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Revision Questions & **Memo**

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CHAPTER 1

Question 1

Which ONE of the following is regarded in the South African law as a source of Roman-Dutch law:

1. Law of the Twelve Tables
2. *Institutions*
3. *Corpus Iuris Civilis*
4. ***Commentarius ad Pandectas***

Question 2

Which ONE of the following is a principle that CANNOT be associated with the doctrine of *stare decisis*?

1. a High Court is bound by its own decisions until they are overruled by a superior court.
2. a High Court is bound by the decision of a court of concurrent status within its own area of jurisdiction.
3. **a High Court, depending on how it is constituted, is bound by a decision of the Supreme Court of Appeal.**
4. a High Court is not bound to follow the decision of a High Court of a different area of jurisdiction.

Question 3

Belouxi is a coastal town situated on a deep bay. Whales migrate to Belouxi Bay annually to breed. This natural phenomenon has become a major tourist attraction. During the breeding season the whales are very sensitive to light and sound. The Belouxi community has always taken care to keep the noise level down in the bay area during the breeding season. Max decides to open a night club in the town. The community wants to close down the night club because they are afraid that the night club's pulsating music and flickering lights will discourage the whales from migrating to Belouxi Bay. Max avers that no legislation exists which restricts "noisy" business activities in the Belouxi Bay area.

Consider the following:

The court will acknowledge the validity of the Belouxi community's customs if it can, amongst other things, indicate that the prohibition on noise ...

- A. has existed for a long time.
- B. has been put in writing.
- C. will encourage the breeding of whales.
- D. is certain and clear.

Which of the above is/are CORRECT?

1. only C and D are correct
2. only A, B and D are correct
3. **only A and D are correct**
4. all of the above are correct

Question 4

Which ONE of the following statements is CORRECT?

In *Varvarigos v Fidelity Bank Ltd* 1989 (4) SA 384 (W) ...

1. Fidelity Bank Ltd is the appellant.
2. Varvarigos is the defendant.
3. **1989 is the year in which the case was reported.**
4. SA stands for the country in which the case was heard.
5. 384 is the number of the case.

Question 5

Indicate the INCORRECT statement:

1. The Supreme Court of Appeal, which usually sits in Bloemfontein, has unlimited jurisdiction to hear appeals in civil and criminal proceedings.
2. **A case relating to the interpretation of a will may be heard by a magistrate's court.**
3. The Constitutional Court has the final say in all matters relating to the interpretation, protection and enforcement of the provisions of the Constitution.
4. The Supreme Court of Appeal is a court of appeal for the High Courts.

Question 6

Which ONE of the following legal systems is the basis of the South African legal system?

1. Dutch law.
2. Roman law.
3. English law.
4. **Roman-Dutch law**

Question 7

Which ONE of the following is NOT an authoritative source of South African Law:

1. South African case law.
2. *Corpus Iuris Civilis*.
3. **English case law.**
4. The Constitution of the Republic of South Africa 108 of 1996.

5. Judgments of the Dutch courts before 1652.

Question 8

Which ONE of the following statements regarding the *stare decisis* doctrine is INCORRECT?

1. A High Court, whether it is a full bench consisting of three judges, a bench of two judges or of only one, is bound by the decisions of the Supreme Court of Appeal.
2. One High Court is not bound to follow the decisions of a High Court from another area of jurisdiction.
3. Within the area of jurisdiction of one High Court, a bench of two judges is bound by a decision of the full bench of the same Court.
4. **If the judgments of the High Courts are conflicting, a magistrate's court can follow any decision he deems to be right irrespective of the jurisdiction in which he falls.**

Question 9

Which ONE of the following is NOT a requirement for a custom to be recognised as a legal rule?

1. It must have existed for a long time and be reasonable.
2. It must be generally recognised and observed by the community.
3. The contents thereof must be certain and clear.
4. **A court must have recognised the custom as a legal rule.**

Question 10

Soon after the death of multimillionaire John Deer a dispute arises regarding the validity and interpretation of his will.

Which ONE of the following courts should be approached to adjudicate the matter?

1. A magistrate's court.
2. A small claims court.
3. The Constitutional Court.
4. The Supreme Court of Appeal.
5. **A High Court.**

Question 11

Which ONE of the following officers is responsible for the issue of process, the enrolment of cases, the maintenance of records and the issuing of orders of the High Court?

1. The Clerk.
2. **The Registrar.**

3. The litigating parties themselves.
4. The Sheriff.

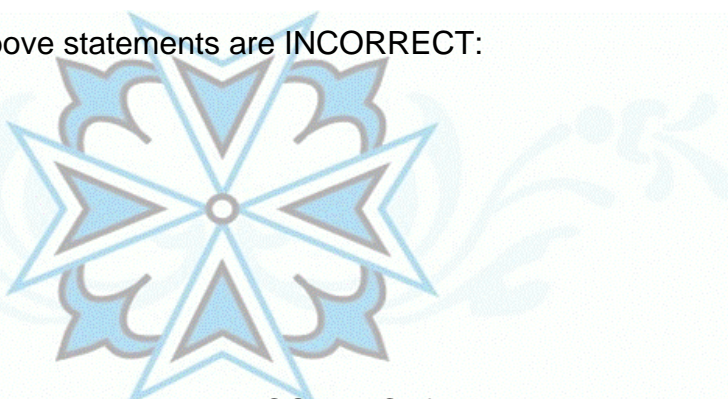
Question 12

Consider the following statements:

- a. The Supreme Court of Appeal, which usually sits in Bloemfontein, has jurisdiction to hear constitutional and other matters and is a court of appeal for the High Courts.
- b. A case relating to the interpretation of a will, will be heard by a magistrate's court.
- c. The High Courts have original jurisdiction which means that they can only hear certain matters that arise in their geographical areas of jurisdiction.
- d. The Constitutional Court has the final say in all matters relating to the interpretation, protection and enforcement of the provisions of the Constitution.
- e. The Supreme Court of Appeal is a court of appeal for the High Courts.

