

PVL301-W, Questions

QUESTION 1

X, an organiser of art exhibitions, contracted with Y for an exhibition to be held on 24 to 27 July. These dates were the only dates mentioned during the negotiations. After having been pressurised by X, Y hurriedly signed the standard form contract without reading it. The contract contained a clause permitting X to change the dates of the exhibition unilaterally. Thereafter X changed the dates. X had no reason to believe that Y would have signed the contract if he had known of the term. Y averred that the contract was void, because of his mistake.

- 1 Is Y's mistake material? Substantiate your answer in one sentence
- 1.2 Will Y succeed in his attempt to have the contract set aside? Substantiate your answer briefly

QUESTION 2

X, a government institution which was the owner of certain immovable property in a township, mistakenly accepted the tender submitted by Y to purchase a certain erf in the township. X had in fact intended to accept the tender submitted by T. Y did not know of X's mistake. X later realised its mistake and averred that it was not bound by the contract.

- 2.1 Was X's mistake material? Substantiate your answer in one sentence
- 2.2 Will X succeed in its attempt to escape liability under the contract? Substantiate your answer briefly.

QUESTION 3

Y sold the farm "Mooifontein" to X. The written contract of sale signed by the parties contained a clause excluding the seller's liability for any misrepresentations made by him. It appears that Y incorrectly pointed out one of the boundaries of the farm to X with the result that the farm contained much less afforested land than X had thought. The farm as pointed out was, however, only marginally smaller than its actual size. X averred that he was not bound by the contract because of his mistake.

QUESTION 4

X, an amateur golfer with a low handicap, participated in a "pro-am" golf tournament (ie one open to both professional and amateur players). On his first round X noticed a car on

display next to the 17th green and an advertising board proclaiming "hole-in-one prize sponsored by Y Motors". The advertising board did not state that the prize was only available to professional golfers. X hit a hole in one on the 17th green. When X claimed his prize from Y, Y refused to deliver on the ground that only professional players qualified for the prize. Z knew that amateurs could only be offered prizes worth less than R600 according to the rules governing amateur status in golf and that the car was worth more than that.

4.1 Was a definite offer made?

4.2 Is there any ground on which Y's refusal to deliver would be upheld? Substantiate your answer briefly.

1997

QUESTION 1

1.1 Indicate in two sentences what the difference is between a void and voidable contract. (1)

1.2 Indicate in two sentences what the difference is between the requirements for a valid contract and the basis of a contract. (1)

QUESTION 2

2.1 Indicate in two sentences the meaning of the maxim *plus valet quod agitur quam quod simulate concipitur*. (1)

2.2 Can an advertisement constitute an offer? Answer Yes or No only. Substantiate your answer in one sentence. (1)

2.3 X attends an auction of certain immovable property. The auction is held subject to certain conditions one of which is that the property may not be sold for less than R100 000. X bids R110 000 but soon sees that no one else is going to bid for the property and he informs the auctioneer that he is retracting his bid of R110 000 and is bidding only R100 000. The auctioneer ignores this statement of X and knocks down the bid of R110 000.

a) What contract(s) are we dealing with here? Answer in one sentence. (1)

b) May X retract his bid? Answer Yes or No only. Substantiate your answer in one sentence. (1)

QUESTION 3

3.1 In *Bird v Sumerville* 1961 (3) SA 194 (A) a valid contract of sale was not concluded because the offeror failed to make separate offers to the addressees, a husband and wife who were married out of community of property. Answer Yes or No only. Substantiate your

answer in one sentence.

(1)

3.2 Why did the plaintiff's claim fail in *Bloom v The American Swiss Watch Co 1915 AD 100*? Answer in two sentences.

(1)

QUESTION 4

X wishes to purchase Y's Ford Mustang and makes Y a verbal offer on 1 January 1997. Y decides to accept X's offer and sends a telegram informing X of this on 2 January but X does not read the telegram because his dog ate it. On 3 January Y telephones X and informs him of the acceptance. On the same day he sends a letter confirming the acceptance to X which X receives on 6 January and reads on 7 January. On what date was the contract concluded? Substantiate your answer in one sentence.

(1)

QUESTION 5

1 Is a mistake by a contactant regarding the presence of a warranty in the contract material? Answer Yes or No only. Substantiate your answer in one sentence.

(1)

5.2 For what reason is the distinction between *error in substantia* and *error in corpore* important? Answer in two sentences.

