

**PVL301W**

( 498011)

October/November 2010  
Oktober/November 2010

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

Duration : 2 Hours  
Tydsduur : 2 Uur100 Marks  
100 Punte

EXAMINERS / EKSAMINATORE :

FIRST / EERSTE : PROF TB FLOYD  
SECOND / TWEEDE : PROF GTS EISELEN

MR/MNR R ISMAIL

This paper consists of 30 pages.

**Hierdie vraestel bestaan uit 30 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 498011. 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 498011. 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** - dié 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.**

**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 :498011)**

**AFDELING A: MULTIKEUSEVRAE (Unieke nommer :498011)**

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

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

**Request:** If you have time, also copy your answers to your examination script itself. The mark reading sheets sometimes get lost.

**Verzoek:** Indien u tyd het, kopieer ook u antwoorde na u eksamenskrif self. Die merkleesblaai raak soms weg.

[TURN OVER]  
[BLAAI OM]

(1) Which theory must be applied to determine whether a contract arose in the case of a contract concluded by telephone?

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

(2)

(1) Watter teorie moet aangewend word om te bepaal of 'n kontrak tot stand gekom het waar die kontrak telefonies gesluit word?

- 1 Die uitingsteorie.
- 2 Die vernemingsteorie.
- 3 Die vertrouensteorie.
- 4 Die ontvangsteorie.
- 5 Die versendingsteorie.

(2)

(2) In which case was it decided that an offer which has been directed to a definite person can only be accepted by that person?

- 1 *Brand v Spies* 1960 (4) SA 14 (E).
- 2 *Cape Explosive Works Ltd v South African Oil and Fat Industries Ltd* 1921 CPD 244.
- 3 *Bird v Summerville* 1961 (3) SA 194 (A).
- 4 *R v Nel* 1921 AD 339.
- 5 *Smeiman v Volkerz* 1954 (4) SA 170 (C).

(2)

(2) In welke saak is beslis dat 'n aanbod wat aan 'n bepaalde persoon gerig is slegs deur daardie persoon aangeneem kan word?

- 1 *Brand v Spies* 1960 (4) SA 14 (OK).
- 2 *Cape Explosive Works Ltd v South African Oil and Fat Industries Ltd* 1921 CPD 244.
- 3 *Bird v Summerville* 1961 (3) SA 194 (A).
- 4 *R v Nel* 1921 AD 339.
- 5 *Smeiman v Volkerz* 1954 (4) SA 170 (K).

(2)

(3) "A tacit term can be read into a contract even if a similar term is implied by law into the contract." Which case proves that this statement is *CORRECT*?

- 1 *Fourie v CDMO Homes (Pty) Ltd* 1982 (1) SA 21 (A).
- 2 *Van den Berg v Tenner* 1975 (2) SA 268 (A).
- 3 *Jurgens Eiendomsagente v Share* 1990 (4) SA 664 (A).
- 4 *Minister van Landbou-Tegniese Dienste v Scholtz* 1971 (3) SA 188 (A).
- 5 *Magna Alloys and Research (SA) (Pty) Ltd v Ellis* 1984 (4) SA 874 (A). (2)

(3) "‘n Stilswyende beding kan in ‘n kontrak ingelees word al word ‘n soortgelyke beding van regsweë in die kontrak ingelees." Welke saak bewys dat hierdie stelling *KORREK* is?

- 1 *Fourie v CDMO Homes (Pty) Ltd* 1982 (1) SA 21 (A).
- 2 *Van den Berg v Tenner* 1975 (2) SA 268 (A).
- 3 *Jurgens Eiendomsagente v Share* 1990 (4) SA 664 (A).
- 4 *Minister van Landbou-Tegniese Dienste v Scholtz* 1971 (3) SA 188 (A).
- 5 *Magna Alloys and Research (SA) (Pty) Ltd v Ellis* 1984 (4) SA 874 (A). (2)

(4) In *Crawley v Rex* 1909 TS 1105 the court held that an advertisement is

- 1 an offer to the public.
- 2 an invitation to do business.
- 3 an offer directed at defined persons.
- 4 an offer directed at undefined persons.
- 5 1 and 4. (2)