Indicate which of the above statements are INCORRECT:

1. **Only a, b and c.**
2. Only c, d and e.
3. Only b and d.
4. Only b and c.
5. Only a and e.



Question 13

Which ONE of the following statements is CORRECT?

1. A Magistrate's Court is bound to follow a decision of another Magistrate's Court.
2. **The Bloemfontein High Court is not bound by a decision of the Pretoria High Court.**
3. The Supreme Court of Appeal is bound by its previous judgments, even if the court is convinced that its previous decision was wrong.
4. A full bench of a High Court is bound by both the ratio decidendi and the *obiter dicta* of the Supreme Court of Appeal.

Question 14

Which court(s) has/have jurisdiction to decide whether one of the fundamental rights entrenched in the Constitution was violated in a particular case?

1. Only the Constitutional Court.
2. Only a High Court.
3. Both the Constitutional Court and the Supreme Court of Appeal.

4. **The Constitutional Court, the Supreme Court of Appeal, and a High Court.**
5. Both the Constitutional Court and a High Court.

Question 15

Mr Dube wants to sue Mrs Dube for a divorce. Which court should he approach?

1. the Supreme Court of Appeal.
2. the Small Claims Court.
3. the Magistrate's Court.
4. **the High Court.**

Question 16

Which ONE of the following sources of the law has only persuasive authority in a South African court?

1. Judgments of the Dutch courts before 1652.
2. **English law.**
3. Dutch legislation before 1652.
4. Roman law.

Question 17

Which ONE of the following phrases indicates that the court will consider its judgment?

1. *stare decisis.*
2. *obiter dictum.*
3. ***curia advisari vult.***
4. *ratio decidendi.*
5. *aliter.*

Question 18

Which ONE of the following is NOT a requirement for a customary rule to be recognised as a legal rule?

1. It must have existed for a long time and be reasonable.
2. It must be generally recognised and observed by the community.
3. The contents thereof must be certain and clear.
4. **It must have been reduced to writing.**

Question 19

Which ONE of the following is NOT an authoritative source of South African law?

1. Statute law.
2. Customary law.
3. The old authorities.
4. Judgments of the superior courts.
5. **Foreign law.**

Question 20

Which one of the following is not a source of modern South African Law?

1. Legislation;
2. Judicial Precedent;
3. Custom;
4. **Modern Text Books.**

Question 21

Which one of the following courts is a superior court of the Republic?

1. Magistrates Court.
2. Small Claims court.
3. **Supreme Court of Appeal.**
4. Income Tax Court.

Question 22

Indicate the incorrect statement:

1. Customary law consists of written rules developed from the views of the community and which are carried forward from generation to generation.
2. Common law is to a large extent based upon the writings of Roman and Dutch jurists of the seventeenth and eighteenth centuries.
3. **Modern legal textbooks have no inherent authority but may be considered by the courts to be persuasive.**
4. An Act of Parliament takes priority over all other legislation and laws including any court decision.

Question 23

Indicate the incorrect statement:

According to the doctrine of *stare decisis*:

1. Decisions of the Supreme Court of Appeal bind all divisions of the High Court as well as all inferior courts.
2. The Supreme Court of Appeal regards itself as bound by its own previous decisions unless it is convinced that its previous judgment was incorrect.

3. **The *ratio decidendi* of a case may never be departed from by a judge even when he feels that there are grounds for distinguishing the case before him.**
4. Where there is no previous Supreme Court of Appeal decision, a division of the High Court is bound by a judgment of the same division that is made up of the same number of judges or more.

Question 24

Which of the following statements is/are incorrect?

- a. The *obiter dicta* may be described as statements of law not necessary for the decision of the case in which they are made.
- b. Where there are conflicting decisions in his own area, a magistrate must follow the decision of the larger court and if the courts are of equal size, then he must follow the latest decision.
- c. The *ratio decidendi* are statements made by a judge in passing and are highly persuasive.
- d. One provincial division is bound to follow the decisions of another provincial division of concurrent status.

1. a, b
2. b, c
3. d, a
4. **c, d**

Question 25

Indicate the correct statement/s :

- a. If a judge finds that the material facts of a case before him differ from those in a previous case, he will not be bound to follow the *ratio decidendi* in that case: he distinguishes the previous case from the one he must decide on the basis of the material differences of fact between the two.
- b. If there are no Supreme Court of Appeal or High Court decision in point, a magistrate is obliged to follow the ruling of a fellow magistrate.
- c. The effect of the doctrine of stare decisis is that any court deciding on a point of law is always bound by a previous decision of another court on the same point of law.
- d. The binding authority of a Supreme Court of Appeal decision is affected by the composition of the court, i.e. the number of judges of appeal who heard the case.

1. a, b, c
2. b, c, d
3. a, c, d
4. **a**

Question 26

Indicate the correct statement/s:

A judge sitting in the Johannesburg Division of the High Court is bound by:

- a. A municipal regulation.
- b. A legal custom.
- c. A full bench of the Bloemfontein High Court.
- d. A decision of a single judge sitting in the Pretoria Division of the High Court which he is convinced is wrong.

1. a, b
2. c, d
3. c, a
4. **b.**

Question 27

The *ratio decidendi* of a case:

1. Binds only the parties to that case.
2. **Will generally be followed when different parties involved in a case with a similar set of facts come before the court.**
3. Is made up of statements made by the judge, each of which is known as an *obiter dictum*.
4. May never be departed from by a judge even when he feels that there are grounds for distinguishing the case before him.