(1)

QUESTION 6

X, a dealer in musical instruments is approached by Y who wants to purchase a Gibson Les Paul guitar in the window of X's shop. Unknown to X, Y thinks that the guitar once belonged to Jimmy Page of the now defunct rock group Led Zeppelin. Y buys the guitar from X for R100 000 even though it is only worth R1 000 and in fact never belonged to Jimmy Page. Later Y alleges that the contract is void for mistake.

6.1 Under what type of mistake does Y labour? Substantiate your answer in one sentence?

(1)

6.2 Is this type of mistake material? Answer Yes or No only. Substantiate your answer in one sentence.

(1)

6.3 If it is accepted that Y's mistake is material, did a valid contract arise between the parties? Answer Yes or No only. Substantiate your answer in one sentence.

(1)

QUESTION 7

Du Toit v Atkinson's Motors Bpk 1985 (2) SA 893 (A) merely confirms the rule laid down in *George v Fairmead (Pty) Ltd 1958 (2) SA 465 (A)* that the party who signs a written agreement without reading it is bound by the terms contained in it. Answer Yes or No only. Substantiate your answer in one sentence.

(1)

QUESTION 8

X wishes to purchase a 1997 Porsche 911 and telephones Y, a Porsche dealer, and orders one. Y is prepared to accept payment by cheque on delivery. When the vehicle is delivered at X's residence X finds that it is indeed a 1997 Porsche 911 but the shape differs completely from the one he had in mind. X was in fact thinking of the 1997 Porsche 944 when he ordered the vehicle.

8.1 Is X's mistake material? Answer Yes or No only. Substantiate your answer in one sentence.

(1)

8.2 If it is accepted that X's mistake is material, explain how you would set about to determine whether a valid contract arose between X and Y by respectively using the direct approach to the reliance theory and the *iustus error* approach. Answer in six sentences.

(2)

QUESTION 9

X and Y did business with each other for three years. Thereafter X inserted a new clause in the contract that they used without Y's knowledge. This clause reserved ownership in X's favour of goods that Y ordered from X. Although reference to the clause was made in invoices, X did not draw Y's attention to the clause. Y alleged that he was not bound by the contract, in which the new clause appeared, since he was not aware of it.

9.1 Was Y's mistake concerning the new clause material? Answer Yes or No only. Substantiate your answer in one sentence.

(1)

9.2 Is Y bound by the contract? Answer Yes or No only. Substantiate your answer in three sentences.

(1)

PVL301-W Questions

Question 1

- 1.1 Distinguish between a contract and an obligation. (4)
- 1.2 Name the requirements for the formation of a valid contract. (5)
- 1.3 Explain the difference between a void contract and a voidable contract. (5)
- 1.4 Distinguish between agreements creating obligations, agreements extinguishing debts and real agreements. (6)

Question 2

Underline the correct applicable option in the following cases:

2.1 In the course of a conversation B offers to buy A's motor car for R5000. The next day A writes to B accepting the offer. The letter does not reach B. Which theory would you use to determine whether A can institute an action successfully?

- information theory
- declaration theory
- expedition theory
- reception theory (2)

2.2 B, a motor car dealer, inserts the following advertisement in a newspaper: "Buy a XYZ motor car. We ensure at least 200000 troublefree kilometers from the best engine on the market." A reads the advertisement and buys a XYZ car from B. After 50000 kilometres, however, the engine is in such a poor condition that A is forced to sell the car to a scrapyard for R10 (You may accept that the car had no latent defects). Does the advertisement qualify as one of the following?

- a term of the contract
- mere puffing
- a guarantee
- a misrepresentation (2)

2.3 B sells his horse Kolbooi to A for R15000. Kolbooi had been killed by lightning the previous day. Does this qualify as one of the following?

- objective impossibility of performance
- subjective impossibility of performance
- supervening impossibility of performance (2)

2.4 B informs A, without counting, that there are 1000 fruit trees on his (B's) farm, as a result of which A buys the farm from B. It is later found that there are only 800 trees on the

farm. On which basis can A institute an action against B ?

- negligent misrepresentation
 - both of the above
 - neither of the above
- (2)

2.5 A, B and C take part in a card game. After B has lost all his money, A lends him R50 to carry on with the game. What type of obligation comes into being between A and B?

