

08:30

19/11/07

F. HALL

EXAMS OFFICE  
USE ONLY

University of the Witwatersrand, Johannesburg

Course or topic No(s)

LAWS 2002

Course topic names(s)  
Paper Number & title

CONTRACT

Test to be  
held during month(s) of

NOVEMBER 2007

Year of study  
(Art & Science leave blank)

Degrees / Diplomas for which  
this course is prescribed  
(BSc (Eng) should indicate which branch)

LLB/BA/BCom

Faculty/ies presenting candidates

COMMERCE, LAW AND  
MANAGEMENT

Internal examiner(s) and  
telephone extension number(s)

PROF E BONTHUYS (78427)  
MS C MARCUS  
MS M NORTJE  
MS T SEFTON

External examiner(s)

MRS B KUSCHKE - UP

Special materials required

NONE

Time allowance

THREE HOURS

Instructions to candidates  
Examiners may wish to use this space to indicate,  
inter alia,  
the contribution made by this examination or test  
towards the year mark, if appropriate

1. ANSWER ALL THE QUESTIONS
2. WRITE THE NAME OF YOUR LECTURER ON YOUR SCRIPT
3. THIS EXAM COUNTS FOR 60% OF THE YEAR MARK.

**Internal Examiners of Heads of  
Departments are requested to sign  
the declaration overleaf**

**Question 1**

Buhle and her husband Andile are unable to conceive a child. One day Buhle reads a magazine article about having a child by way of surrogacy – where another woman (the surrogate mother) is artificially inseminated and bears a child who is adopted by the commissioning parents (Buhle and Andile). Buhle is very excited and starts looking for a surrogate mother.

Wanda is a housewife and mother of two who has a secret gambling problem. She owes R50 000 in gambling debts and decided that, since she successfully gave birth to three children, one way of making money would be to become a surrogate mother. Wanda therefore places an advertisement in the local newspaper indicating that, for a fee of R50 000, she will be a surrogate mother.

Reading Wanda's advert in the newspaper, Buhle is very excited. She contacts Wanda with the result that Buhle and Andile conclude a written contract with Wanda with the following terms: Wanda will be inseminated with sperm from Andile and will become a surrogate mother for a child to be adopted by Buhle and Andile. Their agreement also contains a provision that, as soon as she falls pregnant and up to the time of the birth, Wanda will leave her family and live with Buhle and Andile so that they can ensure that she behaves appropriately to protect the health of the foetus. Wanda also undertakes that during the pregnancy she will not smoke, drink alcohol or eat any sugary and fatty foods which may be detrimental to the unborn child. In exchange, Buhle and Andile will pay for the artificial insemination, the full medical costs for the pregnancy and birth plus a surrogacy fee of R50 000 to be paid to Wanda for being the surrogate mother.

- (a) Would the contract between Andile, Buhle, and Wanda be valid in terms of the common law? **[5 marks]**
- (b) Andile and Buhle pay for the artificial insemination and, when Wanda becomes pregnant, they also pay R25 000 of the surrogacy fee to her. However, after giving birth to a child, who she calls Suzy, Wanda is overwhelmed by motherly love and refuses to give her up for adoption by Buhle and Andile. Buhle and Andile want to know whether they can insist on adopting Suzy, or, if this is not possible, whether they can reclaim the R25 000 and the money they paid for the artificial insemination, the pregnancy and the birth.

Assume that there is an act, the Surrogate Motherhood Act 12 of 1998 which determines that:

“Payments in respect of surrogacy prohibited

10. (1) No person shall in connection with a surrogate motherhood agreement give or promise to give to any person, or shall receive from any person, a reward or compensation in money or

kind, except compensation for expenses that relate directly to the artificial fertilisation and pregnancy of the surrogate mother and the birth of the child.”

Advise Buhle and Andile.

[15 marks]

Total: Question 1: [20]

## Question 2

Nicole won the Teen Queen beauty contest in 2006. The contract she signed with the organizer (Jolly Lackson) when she won the competition contained the following clauses:

“7. Jolly will pay Nicole an amount of R20,000 per month during the period of her reign, payable on the last day of every month. In return, Nicole will attend all functions and public appearances and do modelling work whenever Jolly requires her to.