Question 28

In terms of the doctrine of *stare decisis*:

1. A full bench of a High Court division is not bound by a previous full bench decision of that same division;
2. A magistrate is bound by the decision of another magistrate;
3. The Supreme Court of Appeal is bound by a previous decision of the Supreme Court of Appeal, even if it is convinced that the previous decision was wrong;
4. **One High Court division is not bound by the decision of another High Court division.**

Question 29

Indicate the incorrect statement. According to the system of precedents in South Africa:

1. Every court is bound by the decisions of a court superior to itself within its area of jurisdiction, unless the decision of the superior court is based on an obvious error.

2. Every court is bound by the decision of a court of concurrent status within its own area of jurisdiction, unless convinced that the earlier decision was incorrect.
3. **Every High Court division is bound to follow the decisions of another High Court division unless convinced that the earlier decision was incorrect.**
4. Magistrates' courts are bound by the judgments of all superior courts.

Question 30

Which one of the following is an inferior court of the Republic?

1. Supreme Court of Appeal
2. High Court
3. **Magistrate's court**
4. Constitutional Court.

Question 31

In terms of the doctrine of *stare decisis*:

1. **One division of the High Court is not bound to follow the decision of another, although such decision has a great deal of persuasive authority;**
2. The Supreme Court of Appeal is bound by the decision of a provincial division;
3. A magistrate is bound by the decision of another magistrate;
4. A and C;
5. A full bench of a High Court division is not bound by a previous full bench decision of that division.

Question 32

Which one of the following was the highest court of appeal for South Africa before it was abolished by Act 16 of 1950?

1. The Orphan Chamber.
2. The Appellate Court.
3. **The Privy Council.**
4. None of the above.

Question 33

Which of the following legal systems exerted a considerable influence on the development of South African law?

1. Roman, law, English law, French law, American law, & Roman-Dutch law;
2. Roman law, English law, French law and American law;
3. **Roman law, English law, and Roman-Dutch law;**

4. English law, French law, and American law;
5. English law, French law, and Roman-Dutch law .

Question 34

Which one of the following jurists may truly be described as the father of Roman-Dutch law?

1. Gaius
2. **Hugo de Groot**
3. Johannes Voet
4. Johannes van der Linden
5. Dionysius Godefridus van der Keessel.

CHAPTER 2

Question 1

Solomon provided in his will that on his death ownership of his farm, Happy Valley, which is situated close to Delmas, would pass to his younger son Peter and that Solomon's widow, Lelete would have the right to stay on the farm and use it as long as she lived, a so-called life-interest. Solomon used the property for dairy farming, for growing wheat crops and for cultivating vegetables. Solomon and Lelete's older son Rambo is a successful farmer on the farm Silver Oaks, adjacent to Happy Valley.

Which ONE of the following statements is CORRECT?

1. **Lelete's right is an example of a personal servitude and is called a usufruct.**
2. The farm, Happy Valley is called the dominant tenement.
3. Lelete may replace the wheat fields with a dirt track racing course, for which a need exists in Delmas and which would mean less work for her than growing wheat.
4. Peter is entitled to the dairy products and vegetables produced on the farm.
5. Lelete may sell her right in the property to Rambo.

Question 2

When does the legal personality of a human being come into existence?

1. at his / her conception.
2. **it his / her birth.**
3. when he/she reaches the age of twenty one.
4. when he/she concludes a marriage.

Question 3

Bob, a soccer star, has a tendency to hold onto the ball for too long during matches and defenders of opposition teams often hit on him for this reason. During a match between his team and "Rovers", a team from Mpumalanga, John, a "Rovers" player, complains to the referee that Bob keeps on pushing him. Soon after this Bob gets kicked in the ribs by John, and suffers serious injury. It is, however, clear that John never intended to rough tackle Bob, but was only trying to take possession of the ball. Unfortunately Bob thinks that John acted in revenge. Bob decides to sue John for the injury.

On which ONE of the following grounds of justification can John rely?

1. provocation.
2. **consent.**
3. self-defence.
4. necessity.

Question 4

The right to a patent is a / an ...

1. real right
2. **intellectual property right**
3. personality right
4. personal right

Question 5

Paul and Peter own farms adjoining each other. Paul picks the flowers from the wild Proteas growing on his farm and sells them to tourists. Peter farms with chickens. Peter has a constant problem with jackal entering his farm and catching the chickens. He decided to erect a jackal-proof fence between himself and Paul. In the process he cuts down the Protea bushes along the line of the fence up to 1.5 meters on each side thereof and moves the bushes standing in the immediate line of the fence. As a result Paul can no longer pick the flowers and sell them to the tourists. He claims the amount of R10 000 from Peter. Peter argues that his cutting down and removing of the bushes was not unlawful since he acted in terms of the Fencing Act 31 of 1963.

Which ONE of the following grounds of justification is Peter relying on?

1. Necessity.
2. Self-defence.
3. Consent.
4. Provocation.
5. **Statutory authority.**

Question 6

Which ONE of the following rights is infringed where a person makes defamatory statements about another person?

1. **personality right.**
2. personal right.
3. real right.
4. intellectual property right.

Question 7

Belle consults Dr Chance, a plastic surgeon, about a face lift. She signs a consent form for the surgery. When she wakes up after the surgery, She realizes that the operation was a failure. She later learns that Dr Chance didn't perform the surgery himself, but that one of the nurses performed it on his behalf.

Indicate the CORRECT statement:

1. Dr Chance did not commit a delict because he concluded a contract with Belle in terms of which Belle consented to the operation.
2. Dr Chance did not commit a delict because Belle consented to the operation and all the risks when she signed the consent form.
3. **Dr Chance committed a delict because he acted outside the limits of consent when he allowed the nurse to perform the surgery.**
4. Dr Chance committed a delict because consent to the risk of serious bodily injury (the operation) is contrary to good moral and therefore valid.