(4) In *Crawley v Rex* 1909 TS 1105 het die hof bevind dat ‘n advertensie is

- 1 ‘n aanbod aan die publiek.
- 2 ‘n uitnodiging om besigheid te doen.
- 3 ‘n aanbod gerig aan bepaalde persone.
- 4 ‘n aanbod gerig aan onbepaalde persone.
- 5 1 en 4. (2)

- (5) Where a culpable misrepresentation exists, the action which arises is based on
- 1 delictual liability.
  - 2 unjustified enrichment.
  - 3 estoppel.
  - 4 statutory liability.
  - 5 contractual liability. (2)
- (5) Waar 'n skuldige wanvoorstelling bestaan, berus die aksie wat ontstaan op**
- 1 deliktuele aanspreeklikheid.**
  - 2 ongeregverdigde verryking.**
  - 3 estoppel.**
  - 4 statutêre aanspreeklikheid.**
  - 5 kontraktuele aanspreeklikheid. (2)**
- (6) 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 *Dickinson Motors (Pty) Ltd v Oberholzer* 1952 (1) SA 443 (A).
  - 3 *George v Fairmead (Pty) Ltd* 1958 (2) SA 465 (A).
  - 4 *Magwaza v Heenan* 1979 (2) SA 1019 (A).
  - 5 *Bloom v The American Swiss Watch Company* 1915 AD 100. (2)
- (6) Watter saak het gehandel 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 *Dickinson Motors (Pty) Ltd v Oberholzer* 1952 (1) SA 443 (A).**
  - 3 *George v Fairmead (Pty) Ltd* 1958 (2) SA 465 (A).**
  - 4 *Magwaza v Heenan* 1979 (2) SA 1019 (A).**
  - 5 *Bloom v The American Swiss Watch Company* 1915 AD 100. (2)**

(7) Sibongile is desperate to sell her house because of a termite infestation. Consequently she knowingly conceals all signs of damage when a potential purchaser, Thandi, comes to inspect the house and furthermore tells Thandi that there is nothing wrong with the house. Thandi purchases the house, which she would never have done if she knew of the termite infestation. What cause of action will Thandi be able to rely on in the circumstances?

- (a) *Dictum et promissum*.
- (b) Innocent misrepresentation.
- (c) Culpable misrepresentation.
- (d) Material mistake.

1 (a), (b) and (c).

2 (a) and (c).

3 (b) and (c).

4 Only (c).

5 Only (d).

(2)

(7) Sibongile is desperaat om haar huis te verkoop weens die aanwesigheid van 'n termiet-infestasië. Sy verberg gevolglik alle tekens van skade toe 'n potensiële koper, Thandi, die huis kom besigtig en sy sê verder aan Thandi dat daar absoluut niks met die huis verkeerd is nie. Thandi koop die huis, maar sy sou nooit die huis gekoop het nie as sy geweet het van die termiet-infestasië nie. Op watter aksiegrond sal Thandi kan staatmaak in die omstandighede?

- (a) *Dictum et promissum*.
- (b) Onskuldige wanvoorstelling.
- (c) Skuldige wanvoorstelling.
- (d) Wesenlike dwaling.

1 (a), (b) en (c).

2 (a) en (c).

3 (b) en (c).

4 Slegs (c).

5 Slegs (d).

(2)

(8) Assume the same facts as in question (7). What remedy or remedies are available to Thandi when she discovers the termite infestation and damage to the house?

- 1 Thandi may *only* rescind the contract.
- 2 Thandi may *only* uphold the contract and claim damages.
- 3 Thandi may rescind the contract and claim damages.
- 4 Thandi may uphold the contract and claim damages.
- 5 Both 3 and 4.

