

LPL4801

(499236)

October/November 2013
Oktober/November 2013**THE LAW OF SALE AND LEASE
KOOP- EN HUURREG**Duration 2 Hours
Tydsduur 2 Uur100 Marks
100 Punte**EXAMINERS / EKSAMINATORE :**

FIRST / EERSTE

ADV R ISMAIL

PROF C PRETORIUS

SECOND / TWEEDE

PROF L HAWTHORNE

EXTERNAL / EKSTERNE

PROF B KUSCHKE

Closed book examination.
Toeboekeksamen

This examination question paper remains the property of the University of South Africa and may not be removed from the examination venue.
Hierdie eksamen vraestel bly die eiendom van die Universiteit van Suid-Afrika en mag nie uit die eksamenlokaal verwyder word nie.

This paper consists of 40 pages
Hierdie vraestel bestaan uit 40 bladsye.

					-														
--	--	--	--	--	---	--	--	--	--	--	--	--	--	--	--	--	--	--	--

STUDENT NUMBER / STUDENTENOMMER

This examination paper remains the property of the University of South Africa
and may not be removed from the examination room
Hierdie eksamen vraestel bly die eiendom van die Universiteit van Suid-Afrika
en mag nie uit die eksamenlokaal verwyder word nie.

INSTRUCTIONS

- 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 499236 You will not receive an examination book
- You must hand in the entire examination paper, you are not allowed to keep any part thereof
- Answer all the questions in the designated spaces therefore only Answers outside such spaces will not be read
- Do not write in the right-hand margin - this space is reserved for the examiners
- Do your rough work on page 2 This page will not be read by the examiners
- The English version of each question is directly followed by the Afrikaans version
- Answer ALL the questions
- This paper counts 100 marks Divide your time accordingly
- Plan each answer carefully before you write it down and refer to relevant authority whenever possible

INSTRUKSIES

- 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 499236 U ontvang geen eksamenboek nie
- U moet die hele vraestel inlewer en mag geen deel daarvan hou nie
- Beantwoord al die vrae net in die ruimtes daarvoor aangedui Antwoorde buite sodanige ruimtes sal nie gelees word nie
- Moenie in die regterkantste kantlyn skryf nie - dié ruimte is vir gebruik deur die eksaminatore
- Doen u rofwerk op bladsy 2 Die bladsy sal nie deur die eksaminatore gelees word nie
- Die Afrikaanse weergawe van elke vraag volg direk na die Engelse weergawe
- Beantwoord AL die vrae
- Die vraestel tel 100 punte Deel u tyd daarvolgens in
- Beplan elke antwoord deeglik voordat u dit neerskryf en verwys waar nodig na relevante gesag

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

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: 499236)

AFDELING A: MULTIKEUSEVRAE (Unieke nommer: 499236)

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 MES KORREKTE ANTWOORD.

NB: ONLY REFER TO THE CONSUMER PROTECTION ACT 68 OF 2008 WHERE SPECIFICALLY ASKED TO DO SO.

NB: VERWYS SLEGS NA DIE VERBRUIKERSBESKERMINGSWET 68 VAN 2008 WAAR SPESIFIEK GEVRA OM DIT TE DOEN.

Request: If you have time, also indicate on the examination paper itself which answers you have chosen as the mark reading sheets sometimes get lost.

Versoek: Indien u tyd het, dui ook op die eksamenvraestel self aan watter antwoorde u gekies het, omdat die merkleesblad soms wegraak.

[TURN OVER]
[BLAAI OM]

**CONTRACT OF LEASE
HUURKONTRAK****QUESTION 1**

Benoit and Lorraine agree orally that Benoit will lease his vineyards to Lorraine on condition that Lorraine will annually give 10 percent of the grapes produced by her to Benoit, as rent Which **ONE** of the following statements is **CORRECT**?

- 1 No contract of lease will come into being, because the amount of the rent is not certain or ascertainable
- 2 No contract of lease will come into being, because the rent must sound in money, that is the lessee must compensate the lessor with money
- 3 No contract of lease will come into being if it is agreed that Lorraine's stay on the farm is permanent
- 4 No contract of lease will come into being, because the agreement relates to immovable property
- 5 No contract of lease will come into being, because the agreement relates to immovable property and is not embodied in a written document (2)

VRAAG 1

Benoit en Lorraine kom mondeling ooreen dat Benoit sy wingerde aan Lorraine sal verhuur op voorwaarde dat Lorraine jaarliks 10 persent van die druiwe wat deur haar geproduseer word, as huurgeld aan Benoit sal gee. Watter **EEN** van die volgende stellings is **KORREK**?

- 1 Geen huurkontrak sal tot stand kom nie aangesien die bedrag van die huur nie seker of vasstelbaar is nie.
- 2 Geen huurkontrak sal tot stand kom nie aangesien die huurgeld in geld betaalbaar moet wees, dit wil sê die huurder moet die verhuurder met geld vergoed.
- 3 Geen huurkontrak sal tot stand kom as daar ooreengekom is dat Lorraine se verblyf op die plaas permanent is nie.
- 4 Geen huurkontrak sal tot stand kom nie aangesien die ooreenkoms op onroerende eiendom betrekking het.
- 5 Geen huurkontrak sal tot stand kom nie aangesien die ooreenkoms op onroerende eiendom betrekking het en nie in 'n skriftelike dokument vervat is nie. (2)

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

QUESTION 2

Harry leases Shannon's apartment for one year. In terms of their contract Harry has to pay the rent of R3 000 in advance on the first day of the month. After expiry of the lease Harry stays in occupation of the apartment and continues to pay the rent on the first day of the month. Shannon accepts payment of the rent on every occasion. Later Shannon wishes to terminate the lease and gives Harry a month's notice on the first day of the month. You should also take the provisions of the Rental Housing Act 50 of 1999 into account when answering this question. Which of the following statement(s) is (are) **CORRECT**?