Question 8

Which ONE of the following is an example of a personal servitude?

1. Andrew, the owner of a plot, has the right to drive or walk over the plot of a neighbouring owner, Bob.
2. Maude has the right to fetch water from Noel's plot.
3. Peter has the right to graze his cattle on Jona's farm.
4. **Mary has the right to live on and cultivate a farm, which belongs to her children, until her death.**

Question 9

Gus, a famous inventor, sits in his house admiring his revolutionary invention for which the government still owes him R1000 000.

This sentence contains four legal objects, one from each of the four categories of subjective rights that Gus assesses.

Gus' s well earned reputation as a famous and respected inventor is an example of

1. A real right.
2. An immaterial property right.
3. **A personality right.**
4. A personal right.

Question 10

John owes Peter money. They agree to have a fist-fight, and if John wins, Peter will free him from his debt. John injures Peter severely.

Indicate the CORRECT statement:

1. John did not commit a delict because Peter voluntarily assumed the risk of injury.
2. John did not commit a delict because he acted in self defence.
3. John committed a delict because South African law regards assault as a crime.
4. **John committed a delict because consent to serious bodily injury is contrary to good morals and therefore invalid.**

Question 11

Amos works on a Johannesburg gold mine. Before leaving his home in the Free State he asked his nephew Buti to look after his cattle during his absence and gave him permission to use the cattle. Everyone in their village now considers the animals to be Buti's as Amos has been gone for so long. Buti uses the dung of the cattle to fertilise his fields and he sells and consumes their milk.

Which ONE of the following statements is CORRECT under these circumstances?

1. **Buti is the usufructuary of the cattle.**
2. Buti is the holder of a praedial servitude in the cattle.
3. Buti is the pledge of the cattle.
4. Buti is the mortgagee of the cattle.
5. Buti is the owner of the cattle through prescription.

Question 12

In front of ten other people, Mark calls Neil a liar and a child molester. Offended by these statements, Neil wishes to sue Mark.

Which of Neil's rights has Mark infringed?

1. **A personality right.**

2. A personal right.
3. A real right.
4. An intellectual property right.

Question 13

Which ONE of the following is not a source of an obligation?

1. A contract.
2. A delict.
3. **A social appointment.**
4. Unjustified enrichment.

Question 14

Scotch wishes to grant Mthakathi a usufruct to live in Scotch's house. The parties are not sure of the law regarding usufruct and their rights in terms of the usufruct.

Which ONE of the following statements is INCORRECT?

1. Mthakathi would have the right to let the house if he had to move to another province.
2. **Mthakathi is entitled to demolish one wing of the house and put in a swimming pool in that area.**
3. Mthakathi is not allowed to sell Willie the right to occupy the house.
4. Scotch can grant Mthakathi a usufruct to last until Mthakathi graduates from university in four years' time.

Question 15

Ephraim has damaged Frikkie's car.

Which ONE of the following actions should Frikkie institute against Ephraim to recover the monetary loss which he (Frikkie) has suffered?

1. *Rei vindicatio*
2. *Actio iniuriarum.*
3. *Condictio indebiti.*
4. ***Actio legis Aquiliae.***

Question 16

Jerry sinks a borehole on his property. As a result of this, the water supply to his neighbour, Bob, unfortunately dries up. Is Jerry delictually liable to Bob?

1. Yes, because Jerry infringed Bob's rights of ownership.
2. **No, because Jerry did not act unlawfully.**
3. No, because there is no causation.
4. Yes, because Bob suffered damage.

Question 17

Name the right of an artist to his works which prevents others from imitating such works.

1. Ownership
2. **Intellectual property right**
3. Personality right
4. Personal right

Question 18

Which ONE of the following actions should someone who has paid a sum of money to another in the mistaken belief that it was due, institute to recover the money from that other person?

1. *Rei vindicatio.*
2. *Actio iniuriarum.*
3. *Actio legis Aquiliae.*
4. ***Condictio indebiti.***

Question 19

To get from the main access routes to his farm, Benjamin needs to make use of a road that runs through the farm of his neighbour, Mell. Benjamin may exercise this right to drive over Mell's farm without Mell's interference because he is the holder of a praedial servitude.

Which ONE of the following statements regarding the abovementioned praedial servitude is INCORRECT?

1. **The land of the owner (Mell) who has to permit the exercise of the powers conferred by the servitude is called the "dominant tenement".**
2. If Benjamin suffers loss, because Mell will not allow him to use the road he will be able to claim damages from Mell.
3. Although the most common method of acquiring a servitude is by registration of the servitude at a Deeds Office against the title deeds of the properties concerned, a servitude can also be obtained by prescription.

Question 20

Moloto rents the storeroom, which he inherited from his uncle, to his friend Pat for as long as Pat lives. A few years later Moloto and Pat are involved in an unresolved argument and as a result Moloto decides to demolish the storeroom.

Which ONE of the following statements is CORRECT?

1. Moloto has ownership of the storeroom and may therefore do with it what he likes.
2. Moloto has possession of the storeroom as he is the owner of the storeroom.
3. **Pat has possession of the storeroom as he is renting the storeroom.**
4. Pat has ownership of the storeroom as he was given the right to use the storeroom for the rest of his life.

Question 21

Which ONE of the following statements is CORRECT?

1. If a person effects improvements to property with the intention of doing so for his or her own benefit and he or she has no title to the property the improvements become his or her property.
2. **If one person voluntarily and without the permission or knowledge of another person, manages the affairs of the last mentioned, negotiorum gestio takes place.**
3. If one party to a contract has performed only a portion of an obligation which is indivisible, there is no possibility of enrichment liability arising.
4. If a person mistakenly believes that he or she is the owner of ground and erects a house thereon, he or she may not claim anything from the true owner because it was his or her mistake.