(2)

**(8) Veronderstel dieselfde feite as in vraag (7). Welke remedie(s) is tot Thandi se beskikking wanneer sy die termiet-infestasië en skade aan die huis ontdek?**

- 1 Thandi kan *slegs* die kontrak kanselleer.**
- 2 Thandi kan *slegs* die kontrak instandhou en skadevergoeding eis.**
- 3 Thandi kan die kontrak kanselleer en skadevergoeding eis.**
- 4 Thandi kan die kontrak instandhou en skadevergoeding eis.**
- 5 Beide 3 en 4.**

(2)

(9) Joe resides in Port Elizabeth and Steve resides in Bloemfontein. They meet coincidentally on holiday in Cape Town, as they were staying at the same hotel. One morning at breakfast in the hotel, Joe notices and is impressed with Steve's Rolex watch. Joe offers Steve R75 000 for the watch and Steve replies that he will think about it. Two weeks later, Steve sends Joe a letter by post from Johannesburg while there on business and advises him (Joe) that he (Steve) accepts the offer. A week after Joe received and read the letter at his home he (Joe) sends Steve an electronic-mail from his house to make arrangements for payment of the purchase price. Steve receives the electronic-mail on his laptop while on business in Durban. Where was the contract concluded?

- 1 Cape Town.
- 2 Bloemfontein.
- 3 Johannesburg
- 4 Port Elizabeth.
- 5 Durban.

(2)



(9) Joe woon in Port Elizabeth en Steve woon in Bloemfontein. Hulle ontmoet toevallig terwyl op vakansie in Kaapstad, aangesien albei in dieselfde hotel bly. Een oggend tydens ontbyt by die hotel bewonder Joe Steve se Rolex horlosie. Joe bied Steve R75 000 aan vir die horlosie en Steve antwoord dat hy daarvoor sal dink. Twee weke later stuur Steve vir Joe 'n brief per pos vanaf Johannesburg terwyl hy (Steve) daar met besigheid is en deel hom (Joe) mee dat hy (Steve) die aanbod aanvaar. 'n Week na Joe die brief by sy huis ontvang en gelees het, stuur Joe vir Steve 'n elektroniese-posboodskap vanaf sy huis om reëlings te tref vir betaling van die koopprys. Steve ontvang die elektroniese-posboodskap op sy skootrekenaar terwyl hy met besigheid in Durban is. Waar is die kontrak gesluit?

1 Kaapstad

2 Bloemfontein.

3 Johannesburg

4 Port Elizabeth.

5 Durban.

(2)

(10) In which case did the seller not reveal to the purchaser that the swimming pool was not structurally sound because it leaked?

1 *Trotman and Another v Edwick* 1951 (1) SA 443 (A).

2 *De Jager v Grunder* 1964 (1) SA 446 (A).

3 *Ranger v Wykerd and Another* 1977 (2) SA 976 (A).

4 *Bayer South Africa (Pty) Ltd v Frost* 1991 (4) SA 559 (A).

5 *Phame (Pty) Ltd v Paizes* 1973 (3) SA 397 (A).

(2)

(10) In watter saak het die verkoper versuim om aan die koper te openbaar dat die swembad struktureel gebrekkig was deurdat dit gelek het?

1 *Trotman and Another v Edwick* 1951 (1) SA 443 (A).

2 *De Jager v Grunder* 1964 (1) SA 446 (A).

3 *Ranger v Wykerd and Another* 1977 (2) SA 976 (A).

4 *Bayer South Africa (Pty) Ltd v Frost* 1991 (4) SA 559 (A).

5 *Phame (Pty) Ltd v Paizes* 1973 (3) SA 397 (A).

(2)

(11) Which statement is **CORRECT**?

- 1 The court held in *Bayer South Africa (Pty) Ltd v Frost* 1991 (4) SA 559 (A) that negligent misrepresentation should be recognised in principle as a ground of action, but that the innocent party failed to prove that the other party was negligent.
- 2 In *De Jager v Grunder* 1964 (1) SA 446 (A) the majority of the court held in effect that this was a case of misrepresentation in the form of *dolus dans*.
- 3 In *Ranger v Wykerd and Another* 1977 (2) SA 976 (A) the court applied the *actio quanti minoris* as a remedy and awarded the difference between the price and the actual value of the house as damages for misrepresentation.
- 4 In *Trotman and Another v Edwick* 1951 (1) SA 443 (A) the Appeal Court upheld the award of the difference between the price paid and the actual value of the property as damages for misrepresentation.
- 5 All of the above statements are correct. (2)

(11) Welke stelling is **KORREK**?

