

PVL301W

(460681)

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Oktober/November 2009

**LAW OF CONTRACT (PRIVATE LAW 301)
KONTRAKTEREG (PRIVAATREG 301)**

Duration 2 Hours
Tydsduur 2 Ur100 Marks
100 Punte**EXAMINERS / EKSAMINATORE**

FIRST / EERSTE	PROF TB FLOYD
SECOND / TWEEDE	PROF L STEYNBERG

This paper consists of 28 pages
Hierdie vraestel bestaan uit 28 bladsye.

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STUDENT NUMBER / STUDENTENOMMER

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INSTRUCTIONS

- 1 This paper consists of Section A Multiple-choice questions (to be answered on the mark reading sheet) and Section B Fill-in questions (to be answered on the fill-in question paper) The unique number which you must fill-in on the mark reading sheet is 460681 You will not receive an examination book
- 2 You must hand in the entire examination paper, you are not allowed to keep any part thereof
- 3 Answer all the questions in the designated spaces therefor only Answers outside such spaces will not be read
- 4 **Do not write in the right-hand margin** - this space is reserved for the examiners
- 5 **Do your rough work on page 2** This page will not be read by the examiners
- 6 The English version of each question is directly followed by the Afrikaans version
- 7 Answer **ALL** the questions
- 8 This paper counts 100 marks Divide your time accordingly
- 9 Plan each answer carefully before you write it down and refer to relevant authority whenever possible

INSTRUKSIES

- 1 Hierdie vraestel bestaan uit Afdeling A Multikeusevrae (wat op die merkleesblad beantwoord word) en Afdeling B Invulvrae (wat op die invulvraestel beantwoord word) Die unieke nommer wat u op die merkleesblad moet invul is 460681 U ontvang geen eksamenboek nie
- 2 U moet die hele vraestel inlewer en mag geen deel daarvan hou nie
- 3 Beantwoord al die vrae net in die ruimtes daarvoor aangedui Antwoorde buite sodanige ruimtes sal nie gelees word nie
- 4 **Moenie in die regterkantste kantlyne skryf nie** - die ruimte is vir gebruik deur die eksaminatore
- 5 **Doen u rofwerk op bladsy 2** Die bladsy sal nie deur die eksaminatore gelees word nie
- 6 Die Afrikaanse weergawe van elke vraag volg direk na die Engelse weergawe
- 7 Beantwoord **AL** die vrae
- 8 Die vraestel tel 100 punte Deel u tyd daarvolgens in
- 9 Beplan elke antwoord deeglik voordat u dit neerskryf en verwys waar nodig na relevante gesag

ROUGH WORK / ROFWERK

Do all your rough work on this page. This page will not be read by the examiners.

Doen al u rofwerk op hierdie bladsy. Hierdie bladsy sal nie deur die eksaminatore gelees word nie.

**[TURN OVER]
[BLAAI OM]**

NB: Read the instructions carefully before answering the questions. You have **enough time** to answer this paper. Plan your answers thoroughly - if you fill the space left for an answer with the wrong information, you will not have any other space in which to give the correct answer.

LW: Lees eers die instruksies deeglik deur voordat u die vrae beantwoord. U het **genoeg tyd** om die vraestel te beantwoord. Beplan u antwoorde deeglik, want as u eers 'n antwoordspasie met verkeerde inligting gevul het, het u nie nog plek om die korrekte antwoord te gee nie.

Answer ALL the questions.

Beantwoord AL die vrae.

SECTION A: MULTIPLE-CHOICE QUESTIONS (Unique number : 460681)

AFDELING A: MULTIKEUSEVRAE (Unieke nommer : 460681)

NB: ANSWER THESE QUESTIONS ON THE MARK READING SHEET WHERE APPLICABLE, CHOSE THE MOST CORRECT ANSWER.

NB: BEANTWOORD HIERDIE VRAE OP DIE MERKLEESBLAD WAAR VAN TOEPASSING, KIES DIE MEES KORREKTE ANTWOORD.

(1) In which case was it decided that advertisements are usually mere invitations to the public to do business?

1 *R v Nel* 1921 AD 339

2 *Allen v Sixteen Stirling Investments (Pty) Ltd* 1974 (4) SA 164 (D)

3 *Crawley v Rex* 1909 TS 1105

4 *Steyn v LSA Motors Ltd* 1994 (1) SA 49 (A)

5 None of the above

(2)

[TURN OVER]
[BLAAI OM]

(1) In watter saak is beslis dat advertensies gewoonlik blote uitnodigings aan die publiek is om besigheid te doen?

1 *R v Nel* 1921 AD 339.

2 *Allen v Sixteen Stirling Investments (Pty) Ltd* 1974 (4) SA 164 (D).

3 *Crawley v Rex* 1909 TS 1105.

4 *Steyn v LSA Motors Ltd* 1994 (1) SA 49 (A)

5 Geeneen van bogenoemde. (2)

(2) Which case deals with a notice promising a monetary reward in return for the furnishing of certain information?