- (a) Shannon may terminate the lease at any time after expiry of their initial lease as no valid contract of lease is now in existence
- (b) Shannon may not claim eviction of Harry because Harry and Shannon concluded a tacit contract of lease for an indefinite period after expiry of their initial lease
- (c) Harry and Shannon concluded a tacit contract of lease for one year after expiry of their initial lease
- (d) Shannon may terminate their tacit contract of lease by giving reasonable notice thereof to Harry

- 1 (b) and (c)
- 2 (c) and (d)
- 3 (a)
- 4 (b)
- 5 (d)

(2)

[TURN OVER]
[BLAAI OM]

VRAAG 2

Harry huur Shannon se woonstel vir een jaar. Ingevolge hulle kontrak moet Harry die huur van R3 000 op die eerste dag van elke maand vooruit betaal. Na afloop van die huur bly Harry in okkupasie van die woonstel en gaan voort om die huur op die eerste dag van die maand te betaal. Shannon aanvaar telkens die huurgeld. Shannon wil later die huurkontrak beëindig en gee Harry 'n maand kennis op die eerste dag van die maand. U moet ook die bepalings van die Wet op Huurbehuising 50 van 1999 in ag neem by die beantwoording van hierdie vraag. Watter van die volgende stellings is KORREK?

- (a) Shannon kan die huur beëindig te enige tyd na afloop van die aanvanklike huurkontrak, omdat geen geldige huurkontrak tans meer bestaan nie.
- (b) Shannon kan nie uitsetting van Harry eis nie, omdat Harry en Shannon 'n stilswyende huurkontrak vir 'n onbepaalde tydperk gesluit het.
- (c) Harry en Shannon sluit 'n stilswyende huurkontrak vir 'n jaar na hulle aanvanklike huurkontrak.
- (d) Shannon kan die stilswyende huurkontrak beëindig deur redelike kennis daarvan aan Harry te gee.

- 1 (b) en (c).
- 2 (c) en (d).
- 3 (a).
- 4 (b).
- 5 (d).

(2)

[TURN OVER]
[BLAAI OM]

QUESTION 3

X hired from Y certain premises for a period of 2 years for the purpose of conducting a health and pleasure resort thereon. Y undertook to transfer the trading licence in respect of the premises and duly did so. After 1 year the licensing board refused to renew the licence unless substantial structural alterations and additions as required in terms of by-laws promulgated that month were made. Y refused to carry out the alterations at which point X stopped paying the monthly rental. Why is X entitled to stop paying the rent?

- 1 Because Y breaches the lease agreement
- 2 Because structural changes to the leased premises form part of the lessor's obligation
- 3 Because Y fails to maintain the leased premises in the condition in which they were when the contract was concluded
- 4 Because X does not have full use and enjoyment of the leased thing.
- 5 Because the Rental Housing Act 50 of 1999 entitles X to do so. (2)

VRAAG 3

X het van Y 'n sekere perseel gehuur vir 'n periode van 2 jaar met die doel om dit as 'n gesondheids- en vakansieoord te gebruik. Y het onderneem om die besigheidslisensie oor te dra en doen dit ook. Na 1 jaar weier die besigheidslisensie-raad om die lisensie te hernu, tensy substansiële veranderinge en aanbouings plaasvind soos vereis deur regulasies wat daardie maand uitgevaardig is. Y het geweer om die veranderinge aan te bring met die gevolg dat X opgehou het om die huur te betaal. Waarom is X geregtig om op te hou huurgeld te betaal?

- 1 Omdat Y kontrakbreuk pleeg.
- 2 Omdat die verpligting om strukturele veranderinge aan die verhuurde perseel aan te bring deel vorm van die verhuurder se verpligtinge.
- 3 Omdat Y versuim om die verhuurde perseel te hou in die kondisie waarin dit was toe dit gehuur is.
- 4 Omdat X nie volle gebruik en genot van verhuurde perseel het nie.
- 5 Omdat die Wet op Huurbehuising 50 van 1999 hom toelaat om nie huur te betaal nie. (2)

[TURN OVER]
[BLAAI OM]

QUESTION 4

The rule involved in your answer to question 3 is an expression of a general contractual principle applicable to all contracts and not only the contract of lease. What is this rule?

- 1 Positive malperformance
- 2 *Mora debitoris*
- 3 Supervening impossibility of performance
- 4 *Mora creditoris*
- 5 Repudiation (2)

VRAAG 4

Die reël betrokke by u antwoord op vraag 3 is 'n uitdrukking van 'n algemene kontraktuele beginsel wat van toepassing op alle kontrakte is nie net die huurkontrak nie. Wat is die reël?

- 1 **Positiewe wanprestasie.**
- 2 ***Mora debitoris.***
- 3 **Ontmoontlikwording van prestasie.**
- 4 ***Mora creditoris.***
- 5 **Repudiasie.** (2)

[TURN OVER]
[BLAAI OM]

QUESTION 5

T leases business premises from L for the purpose of running a casino, which is prohibited by legislation. The rent is R100 000 per month payable in advance, and in addition T is required to pay an exorbitant deposit of R1 000 000 upon the signing of the agreement. T proceeds to spend a further R1 000 000 decorating the premises and, cash-strapped, he opens the casino before a gambling license has been granted to him. Within a week the police close down the casino for being an illegal gambling house and subsequently T's application for a gambling license is also turned down. T wants his first month's rent and deposit returned as well as compensation for the improvements he effected to the property. L refuses to pay T a cent and avers that the contract is completely valid. Which rule prohibits either of the parties from instituting an action based on the contract?