- 1 Die hof beslis in *Bayer South Africa (Pty) Ltd v Frost* 1991 (4) SA 449(A) dat nalatige wanvoorstelling in beginsel erken moet word as aksie grond, maar dat die onskuldige party nie daarin geslaag het om te bewys dat die ander party nalatig was nie.
- 2 Die meerderheid in *De Jager v Grunder* 1964 1 SA 446 (A) het in effek beslis dat dit 'n geval van *dolus dans* was.
- 3 Die hof het in *Ranger v Wykerd* 1977 (2) SA 976 (A) die *actio quanti minoris* as remedie toegepas en het die verskil tussen die koopprys en die werklike waarde van die huis as skadevergoeding toegeken.
- 4 In *Trotman v Edwick* 1951 (1) SA 443 (A) het die Appèlhof die toekenning van die verskil tussen die koopprys en die werklike waarde van die eiendom as skadevergoeding vir wanvoorstelling bevestig.
- 5 Al bogenoemde stellings is korrek. (2)

(12) Mark is engaged to Jane. Mark has a very strong personality and eventually persuades Jane to sell and transfer her house that is worth R900 000 to him at a purchase price of a mere R20 000. After registration of the property in Mark's name he breaks off the engagement. Which of the following requirement(s) is / are relevant for Jane to prove, in her pursuit to have the transfer of the house into Mark's name set aside?

- (a) Mark exercised an influence over her.
- (b) Mark exercised this influence over her, in an unscrupulous manner in order to induce her to consent to a transaction which is to her detriment and which she, with normal free will, would not have concluded.
- (c) Mark gained this influence by standing in a position of trust in relation to her.
- (d) This influence exercised by Mark over her, amounted to intimidation which was contrary to good morals.

1 (a) and (d).

2 (a) and (b).

3 (a), (b) and (c).

4 (a), (b) and (d).

5 (a), (b), (c) and (d).

(2)

**(12) Markus is verloof aan Jane. Markus het 'n baie sterk persoonlikheid en oortuig Jane uiteindelik om haar huis, wat R900 000 werd is, aan hom te verkoop en te transporteer vir slegs R20 000. Na registrasie van die eiendom in Markus se naam verbreek hy die verlowing. Welke vereiste(s) moet Jane bewys ten einde die oordrag van die huis in Markus se naam ter syde te stel?**

- (a) Markus het invloed oor haar gekry.**
- (b) Markus het hierdie invloed oor haar op gewetenlose wyse gebruik om haar te oorreed om toe te stem tot 'n transaksie wat tot haar nadeel strek en wat sy met normale wilsvryheid nie sou aangegaan het nie.**
- (c) Markus het hierdie invloed verkry deur in 'n vertrouensverhouding met haar te staan.**
- (d) Hierdie invloed oor haar wat deur Markus uitgeoefen was, het neergekom op intimidasie wat strydig met die goeie sedes is.**

1 (a) en (d).

2 (a) en (b).

3 (a), (b) en (c).

4 (a), (b) en (d).

5 (a), (b), (c) en (d).

(2)

- (13) X agrees with Y that Y will paint X's holiday home at the coast. Unbeknown to either of them the house had been destroyed in a storm the previous day. This is a case of:
- 1 mutual mistake
  - 2 impossibility of performance
  - 3 prevention of performance
  - 4 supervening impossibility of performance
  - 5 an obligation subject to a resolutive condition. (2)
- (13) X kom met Y ooreen dat Y X se vakansiehuis sal verf. Beide is daarvan onbewus dat die huis die vorige dag in 'n storm vernietig is. Hierdie is 'n geval van:
- 1 wedersydse dwaling of misverstand
  - 2 onmoontlikheid van prestasie
  - 3 onmoontlikmaking van prestasie
  - 4 latere onmoontlikwording van prestasie
  - 5 'n verbintenis wat aan 'n ontbindende voorwaarde onderhewig is. (2)
- (14) X gives Y a cheque which is payable when X becomes 30 years old. X is 28 years old at present. The cheque is subject to a
- 1 suspensive time clause.
  - 2 resolutive time clause.
  - 3 *modus* (modal clause).
  - 4 supposition.
  - 5 suspensive condition. (2)
- (14) X gee aan Y 'n tjek wat betaalbaar is wanneer X 30 jaar oud word. X is tans 28 jaar oud. Hierdie tjek is onderworpe aan 'n
- 1 opskortende termyn.
  - 2 ontbindende termyn.
  - 3 *modus* (lasbepaling).
  - 4 veronderstelling.
  - 5 opskortende voorwaarde. (2)