1 *Vasco Dry Cleaners v Twycross* 1979 (1) SA 603 (A)

2 *Bloom v The American Swiss Watch Company* 1915 AD 100

3 *George v Fairmead (Pty) Ltd* 1958 (2) SA 465 (A)

4 *Magwaza v Heenan* 1979 (2) SA 1019 (A)

5 *Dickinson Motors (Pty) Ltd v Oberholzer* 1952 (1) SA 443 (A) (2)

(2) Watter saak het gegaan oor 'n kennisgewing waarin 'n geldelike beloning aangebied is vir die verskaffing van sekere inligting?

1 *Vasco Dry Cleaners v Twycross* 1979 (1) SA 603 (A).

2 *Bloom v The American Swiss Watch Company* 1915 AD 100.

3 *George v Fairmead (Pty) Ltd* 1958 (2) SA 465 (A)

4 *Magwaza v Heenan* 1979 (2) SA 1019 (A)

5 *Dickinson Motors (Pty) Ltd v Oberholzer* 1952 (1) SA 443 (A). (2)

(3) In *Bird v Sumerville* 1961 (3) SA 194 (A) the court found that

1 an acceptance must be unconditional and unequivocal

2 an acceptance must be a reaction to the offer

3 an acceptance must comply with any formalities set by law or by the offeror

4 an offer must be accepted by the person to whom it was addressed

5 a person cannot accept an offer of which he is not aware (2)

[TURN OVER]
[BLAAI OM]

(3) In *Bird v Sumerville* 1961 (3) SA 194 (A) het die hof beslis dat

- 1 die aanname moet onvoorwaardelik en ondubbelsinnig wees.
- 2 die aanname moet 'n reaksie wees op die aanbod.
- 3 die aanname moet voldoen aan enige formaliteite wat deur die reg of die aanbieder vereis word.
- 4 die aanbod aangeneem moet word deur die persoon aan wie dit gerig is.
- 5 'n persoon kan nie 'n aanbod aanvaar waarvan hy nie bewus is nie. (2)

(4) Which theory must be applied to determine when and where a contract arose in the case of a contract concluded by post?

- 1 The declaration theory
- 2 The expedition theory
- 3 The reliance theory
- 4 The reception theory
- 5 The information theory (2)

(4) Watter teorie moet aangewend word om te bepaal waar en wanneer 'n kontrak tot stand gekom het waar die kontrak per pos gesluit word?

- 1 Die verklaringsteorie.
- 2 Die versendingsteorie.
- 3 Die vertrouenssteorie.
- 4 Die ontvangsteorie
- 5 Die vernemingsteorie. (2)

(5) Y offers to sell his BMW motor car to Z on 1 July, for R50 000. One of the terms of Y's offer is that the offer lapses on 30 August. However, on 20 July Y notifies Z that the offer is cancelled. Z insists that the offer is valid until 30 August and on 25 July Z notifies Y that he (Z) accepts the offer. Which answer reflects the correct legal position?

- 1 An option contract was concluded between Y and Z
- 2 An option contract was not concluded between Y and Z
- 3 A pre-emption contract was not concluded between Y and Z
- 4 None of the above
- 5 2 and 3

(2)

(5) Op 1 Julie bied Y aan om sy BMW motorkar aan Z te verkoop vir R50 000. Een van die bedinge van Y se aanbod is dat die aanbod verval op 30 Augustus. Op 20 Julie stel Y Z egter in kennis dat die aanbod teruggetrek word. Z dring daarop aan dat die aanbod geldig is tot 30 Augustus. Op 25 Julie stel Z vir Y in kennis dat sy (Z) die aanbod aanvaar. Watter antwoord weerspieël die korrekte regsposisie?

- 1 'n Opsiekontrak het tot stand gekom tussen Y en Z.
- 2 'n Opsiekontrak het nie tot stand gekom tussen Y en Z nie.
- 3 'n Voorkeurkontrak het nie tot stand gekom tussen Y en Z nie.
- 4 Nie een van bogenoemde nie.
- 5 2 en 3.

(2)

(6) In December 2008 C sold her business to D for R200 000. C alleged that this amount reflected the value of her business. Prior to the sale C showed D certain financial statements of his business which revealed that R200 000 was a fair and reasonable valuation of the business. In fact C knew that some important figures had been falsified, as certain assets had been overvalued and some liabilities undervalued. A correct presentation of the figures would have reflected a fair and reasonable valuation of R100 000. Which cause(s) of action will D be able to rely on?

- 1 Fraudulent misrepresentation
- 2 *Dictum et promissum*
- 3 Reliance protection
- 4 Rectification
- 5 1 and 2

(2)

(6) In Desember 2008 verkoop C haar besigheid aan D vir R200 000. C beweer dat hierdie bedrag die waarde van die besigheid verteenwoordig. Voor die koop het C aan D sekere finansiële state van haar besigheid getoon wat dit duidelik maak dat R200 000 'n billike en redelike waardasie van die besigheid was. C het in werklikheid gewet dat sekere belangrike syfers vervals was, omdat sekere bates oorgewaardeer en sekere laste ondergewaardeer was. 'n Korrekte weergawe van die syfers sou 'n billike en redelike waardasie van R100 000 weerspieël het. Op watter eisoorzaak / eisoor sake kan D sy eis baseer?