Question 22

Due to her negligent driving, Florah runs into Fanie's car with her car. Fanie's car is damaged as a result of the accident and his total damages amount to R20 000. Slow Insurance Company, the insurer of Fanie's car, pays R13 000 in terms of an insurance policy for panel beating.

Which ONE of the following statements is CORRECT?

1. In terms of the *conditio sine qua non test*, Florah's act will have caused the damage if her act is an indispensable condition for the damage to have arisen.
2. Fanie has suffered patrimonial damage since his estate has become smaller than it otherwise would have been as a result of Florah's act.
3. In order to determine whether Fanie has suffered damage as a result of Florah's act, the present condition of his estate must be compared with what it otherwise would have been.
4. **Regarding the calculation of damages, Florah may raise the defence that Fanie's damage had been partly extinguished by the payment he got from Slow Insurance Company.**

Question 23

Which ONE of the following statements is INCORRECT?

1. **The law of family includes the law on relationships between relatives.**
2. The law of family includes the law on relationships between parents and children.
3. The law of personality includes the law on relations between people and their physical and psychical integrity.
4. The law of personality includes the law on a person's right of privacy.

Question 24

Sam goes to a Sports Pub one Friday afternoon for a few drinks. He is wearing the T-shirt of his favourite team. Someone approaches Sam and tells him how stupid he is to support that team. At first Sam ignores him, but he keeps on arguing with Sam, and ultimately their argument draws the attention of the other people in the pub. Sam loses his temper and punches and kicks the man until he loses consciousness. On Sam's arrival home, he finds his two year old son very sick. Still fuming from the incident at the pub, he takes the child to the hospital. On his way there he is caught driving at 140 km/h in a 80 km/h zone. He is summoned to appear in court on a charge of contravention of traffic regulations.

On which ground of justification can Sam rely?

1. **Necessity.**
2. Provocation.
3. Self-defence.
4. Consent.

Question 25

In which ONE of the following circumstances did ownership in fact pass from one party to the other?

1. Natanya delivers the latest edition of the Guinness Book of Records to Marlize under the impression that she is lending it to Marlize, and Marlize receives it thinking it is a present.
2. The day after Jane has paid Michelle the full purchase price of R750 000 for the penthouse, Michelle hands over the keys of the penthouse to Jane.
3. Marena donates a hundred books to the Well Read library and tells the librarian that he may collect the books from her house at any time convenient to him.
4. **Cathleen hands the antique watch she inherited from her mother to Stefni after Stefni agreed to accept the watch in lieu of payment of R3 000 for services rendered.**

Question 26

Which ONE of the elements of a delict is absent when the perpetrator has acted like a reasonable person?

1. an act.
2. unlawfulness.
3. **fault.**
4. causation.
5. damage or impairment of personality.

Question 27

The right to claim performance from someone is a / an

1. real right.
2. intellectual property right.
3. personality right.
4. **personal right.**

Question 28

Which ONE of the following is an example of an original method of acquiring ownership?

1. **Andrew picks up a knife which someone else has thrown away and keeps it for himself.**
2. Steven has lived on a portion of Ben's farm secretly for an uninterrupted period of thirty years,
3. Allan purchases a car from a dealer, and the dealer delivers the car to Allan after receiving payment for it.
4. Jim inherits a farm from his grandfather, and it is duly registered in his name.

Question 29

John's isolated shop is plundered periodically and the only reasonable way of protecting his property is by setting up a gun inside the shop with a conspicuous sign warning that the gun has been set. If a thief is injured or killed by the gun, John will NOT be liable because his actions will have been justified.

This is an example of

1. voluntary assumption of risk.
2. necessity.
3. **self-defence.**
4. consent by the injured party.

Question 30

Rebecca buys Lebo's farm and pays the full purchase price. Rebecca acquires ownership of the farm on ...

1. conclusion of the contract of sale.
2. payment of the full purchase price.
3. registration of the transfer at a deeds office.
4. occupation of the farm house.

Question 31

Which of the following statements is/are correct?

- a. A right is any right which is a legal object has regarding a specific subject.
- b. Only a natural person has legal capacity, that is, the capacity to be bearer of rights and duties.
- c. A legal object is any entity which can be the object of a legal subject's claim to a right.
- d. A praedial servitude confers on the holder the right of use and enjoyment of a thing of which another is the owner, for example, usufruct.

1. a, b
2. b, d
3. a
4. **c**

Question 32

Which of the following statements is/are incorrect?

1. A legal subject can be either a natural person or a juristic person.
2. A person's status determines the extent of his rights, obligations and powers which he may have as a legal subject.
3. **Ownership confers upon the owner unlimited absolute control over a thing.**
4. A servitude can be obtained by prescription.

Question 33

Indicate the correct statements.

- a. All human beings are legal subjects.
- b. All legal subjects are human beings.
- c. The foetus is always protected under SA law.
- d. Death terminates legal personality.

1. a, b
2. c, d
3. a, c
4. a, d

Question 34

Which of the following statements is/are correct?

- a. A servitude can be obtained by prescription;
- b. Ownership of property confers upon an owner; unlimited absolute control over that property;
- c. Occupation and delivery are original methods of acquiring ownership;
- d. Ownership over immovable property is acquired by payment and registration of the transfer of the Deeds Registry.

1. a
2. b
3. c, d
4. a, d

Question 35

Dan steals Debbie's compact disc and sells it to Beth who believes Dan to be the owner of the compact disc. Debbie can reclaim the compact disc from Beth, in spite of Beth's good faith, by relying on:

1. the *mandament van spolie*.
2. **the *rei vindicatio***.
3. prescription.
4. occupation.