- (15) The hypothetical bystander test is applicable when considering the existence of
- 1 express terms.
  - 2 terms implied by law.
  - 3 tacit terms.
  - 4 *naturalia*.
  - 5 *essentialia*. (2)
- (15) Die hipotetiese bystander-toets is van toepassing wanneer die moontlikheid van
- 1 uitdruklike bedinge
  - 2 bedinge wat regtens veronderstel word
  - 3 stilswyende bedinge
  - 4 *naturalia*
  - 5 *essentialia*
- oorweeg word. (2)
- (16) X, a manufacturer of navigation systems, sells a new navigation system to Y for R200 000 and undertakes to install it on Y's fishing trawler. X warrants that the system complies with a number of specifications. A month after X has installed the system and Y has paid X R200 000, the trawler is lost at sea during a storm and cannot be salvaged. Afterwards, it is established that the navigation system that X installed did not comply with most of the specifications. This amounts to
- 1 prevention of performance.
  - 2 *mora debitoris*.
  - 3 *mora creditoris*.
  - 4 positive malperformance.
  - 5 breach of a suspensive condition. (2)

(16) X, 'n vervaardiger van navigasiesistels, verkoop aan Y 'n nuwe navigasiesistels vir R200 000 en onderneem om dit in Y se vistreiler te installeer. X waarborg dat die stelsel voldoen aan sekere spesifikasies. 'n Maand nadat X die stelsel geïnstalleer het en Y R200 000 aan X betaal het, sink die vistreiler tydens 'n storm ter see en kan nie geberg word nie. Daarna word dit vasgestel dat die navigasiesistels wat X geïnstalleer het nie aan die meeste van die spesifikasies voldoen het nie. Dit kom neer op

1 onmoontlikmaking van prestasie.

2 *mora debitoris*.

3 *mora creditoris*.

4 positiewe wanprestasie.

5 verbreking van 'n opskortende voorwaarde.

(2)

(17) Assume the same facts as in question (16). Which statement(s) is / are **CORRECT**?

(a) Y may resile from the contract if he has reserved the right to resile from the contract on the basis of any breach of contract.

(b) Y may not resile from the contract if he has not reserved the right to resile on the basis of any breach of contract.

(c) Y may resile from the contract because the breach by X was so serious that it cannot reasonably be expected of Y to abide by the contract and be satisfied with damages.

(d) Y may not resile from the contract because he made use of the navigation system and the storm was not X's doing.

1 (a).

2 (b)

3 (c)

4 (a) and (c).

5 (b) and (d).

(2)

(17) Veronderstel dieselfde feite as in vraag (16). Welke stelling(s) is **KORREK**?

- (a) Y kan terugtree uit die kontrak indien hy vir homself 'n terugtrekingsreg vir enige kontrakbreuk in die kontrak voorbehou het.
- (b) Y kan nie terugtree uit die kontrak nie indien hy nie vir homself so 'n reg onder hierdie omstandighede in die kontrak voorbehou het nie.
- (c) Y kan terugtree uit die kontrak omdat die kontrakbreuk deur X so ernstig is dat dit nie redelikerwys van Y verwag kan word om die kontrak in stand te hou en tevrede te wees met skadevergoeding nie.
- (d) Y kan nie terugtree uit die kontrak nie omdat hy gebruik gemaak het van die navigasiesistelsel en die storm nie aan X te wyte was nie.

1 (a).

2 (b)

3 (c)

4 (a) en (c).

5 (b) en (d)

(2)

(18) Assume the same facts in question (16). Which statement(s) with regard to Y's right of rescission is / are **CORRECT**?