1 Bedrieglike wanvoorstelling.

2 *Dictum et promissum*.

3 Vertrouensbeskerming

4 Rektifikasie.

5 1 en 2

(2)

(7) Assume the same facts as in question (6) Which statement is *CORRECT*?

1 The contract of sale is voidable at the instance of C

2 D may enforce the contract of sale and claim a reduction in the purchase price

3 The contract of sale is automatically void

4 D may not cancel the contract of sale

5 D may claim that a contract of sale of the business for R100 000 came into being

(2)

(7) Veronderstel dieselfde feite as in vraag (6). Welke stelling is *KORREK*?

1 Die koopkontrak is vernietigbaar ter keuse van C.

2 D kan die koopkontrak afdwing en 'n vermindering van die koopprys eis.

3 Die koopkontrak is outomaties nietig.

4 D kan nie die koopkontrak kanselleer nie.

5 D kan eis dat 'n koopkontrak van die besigheid vir R100 000 tot stand gekom het.

(2)

(8) Assume the same facts as in question (6) Which case relates to the correct answer in question (7)?

1 *Sonap Petroleum (SA) Ltd (SA) (Pty) Ltd v Pappadogianis* 1992 (3) SA 234 (A)

2 *Mahabeer v Sharma* NO 1985 (3) SA 729 (A)

3 *Phame (Pty) Ltd v Paizes* 1973 (3) SA 1019 (A)

4 *Ranger v Wykerd* 1977 (2) SA 976 (A)

5 None of the above (2)

(8) **Veronderstel dieselfde feite as in vraag (6) Watter saak hou verband met die korrekte antwoord in vraag (7)?**

1 ***Sonap Petroleum (SA) Ltd (SA) (Pty) Ltd v Pappadogianis* 1992 (3) SA 234 (A).**

2 ***Mahabeer v Sharma* NO 1985 (3) SA 729 (A).**

3 ***Phame (Pty) Ltd v Paizes* 1973 (3) SA 1019 (A).**

4 ***Ranger v Wykerd* 1977 (2) SA 976 (A).**

5 **Nie een van bogenoemde nie.** (2)

(9) John owns a business. During the period 1 February to 31 March he unknowingly operates his business in contravention of a statute which requires him to have a trading license. This statute only criminalises the operation of a business without a trade license. On 15 February John sells goods on credit to Steve for R2000. John delivers the goods to Steve. When the price is due and payable on 20 February, Steve refuses to pay John. Steve argues that he is not obliged to pay John, as John did not have a trading license on 15 February. Which answer is **CORRECT**?

1 John may enforce the contract and claim R2000 from Steve

2 The contract is illegal and therefore unenforceable

3 Under certain circumstances John may claim back the goods from Steve, or if it no longer exists, the value thereof, based on an unjustified enrichment claim

4 John may always claim back the goods from Steve, or if it no longer exists, the value thereof, based on an unjustified enrichment claim

5 2 and 3 (2)

(9) Johannes besit 'n besigheid. Gedurende die periode 1 Februarie tot 31 Maart bedryf hy in onkunde sy besigheid teenstrydig met wetgewing wat van hom vereis om 'n handelaarslisensie te hê. Hierdie wet kriminaliseer slegs die bedryf van 'n besigheid sonder 'n handelaarslisensie. Op 15 Februarie verkoop Johannes goedere op krediet aan Stefaans vir R2000. Johannes lewer die goedere aan Stefaans. Wanneer die prys betaalbaar word op 20 Februarie, weier Stefaans om Johannes te betaal. Stefaans argumenteer dat hy nie verplig is om Johannes te betaal nie, omdat Johannes nie 'n handelaarslisensie gehad het op 15 Februarie nie. Welke antwoord is **KORREK**?

1 Johannes kan die kontrak afdwing en R2000 eis van Stefaans.

2 Die kontrak is onwettig en daarom onafdwingbaar.

3 Johannes kan die goedere van Stefaans terugeis onder sekere omstandighede, of as dit nie meer bestaan nie, die waarde daarvan gebaseer op 'n ongeregverdigde verrykingsaksie.

4 Johannes kan altyd die goedere terugeis van Stefaans, of as dit nie meer bestaan nie, die waarde daarvan gebaseer op 'n ongeregverdigde verrykingsaksie.

5 2 en 3.

(2)

(10) What is the general effect of supervening impossibility of performance?

1 The contract is rendered voidable at the instance of the creditor

2 The contract is rendered voidable at the instance of the debtor

3 The creditor is guilty of contractual breach

4 The debtor is guilty of contractual breach

5 Termination of the contractual obligation

(2)

(10) Wat is die algemene effek van latere onmoontlikwording van prestasie?