Question 36

The right that a computer programmer has to his program which prevents another from imitating such program is a :

1. personal right.
2. right of ownership.
3. personality right.
4. **immaterial right.**

Question 37

In an attempt to douse a house which is on fire, a fireman causes much water damage. The owner of the house institutes a claim for damages against the fireman. Indicate the correct statement.

1. The fireman is liable as his action is causally linked to the damage suffered by the owner of the house.

2. **The fireman is not liable as his act was not wrongful.**
3. The fireman is not liable if he can prove that the house in any event would have been damaged by the fire.
4. The fireman is liable because he acted with intent.

Question 38

Where a person claims compensation for non-patrimonial loss his action is based on the:

1. *actio legis Aquilae.*
2. ***actio iniuriarum.***
3. *condictio indebiti.*
4. *obiter dictum.*

Question 39

A steals B's pen and sells it to C who believes A to be the owner of the pen. B can reclaim the pen from C, in spite of C's good faith, by relying on :

1. *estoppel.*
2. The *ratio decidendi.*
3. The *mandament van spolie* .
4. **The *rei vindicatio.***

Question 40

X and his family are trapped in a hotel which is on fire and which belongs to Z (Pty) Ltd. To enable him and his family to escape he uses a chair to demolish an expensive glass panel of one of the walls. X is not delictually liable to compensate Z (Pty) Ltd for the damages which he caused as the following ground of justification is present:

1. **Necessity.**
2. Self-defense.
3. Consent by the injured party Z (Pty) Ltd.
4. Voluntary assumption of risk.

Question 41

Indicate the incorrect statement. The following are requirements for liability on the basis of the commission of a delict:

1. **Voluntary or involuntary human conduct.**
2. An act which is wrongful.
3. The wrongdoer must have been at fault.
4. There must be a casual connection in a juridical sense.

Question 42

Indicate the incorrect statement:

1. Damages can be claimed by someone who suffered patrimonial loss due to another's culpable wrongful act.
2. A court can grant compensation to someone whose personality has been impaired by another's culpable wrongful act.
3. **There is no ground of justification for the intentional causing of damage to another.**
4. Necessity, defense, consent and voluntary assumption of risk are not the only grounds of justification which convert an otherwise unlawful act into a lawful act.
5. To determine whether a person has suffered damage as a result of a delict, the condition of his estate before and after the commission of the act must be compared.

Question 43

A boxer is seriously injured during a world title boxing match. Which of the following grounds of justification is applicable?

1. Necessity.
2. Defense.
3. **Consent by the injured party.**
4. Absence of fault.
5. Voluntary assumption of risk.

Question 44

Which of the following constitutes an original method of acquiring ownership?

1. Delivery.
2. **Occupation.**
3. Cession.
4. Registration.
5. None of the above.

Question 45

A rescues a child from a burning house. While doing so, he unavoidable knocks over a display cabinet in the smoke-filled living room. It later appears that an antique vase in the cabinet was broken in the process. The owner of the vase institutes a claim for damages against A. Which one of the following statements is correct?

1. A will not be liable if he can prove that the vase would in any case have shattered due to the heat of the fire.
2. **A is not liable because his act was not unlawful.**

3. A is not liable because he did not intentionally break the vase.
4. A is liable because his act is causally linked to the damage suffered by the owner of the vase, and caused such damage.

Question 46

Indicate the correct answer to the following question :

Is there any entity other than a natural person which is accorded legal capacity in present-day South African law?

1. No, only a human being has the capacity to be the bearer of rights and duties.
2. Yes, an animal is also a legal subject which has the capacity to be the bearer of rights and duties.
3. No, only a natural person can be the object of a legal subject's claim to a right.
4. **Yes, a juristic person such as a company has the capacity to be the bearer of rights and duties.**

Question 47

During a professional boxing fight the World Heavy Weight Title between Lightning Mahlala and Thunder Pearson, Thunder Pearson is seriously injured. It appears that the said injury was caused by a direct blow to his head after the bell had rung at the end of the third round. Lightning Mahlala wins the World Heavy Weight Title as the result of this controversial knockout.

On which of the following grounds is Thunder Pearson most likely to succeed in claiming damages from Lightning Mahlala?

1. Contract.
2. **Delict.**
3. Provocation.
4. Unjustified enrichment.

Question 48

On which of the following defenses will Lightning Mahlala be able to rely successfully in order to ward off a claim for damages based on the facts in Question 6 above?

1. Necessity.
2. Self-defense.
3. Voluntary assumption of risk.
4. **None of the above.**

Question 49

A buys B's farm and pays the full purchase price. A acquires ownership of the farm at the :

1. Conclusion of the contract of sale.
2. Payment of the full purchase price.
3. **Registration of the transfer at a deeds office.**
4. Occupation of the farm house.

Question 50

A politician instructs an artist to paint a portrait of the politician and his wife. The artist accepts the commission. What is the right called in terms of which the politician can demand performance from the artist.

1. an immaterial property right.
2. a personality right
3. **a personal right**
4. a real right.

Question 51

An artist completes a painting commissioned by a politician, but decides to use his imagination and paint a second portrait in which he portrays the politician and another woman in the nude. What right (of the politician) may possibly be infringed by the artist if the artist exhibits this portrait at the national art gallery where it is seen by thousands of people?

1. an immaterial property right.
2. **personality right**
3. personal right
4. real right.

Question 52

What right is infringed if a guard at an art gallery makes and then sells unauthorised copies of a portrait?

1. **an immaterial property right.**
2. a personality right.
3. a personal right.
4. a real right.

Question 53

Which one of the following actions should a person institute against a wrongdoer for the recovery of sentimental damages?

1. ***actio iniuriarum.***

2. *rei vindicatio*.
3. *conditio indebiti*.
4. *actio legis Aquiliae*.

Question 54

Rebecca buys Leho's farm and pays the full purchase price. Rebecca acquires ownership of the farm at the ...