- 1 *Supervening impossibility of performance*
- 2 *Impossibility of performance*
- 3 *Ex turpi causa non oritur actio.*
- 4 *In pari delicto*
- 5 *Positive malperformance* (2)

VRAAG 5

H huur 'n besigheldperseel van V vir doeleindes van die bedryf van 'n casino wat in stryd is met wetgewing. Die huur is R100 000 per maand vooruitbetaalbaar en H moet ook nog 'n buitensporige deposito van R1 000 000 betaal by ondertekening van die ooreenkoms. H gaan voort om 'n verdere R1 000 000 te spandeer ter versiering van die perseel en aangesien hy kort van geld is maak hy die casino oop voordat 'n dobbellisensie aan hom toegestaan is. Binne 'n week sluit die polisie die casino synde 'n onwettige dobbelhuis en daarna word H se aansoek om 'n dobbellisensie ook nie toegestaan nie. H wil sy eerste maand se huur en deposito terug hê asook vergoeding vir die verbeterings wat hy op die perseel aangebring het. V weier om vir H 'n sent te betaal en beweer dat die kontrak ten volle geldig is. Watter reël verbied die instel van 'n aksie deur enigeen van die partye op grond van die kontrak?

- 1 *Onmoontlikwording van prestasie.*
- 2 *Onmoontlikheid van prestasie.*
- 3 *Ex turpi causa non oritur actio.*
- 4 *In pari delicto.*
- 5 *Positiewe wanprestasie.* (2)

[TURN OVER]
[BLAAI OM]

QUESTION 6

Paulus leases Maphela's farm for one year for R10 000 per month. Paulus permanently stays on the farm. Which goods are **NOT** subject to Maphela's tacit hypothec?

- 1 Paulus's money in the safe in the farmhouse
- 2 Paulus's furniture in the farm house where Paulus stays
- 3 The horse which Paulus's brother lent to Paulus for use while Paulus is on the farm
- 4 The cow hides which Paulus's sister stored in the shed on the farm while she is at university
- 5 The furniture of Paulus's subtenant who leases the cottage on the farm from Paulus until Paulus's lease expires, and who is in arrears with his rent (2)

VRAAG 6

Paulus huur Maphela se plaas vir een jaar teen R10 000 per maand. Paulus bly permanent op die plaas. Watter goedere is **NIE** onderworpe aan Maphela se stilswyende hipoteek **NIE**?

- 1 Paulus se geld in die kluis in die plaashuis.
- 2 Paulus se meubels in die plaashuis waar Paulus bly.
- 3 Die perd wat Paulus se broer aan Paulus geleen het om te gebruik terwyl Paulus op die plaas is.
- 4 Die koei velle wat Paulus se suster in die skuur op die plaas gestoor het terwyl sy op universiteit is.
- 5 Die meubels van Paulus se onderhuurder wat die kothuis op die plaas van Paulus huur tot Paulus se huur verstryk, en wat agterstallig is met sy huur. (2)

[TURN OVER]
[BLAAI OM]

QUESTION 7

Christian leases his house to Celia for R15 000 per month. The rental includes payment in respect of water and electricity consumption. The power supply to the house is cut off because Christian did not pay the account in respect of water and electricity. At the end of the month, Celia refuses to pay the rent. She alleges that she has suffered damage because all the meat in her freezer was spoiled when the power supply was cut off. Which **ONE** of the following statements is **INCORRECT**?

- 1 Celia is liable for the rent until she vacates the property
- 2 Celia is entitled to claim a reduction in the rent
- 3 Christian is liable for the damages suffered by Celia when the meat was spoiled
- 4 Christian is entitled to summarily sell any movable property in the house in order to recover the outstanding rent
- 5 Christian must replace the meat that Celia lost (2)

VRAAG 7

Christian verhuur sy woonhuis aan Celia teen R15 000 per maand, wat betaling ten aansien van die verbruik van water en elektrisiteit insluit. Die elektrisiteitstoevoer na die huis word afgesny omdat Christian nie die rekening ten aansien van water en elektrisiteit betaal het nie. Celia weier om die huurgeld aan die einde van die maand te betaal. Sy beweer dat sy skade gely het omdat al die vleis in haar vrieskas bederf het. Watter EEN van die volgende stellings is **VERKEERD**?

- 1 Celia is aanspreeklik vir die huurgeld totdat sy die huis ontruim.
- 2 Celia is geregtig daarop om 'n vermindering in die huurgeld te eis.
- 3 Christian is aanspreeklik vir die skade wat Celia gely het weens die feit dat die vleis bederf is.
- 4 Christian is daarop geregtig om enige roerende goed in die huis summier te verkoop ten einde die agterstallige huurgeld te verhaal.
- 5 Christian moet die vleis wat Celia verloor het vervang. (2)

[TURN OVER]
[BLAAI OM]

QUESTION 8

Vereniki leases a swimming pool from Lorraine from where she plans to run her new swimming school. A month after moving into the premises, Vereniki notices large diagonal cracks appearing in the paving around the pool. Which **ONE** of the following statements is **CORRECT**?

- 1 Vereniki is, as lessee, responsible for having the paving repaired, because there was nothing wrong with the paving when she moved in.
- 2 Lorraine will not be liable for any damages Vereniki might suffer, because she delivered the swimming pool and paving in a condition fit for the purpose for which it was leased.
- 3 Vereniki has, as lessee, a right to the delivery and maintenance of the swimming pool paving in a condition which is reasonably fit for the purpose for which it was leased.
- 4 Vereniki will only be liable for paying rent when the swimming pool paving is in a condition fit for the purpose for which it was leased.
- 5 Vereniki should have made it clear that she wanted a swimming pool with paving without cracks at the time of conclusion of the contract. (2)

VRAAG 8

Vereniki huur 'n swembad by Lorraine, vanwaar sy beoog om 'n swemschool te bedryf. 'n Maand nadat sy swembad begin gebruik het, merk Vereniki groot krake in die plaveisel om die swembad. Watter **EEN** van die volgende stellings is **KORREK**?