1 Die kontrak is vernietigbaar na gelang die keuse van die skuldeiser

2 Die kontrak is vernietigbaar na gelang die keuse van die skuldenaar

3 Die skuldeiser is skuldig aan kontrakbreuk

4 Die skuldenaar is skuldig aan kontrakbreuk

5 Beeindiging van die kontraktuele verbintenis

(2)

(11) Which case provides a clear illustration of the distinction between *mora debitoris* and positive malperformance?

- 1 *Nel v Cloete* 1972 (2) SA 150 (A)
- 2 *Goldstein and Wolff v Maison Blanc (Pty) Ltd* 1948 (4) SA 446 (C)
- 3 *Stewart Wrightson (Pty) Ltd v Thorpe* 1977 (2) SA 943 (A)
- 4 *Swart v Vosloo* 1965 (1) SA 100 (A)
- 5 *Sweet v Ragerguhara NO* 1978 (1) SA 131 (D) (2)

(11) Welke beslissing bied 'n duidelike voorbeeld van die verskil tussen *mora debitoris* en positiewe wanprestasie?

- 1 *Nel v Cloete* 1972 (2) SA 150 (A).
- 2 *Goldstein and Wolff v Maison Blanc (Pty) Ltd* 1948 (4) SA 446 (K).
- 3 *Stewart Wrightson (Pty) Ltd v Thorpe* 1977 (2) SA 943 (A).
- 4 *Swart v Vosloo* 1965 (1) SA 100 (A).
- 5 *Sweet v Ragerguhara NO* 1978 (1) SA 131 (D). (2)

(12) Gary, a breeder of stud bulls, sells a bull to Piet for an agreed price. Gary knew that Piet required the bull for breeding purposes, although this fact is not mentioned in the contract. Subsequently it turns out that the bull is infertile and Piet wishes to cancel the contract. Which cause of action will Piet be able to rely on?

- 1 Breach of a term implied by law that the stud bull is fertile
- 2 Breach of a tacit term that the stud bull will not have any latent defect
- 3 Breach of a tacit term that the stud bull is fertile
- 4 Breach of an express term agreed upon by the conduct of the parties that the stud bull is fertile
- 5 None of the above (2)

(12) Gary, 'n teler van stoetbulle, verkoop 'n bul aan Piet vir 'n ooreengekome prys. Gary weet dat Piet die bul benodig vir teeldoeleindes, hoewel hierdie feit nie genoem word in die kontrak nie. Die bul blyk later onvrugbaar te wees en Piet wil die kontrak kanselleer. Op watter eisoorzaak kan Piet sy eis baseer?

1 Verbreking van 'n beding wat van regswee ingelees word dat die stoetbul vrugbaar is.

2 Verbreking van 'n stilswyende beding dat die stoetbul nie enige verborge gebrek het nie.

3 Verbreking van 'n stilswyende beding dat die stoetbul vrugbaar is.

4 Verbreking van 'n uitdruklike beding ooreengekom deur die gedrag van die partye dat die stoetbul vrugbaar is.

5 Nie een van bogenoemde nie. (2)

(13) Which case is applicable to the facts in question (12)?

1 *Van den Berg v Tenner* 1975 (2) SA 268 (A)

2 *Minister van Landbou-Tegniese Dienste v Scholtz* 1971 (3) SA 188 (A)

3 *Sweet v Ragerghara NO* 1978 (1) SA 131 (D)

4 *Goldstein and Wolff v Maison Blanc (Pty) Ltd* 1948 (4) SA 446 (C)

5 *Trotman v Edwick* 1951 (1) SA 443 (A) (2)

(13) Watter saak is van toepassing op die feite van vraag (12)?

1 *Van den Berg v Tenner* 1975 (2) SA 268 (A)

2 *Minister van Landbou-Tegniese Dienste v Scholtz* 1971 (3) SA 188 (A).

3 *Sweet v Ragerghara NO* 1978 (1) SA 131 (D).

4 *Goldstein and Wolff v Maison Blanc (Pty) Ltd* 1948 (4) SA 446 (K)

5 *Trotman v Edwick* 1951 (1) SA 443 (A). (2)

- (14) The case in question (13) provides an excellent example of the distinction between
- 1 *naturalia* and tacit *incidentalia* of a contract
 - 2 *essentialia* and *naturalia* of a contract
 - 3 *incidentalia* and an *essentialia* of a contract
 - 4 *accidentalia* and *incidentalia* of a contract
 - 5 *essentialia* and *accidentalia* of a contract (2)
- (14) Die saak in vraag (13) bied 'n uitstekende illustrasie van die onderskeid tussen
- 1 *naturalia* en stilswyende *incidentalia* van 'n kontrak
 - 2 *essentialia* en *naturalia* van 'n kontrak
 - 3 *incidentalia* en *essentialia* van 'n kontrak.
 - 4 *accidentalia* en *incidentalia* van 'n kontrak
 - 5 *essentialia* en *accidentalia* van 'n kontrak. (2)
- (15) In *Fourie v CDMO Homes (Pty) Ltd* 1982 (1) SA 21 (A) the court concluded that the following legal concept was applicable
- 1 a *modus*
 - 2 a guarantee
 - 3 a suspensive condition
 - 4 a resolutive condition
 - 5 a supposition (2)
- (15) Die hof het in *Fourie v CDMO Homes (Pty) Ltd* 1982 (1) SA 21 (A) tot die gevolgtrekking gekom dat die volgende regsbegrip van toepassing was'
- 1 'n *modus*.
 - 2 'n waarborg.
 - 3 'n opskortende voorwaarde.
 - 4 'n ontbindende voorwaarde.
 - 5 'n veronderstelling. (2)