1. conclusion of the contract of sale.
2. payment of the full purchase price.
3. **registration of the transfer at a deeds office.**
4. occupation of the farm house.

Question 55

Lara buys a horse from Mona. The purchase price is paid and the horse is delivered to Lara. Three months later, John claims the horse from Lara. John is able to prove that the horse belonged to him, but was stolen by Igor, who in turn sold the horse to Mona. Mona had not been aware that the horse was stolen.

Which statement is the most accurate?

1. Lara can bring a *rei vindicatio* against John.
2. Lara can claim damages from Igor.
3. The contract between Lara and Mona is void because it is legally impossible.
4. The contract between Lara and Mona is void because of supervening impossibility of performance.
5. **Lara can claim damages from Mona if she returns the horse to John.**

CHAPTER 3

Question 1

Indicate the INCORRECT statement:

The requirements for the conclusion of a valid contract are:

1. Each party to the contract must have capacity to act.
2. There must be consensus between the parties .
3. It must be physically possible to perform in terms of the contract.
4. The contract must be permitted by law.
5. **The contract must be in writing and must be signed and dated.**

Question 2

Bobby studies for a B Com-degree at Unisa. While writing examination he sees a beautiful girl, Sandy, at the examination hall and falls head over heels in love with her. After the examination he introduces himself and invites her to go to the movies with him. They agree to meet the next Friday at 6 o'clock in front of Sterland. Bobby arrives at Sterland on the agreed time, but Sandy is not there. After he has waited for more than two hours, he decides to go home, and consults his Commercial Law textbook to see whether he can take legal action against Sandy for not honouring their appointment. Only later Bobby learns that Sandy's car had broken down on her way to Sterland.

Bobby's appointment with Sandy was NOT a contract because:

1. their appointment was not in writing and signed by them.
2. **they did not have the intention to create legally enforceable obligations.**
3. it was not physically possible for Sandy to honour their appointment.
4. it was not juridically possible for Sandy to honour their appointment.

Question 3

Victoria and Ruth arrange telephonically to meet at a coffee shop at 10am the next day.

Indicate the CORRECT answer:

1. **No contract arises as Victoria and Ruth have no intention to be legally bound.**
2. A contract arises as consensus exists.
3. A contract has come about as a common intention exists and it has been made known to each party.
4. No contract arises as nothing was put into writing.

Question 4

Andrew and Sally agree to meet for dinner and thereafter to go to the theatre. Andrew reserves a table at a very expensive restaurant and buys two tickets to attend the premiere of a musical. Andrew arrives at Sally's home but she is not there. A note on the door informs him that she has decided to spend the evening with her friend Peter.

Indicate the correct statement(s):

1. The agreement between Andrew and Sally is a contract.
2. Andrew can claim the amount of the theatre tickets from Sally for a breach of contract.
3. Andrew can claim the amount of the theatre tickets from Peter.
4. **The agreement between Andrew and Sally does not have legal consequences.**

5. (1) and (2) above.

Question 5

Sandy and Kate have decided to start a business. They have agreed on their respective duties and on the division of the profits. They decide that Sandy will record the contract in writing. However, just as Sandy starts writing, Kate changes her mind about the contract and informs Sandy that she no longer wants to be involved in the business. What is the legal position?

1. The contract has already come into being and Kate is bound by it
2. The contract has not yet come into being and Kate is entitled to withdraw from the business.
3. The contract has not yet come into being but Kate cannot withdraw from the business at this stage.
4. **The intention of the parties will determine whether a contract has already been concluded or not.**

CHAPTER 4

Question 1

Which ONE of the following statements is CORRECT?

1. At an auction subject to reservation, it is the auctioneer who makes the offer.
2. **At an auction without reservation, the auctioneer must sell to the highest bidder.**
3. If nothing is stated in the advertisement of the auction, it is presumed that the auction is held without reservation.
4. Auctions of immovable property are always held subject to reservation.

Question 2

In which ONE of the following situations was a VALID contract concluded?

1. The organisers of the Bloemfontein 2000 Rally make an offer to pay John R10 000 if he can drive the 500 kilometers between Johannesburg and Bloemfontein in an hour. John accepts the offer.
2. Paseka, with his speech slurred and his eyes blood-shot and semi-closed, undertakes in front of witnesses at Mary's Shebeen, to fix Jabu's leaking roof in exchange for one of Jabu's cars. Moments later Paseka collapses on a chair. The next morning he remembers nothing of his agreement with Jabu.
3. **Xander and Yusuf agree that Xander will hand R50 to Yusuf and that Yusuf will hand over his watch to Xander in full exchange.**
4. Joe parks his taxi at the exact spot in Mark's neighbourhood from where buses and taxis leave for the city centre. Mark boards the taxi and takes a seat. After thirty minutes Joe tells Mark and all the other

passengers that he is not going to the city. Mark misses an important appointment.

Question 3

In which ONE of the following instances will the contract be VOID?

1. Nomsa holds a pistol to Victor's head and persuades him to sell his car to her.
2. **Nomsa does not know whether the contract she has concluded is a contract of sale or a contract of lease.**
3. Nomsa tells the buyer that he is buying a 1990 model motor car, while it is in fact a 1988 model.
4. Nomsa, a doctor, persuades a very sick patient, Tom, to sell his car cheaply to her.

Question 4

Yusi and Mpho arrange telephonically to meet at Jumbo Restaurant. At the restaurant Yusi offers to buy Mpho's car for R35 000 which Mpho accepts without hesitation. A week later, Mpho calls Yusi to tell him how happy he is doing business with him. The delivery of the car and the payment of the purchase price takes place two days after the call, at the Menlyn Shopping Mall.

When and where did the contract come into being?