- 1 Vereniki is as huurder verantwoordelik vir die herstel van die plaveisel, aangesien daar niks met die plaveisel verkeerd was toe sy ingetrek het nie.
- 2 Lorraine is nie verantwoordelik vir enige skade wat Vereniki moontlik kan ly nie, aangesien sy die swembad en plaveisel gelewer het in 'n toestand geskik vir die doel waarvoor dit verhuur is.
- 3 Vereniki het as huurder 'n reg dat die swembad se plaveisel gelewer en onderhou word in 'n toestand wat redelik geskik is vir die doel waarvoor dit gehuur is.
- 4 Vereniki sal eers wanneer die swembad se plaveisel weer in 'n geskikte toestand is vir die doel waarvoor dit verhuur is, aanspreeklik wees vir huurgeld.
- 5 Vereniki moes tydens kontraksluiting dit duidelik gestel het dat sy 'n swembad met plaveisel sonder krake wou hê. (2)

[TURN OVER]
[BLAAI OM]

QUESTION 9

In terms of article 12 of the *Placaat* of Holland of September 1658 a tenant of rural property who effects improvements to the property without the owner's permission

- 1 may claim compensation for necessary improvements
- 2 may claim compensation for useful improvements
- 3 may claim compensation for necessary improvements and useful improvements, but not luxurious improvements
- 4 may remove the improvement irrespective of its nature **before** expiration of the lease
- 5 may remove the improvement irrespective of its nature **after** expiration of the lease. (2)

VRAAG 9

Ingevolge artikel 12 van die *Placaat* van Holland van September 1658 kan die huurder van landelike grond wat verbeterings op die eiendom aanbring sonder die eienaar se toestemming:

- 1 vergoeding eis vir noodsaaklike verbeterings.
- 2 vergoeding eis vir nuttige verbeterings.
- 3 vergoeding eis vir beide noodsaaklike as nuttige verbeterings, maar nie vir luukse verbeterings nie.
- 4 die verbetering ongeag die aard daarvan voor verstryking van die huurkontrak verwyder.
- 5 die verbetering ongeag die aard daarvan na verstryking van die huurkontrak verwyder. (2)

[TURN OVER]
[BLAAI OM]

QUESTION 10

According to which decision does a lessee of immovable property automatically retain a right to occupation upon a change in ownership of the property?

- 1 *De Jager v Sisana* 1930 AD 71
- 2 *Genac Properties JMB (Pty) Ltd v NBC Administrators CC* 1992 (1) SA 566 (A)
- 3 *Weilbach v Grobler* 1980 (3) SA 998 (O)
- 4 *Genna-Wae Properties (Pty) Ltd v Medio-Tronics (Natal) (Pty) Ltd* 1995 (2) SA 926 (A)
- 5 *Ndlovu v Ngcobo, Bekker v Jika* 2003 (1) SA 113 (SCA) (2)

VRAAG 10

Ingevolge watter beslissing behou die huurder van onroerende eiendom automaties 'n reg tot okkupasie wanneer daar 'n verandering in eiendomsreg ten opsigte van die eiendom plaasvind?

- 1 *De Jager v Sisana* 1930 AA 71.
- 2 *Genac Properties JMB (Pty) Ltd v NBC Administrators CC* 1992 (1) SA 566 (A).
- 3 *Weilbach v Grobler* 1980 (3) SA 998 (O).
- 4 *Genna-Wae Properties (Pty) Ltd v Medio-Tronics (Natal) (Pty) Ltd* 1995 (2) SA 926 (A).
- 5 *Ndlovu v Ngcobo, Bekker v Jika* 2003 (1) SA 113 (HHA). (2)

[TURN OVER]
[BLAAI OM]

**CONTRACT OF SALE
KOOPKONTRAK****QUESTION 11**

Which **ONE** of the following statements is **CORRECT**?

- 1 The delivery of a thing and the payment of the price are the two *essentialia* of a contract of sale
- 2 The undertaking to deliver a thing by the owner and the undertaking to pay a price by the purchaser are the two *essentialia* of a contract of sale
- 3 A valid contract of sale only comes into being once the contract of sale is *perfecta*
- 4 A valid contract only comes into being once the purchase price is paid and the thing sold is delivered
- 5 None of the above (2)

VRAAG 11

Watter **EEN** van die volgende stellings is **KORREK**?

- 1 Die twee *essentialia* van 'n koopkontrak is die lewering van 'n saak en die betaling van 'n prys.
- 2 Die twee *essentialia* van 'n koopkontrak is die onderneming deur die eienaar om 'n saak te lewer en die onderneming om 'n prys te betaal deur die koper.
- 3 'n Geldige koopkontrak kom slegs tot stand wanneer die koopkontrak *perfecta* is.
- 4 'n Geldige kontrak kom eers tot stand sodra die koopprys betaal en die saak gelewer is.
- 5 Geeneen van bogenoemde nie. (2)

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

QUESTION 12

John orders a dining room suite from Mike for R15 000. The parties agree that Mike will make the suite from stinkwood. This is an example of

- 1 A sale of a group of things at a price per unit (*emptio ad mensuram*)
- 2 A sale of a future thing (*emptio rei speratae*)
- 3 A sale of a pure chance (*emptio spei*)
- 4 A contract for the letting and hiring of work (*locatio conductio operis*)
- 5 A contract for the hiring of services (*locatio conductio operarum*) (2)

VRAAG 12

Johannes bestel 'n eetkamerstel van Mike vir R15 000. Die partye kom ooreen dat Mike die stel sal maak van stinkhout. Hierdie is 'n voorbeeld van:

- 1 'n koopkontrak van 'n groep sake teen 'n prys (*emptio ad mensuram*).
- 2 'n Koopkontrak van 'n toekomstige saak (*emptio rei speratae*).
- 3 'n Koopkontrak van 'n verwagting (*emptio spei*).
- 4 'n Kontrak vir die huur en verhuur van werk (*locatio conductio operis*).
- 5 'n Kontrak vir die huur van dienste (*locatio conductio operarum*). (2)

QUESTION 13

John orders a suit from his tailor, who quotes John an amount of R3 000 to make the suit from wool that John will especially import for the purpose. This is an example of

- 1 A sale of a group of things at a price per unit (*emptio ad mensuram*).
- 2 A sale of a future thing (*emptio rei speratae*)
- 3 A sale of a pure chance (*emptio spei*)
- 4 A contract for the letting and hiring of work (*locatio conductio operis*)
- 5 A contract for the hiring of services (*locatio conductio operarum*) (2)

[TURN OVER]
[BLAAI OM]

VRAAG 13

Johannes bestel 'n pak by sy kleremaker wat Johannes R3 000 kwoteer om die pak te maak van wol wat Johannes spesiaal vir hierdie doel sal invoer. Hierdie is 'n voorbeeld van:

- 1 'n Koopkontrak van 'n groep sake teen 'n prys (*emptio ad mensuram*).
- 2 'n Koopkontrak van 'n toekomstige saak (*emptio rei speratae*).
- 3 'n Koopkontrak van 'n verwagting (*emptio spei*).
- 4 'n Kontrak vir die huur en verhuur van werk (*locatio conductio operis*).
- 5 'n Kontrak vir die huur van dienste (*locatio conductio operarum*). (2)

QUESTION 14

Which case would you consult to determine which type(s) of contract John concluded in questions 12 and 13?

- 1 *Minister van Landbou Tegniese Dienste v Scholtz* 1971 (3) SA 188 (A)
- 2 *Kroonstad Westelike Boere-Ko-operatiewe Vereniging Bpk v Botha and Another* 1964 (3) SA 561 (A)
- 3 *SA Wood Turning Mills (Pty) Ltd v Price Bros (Pty) Ltd* 1962 (4) SA 263 (T)
- 4 *Dibley v Furter* 1961 (4) SA 73 (C)
- 5 *Phame (Pty) Ltd v Paizes* 1973 (3) SA 397 (A) (2)

[TURN OVER]
[BLAAI OM]

VRAAG 14

Watter saak sal u raadpleeg om vas te stel watter soort kontrak(te) Johannes in vrae 12 en 13 gesluit het?

- 1 *Minister van Landbou Tegniese Dienste v Scholtz* 1971 (3) SA 188 (A).**
- 2 *Kroonstad Westelike Boere-Ko-operatiewe Vereniging Bpk v Botha and Another* 1964 (3) SA 561 (A).**
- 3 *SA Wood Turning Mills (Pty) Ltd v Price Bros (Pty) Ltd* 1962 (4) SA 263 (T).**
- 4 *Dibley v Furter* 1961 (4) SA 73 (K).**
- 5 *Phame (Pty) Ltd v Paizes* 1973 (3) SA 397 (A). (2)**

QUESTION 15

Which **ONE** of the following statements on the Alienation of Land Act 68 of 1981 is **CORRECT**?

- 1 The doctrine of the undisclosed principal finds application in regard to the alienation of land**
- 2 When a company acts through its organs in purchasing land, the organs act as agents of the company and require written authority to act on behalf of the company.**
- 3 Section 2 of the Act does not apply to sales of land by public auction.**
- 4 Waiver of a right in a deed of alienation is a variation of the deed and must be in writing**
- 5 A cancelled deed of alienation may not be informally revived by the parties, that is to say it must be in writing (2)**

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

VRAAG 15

Watter EEN van die volgende stellings oor die Wet op die Vervreemding van Grond 68 van 1981 is KORREK?

- 1 Die leerstuk van die ongeopenbaarde prinsipaal vind toepassing by vervreemding van grond.**
- 2 Wanneer 'n maatskappy deur sy organe handel om grond te koop, handel die organe as agente van die maatskappy en benodig skriftelike magtiging om namens die maatskappy op te tree.**
- 3 Artikel 2 van die Wet is nie van toepassing op die verkoop van grond deur openbare veiling nie.**
- 4 Afstanddoening van 'n reg verkry uit 'n vervreemdingsakte is 'n wysiging van die akte en moet op skrif wees.**
- 5 'n Gekanselleerde vervreemdingsakte kan nie op informele wyse herleef nie; dit wil sê dit moet skriftelik geskied.** (2)

QUESTION 16

Which statement regarding Section 29(A) of the Alienation of Land Act 68 of 1981 is INCORRECT?

- 1 Section 29(A) does not apply where the purchase price of the land, or the price offered for the land, exceeds R250 000, or such higher amount as the Minister may prescribe**
- 2 Section 29(A) does not apply where the purchaser or prospective purchaser is a trust or a person other than a natural person**
- 3 Section 29(A) does not apply where the purchaser has purchased the land at a publicly advertised auction**
- 4 Section 29(A) does not apply where the purchaser and seller previously entered into a deed of alienation in respect of the same land**
- 5 Section 29(A) does not apply where the purchaser purchases the land by exercising an option which was open for exercising for a period of at least 5 days.** (2)

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

VRAAG 16

Watter EEN van die volgende stellings oor artikel 29(A) van die Wet op die Vervreemding van Grond 68 van 1981 is VERKEERD?