(16) In *SA Sentrale Ko-operatiewe Graanmaatskappy Bpk v Shifren* 1964 (4) SA 760 (A) the court dealt with the applicability of

1 a formality prescribed by law

2 section 2(1) of the Alienation of Land Act 68 of 1981

3 section 6 of the General Law Amendment Act 50 of 1956

4 a non-variation clause

5 a notarial execution

(2)

(16) In *SA Sentrale Ko-operatiewe Graanmaatskappy Bpk v Shifren* 1964 (4) SA 760 (A) het dit gegaan oor die toepasbaarheid van

1 'n formaliteit voorgeskryf deur die reg.

2 artikel 2(1) van die Vervreemding van Grond 68 van 1981.

3 artikel 6 van die Algemene Regswysigingswet 50 van 1956.

4 'n geen-wysigingsklousule.

5 notariese verlyding

(2)

(17) *With in solutum datio*

1 the creditor is conditionally released from his/her obligation to perform

2 the debtor is conditionally released from his/her obligation to perform

3 the debtor is finally released from his/her obligation to perform

4 the creditor is unconditionally released from his/her obligation to perform

5 the debtor is unconditionally released from his/her obligation to perform

(2)

(17) *Met in solutum datio*

1 word die krediteur voorwaardelik bevry van sy/haar verpligting om te presteer

2 word die skuldenaar voorwaardelik bevry van sy/haar verpligting om te presteer.

3 word die skuldenaar finaal bevry van sy/haar verpligting om te presteer.

4 word die skuldeiser onvoorwaardelik bevry van sy/haar verpligting om te presteer.

5 word die skuldenaar onvoorwaardelik bevry van sy/haar verpligting om te presteer.

(2)

[TURN OVER]
[BLAAI OM]

(18) Mark bought from James 200 shares in a company whose shares were readily available on the stock market. James delivered only 150 of the shares to Mark. Mark wishes to claim delivery of the remaining 50 shares from James. Which statement is *CORRECT*?

- 1 The court will not grant an order for specific performance to deliver the remaining 50 shares, because the shares are readily available on the stock market
- 2 The court does not have a discretion to grant an order for specific performance to deliver the remaining 50 shares
- 3 The court will not grant an order for specific performance to deliver the remaining 50 shares, because Mark has a claim for damages against James
- 4 Mark may claim delivery of the remaining 50 shares from James as the court will have a discretion to grant such an order

5 1 and 3

(2)

(18) Markus koop van Jakobus 200 aandele in 'n maatskappy, waarvan die aandele vryelik op die aandelemark beskikbaar is. Jakobus lewer slegs 150 van die aandele aan Markus. Markus wil lewering van die oorblywende aandele van Jakobus eis. Welke stelling is *KORREK*?

- 1 Die hof sal nie 'n bevel van spesifieke nakoming vir die lewering van die oorblywende 50 aandele verleen nie, omdat die aandele vryelik op die aandelemark beskikbaar is.
- 2 Die hof het nie 'n diskresie om 'n bevel van spesifieke nakoming vir die lewering van die oorblywende 50 aandele te verleen nie.
- 3 Die hof sal nie 'n bevel van spesifieke nakoming vir die lewering van die oorblywende 50 aandele verleen nie, omdat Markus 'n eis vir skadevergoeding teen Jakobus het.
- 4 Markus kan lewering van die oorblywende 50 aandele van Jakobus eis, omdat die hof 'n diskresie het om so 'n bevel te verleen

5 1 en 3

(2)

(19) The case applicable to the facts in question (18) is

- 1 *Tuckers Land and Development Corporation (Pty) Ltd v Hovis* 1980 (1) SA 645 (A)
- 2 *Stewart Wrightson (Pty) Ltd v Thorpe* 1977 (2) SA 943 (A)
- 3 *Benson v SA Mutual Life Assurance Society* 1986 (1) SA 776 (A)
- 4 *Jurgens Eiendomsagente v Share* 1990 (4) SA 664 (A)
- 5 *Swart v Vosloo* 1965 (1) SA 100 (A) (2)