- 1 Y will automatically forfeit his right to rescission if he is unable to tender restitution of the navigation system to X.
- 2 Y will automatically forfeit his right to rescission because he is unable to tender restitution of the navigation system to X as his putting to sea led to the trawler (and the navigation system) sinking in the storm.
- 3 Y will automatically forfeit his right to rescission if he fails to return the surrogate of the navigation system to X.
- 4 Y will not automatically forfeit his right to rescission, because he did not breach the contract and therefore Y does not have to tender restitution to X.
- 5 Y will not automatically forfeit his right to rescission, because the return of the performance which he received from X has become impossible through no fault on his (Y's) part.

(2)

**(18) Veronderstel dieselfde feite as in vraag (16). Welke stelling(s) ten aansien van Y se reg op kansellasië is *KORREK*?**

- 1 Y sal outomaties sy reg op kansellasië verbeur indien hy nie in staat is om aan X restitusië van die navigasiestelsel aan te bied nie.**
- 2 Y sal outomaties sy reg op kansellasië verbeur, omdat hy nie in staat is om aan X restitusië van die navigasiestelsel aan te bied nie weens die feit dat sy uitgaan op die see daartoe gelei het dat die treiler (en die navigasiestelsel) tydens die storm gesink het.**
- 3 Y sal outomaties sy reg op kansellasië verbeur indien hy versuim om die surrogaat van die navigasiestelsel aan X terug te gee.**
- 4 Y sal nie outomaties sy reg op kansellasië verbeur nie, omdat hy nie kontrakbreuk gepleeg het nie en Y daarom nie restitusië aan X hoef aan te bied nie.**
- 5 Y sal nie outomaties sy reg op kansellasië verbeur nie, omdat teruggawe van die prestasië wat hy van X ontvang het onmoontlik geword het sonder skuld aan sy (Y se) kant.**

(2)

**(19) O and C, an electrician, agrees that C will replace the electrical wiring in O's house for R10 000 and that the work will commence on 1 June. On 1 June, C arrives at O's house, but O refuses him entry into the house and tells him that he must return in two months time to do the job. O's conduct amounts to**

- 1 *mora debitoris*.**
- 2 *mora creditoris*.**
- 3 prevention of performance.**
- 4 repudiation.**
- 5 positive malperformance.**

(2)

**(19) O en C, 'n elektrisiën, kom ooreen dat C die elektriese bedrading in O se huis sal vervang vir R10 000 en dat die werk op 1 Junie 'n aanvang sal neem. Op 1 Junie arriveer C by O se huis, maar O weier hom toegang tot die huis en sê vir hom om in twee maande se tyd terug te kom om die werk te doen. O se optrede kom neer op**

- 1 *mora debitoris*.**
- 2 *mora creditoris*.**
- 3 onmoontlikmaking van prestasië.**
- 4 repudiëring.**
- 5 positiewe wanprestasië.**

(2)



(20) Assume the same facts as in question (19). Further assume that O no longer wants C to do the electrical wiring in the house. C has the following possible remedies against O:

- (a) An order for specific performance that allows C entry into O's house in order to do the electrical wiring.
- (b) A claim for damages for any loss suffered by C.
- (c) A claim for the cancellation of the contract after a notice of rescission has been sent to O.
- (d) A claim for the cancellation of the contract after a letter of demand and a notice of rescission have been sent to O.

1 (a), (b) and (c).

2 (a), (b) and (d).

3 Only (a).

4 Only (b).

5 None.

(2)

**(20) Veronderstel dieselfde feite as in vraag (19). Veronderstel verder dat O nie langer wil hê dat C die elektriese bedrading in die huis moet doen nie. C het die volgende moontlike remedie(s) teen O:**

- (a) 'n Eis vir spesifieke nakoming wat C toegang verleen tot O se huis om die elektriese bedrading te kan doen.**
- (b) 'n Eis vir skadevergoeding vir enige verlies gely deur C.**
- (c) 'n Eis vir die kansellasië van die kontrak nadat 'n kennisgewing van ontbinding aan O gestuur is.**
- (d) 'n Eis vir die kansellasië van die kontrak nadat 'n aanmaning en 'n kennisgewing van ontbinding aan O gestuur is.**

**1 (a), (b) en (c).**

**2 (a), (b) en (d).**

**3 Slegs (a).**

**4 Slegs (b).**

**5 Geeneen nie.**

**(2)**

(21) Jean, a builder, and Mike agree that Jean will build a house on Mike's stand for R800 000 and that Jean will only be paid after completion of the house, which must be no later than 1 August. On 1 August the house is only 80% complete. Mike refuses to pay Jean any money as he believes that Jean is in breach of contract. It will cost R300 000 to complete the house. Mike's refusal amounts to

1 repudiation.