- a natural obligation
 - a civil obligation
 - neither
 - both
- (2)

Question 3

X buys a stand from Y for R100000 after being told by Y that business rights existed on the stand. Later it emerges that no such rights exist. Y, however knew that business rights did not exist on the stand. The contract of sale contains a term which excludes Y's liability for "any misrepresentation".

Where appropriate, underline the correct answer to the following questions.

3.1 What form of mistake arises in the given set of facts?

- a mistake regarding the identity of the other contracting party
 - a mistake regarding the motive for concluding the contract
 - a mistake regarding the identity of the subject matter of the contract
 - a mistake regarding the nature of the transaction
 - a mistake regarding a characteristic of the subject matter of the contract
 - a mistake which is induced by the other contractant regarding the identity of the subject matter of the contract
 - common mistake
- (2)

3.2 What would your answer to 3.1 be if X and Y honestly believed that business rights existed on the stand and were aware of each other's belief?

- a mistake regarding the identity of the other contracting party
 - a mistake regarding the motive for concluding the contract
 - a mistake regarding the identity of the subject matter of the contract
 - a mistake regarding the nature of the transaction
 - a mistake regarding a characteristic of the subject matter of the contract
 - a mistake which is induced by the other contractant regarding the identity of the subject matter of the contract
 - a common mistake
- (2)

3.3 Substantiate your answer to question 3.2 in one sentence. (2)

3.4 What would your answer to question 3.1 be if X wrongly believed, when he signed the contract without reading it, that Y warranted the existence of business rights on the stand in the contract of sale?

- a mistake regarding the identity of the other contracting party
- a mistake regarding the motive for concluding the contract
- a mistake regarding the identity of the subject matter of the contract
- a mistake regarding the nature of the transaction
- a mistake regarding a characteristic of the subject matter of the contract
- a mistake which is induced by the other contractant regarding the identity of the subject matter of the contract
- a common error (2)

3.5 Substantiate your answer to question 3.4 in one sentence. (2)

3.6 Which form of misrepresentation may not be excluded from liability?

- innocent misrepresentation
- intentional misrepresentation
- negligent misrepresentation
- none of the above (2)

3.7 Which approach would you advise X to follow in order to have the contract declared void on the basis of mistake? Substantiate your answer. (4)

3.8 Briefly set out the elements of the direct reliance approach. (2)

3.9 Briefly explain the role misrepresentation plays in the approach you choose. (2)

(20)

Question 4

4 Susan enters into a contract with Jane to work as an apprentice hairdresser in Jane's beauty salon in Johannesburg for two years. They agree that should Susan leave Jane's employ before the contract expires, she is prohibited from taking up similar employment or starting a similar business for a period of two years in the greater Johannesburg area. After 6 months, Susan quits her job with Jane and starts work as a hairdresser in Ntombi's hairdressing salon in Soweto at a much better salary. Jane claims damages from Susan for loss of income caused by Susan's breach of contract. Susan refuses to pay, because she avers that she was not bound by the agreement.

4.1 Briefly explain the legal basis of Susan's defence with reference to *Magna Alloys and Research (SA) (Pty) Ltd v Ellis* 1984 (4) SA 874 (A). (3)

4.2 Underline who bears the onus of proving the enforceability (or not) of the agreement between Jane and Susan?

- Jane
 - Susan
 - Neither
 - Both
- (2)

4.3 Briefly state the two underlying principles taken into account in determining the enforceability of the agreement and state which of the two enjoys preference in current South African case law. (3)

4.4 Which one of the following principles is used to determine whether a restraint of trade clause is enforceable or not? *Underline the correct principle.*

- public policy
 - good faith
 - equity
 - reasonableness
- (2)

(10)

Question 5

5. X and his family are on holiday in Durban. On a beautiful day they decide to go on a Riksha ride. They buy tickets for R10 per person. X puts the tickets in his pocket without looking at them. On the reverse side of the tickets the following terms are printed: "You are transported at your own risk. Neither the owner nor the driver of this vehicle accepts responsibility for any injuries which may be sustained as a result of this ride." When X and his wife climb onto the vehicle a wheel falls off and both of them are injured.

Briefly set out the test which the courts use to determine whether X is bound by the terms printed on the tickets. (5)

Question 6

6.1 Distinguish between *mora ex re* and *mora ex persona*. (5)

6.2 Read the following facts carefully and then *underline* which form of breach of contract has taken place.

6.2.1 X orders a white designer wedding dress from Y. X and Y agree the dress will be delivered by Y to X on the 1st of March. On the 1st of March when the dress is delivered, X sees the dress is cream coloured.

