3
3. only 1, 2 and 3
4. **only 1, 2 and 4**

### QUESTION 22

Sebake buys a car for R20 000 from Joel. Sebake's friend, Lerato, enters into a contract of suretyship with Joel to secure Sebake's debt for the amount of R10 000.

Which ONE of the following statements is CORRECT?

1. **The contract between Joel and Lerato will only be valid if it is in writing and signed by or on behalf of Lerato.**
2. Lerato has bound herself as surety for Sebake's debt and therefore is liable for the total amount of the outstanding balance.
3. The contract between Joel and Lerato is not binding since Sebake was not a party to it and he does not know of its existence.

### QUESTION 23

Which of the following liens is/are enrichment liens?

1. only salvage liens
2. only improvement liens
3. **both salvage liens and improvement liens**
4. only debtor and creditor liens
5. both improvement liens and debtor and creditor liens

**QUESTION 24**

Which ONE of the options provided below CORRECTLY completes the sentence?

A mortgage bond .....

1. must be registered in the Deeds Office in the form of a bond deed in order to be valid between the parties.
2. is similar to a hypothec, save that whereas the subject-matter of a hypothec is movable property that of a mortgage bond is immovable property.
3. **may secure an existing or a future debt, or a combination of the two.**
4. creates a real right for the benefit of the mortgagor and it is not possible for the mortgagee to register further bonds over the same property.

**QUESTION 25**

Which ONE of the following statements is INCORRECT?

1. In a contract of suretyship a surety renders him - or herself liable towards a creditor for the proper compliance with the obligations of a debtor.
2. In a contract of suretyship there are two debtors, namely the debtor in the principal agreement and the debtor in the contract of suretyship.
3. A contract of suretyship is accessory to the principal obligation between the principal debtor and creditor.
4. **The surety may not render himself liable for an amount less than the principal debt.**

**QUESTION 26**

Which ONE of the following statements is CORRECT?

1. Some liens arise by operation of law and others through agreement.
2. **If the person claiming the lien loses possession of the object of the lien, he or she automatically loses the lien.**
3. In respect of useful expenses, a party to a contract can only obtain a debtor and creditor lien.
4. In respect of luxurious expenses, a party to a contract can only obtain an enrichment lien.

**QUESTION 27**

Lindiwe decides to start a bakery. She buys a bread making machine for R200 000 from Motshene Factory and pays a R20 000 deposit. Without informing Lindiwe, Bongiwe and Thembi stand surety for the balance of the purchase price. The debt is now due and Motshene Factory wants to claim the entire balance from Bongiwe.

Which ONE of the following statements is INCORRECT?

1. Bongiwe may demand that Motshene Factory divide its claim between her and Thembi because they are co-sureties.
2. **The contract between Bongiwe, Thembi and Motshene Factory is not valid because the principal debtor (Lindiwe) is not aware of its conclusion.**
3. Bongiwe may pay the debt and demand the transfer by Motshene Factory of all rights it enjoys against Lindiwe and Thembi in respect of the debt.
4. If Bongiwe pays the principal debt fully, she is entitled to recover a proportionate contribution from Thembi, her co-surety.

### QUESTION 28

Quintin owes money to Philip. The full amount of the debt is secured by a suretyship contract in which Siegfried is the surety; and also by a cession to Philip of Quintin's right to receive payment from Ralph.

Which ONE of the following statements is INCORRECT?

1. **Quintin may cede to Siegfried his right to receive payment from Ralph.**
2. Quintin is not entitled to sue Ralph for the money he owes him in order to pay Philip.
3. Siegfried is not entitled to the benefit of division if Phillip attempts to recover the entire debt from him.
4. Siegfried may possibly obtain a right to the money which Ralph owes to Quintin if he settles the entire debt.

### QUESTION 29

Which ONE of the following statements is CORRECT?

1. The surety may not rely on defects in the liability of the principal debtor, such as misrepresentation, in order to avoid liability.
2. **The surety may not rely on personal defences, such as minority, which may be at the disposal of the principal debtor.**
3. The surety's obligation is enforceable if the principal debtor has not defaulted in the performance of the principal obligation.
4. A creditor may enforce a surety's obligation for a debt of a certain or uncertain amount.

### QUESTION 30

Henry owes Ivor R10 000. On 2 June he hands over his computer worth R6 000 and his racing bicycle worth R2 000 to Ivor as pledge. On 3 June Ivor returns the bicycle to Henry, because Henry needs it. Henry agrees to deliver

an antique table worth R4 000 to Ivor as pledge on 5 June. On 4 June Ivor is a secured creditor against third parties for .....

1. R10 000
2. R8 000
3. **R6 000**
4. R4 000