- 1 Artikel 29(A) is nie beskikbaar nie waar die koopprys van die grond, of die prys aangebied vir die grond, R250 000 of die groter bedrag wat die Minister voorskryf, oorskry.**
- 2 Artikel 29(A) is nie beskikbaar nie waar die koper of voornemede koper 'n trust of 'n ander persoon as a natuurlike persoon is.**
- 3 Artikel 29(A) is nie beskikbaar nie waar die koper die grond op 'n openbaar geadverteerde veiling gekoop het.**
- 4 Artikel 29(A) is nie beskikbaar nie waar die verkoper en koper vantevore 'n vervreemdingsakte ten opsigte van dieselfde grond aangegaan het.**
- 5 Artikel 29(A) is nie beskikbaar nie waar die koper die grond koop deur die uitoefening van 'n opsie wat minstens vir 'n tydperk van 5 dae oop was vir uitoefening.** (2)

THE FOLLOWING FACTS APPLY TO QUESTIONS 17-19

John sells his motor vehicle to Mary for R50 000, to be delivered to her at the end of the month. The agreement is subject to Mary obtaining a loan from her bank in the amount of the purchase price. While John and Mary await the bank's decision the vehicle is damaged in a hail storm when John is driving home with it.

DIE VOLGENDE FEITE HET BETREKKING OP VRAE 17-19:

Johan verkoop sy motorvoertuig aan Marie vir R50 000, wat aan die einde van die maand aan haar gelewer sal word. Die ooreenkoms is onderhewig aan die verkryging van Marie van 'n lening van haar bank vir die koopsom. Terwyl Johan en Marie wag vir die bank se besluit word die voertuig in 'n haelbui beskadig wanneer Johan daarmee huis toe ry.

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

QUESTION 17

Which **ONE** of the following statements is **CORRECT**?

- 1 The sale is **not** *perfecta* because it is subject to a suspensive condition
- 2 The sale **is** *perfecta* even though it is subject to a suspensive condition
- 3 The sale is **not** *perfecta* because it is subject to a resolutive condition.
- 4 The sale **is** *perfecta* even though it is subject to a resolutive condition
- 5 None of the above

(2)

VRAAG 17

Watter **EEN** van die volgende stellings is **KORREK**?

- 1 Die koop is nie *perfecta* nie omdat dit aan 'n opskortende voorwaarde onderhewig is.
- 2 Die koop is *perfecta* alhoewel dit aan 'n opskortende voorwaarde onderhewig is.
- 3 Die koop is nie *perfecta* nie omdat dit aan 'n ontbindende voorwaarde onderhewig is.
- 4 Die koop is *perfecta* alhoewel dit aan 'n ontbindende voorwaarde onderhewig is.
- 5 Geeneen van bogenoemde nie.

(2)

QUESTION 18

What would the consequence be if Mary obtains the loan after the car was damaged?

- 1 Mary bore the risk of accidental destruction until the loan was granted
- 2 John bore the risk of accidental destruction until the loan was granted
- 3 Mary bore the risk of accidental destruction only after the loan was granted
- 4 John bore the risk of accidental destruction only after the loan was granted
- 5 None of the above

(2)

[TURN OVER]
[BLAAI OM]

VRAAG 18

Wat sou die gevolg wees indien Marie wel die lening kry nadat die kar beskadig is?

- 1 Marie het die risiko vir toevallige beskadiging gedra totdat die lening goedkeur is.**
- 2 Johann het die risiko vir toevallige beskadiging gedra totdat die lening goedkeur is.**
- 3 Marie het die risiko vir toevallige beskadiging gedra slegs nadat die lening goedgekeur is.**
- 4 Johann het die risiko vir toevallige beskadiging gedra slegs nadat die lening goedgekeur is.**
- 5 Geeneen van bogenoemde nie. (2)**

QUESTION 19

If the Consumer Protection Act 68 of 2008 applied to the facts when would nsk have passed to Mary?

- 1 When John tenders delivery of the vehicle**
- 2 When John delivers the vehicle at Mary's house**
- 3 When John delivers the vehicle at Mary's house and has taken reasonable steps to confirm delivery with her**
- 4 When it comes to Mary's attention that the vehicle has been delivered**
- 5 When Mary accepts delivery of the vehicle (2)**

[TURN OVER]
[BLAAI OM]

VRAAG 19

Indien die Wet op Verbruikersbeskerming 68 van 2008 op die feite van toepassing was, wanneer sou risiko op Marie oorgegaan het?

- 1 Wanneer Johan lewering van die voertuig tender.**
- 2 Wanneer Johan die voertuig aflewer by Marie se huis.**
- 3 Wanneer Johan die voertuig by Marie se huis aflewer en ook redelike stappe geneem het om aflewering met haar bevestig.**
- 4 Wanneer Marie kennis neem dat aflewering plaasgevind het.**
- 5 Wanneer Marie aflewering van die voertuig aanvaar. (2)**

QUESTION 20

In *Bayer South Africa (Pty) Ltd v Frost* 1991 (4) SA 559 (A) the plaintiff succeeded on the basis of

- 1 the aedilitian remedies
- 2 the *actio empti*
- 3 breach of contract by way of positive malperformance
- 4 negligent misrepresentation
- 5 fraudulent misrepresentation (2)

VRAAG 20

In *Bayer South Africa (Pty) Ltd v Frost* 1991 (4) SA 559 (A) het die eiser geslaag met:

- 1 die aedilisiere remedies.**
- 2 die *actio empti*.**
- 3 kontrakbreuk by wyse van positiewe wanprestasie.**
- 4 nalatige wanvoorstelling.**
- 5 bedrieglike wanvoorstelling. (2)**

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

THE FOLLOWING FACTS APPLY TO QUESTIONS 21-23

John buys a Jeep from AZ Motors for R150 000. A Jeep is a four wheel drive vehicle. During the negotiations, John tells the salesman at AZ motors that he wants to use the Jeep to plough the land on his plot, but the salesman says nothing, even though he knows otherwise, because he wants to sell the Jeep and earn commission. The contractual document which the parties sign contains a *voetstoots* clause. John pays the price and drives away with the Jeep. John finds out later that this Jeep (and any other jeep) cannot plough at all.