- mora debitoris
 - mora creditoris
 - repudiation
 - positive malperformance
 - prevention of performance
- (2)

6.2.2 X orders a white designer wedding dress from Y. X and Y agree the dress will be

delivered by Y to X on the 1st of March. On the 1st of March when the dress is delivered there is no-one at home because X has gone gambling at Sun City and Y is forced to take the dress back to the shop.

- mora debitoris
- mora creditoris
- repudiation
- positive malperformance
- prevention of performance (2)

6.2.3 X orders a white designer wedding dress from Y. X and Y agree the dress will be delivered by Y to X on the 1st of March. On the 1st of March when the dress is supposed to be delivered to X for the wedding that evening, Y fails to deliver the dress because she (Y) is still on holiday in America.

- mora debitoris
- mora creditoris
- repudiation
- positive malperformance
- prevention of performance (2)

6.2.4 X orders a white designer wedding dress from Y. X and Y agree the dress will be delivered by Y to X on the 1st of March. On the 1st of March when the dress is supposed to be delivered to X for the wedding that evening, it comes to X's attention that Y in a fit of rage has hacked the dress to pieces.

- mora debitoris
- mora creditoris
- repudiation
- positive malperformance
- prevention of performance (2)

6.2.5 X orders a white designer wedding dress from Y. X and Y agree the dress will be delivered by Y to X on the 1st of March. On the 1st of March when the dress is supposed to be delivered to X for the wedding that evening, it comes to X's attention that Y has sold the dress to a celebrity because Y would get far more publicity.

- mora debitoris
- mora creditoris
- repudiation
- positive malperformance
- prevention of performance (2)

(15)

Question 7

7. Chad, a script writer, has written a story which is in the process of being filmed. The director demands that Chad be on set in order to make changes to the story as filming progresses and the director changes his mind about the story. However, Chad's state of the art portable computer is defective and Chad contracts with Thane's company to repair the

computer. Chad informs Thane during the negotiations that he (Chad) will be fired if he does not have the computer back before the start of the filming in a month's time. Thane makes three abortive attempts before he succeeds in repairing the computer. Thane returns the computer two months after filming has started. Chad hires another computer two weeks after filming has started for R10000 per week. As Chad started two weeks late with amending the script, the director is not prepared to pay him for the two weeks and Chad has lost R50000 in salary because he started work two weeks late. You may assume that Thane commits a breach of contract by not repairing the computer timeously.

7.1 Chad claims R20000 for the hiring of the computer. What type of damages are these? *Underline the correct answer.*

- general damages
- special damages
- negative *interesse* (2)

7.2 What test is applied in order to determine whether Chad is entitled to the R20000 or not? *Underline the correct answer.*

- contemplation principle
- convention principle
- either principle
- neither principle (2)

7.3 Chad claims R50000 for the loss of salary. What type of damages does Chad claim for? *Underline the correct answer.*

- general damages
- special damages
- negative *interesse* (2)

7.4 What test is applied in order to determine whether Chad is entitled to damages or not? *Underline the correct answer.*

- contemplation principle
- convention principle
- either principle
- neither principle (2)

7.5 Briefly in two sentences explain the difference between the convention and contemplation principles. (6)

7.6 If Chad's contract with Thane had made provision for a penalty clause in terms of which Thane would have to pay Chad an amount of R100000 if the computer was not repaired timeously would you advise Chad to :

- claim damages
- enforce the penalty clause
- institute an action claiming both the damages and enforcing the penalty clause

Underline the correct answer.

(2)
(16)

Question 8

8.1 A and B agree that B will deliver a horse to A. Subsequently the parties reach a new agreement in terms of which B is to deliver a cow instead of the horse. Would you say that the second agreement qualifies as one of the following:

- cession
- delegation
- novation
- settlement (2)

8.2 There are a number of principles which underlie the positive rules of South African law of contract. *Underline the ODD one out.*

- freedom of contract
- sanctity of contract
- free participation in the economy
- good faith (2)

(4)

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UNKNOWN DATE

Question 1

1.1 Discuss *Cape Explosive Works Lid v SA Oil and Fat Industries (Pty) Ltd* 1921 CPD 244 and *Smeiman v Volkorsz* 1954 (4) SA 170 (C) with regard to the moment of formation of a contract. (6)

