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10/11/05

HALL 29-GF

EXAMS OFFICE  
USE ONLY

University of the Witwatersrand, Johannesburg

Course or topic No(s)

LAWS 242

Course topic names(s)  
Paper Number & title

CONTRACT

Test to be held during month(s) of

NOVEMBER 2005

Year of study  
(Art & Science leave blank)

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

LLB

Faculty/ies presenting candidates

COMMERCE, LAW AND MANAGEMENT

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

MS D BHANA  
PROF E BONTHUYS  
MS D COLGAN  
MS S FODOR  
MS M NORTJE

External examiner(s)

MS B KUSCHKE - UP

Special materials required (graph/music/drawing paper maps, diagrams, tables, computer cards, etc)

Time allowance

Course no: LAWS 242 Hours: 3

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

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

**QUESTION 1**

Andile decided to take out insurance on his car with Best Insurance Co. He visited their offices in Sandton, where they agreed that his monthly premium would be R200 and that the car would be insured for an amount of R30 000. The agent for Best Insurance, Fabian, warned Andile that the car may only be used for private purposes like driving to work or to social occasions. On 1 August 2001 Andile signed the contract which contained the following terms:

Name of insured party: Andile

Address of insured party: 19 Rowbottom St, Parktown North, Johannesburg.

Date from which the insurance policy will commence: 1 August 2001.

1. Andile (the insured) undertakes to maintain the car in a roadworthy condition.
2. The vehicle will only be used for private, social or domestic purposes.
3. The following uses are specifically excluded: hiring to other parties, driving instruction for reward, racing, carriage of passengers for hire or reward.
4. It is a condition of the contract that the insured has the vehicle fitted with an immobiliser by Best Insurance.
5. This policy is issued on the basis of the above details being accurate and correct. Should this not be so, then no cover exists regardless of whether premiums have been paid.

Andile made an appointment with Best Insurance, to have the vehicle fitted with an approved immobiliser on 12 August at 8h30. When he arrived at the appointed time, he was told by the receptionist, Celia, that the approved immobilisers were no longer being manufactured and that Best Insurance was still investigating what other make of immobiliser would be approved.

On his way to work from Best Insurance, Andile was involved in an accident with Dumisa. Andile's car was severely damaged and repairs would cost R6 000.

- (a) Best Insurance claims that they do not have to pay him, because at the time when the accident occurred, the car had not yet been fitted with an immobiliser. Advise Andile as to whether this is a valid argument.

[10]

- (b) When he informed Best Insurance of the accident, their representative, Eliza referred him to the written contract. She indicated that driving to work was not covered under the policy. Advise Andile whether this argument will succeed.

[10]

**TOTAL QUESTION 1: [20]**

## **QUESTION 2**

Thandi recently saw a movie called “Love Bug” which features a talking Volkswagen Beetle from the year 1967. She immediately fell in love with the car and wanted to have exactly the same car to impress her friends. One day she drove past Honest Joe’s Volkswagen Dealers and saw a car which looked exactly like the Love Bug. She stopped immediately approached Honest Joe who was sitting in the showroom. Excitedly she exclaimed: “Oh look, this is exactly the same year, model and colour as the Love Bug! I simply must have it!” Honest Joe took one look at Thandi and told her that she could have the car for R100 000 cash. Thandi immediately whipped out her chequebook and started writing a cheque for the amount. Before handing her the keys, Joe said that she just needed to complete some paperwork for the registration of the vehicle in her name. Thandi signed at the bottom of a five page document without reading it and rushed home to show the car to her friends.

When she showed the car to her father however, a collector of classic cars, and told him what she had paid for it, he was horrified. He told her that this was a cheap fiberglass imitation, made in Hong Kong in 2003 and that it was worth R40 000. Thandi is devastated. She asks you for legal advice. When you read the document which Thandi had signed, it turns out to be a lengthy contract for the sale of the car.

- (a) Can Thandi escape from the contract on the basis of misrepresentation?

[5]

- (b) Assume for the purposes of this question that there is a misrepresentation, but that clause 12 of the contract reads as follows:

“Honest Joe will not be liable for any representation that may have been made by him or his staff”  
Can Thandi escape the contract on the basis of mistake?

[15]

**TOTAL [20]**

**QUESTION 3**

James and Sheryl are getting married on 31 December 2005. They start planning their wedding in February and after looking at many photographers' portfolios, enter into an agreement with Happy Snappy, in terms of which Happy Snappy will:

- 1 photograph the happy day using 10 rolls of high definition colour film
- 2 make a video of the entire event and burn an edited copy onto DVD for the newlyweds.

The agreed price is broken down as follows:

Developing and printing the film – R 300 per roll of film

Video editing and burning to DVD R5 000

The wedding day arrives, and the champagne flows. Happy Snappy arrives ready to take the photos together with his assistant Snapper who will make the video of the event. After finishing two rolls of film, Happy gets a little bit drunk and the remainder of the films are under-exposed and blurred.

James and Sheryl return from their honeymoon, excited to view the pictures. They are distraught to find that only two rolls of film have come out properly. When they load the DVD into their computer, the screen suddenly turns black. They call in their computer expert who tells them that the DVD was infected with a serious virus which irreparably damaged the hard drive of the computer and erased all information contained on it forever. James has to buy a new computer worth R8 000. The video cannot be recovered from the DVD and when they asked Happy Snappy for another copy of the video, he replies that he had already deleted it. Moreover, James ran his business from home and had all of his work files, including information as to who owed him money, on his computer. Because he cannot recover this information, James suffers a loss of R1 000 000. Sheryl is distraught and is unable to get out of bed for a week.

- (a) James and Sheryl find a bill for R8 000 from Happy Snappy in their mailbox. Do they have to pay him R8 000 or any amount at all? Motivate.

[10]

- (b) What damages, if any, can James and Sheryl claim from Happy Snappy? Motivate your answer.

[10]

**TOTAL QUESTION 3: 20**  
**TOTAL FOR THE PAPER: 60**