DIE VOLGENDE FEITE HET BETREKKING OP VRAE 21-23:

Johannes koop 'n Jeep van AX Motors vir R150 000. 'n Jeep is 'n vierwiel aangedrewe voertuig. Tydens die onderhandelinge vertel Johannes vir die verkoopsman by AZ Motors dat hy die Jeep wil gebruik om die lande op sy kleinhoewe te ploeg maar die verkoopsman sê niks nie, alhoewel hy die teendeel weet, omdat hy die voertuig wil verkoop en kommissie verdien. Die kontraktuele dokument wat die partye onderteken bevat 'n *voetstoots* klousule. Johannes betaal die prys en ry weg met die Jeep. Johannes vind later uit dat hierdie Jeep (en alle ander jeeps) glad nie kan ploeg nie.

QUESTION 21

On what ground(s) does John have a claim against AZ Motors?

- (a) An intentional misrepresentation
- (b) A negligent misrepresentation
- (c) An innocent misrepresentation
- (d) *A dictum et promissum*
- (e) Liability for latent defects

1 (a)

2 (b)

3 (a) and (b)

4 (a) and (e)

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

(2)

[TURN OVER]
[BLAAI OM]

VRAAG 21

Op watter grond(e) het Johannes 'n eis teen AZ Motors?

- (a) 'n Opsetlike wanvoorstelling.**
- (b) 'n Nalatige wanvoorstelling.**
- (c) 'n Onskuldige wanvoorstelling.**
- (d) 'n *Dictum et promissum*.**
- (e) Aanspreeklikheid vir verborge gebreke.**

1 (a).

2 (b).

3 (a) en (b).

4 (a) en (e).

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

(2)

QUESTION 22

Which case(s) would you consult to determine the answer to question 21?

- (a) *Van der Merwe v Meades* 1991 (2) SA 1 (A).**
- (b) *York and Co (Pty) Ltd v Jones* 1962 (1) SA 65 (SR)**
- (c) *Dibley v Furter* 1961 (4) SA 73 (C)**
- (d) *Lammers and Lammers v Giovannoni* 1955 (3) SA 385 (A)**
- (e) *Bayer South Africa (Pty) Ltd v Frost* 1991 (4) SA 559 (A)**

1 (a) and (c)

2 (b) and (c)

3 (b) and (d)

4 (a), (b) and (c)

5 (a), (c) and (e)

(2)

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

VRAAG 22

Watter saak (sake) sal u raadpleeg om die antwoord op vraag 21 te bepaal?

- (a) *Van der Merwe v Meades* 1991 (2) SA 1 (A).**
- (b) *York and Co (Pty) Ltd v Jones* 1962 (1) SA 65 (SR).**
- (c) *Dibley v Furter* 1961 (4) SA 73 (K).**
- (d) *Lammers and Lammers v Giovannoni* 1955 (3) SA 385 (A).**
- (e) *Bayer South Africa (Pty) Ltd v Frost* 1991 (4) SA 559 (A).**

- 1 (a) en (c).**
- 2 (b) en (c).**
- 3 (b) en (d).**
- 4 (a), (b) en (c).**
- 5 (a), (c) en (e).**

(2)**QUESTION 23**

What does the *voetstoots* clause protect the seller against?

- (a) Latent defects**
- (b) Positive negligent misrepresentation**
- (c) Positive innocent misrepresentation**
- (d) *A dictum et promissum***
- (e) Breach of warranty**

- 1 (a)**
- 2 (a) and (e)**
- 3 (b) and (d)**
- 4 (a), (b) and (c)**
- 5 (a), (b), (c) and (d)**

(2)**[TURN OVER]
[BLAAI OM]**

VRAAG 23

Wat beskerm die voetsootsklousule die verkoper teen?

- (a) Verborgte gebreke.**
- (b) Positiewe nalatige wanvoorstelling.**
- (c) Positiewe onskuldige wanvoorstelling.**
- (d) 'n *Dictum et promissum*.**
- (e) Waarborgbreuk.**

1 (a).

2 (a) en (e).

3 (b) en (d).

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

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

(2)

QUESTION 24

In which case did the court decide that the aedilician remedies were **NOT** available to the seller for *dicta et promissa* made by the purchaser regarding the trade-in?

1 *Janse van Rensburg v Grieve Trust CC* 2000 (1) SA 1315 (C)

2 *Mountbatten Investments (Pty) Ltd v Mahomed* 1989 (1) SA 172 (D)

3 *Phame (Pty) Ltd v Paizes* 1973 (3) SA 387 (A)

4 *Holmdene Brckworks (Pty) Ltd v Roberts Construction Co Ltd* 1977 (3) 670 (A)

5 *Kroonstad Westelike Boere-Ko-operatiewe Vereniging Bpk v Botha* 1964 (3) SA 561

(A)

(2)

[TURN OVER]
[BLAAI OM]

VRAAG 24

In watter saak is beslis dat die aedilisiere aksies Nie beskikbaar was aan die verkoper vir *dicta et promissa* gemaak deur die koper ten aansien van die ingeruilde saak NIE?

- 1 ***Janse van Rensburg v Grieve Trust CC 2000 (1) SA 1315 (K).***
- 2 ***Mountbatten Investments (Pty) Ltd v Mahomed 1989 (1) SA 172 (D).***
- 3 ***Phame (Pty) Ltd v Paizes 1973 (3) SA 387 (A).***
- 4 ***Holmdene Brickworks (Pty) Ltd v Roberts Construction Co Ltd 1977 (3) 670 (A).***
- 5 ***Kroonstad Westelike Boere-Ko-operatiewe Vereniging Bpk v Botha 1964 (3) SA 561 (A).*** (2)

QUESTION 25

Which **ONE** of the following statements is **CORRECT**?