1.2 Distinguish between delegation and cession. (4)

(10)

Question 2

2.1 Explain the difference between a condition and a time clause. Give an example of each. (4)

2.2 Explain how you would decide whether to base a particular case on mistake or on misrepresentation. (4)

2.3 Explain why a common error renders a contract void. (2)

(10)

Question 3

While Ann was sick in hospital, she sent for her neighbour, Jack. She was worried that she would not be able to cope with the running of her farm. She decided to offer her farm for sale to Jack as he had expressed an interest in buying her family farm to her father many years previously and she trusted him to look after the family graveyard. Jack agreed to buy the farm. She later signed the written contract of sale without reading it. Jack also signed the contract. To her horror she found out later that she had sold the farm to the Jack Trust and not to Jack personally. Jack, a trustee of the Jack Trust, signed the contract on behalf of the Jack Trust without telling her that he was not buying in his personal capacity. She furthermore did not know any of the other trustees and would never have signed the contract if she had known that the purchaser was not Jack.

3.1 Was Ann's mistake material? Discuss. (3)

3.2 Was Ann's mistake reasonable? Discuss. (5)

3.3 Explain how you would go about to decide whether Ann would succeed in having the written contract set aside on the basis of mistake if you were to use the direct reliance approach. (5)

(13)

Question 4

Peter wants a motor car just like the one his neighbour Siphon has. Peter knows that Siphon cheats on his income tax, since Siphon often boasts of this. Consequently Peter tells Siphon that if Siphon does not sell his motor car to him (Peter) for R20 000, he will report Peter to the Receiver of Revenue. Siphon sells his motor car to Peter for the amount mentioned although it is worth R100 000,

4.1 On what basis will Siphon be able to attack the contract? Briefly discuss with reference to the courts' requirements or elements of the cause of action in question. (5)

4.2 Peter's defence against Siphon's action for rescission of the contract is that he, in fact, acted lawfully. Will Siphon be successful with an action for rescission of the contract in the circumstances? Substantiate your answer. (4)

4.3 Will Siphon successfully be able to claim damages from Peter in the circumstances? Discuss. (1)

(10)

Question 5

Sibonki concludes an oral contract of employment with John in terms of which Sibonki employs John as a waiter in her restaurant at a monthly salary of R2000. No other terms are specifically agreed upon.

5.1 After working in the restaurant for two weeks Y approaches Sibonki and orally

demands R1000 from her as wages for two weeks. Sibonki refuses to pay and an irate John storms out of the restaurant declaring that he will never again work for Sibonki.

5.1.1 Did John breach the contract by demanding payment of R1000 ? If your answer is yes, what type of breach of contract did John commit? Discuss briefly. (2)

5.1.2 Did Sibonki breach the contract by refusing to pay John the R1000 ? If your answer is yes, what type of breach of contract did Sibonki commit ? Discuss. (2)

5.2 As a result of John's dramatic departure Sibonki considers the contract as cancelled and she hires another waiter the very same day to take John's place.

5.2.1 Assuming that Sibonki did not breach the contract by refusing to pay John, did Sibonki breach the contract by cancelling it after John's hasty departure? If your answer is yes, what type of breach of contract did Sibonki commit? Discuss. (4)

5.2.2 Assuming that Sibonki validly cancelled the contract, may John still claim two weeks wages from Sibonki? Discuss briefly. (1)

5.2.3 Assuming that Sibonki validly cancelled the contract, may Sibonki claim damages from John? Discuss briefly. (1)

5.3 John returns the next day to resume work but Sibonki has him removed from the premises.

5.3.1 Assuming that Sibonki could not validly cancel the contract, did Sibonki breach the contract by preventing John from continuing to work in the restaurant the next day? If your answer is yes, what type of breach of contract did Sibonki commit? Discuss. (4)

(22)

Question 6

X, the owner of Tex-Mex Baked Chicken Take-Away in Warmbaths, concludes a written franchise contract with Y in terms of which Y may conduct a baked chicken take-away service under such name in Nylstroom, an adjacent town, in return for which he must pay a fixed sum of money to X every month. X undertakes to train Y and his personnel. The contract specifies that if it is cancelled for any reason whatsoever Y may not conduct a similar business in Nylstroom for a period of two years. Six months later Y legally cancels the contract and opens a similar business in Nylstroom under another name. X seeks to enforce the relevant clause in the contract. Before the conclusion of the franchise contract the Tex-Mex Baked Chicken Take-Away drew its customers only from Warmbaths, the town where it was situated. The Tex-Mex chicken is not prepared according to any secret recipe.