2 positive malperformance.

3 prevention of performance.

4 *mora debitoris*.

5 none of the above.

(2)

**(21) Jean, 'n bouer, en Mike kom ooreen dat Jean 'n huis op Mike se erf sal bou vir R800 000 en dat Jean slegs betaal sal word na voltooiing van die huis wat nie later as 1 Augustus mag wees nie. Op 1 Augustus is die huis slegs 80% voltooi. Mike weier om Jean enige geld te betaal omdat hy glo dat Jean kontrakbreuk gepleeg het. Dit sal R300 000 kos om die huis te voltooi. Mike se weiering kom neer op**

**1 repudiëring.**

**2 positiewe wanprestasie.**

**3 onmoontlikmaking van prestasie.**

**4 *mora debitoris*.**

**5 geeneen van bogenoemde.**

(2)

(22) Assume the same facts as in question (21). Should Jean want to pursue a claim against Mike,

1 she may be successful in claiming a reduced amount: the difference between R800 000 and R300 000.

2 she may be successful in claiming the full amount of R800 000.

3 she may be successful in claiming 80% of R800 000, as she (Jean) completed building 80% of the house.

4 she may be successful in claiming 80% of R800 000, only if she is willing to complete the remainder of the house at no extra cost.

5 she will be unsuccessful in claiming any amount, because she (Jean) did not complete the house by 1 August.

(2)

- (22) Veronderstel dieselfde feite as in vraag (21). Indien Jean 'n eis teen Mike wil instel,
- 1 sal sy moontlik daarin slaag om 'n verminderde bedrag te eis: die verskil tussen R800 000 en R300 000.
  - 2 sal sy moontlik daarin slaag om die volle bedrag van R800 000 te eis.
  - 3 sal sy moontlik daarin slaag om 80% van R800 000 te eis, omdat sy (Jean) 80% van die huis voltooi het.
  - 4 sal sy moontlik daarin slaag om 80% van R800 000 te eis, slegs as sy gewillig is om die res van die huis te voltooi teen geen verdere koste nie.
  - 5 sal sy nie daarin slaag om enige bedrag te eis nie, omdat sy (Jean) nie die huis teen 1 Augustus voltooi het nie. (2)
- (23) X donates R100 000 to Y as soon as Y's husband dies. This donation is subject to a
- 1 suspensive condition.
  - 2 supposition.
  - 3 *modus* (modal clause).
  - 4 suspensive time clause.
  - 5 resolutive time clause. (2)
- (23) X skenk R100 000 aan Y sodra Y se man te sterwe kom. Hierdie skenking is onderworpe aan 'n
- 1 opskortende voorwaarde.
  - 2 veronderstelling.
  - 3 *modus* (lasbepaling).
  - 4 opskortende termyn.
  - 5 ontbindende termyn. (2)

- (24) ABC Limited donates money to the XYZ Municipality. The grant is subject to the proviso that the money be used to build a clinic for the local community. The donation is subject to
- 1 a resolutive condition.
  - 2 a *modus* (modal clause).
  - 3 a stipulation for the benefit of a third party.
  - 4 either 1 or 2.
  - 5 either 2 or 3. (2)
- (24) **ABC Beperk skenk geld aan die XYZ Munisipaliteit. Die skenking is onderhewig daaraan dat die geld gebruik moet word om 'n kliniek te bou vir die plaaslike gemeenskap. Die skenking is onderhewig aan**
- 1 'n opskortende voorwaarde.
  - 2 'n *modus* (lasbepaling).
  - 3 'n beding ten behoeve van 'n derde.
  - 4 óf 1 óf 2.
  - 5 óf 2 óf 3. (2)
- (25) X orders medication from a pharmacy but the pharmacy indicates that it only has the generic version of the medicine which X requires in stock. X indicates that he will accept the generic medicine. This is an example of:
- 1 novation.
  - 2 *in solutum datio*.
  - 3 settlement.
  - 4 release.
  - 5 none of the above. (2)

(25) X bestel medisyne by 'n apteek maar die apteek dui aan dat hulle slegs die generiese weergawe van die medisyne in voorraad het. X dui aan dat hy die generiese medisyne sal aanvaar. Hierdie is 'n voorbeeld van:

1 novasie.