14. Nicole may not get engaged, married or pregnant during the period of her reign, which will last until 30 June 2007. If Nicole breaches this clause, Jolly will be entitled to cancel the contract, strip Nicole of her title and claim an amount of R500,000 from Nicole for her breach.

21. This contract is the sole agreement between the parties, and no variation of the agreement will be of any force and effect unless it has been reduced to writing and signed by the parties.”

At one of the functions Nicole attends near the end of her reign, she meets and falls madly in love with Harry. She asks Jolly whether it would be possible for her to get engaged to Harry before the end of her reign. Jolly tells her: “No problem. Just make sure that you keep it a secret from the press.” On 31 May 2007 Nicole and Harry get engaged at a private ceremony to which only Jolly is invited. A week later, Nicole is horrified to read the following article in the newspapers:

“TEEN QUEEN STRIPPED OF HER TITLE!

Nicole, the reigning Teen Queen, has been fired by the organizer, Jolly Lackson after breaching her contract with him. In a statement released early this morning, Mr Lackson said that he had cancelled the contract with Nicole since she brought the competition into disrepute by getting engaged to Harry, even though the contract clearly stipulated that she may not get engaged during her reign. Her place as Teen Queen will now be taken by the runner-up, Paris Lohan. Miss Lohan and Mr Jackson have been dating for the past few months.”

a) Can Jolly rely on clause 14 of the contract despite the oral agreement that Nicole could get engaged to Harry?

[5 marks]

b) Assume for purposes of this question that Jolly can rely on clause 14 of the agreement. Will Jolly be entitled to claim the R500,000 from Nicole?

[5 marks]

c) Assume for purposes of this question that Jolly was not entitled to rely on clause 14 of the agreement, and that he was therefore repudiated the contract by attempting to cancel it. Nicole wishes to apply for a court order forcing Jolly to reinstate her as the Teen Queen. Advise Nicole on her chances of success.

[5 marks]

d) Assume for purposes of this question that Jolly was not entitled to rely on clause 14 of the agreement, and that he was therefore repudiated the contract by attempting to cancel it. Nicole decided to cancel the contract on 7 June 2007. Up to that date she completely complied with all her obligations in terms of clause 7. She approaches you for advice. She has not been paid her monthly salary for May 2007, nor has she received any part of her salary for June 2007. Advise Nicole what amounts, if any, she may claim from Jolly.

[5 marks]

**Total Question 2: [20]**

### **Question 3**

Kelly has been struggling with her weight for the past couple of years. One day she sees the following advertisement in a newspaper: “Lose weight permanently with Miracle Slim Potion! Eat as much you like and watch the kilo’s melt away! All you need to do, is to drink 2 teaspoonfuls of Miracle Slim Potion a day. The secret ingredient in Miracle Slim Potion will dissolve your extra fat, leaving you trim, slim and healthy.”

Kelly immediately goes to Miracle Slim’s store to enquire about the Potion. The saleswoman tells her that she will lose at least 20 kgs in the first month of use. A delighted Kelly signs a contract to buy 6 months’ supply of Miracle Slim Potion at a price of R500 per month (i.e. a total of R3,000). However after using the product for one month, she is very disappointed to find that instead of losing weight, she has picked up 6 kgs.

a) Can Kelly escape the contract with Miracle Slim on the basis of misrepresentation?

**[5 marks]**

b) Assume that the contract signed by Kelly contains the following clause right above her signature:

‘MONEY BACK GUARANTEE: Miracle Slim will refund the purchase price of the potion to the customer if he/she did not lose any weight after using the product for 1 (one) month.’

However when Kelly tries to get a refund from Miracle Slim, they ask her whether she has eaten any bread during the previous month. When she answers yes, they point to the following term on the back of the contract signed by Kelly:

‘13. While using this product, customers may eat as much as they like of the following foods: raw fish, raw vegetables and raw fruit. However Miracle Slim will not work if customers eat any different kinds of food. The money-back guarantee will therefore not apply if a customer eats any different kinds of food while using Miracle Slim.’

Although Kelly was aware that there were clauses on the back of the contract, she did not read them, because there were so many of them, and they were printed in very fine print. She would never have agreed to buy Miracle Slim if she had known about clause 13.

Advise Kelly whether she can escape the contract with Miracle Slim on the basis of mistake.

**[15 marks]**

**Total: Question 3: [20]**

**Total marks [60]**