- 1 The causal system of transfer of ownership applies in South Africa
- 2 A purchaser who neglects to take delivery of the thing sold when he is obliged to do so falls into *mora creditoris*
- 3 Once the contract of sale is *perfecta*, the purchaser carries the risk of any accidental misfortune which may befall the thing sold, but any benefit accruing to the thing befalls the seller
- 4 Modern authorities concur that individualization of the thing sold should be bilateral.
- 5 Only the owner of a thing may validly sell it (2)

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

VRAAG 25

Watter EEN van die volgende stellings is KORREK?

- 1 Die kousale stelsel van eiendomsoordrag geld in Suid-Afrika.**
- 2 'n Koper wat versuim om die koopsaak in ontvangs te neem wanneer hy verplig is om dit te doen, verval in *mora creditoris*.**
- 3 Sodra die koopkontrak *perfecta is*, gaan die risiko vir toevallige onheil wat die saak tref oor op die koper, maar enige voordeel wat die saak toeval kom die verkoper toe.**
- 4 Die moderne gesag is dit eens dat individualisering van die koopsaak tweesydig moet wees.**
- 5 Slegs die eienaar van 'n saak kan dit geldiglik verkoop.**

(2)
[50]

[TURN OVER]
[BLAAI OM]

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

NB ANSWER THESE QUESTIONS IN THE SPACES BELOW REFER TO RELEVANT CASE LAW

NB: BEANTWOORD HIERDIE VRAE IN DIE SPASIES HIERONDER. VERWYS NA RELEVANTE REGSPRAAK.

QUESTION 1 / VRAAG 1

T rents premises in a shopping mall from L and runs a small coffee shop. The shop does very well because many customers pass by it on the way to do shopping at a Woolworths store, and tend to stop for a quick cup of coffee and something to nibble. However, Woolworths wants to expand its premises, but to do so, L diverts the passage to Woolworths so that its customers must enter via another passage. T's shop is now located at the end of a dead end passage. Soon T's coffee shop begins to run at a loss because no customers now walk by. Does T have any remedy against the L? Discuss fully with reference to case law. (10)

T huur 'n perseel in 'n winkelsentrum van L en bedryf 'n klein koffiekroeg. Die winkel doen goed want heelwat klante loop verby dit op pad om inkopies by 'n Woolworths winkel te doen, en neig om vinnig in te loer vir 'n koppie koffie en iets om aan te peusel. Woolworths will egter hulle perseel uitbrei, maar om dit te doen, moet L die gang na Woolworths herlei sodat laasgenoemde se klante nou deur 'n ander ingang moet inkom. T se koffiekroeg is nou geleë aan die einde van 'n doodloop gang. Binnekort begin T se koffiekroeg 'n verlies ly want geen klante loop nou meer verby nie. Het T enige remedie teen L? Bespreek volledig met verwysing na regspraak. (10)

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

..

.

. . .

.

.

....

.

. . . .

.

. . .

.

....

.

.

. . .

..

..

[TURN OVER]
[BLAAI OM]

[TURN OVER]
[BLAAI OM]

[10]

QUESTION 3 / VRAAG 3

S sells his residential house to P for R1 000 000. The deed of sale, which complies with the formal requirements for the validity of such contracts, contains a *voetstoots* clause and further provides that P may take occupation on a specified date pending transfer of the property. The document does not specify who must pay for transfer. P cannot take occupation of the house on the stipulated date because tenants of S still occupy the premises, although their lease has expired. S also refuses to sign the transfer documents because he says P must pay the costs of transfer. Discuss P's legal position with reference to case law. (10)

V verkoop sy woonhuis aan K vir R1 000 000. Die koopakte, wat voldoen aan die formele vereistes vir die geldigheid van sodanige kontrakte, bevat 'n voetstootsklausule en bepaal verder dat K okkupasie op 'n bepaalde datum hangende oordrag van die eiendom kan neem. Die dokument swyg oor wie die kostes van oordrag moet betaal. K kan nie okkupasie van die huis neem op die bepaalde datum nie omdat huurders van V steeds die huis beset, alhoewel hulle huurkontrak verstryk het. V weier ook om die oordragsdokumente te teken want hy beweer dat K die kostes van oordrag moet betaal. Bespreek K se regsposisie met verwysing na regspraak. (10)

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

[TURN OVER]
[BLAAI OM]

[10]

[TURN OVER]
[BLAAI OM]

[Faint, illegible text consisting of scattered dots and lines, likely representing a scan of a document page.]

[10]

[TURN OVER]
[BLAAI OM]

QUESTION 5 / VRAAG 5

P buys a meat pie for R15,00 from S, the owner of "Pies in the Sky." S buys the pies from "Dodgy Pies Inc" and merely heats them on the premises. P contracted food poisoning previously from eating a pie and questions S as to the quality of the pies. S assures P that he is an expert when it comes to pies and that the pies that he sells are of a superior quality. P, however, contracts food poisoning from eating the pie and has to receive medical treatment in hospital. Her medical bill amounts to R30 000. Advise P. (10)

K koop 'n vleispastei van V, die eienaar van "Pies in the Sky" vir R15,00. V koop die pasteie van "Dodgy Pies Ing" en verhit hulle slegs op die perseel. K het voorheen voedselvergiftiging opgedoen toe sy 'n pastei geëet het en ondervra S met betrekking tot die kwaliteit van die pasteie. V verseker vir K dat hy 'n deskundige wat betref pasteie is en dat sy pasteie van hoogstaande gehalte is. K doen wel voedselvergiftiging op van die pastei en moet mediese behandeling in die hospitaal ontvang. Haar mediese onkoste beloop R30 000. Adviseer K. (10)

[TURN OVER]
[BLAAI OM]