(19) Die saak, wat op die feite van vraag (18) van toepassing is, is

- 1 *Tuckers Land and Development Corporation (Pty) Ltd v Hovis* 1980 (1) SA 645 (A).
- 2 *Stewart Wrightson (Pty) Ltd v Thorpe* 1977 (2) SA 943 (A)
- 3 *Benson v SA Mutual Life Assurance Society* 1986 (1) SA 776 (A).
- 4 *Jurgens Eiendomsagente v Share* 1990 (4) SA 664 (A).
- 5 *Swart v Vosloo* 1965 (1) SA 100 (A) (2)

(20) In *BK Tooling (Edms) Bpk v Scope Precision Engineering (Edms) Bpk* 1979 (1) SA 391 (A) the court addressed the applicability of

- 1 the *exceptio doli*
- 2 the *replicatio doli*
- 3 the *stipulatio alteri*
- 4 the *exceptio non adimpleti contractus*
- 5 the *pactum in favorem tertii* (2)

(20) Die hof het in *BK Tooling (Edms) Bpk v Scope Precision Engineering (Edms) Bpk* 1979 (1) SA 391 (A) die toepasbaarheid van

- 1 die *exceptio doli*
- 2 die *replicatio doli*
- 3 die *stipulatio alteri*
- 4 die *exceptio non adimpleti contractus*
- 5 die *pactum in favorem tertii*

beoordeel.

(2)

[TURN OVER]
[BLAAI OM]

(21) Which case would you refer to as authority on the effect of a contractual clause excluding liability for misrepresentation?

1 *Wells v SA Alumenite Co* 1927 AD 69

2 *Broodryk v Smuts* 1942 TPD 47

3 *Neethling v Klopper* 1967 (4) SA 459 (A)

4 *Goldblatt v Fremantle* 1920 AD 123

5 *Bank of Lisbon and South Africa Ltd v De Ornelas* 1988 (3) SA 580 (A) (2)

(21) Watter saak sou u raadpleeg as gesag ten aansien van die gevolg van 'n kontraktuele klousule wat aanspreeklikheid vir wanvoorstelling uitsluit?

1 *Wells v SA Alumenite Co* 1927 AD 69.

2 *Broodryk v Smuts* 1942 TPD 47.

3 *Neethling v Klopper* 1967 (4) SA 459 (A).

4 *Goldblatt v Fremantle* 1920 AD 123

5 *Bank of Lisbon and South Africa Ltd v De Ornelas* 1988 (3) SA 580 (A). (2)

(22) Which statement is *INCORRECT*?

1 Where a party has a right to cancel a contract, he is never obliged to do so

2 A party may cancel a contract where the breach of contract on the part of the other party is material

3 A party may cancel a contract where provision has been made in the contract for a right to resile in the circumstances that exist

4 Cancellation cannot be claimed with the *actio redhibitoria*

5 Cancellation of a contract is available to a party only in exceptional circumstances (2)

(22) Welke stelling is VERKEERD?

- 1 Waar 'n party 'n reg het om uit 'n kontrak terug te tree, is hy nooit verplig om dit te doen nie.
- 2 'n Party kan uit 'n kontrak terugtree waar die ander party se kontrakbreuk wesenlik is
- 3 'n Party kan 'n kontrak kanselleer waar daar in die kontrak voorsiening gemaak word vir 'n terugtreedingsreg in die omstandighede wat bestaan.
- 4 Kansellasië kan nie met die *actio redhibitoria* geëis word nie.
- 5 Terugtrede uit die kontrak is slegs beskikbaar in uitsonderlike omstandighede.

(23) Tom is in the construction business and he buys bricks from Pat. Tom uses these bricks to construct a building for a third party. After the brickwork had been completed, it emerged that a large number of bricks are defective and starting to crumble. Tom tears down the walls in which the defective bricks have been used and rebuilds them with bricks bought from another source. Accordingly, Tom suffers consequential loss as a result of having to tear down and rebuild the walls. Which statement(s) is / are CORRECT?

- 1 Tom will only be able to claim damages for the replacement costs of the defective bricks from Pat
- 2 Tom can claim damages from Pat for all the consequential loss he suffered
- 3 A court will typify the consequential loss as special damages
- 4 A court will typify the consequential loss as general damages
- 5 2 and 4

(2)

(23) Tom is in die konstruksiebedryf en hy koop stene van Pat. Tom gebruik hierdie stene om 'n gebou vir 'n derde party op te rig. Nadat die mure voltooi is, blyk dit dat 'n groot aantal stene gebrekkig is en begin om te verkrummel. Tom breek die mure af waarin die gebrekkige stene gebruik is en herbou die mure met stene wat van 'n ander bron aangekoop is. Tom ly gevolgskaade deurdat hy die mure moet afbreek en herbou. Welke stelling(s) is KORREK?

- 1 Tom kan slegs skadevergoeding van Pat eis vir die vervangingskoste van die gebrekkige stene
- 2 Tom kan skadevergoeding eis van Pat vir al die gevolgskaade wat hy gely het
- 3 'n Hof sal die gevolgskaade tipeer as spesiale skade
- 4 'n Hof sal die gevolgskaade tipeer as algemene skade.