6.1 Y alleges that X must prove the reasonableness of the clause before he can enforce the clause as freedom of trade is a human right protected by the Constitution of the Republic of South Africa, 1996. Is he correct? Discuss. You can assume that the bill of rights in the Constitution has direct horizontal application. (5)

UNKNOWN DATE

Question 1

- 1.1 Is a contract an obligation ? (2)
- 1.2 State the two bases (reasons) for contractual liability. (2)
- 1.3 At what moment is a contract usually concluded? (1)
- 1.4 When does the contract arise in the case of an advertisement offering a reward ? Explain. (1)
- 1.5 State the possible remedies for a breach of a right of pre-emption. (3)
- (9)

Question 2

- 2.1 State the requirements for a claim based on undue influence. (3)
- 2.2 Is a contract voidable if the misrepresentation is made by a third party who does not act on behalf of any party to the contract ? Explain. (1)
- 2.3 What is a dictum et promissum and how do the remedies for it differ from those that are available for the delict misrepresentation. (4)
- (8)

Question 3

The following advertisement appears in the newspaper, the Sunday Reporter, under the heading "AUCTION TOMORROW MORNING":

SMALLHOLDING (portion 1 of the Farm 867, West Road, George) will be sold on Monday, June 21 at 10am by auction at the property next to No 11 on the Varkensvlei Road. 9950 square meters of vacant land in this sought after area must be sold ! Quick Sale Auctioneers."

X reads the advertisement and decides to attend the auction. The next day the auction is held. Before the auction begins, the auctioneer announces to those present that the smallholding being sold is 300 meters further down the road and not as advertised and where they are standing. Unfortunately the auction is already in progress when X arrives and X as a consequence misses the announcement. The smallholding is not sold during the auction. X visits the auctioneer the following day. The auctioneer gives X a street map of the area and tells X that the smallholding is next to the Highlands Estate. X does not know where the boundary of the Highlands Estate is with the result that X never realizes that the smallholding is in actual fact 300 meters down the road. X concludes a contract of sale with the auctioneer acting on behalf of the owner of the smallholding, Y. After

conclusion of the contract of sale, X discovers that the smallholding is only 9000 square meters big and where the smallholding is actually situated. You may accept that the contract of sale complies with the required formalities and that the auctioneer acted as Y's representative at all times.

3.1 Is X's mistake as to the location of the smallholding material? Explain. (2)

3.2 Explain how you would decide whether X should succeed in having the contract set aside on the basis of mistake regarding the location of the smallholding if you were to use the direct reliance approach. (1)

3.3 Is X's mistake as to the location of the smallholding reasonable? Explain. (4)

(10)

Question 5

5.1 Distinguish briefly between the *essentialis*, *naturalia* and *incidentalia* of a contract. Give an example of each. (6)

5.2 State the questions which the court formulated in *Basson v Chilwan 1993 (3) SA 742 (A)* to determine the reasonableness of an agreement in restraint of trade. (4)

(10)

Question 6

Jude sells a new navigation system to Peter for R200000 and undertakes to install it on Peter's fishing trawler. Jude warrants that the system complies with a number of specifications. A month after Jude has installed the system and Peter has paid Jude R200000 the trawler is lost at sea during a storm. Three years later Peter finds out that the system did not comply with most of the specifications. Peter cancels the contract in writing. The letter of rescission is delivered to Jude who never reads the letter because the letter is lost amongst the correspondence on his untidy desk. Jude refuses to pay Peter back the R200000.

1 Jude alleges that the contract has not been validly cancelled. Discuss the following reasons raised by Jude.

6.1.1 Peter had no right to cancel the contract. (Do not discuss latent defects or the remedies for latent defects.) (3)

6.1.2 More than three years had lapsed since the installation of the navigation system before the contract was cancelled. (2)

6.1.3 Peter cannot return the navigation system as the ship was lost at sea. (3)

6.2 Suppose the fishing trawler runs aground because the navigation system does not comply with the specifications and the trawler is damaged by the waves. Fortunately the trawler can be salvaged at the cost of R100000. It will cost a further R50000 to repair the damage to the trawler. Peter wants to claim R150000 (the cost of salvaging and repair)