2 *in solutum datio*.

3 skikking.

4 kwytskelding.

5 geeneen van bogenoemde nie.

(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**

Distinguish an option from a right of pre-emption. (10)

**Onderskei tussen 'n opsie van 'n voorkoopreg. (10)**

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**[TURN OVER]**  
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**QUESTION 2 / VRAAG 2**

Discuss and distinguish between general damage and special damage. Refer to case law in your answer. (10)

**Onderskei tussen gewone en besondere skade. Verwys na regspraak in u antwoord. (10)**

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**QUESTION 3 / VRAAG 3**

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 pressurized 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. Will Y succeed in his attempt to have the contract set aside? Substantiate your answer. Refer to *George v Fairmead (Pty) Ltd* 1958 (2) SA 465 (A), *Du Toit v Atkinson Motors Bpk* 1985 (2) SA 893 (A), *Allen v Sixteen Stirling Investments (Pty) Ltd* 1974 (4) SA 164 (D), *Sonap Petroleum (SA) Ltd (formerly known as Sonarep (SA) (Pty) Ltd v Pappadogianis* 1992 (3) SA 234 (A) in your answer. (15)

**X, 'n organiseerder van kunsttentoonstellings, het met Y gekontrakteer vir 'n tentoonstelling wat 24 tot 27 Julie gehou sou word. Hierdie datums was die enigste datums wat tydens die onderhandelings genoem is. Nadat X druk op Y geplaas het, het Y haastig die standaardvormkontrak geteken, sonder om dit te lees. Die kontrak het 'n klousule bevat wat X toegelaat het om eensydig die datums van die tentoonstelling te verander. Hierna het X die datums verander. X het geen rede gehad om te glo dat Y die kontrak sou geteken het indien hy bewus was van die beding nie. Y het beweer dat die kontrak nietig was. Sal Y slaag in sy poging om die kontrak ter syde gestel te kry? Motiveer u antwoord. Verwys na *George v Fairmead (Pty) Ltd* 1958 (2) SA 465 (A), *Du Toit v Atkinson Motors Bpk* 1985 (2) SA 893 (A), *Allen v Sixteen Stirling Investments (Pty) Ltd* 1974 (4) SA 164 (D) en *Sonap Petroleum (SA) Ltd (formerly known as Sonarep (SA) (Pty) Ltd v Pappadogianis* 1992 (3) SA 234 (A) in u antwoord. (15)**

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**[BLAAI OM]**



## QUESTION 4 / VRAAG 4

Gregory owns a club from which he sells illegal drugs. Recently, he supplied Sandy with drugs to the value of R5 000, which amount both parties agreed will be payable by Sandy. Subsequently, Sandy refuses to pay Gregory for the drugs. Advise Gregory if he can hold Sandy liable for payment of the price and whether he can claim back the drugs from Sandy. Discuss with reference to *Jajbhay v Cassim* 1939 AD 537 and other relevant case law.

(15)

**Gregory besit 'n klub waar hy onwettige verdowingsmiddels verkoop. Hy het onlangs aan Sandy voordowingsmiddels ter waarde van R5 000 voorsien wat beide partye ooreengekom het Sandy sou betaal. Daarna het Sandy egter geweier om Gregory vir die verdowingsmiddels te betaal. Adviseer Gregory of hy Sandy kan aanspreek vir betaling van die prys en of hy teruggawe van die verdowingsmiddels kan eis van Sandy. Bespreek met verwysing na *Jajbhay v Cassim* 1939 AD 537 en ander relevante regspraak.**

(15)

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[BLAAI OM]



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**[15]**

**TOTAL / TOTAAL [100]**