- 5 2 en 4.

(2)

[TURN OVER]
[BLAAI OM]

(24) Which case is directly applicable to the facts in question (23)?

- 1 *Nel v Cloete* 1972 (2) SA 150 (A)
- 2 *Holmdene Brickworks (Pty) Ltd v Roberts Construction Co Ltd* 1977 (3) SA 760 (A)
- 3 *Shatz Investments (Pty) Ltd v Kalovyernas* 1976 (2) SA 545 (A)
- 4 *Lavery & Co Ltd v Jungheinrich* 1931 AD 156
- 5 *Goldstein and Wolff v Maison Blanc (Pty) Ltd* 1948 (4) SA 446 (C) (2)

(24) Watter saak is direk van toepassing op die feite in vraag (23)?

- 1 *Nel v Cloete* 1972 (2) SA 150 (A).
- 2 *Holmdene Brickworks (Pty) Ltd v Roberts Construction Co Ltd* 1977 (3) SA 760 (A).
- 3 *Shatz Investments (Pty) Ltd v Kalovyernas* 1976 (2) SA 545 (A).
- 4 *Lavery & Co Ltd v Jungheinrich* 1931 AD 156
- 5 *Goldstein and Wolff v Maison Blanc (Pty) Ltd* 1948 (4) SA 446 (K). (2)

(25) Which statement is *INCORRECT* regarding the duty to mitigate damage?

- 1 It is the duty of the injured party to mitigate the damage
- 2 The innocent party may recover reasonable expenditure to mitigate damage which could reasonably be mitigated
- 3 The onus is on the innocent party to prove that he acted reasonably to mitigate damage
- 4 The guilty party is not liable for damage which the innocent party could have limited or mitigated by exercising reasonable care
- 5 An example of an unreasonable act to mitigate damage is the buying of potatoes at a black market price where the seller breaches the sale of potatoes (2)

(25) Welke stelling ten aansien van die plig om skade te verhoed, of te verminder, is VERKEERD?

- 1 Dit is die plig van die onskuldige party om skade te verhoed of te verminder.
- 2 Die onskuldige party kan redelike uitgawes om skade wat redelikerwys verhoed of verminder kan word, verhaal.
- 3 Die onskuldige party moet bewys dat hy redelik opgetree het om skade te verhoed of te verminder.
- 4 Die skuldige party is nie aanspreeklik vir skade wat die onskuldige party kon verminder of verhoed deur die beoefening van redelike sorg nie.
- 5 'n Voorbeeld van onredelike optrede om skade te verminder is die koop van aartappels teen 'n swartmark prys, waar die verkoper die koopkontrak van aartappels verbreek

(2)
[50]

SECTION B: FILL-IN QUESTIONS**AFDELING B: INVULVRAE**

NB ANSWER THESE QUESTIONS IN THE SPACES BELOW

NB: BEANTWOORD HIERDIE VRAE IN DIE SPASIES HIERONDER

QUESTION 1 / VRAAG 1

Discuss duress (*metus*) with reference to the description thereof, types of duress, requirements, theoretical explanation and remedies. Refer to case law in your answer (10)

Bespreek dwang (vreesaanjaging of *metus*) met verwysing na die omskrywing daarvan, tipes, vereistes, teoretiese verklaring en remedies. In u antwoord moet u na regspraak verwys. (10)

[10]

QUESTION 2 / VRAAG 2

Discuss agreements in restraint of trade only with reference to the content of the legal test applied by the South African courts. Refer to case law in your answer. (10)

Bespreek bedinge ter beperking van handelsvryheid slegs met verwysing na die inhoud van die regstoets wat die Suid-Afrikaanse howe aanwend. In u antwoord moet u na regspraak verwys. (10)

[TURN OVER]
[BLAAI OM]

[10]

QUESTION 3 / VRAAG 3

Albert takes his motor vehicle to Dodgy Motors for a service. On his arrival, he is asked to sign a "job card" by the owner. Albert enquires why he is required to sign the "job card" and the owner explains to him that by signing he is authorising them to conduct the service on his car which will cost R1 000. He signs the "job card" without reading it. While servicing the car, the service manager finds faults on the car (unrelated to the service) and he proceeds to do these additional repairs for a further R2 000. Albert refuses to pay for the additional repairs and argues that he did not authorise such repairs. The owner of Dodgy Motors argues that Albert is obliged to pay for the work done as the "job card" contains a contractual clause authorising Dodgy Motors to do any repairs on the motor vehicle which they deem necessary without asking the client's authorisation and requiring the client to pay for such repairs. Advise Albert on whether he is liable on the contract to pay Dodgy Motors R2 000 for the additional repairs. Refer to *George v Fairmead (Pty) Ltd* 1958 (2) SA 465 (A), *Sonap Petroleum (SA) Ltd (SA) (Pty) Ltd v Pappadogianis* 1992 (3) SA 234 (A) and other relevant case law in your answer.