Discuss Jude's defence that the damage is too remote from the breach of warranty. (3)
(12)

Question 7

7.1 X hands in her shocking pink suede jacket at the dry-cleaner. Y hands her a receipt. On the back of the ticket is a clause excluding Y's liability in the event of negligent damage to or theft of any goods handed in for dry-cleaning. The same words appear on a big notice board in the shop which is clearly visible. When X fetches her jacket, she is dismayed to discover that the jacket's colour has been changed by the dry-cleaning process. Is she bound by the exemption clause? Discuss. (4)

7.2 Discuss *Peters, Flamman & Co v Kokstad Municipality* 1919 AD 427 with regard to supervening impossibility of performance. (5)

7.3 Why is knowledge of the bill of rights in the Constitution of the Republic of South Africa Act 108 of 1996 of importance to the law of contract? Discuss briefly. (5)
(14)

1997

Question 1

- a. Distinguish between a contract and an obligation. (5)
 - b. State the requirements for the formation of a valid contract. (5)
 - c. Explain the difference between a void contract and a voidable contract. (5)
 - d. Distinguish between agreements creating obligations, agreementsextinguishing debts and real agreements. (5)
- (20)

Question 2

V, a wholesale dealer in jewellery, places the following advertisement in the newspaper.

"Swatch watches manufactured by X Company are now available in South Africa at V wholesaler! Stocks limited!"

K, a dealer in watches, reads the advertisement. K rushes off to V and signs a contract of sale for 1000 of the watches without reading the contract. V notices that K does not read the contract, but says nothing. When V delivers the watches, K notices that the watches were manufactured by Y company and that they are of an inferior quality.

- a. What are the consequences of a term in the contract of sale excluding liability for any misrepresentation. (3)
- b. Did valid contract of sale come into being? Do not discuss misrepresentation.

Substantiate your answer.

(5)

c. Would your answer to question (b) be different if K and V both honestly believed that the watches were real Swatch watches and were aware of each other's belief? Substantiate your answer.

(4)

d. Would your answer to question (b) be different if K wrongly believed, when he signed the contract without reading it, that V warranted that the watches were real Swatch watches? Substantiate your answer

(5)

e. Would your answer to question (d) be different if V in good faith brought K under the impression that such a warranty was a term of the contract of sale? Substantiate your answer.

(8)

(25)

Question 3

A buys a ticket for a ride in a helicopter. On the back of the ticket is a clause excluding the pilot's liability in the event of an accident. Is A bound by the terms of the ticket? Substantiate your answer.

(2)

Question 4

Discuss the following concerning covenants in restraint of trade:

- a. Partial enforcement
- b. Unreasonableness between the parties
- c. Protectable interest

Question 5

P sold but did not deliver a second-hand tractor to V for R6000. The maximum price for the tractor under the relevant price control regulations was R4000. The regulation prohibited the conclusion of contracts of sale at a price in excess of the controlled price. P was aware of the controlled price but V was not. Before delivery of the second-hand tractor but after paying R1000 of the purchase price V became aware of the controlled price.

a. Is the contract between P and V valid? Substantiate your answer.

(1)

b. Would V be able to claim delivery of the tractor from P? Substantiate your answer.

(2)

c. Would V be able to claim repayment of R1000? Substantiate your answer.

(2)

d. What would your answer to (c) be if V had been aware of the controlled price from the outset, but nevertheless decided to enter into the contract with P? Substantiate your answer.

(3)

(8)

Question 6

B builds a swimming pool for O. The parties agree that the pool must be completed on 27 July 1997. The contract price is R20000 and O pays R5000 upon signing the agreement. On 27 July 1997 B and O inspect the pool, but O is not satisfied. The paving around the pool is covered in cement splashes and the pool requires another layer of paint. O is of the opinion that B has committed breach of contract. He refuses to pay B a cent further and forbids B to set foot on the premises again.

- a. Did B commit breach of contract. Substantiate your answer. (4)
- b. Can O cancel the agreement ? Substantiate your answer. (2)
- c. Did O breach the contract if you assume that O may not validly cancel the agreement ? Substantiate your answer. (2)
- d. What remedy(ies) does O have at this disposal where B instituted an action for the balance of the purchase price and the agreement is not cancelled ? Substantiate your answer. (6)

(14)

Question 7

Distinguish between a contract of sale and a contract of mandate. (5)