(10)

Albert neem sy kar na Slenter Motors vir 'n diens. Die eienaar vra hom om 'n "werkbrieff" ("job card") te teken by sy aankoms. Albert vra waarom hy die "werkbrieff" moet teken en die eienaar verduidelik dat hy hulle magtig om die kar te diens vir R1 000 deur te teken. Hy teken toe die werkbrieff sonder om dit te lees. Die diensbestuurder vind tydens die diens foute op die kar wat niks te doen het met die diens nie en hy gaan voort om hierdie addisionele herstelwerk wat R2 000 kos, te doen. Albert weier om te betaal vir die addisionele herstelwerk en argumenteer dat hy nie hierdie herstelwerk gemagtig het nie. Die eienaar van Slenter Motors argumenteer dat Albert verplig is om te betaal vir die werk wat gedoen is aangesien die werkbrieff 'n kontraktuele beding bevat wat Slenter Motors magtig om enige herstelwerk aan die kar te doen wat hulle nodig ag sonder om die klient se magtiging te vra en wat die klient verplig om vir sulke herstelwerk te betaal. Adviseer Albert daaroor of hy kontraktueel aanspreeklik is om Slenter Motors R2 000 vir die addisionele herstelwerk te betaal. Verwys na *George v Fairmead (Pty) Ltd* 1958 (2) SA 465 (A), *Sonap Petroleum (SA) Ltd (SA) (Pty) Ltd v Pappadogianis* 1992 (3) SA 234 (A) en ander relevante regspraak in u antwoord.

(10)

[TURN OVER]
[BLAAI OM]

[10]

QUESTION 4 / VRAAG 4

X hands in her shocking pink suede jacket at the dry-cleaner. Y hands her a receipt. On the back of the receipt 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 briefly.

(5)

X handig haar helder ligroos sweedseleerbaadjie in by die droogskoonmaker. Y oorhandig aan haar 'n ontvangserkenning. Op die agterkant van die ontvangserkenning is 'n beding wat Y se aanspreeklikheid vir nalatige beskadiging en diefstal van alle goedere wat vir droogskoonmaak ingehandig word, uitsluit. Dieselfde woorde verskyn op 'n groot kennisgewingbord in die winkel wat duidelik sigbaar is. Wanneer X die baadjie gaan afhaal, is sy ontsteld toe sy ontdek dat die baadjie se kleur verander is deur die droogskoonmaakproses. Is sy gebonde aan die uitsluitingsbeding? Bespreek kortliks.

(5)

[5]

QUESTION 5 / VRAAG 5

On 1 June 2008 M and Q conclude a contract whereby M undertakes to manufacture and install kitchen cupboards in Q's home for R50 000. The parties agree that the price will be paid as soon as the kitchen cupboard units are installed, but they do not determine a date for the completion of the work. M, however, informs Q during the negotiations that she has some other work to complete and that she will attend to the kitchen cupboards as soon as possible. Eight months has lapsed since the contract was concluded and Q has not heard from M. Q runs out of patience and hires W to manufacture and install the same kitchen cupboards for R60 000. After W has completed the job, M turns up to do the work. Q claims R10 000 from M as damages, but M institutes a counterclaim for R30 000 from Q for her loss of profit. Who will succeed in his / her claim? Discuss. Refer to *Nel v Cloete* 1972 (2) SA 150 (A), *Tuckers Land and Development Corporation (Pty) Ltd v Hovis* 1980 (1) SA 645 (A), *Shatz Investments v (Pty) Ltd v Kolyvyrnas* 1976 (2) SA 545 (A) and other relevant cases in your answer.

(15)

Op 1 Junie 2008 sluit M en Q 'n kontrak ingevolge waarvan M onderneem om kombuiskaste te vervaardig en in Q se huis te installeer vir R50 000. Die partye kom ooreen dat die prys betaal sal word sodra die kombuiskaste geinstalleer is, maar kom nie op 'n datum vir voltooiing van die werk ooreen nie. M lig egter vir Q tydens die onderhandelinge in dat sy ander werk het om te voltooi en dat sy aandag sal gee aan die kombuiskaste sodra sy kan. Agt maande na sluiting van die kontrak hoor Q nog niks van M. Q raak ongeduldig en kry W om dieselde kombuiskaste te vervaardig en te installeer vir R60 000. Nadat W die werk voltooi het, daag M op om die werk te doen. Q eis R10 000 van M as skadevergoeding, maar M stel 'n teeneis vir R30 000 in teen Q vir haar verlies aan wins. Wie sal slaag in sy / haar eis? Bespreek. Verwys na *Nel v Cloete* 1972 (2) SA 150 (A), *Tuckers Land and Development Corporation (Pty) Ltd v Hovis* 1980 (1) SA 645 (A), *Shatz Investments v (Pty) Ltd v Kolyvyrnas* 1976 (2) SA 545 (A) en ander relevante sake in u antwoord.

(15)

[TURN OVER]
[BLAAI OM]

[15]

TOTAL / TOTAAL [100]