1. The moment Mpho accepted the offer at Jumbo Restaurant.
2. The moment Mpho telephoned Yusi to tell him how happy he was doing business with him.
3. The moment Yusi and Mpho arranged telephonically to meet at Jumbo Restaurant.
4. **The moment the delivery of the car and the payment of the purchase price took place at the Menlyn Shopping Mall.**

Question 5

Choose ONE of the options below to complete the sentence CORRECTLY.

In terms of the dispatch theory, a contract comes into being at the place where, and the time when

1. the offeror becomes aware of the offeree's acceptance of the offer.
2. the offeree puts his or her acceptance in writing.
3. the offeror receives the acceptance.
4. **the offeree posts the letter of acceptance.**

Question 6

James, a horse breeder, tells Lionel that he owns a mare which is in foal, knowing that the mare is in fact not in foal. Lionel is very keen to buy this mare because he understands her to be in foal. He offers to buy her for R20 000, without verifying the facts. James accepts the offer.

Which ONE of the following statements is CORRECT?

1. **Lionel can uphold the contract and claim damages from James.**
2. Lionel can uphold or rescind the contract but he has no claim for damages.
3. No contract came into existence because the parties did not reach consensus.
4. The agreement between Lionel and James is void on the grounds of misrepresentation.

Question 7

Sam, a dealer in electrical goods, has numerous washing machines on display on his shop floor. A card is attached to each machine setting out its make, model and price. A card is placed on a machine stating that the price is R1 000 whereas it is actually R10 000. Anna sees the machine and takes it to the check-out. The cashier realizes that the price is incorrect and refuses to accept the R1 000 tendered by Anna.

Which ONE of the following statements is CORRECT?

1. Anna accepted Sam's offer with the intention of being legally bound to it on the terms as set out in the card.
2. Sam made an offer to Anna with the intention that he would be legally bound by the mere acceptance thereof by Anna.
3. **By displaying the machine on the shop floor, Sam invited Anna to make an offer to purchase the machine.**
4. By offering the R1 000 Anna made it clear that she unconditionally accepted Sam's offer.

Question 8

Leo "the Butcher" Vincenzo and Mario, alias "Muscle", Merino are staring at the shaking figure of Mr Wilmer, the owner of the only liquor store in Mafiaville.

Leo: "The Boss wants your shop Mr Wilmer. Sign the contract, or Mario and I will have to show you what the bottom of the lake looks like. Is it clear?" Mr Wilmer signs the contract.

The above set of facts is an example of consensus obtained by way of:

1. undue influence
2. misrepresentation

3. duress
4. mistake

Question 9

Kwena and Richard negotiated the sale of a house. Kwena represented to Richard that the house had a sound foundation and that there was no danger of the walls starting to crack. They both signed the contract and two days later, after a heavy thunderstorm, three walls cracked as a result of the house having been built on clay.

Which ONE of the following statements is CORRECT?

1. The agreement between Kwena and Richard is void on grounds of misrepresentation.
2. Richard does not have any remedies against Kwena since he signed the contract of sale.
3. **The contract between Kwena and Richard is voidable on grounds of misrepresentation.**
4. No contract came into existence because the parties did not reach consensus.

Question 10

Which ONE of the following situations indicates that consensus does NOT exist?

1. Arni tells the purchaser that he is buying a 1992 model car, while in fact it is a 1990 model.
2. **Arni does not know whether the purchaser is Jonathan Lee or his brother John Lee.**
3. Surgeon Piet convinces a very sick Pat shortly before an operation to sell his car cheaply to him.
4. Arni persuades Xaba at gun point to sell him his 1994 Enzo car for R5 000.

Question 11

Indicate which ONE of the following situations complies with the requirements for a valid offer which could lead to the conclusion of a contract.

1. John tells Tito that he can buy one of his cars at whatever price they agree upon at a later stage.
2. Supermarket Cheap-Cheap advertises the sale of model XTS toaster for R59,99 in the local newspaper.
3. **The police offer a reward of R10 000 for information leading to the apprehension of escaped convict, Kit.**
4. Lebo leaves a message on Jim's answering machine, stating that Jim may buy his car for R21 000. Jim's wife inadvertently erases the message before anyone can listen to it.

Question 12

Rob wants to rent a house belonging to John. They make arrangements to meet at John's house. John tells Rob about the terms of his offer. Rob is not sure whether he should accept the offer or not, and he asks for more time to consider it. They agree that the offer will remain open for a period of one week. The following day John is approached by Malebo who also wants to rent the house.

Indicate the INCORRECT statement.

1. John may not let the house to Malebo because a contract exists that forbids him from doing that.
2. John may not let the house to Malebo because his offer to Rob is still open.
3. **John may let the house to Malebo because Rob has indirectly rejected the offer.**
4. John may not let the house to Malebo until the period of one week has lapsed.

Question 13

Andy plans a surprise birthday party for Mia. He invites twenty friends, including Harry, to the party. Everyone Andy has invited agrees to keep the arrangements confidential, as it is meant to be a surprise party. However, Harry drinks too much the night before the party, and blurts out the news to Mia. Mia is shocked by the news and goes into hiding as she loathes parties. Andy is forced to cancel the party. As a result of the cancellation of the party, Andy suffers a severe financial loss. He is very upset with Harry and threatens to sue him for breach of contract.

Andy CANNOT sue Harry because :

1. **Harry and Andy did not conclude a legally binding contract.**
2. Mia prevented performance.
3. Harry made a unilateral and reasonable mistake.
4. Harry acted under the influence of alcohol.

Question 14

Prof Absent parks his car in front of a shopping mall. After having done his shopping, he cannot find his car. Under the impression that it has been stolen, he buys a second-hand car from Basie. An hour after he has concluded the contract of sale with Basie, the police inform him that his car has not been stolen but was parked a few parking spaces from where he thought he had parked it.

Indicate the CORRECT statement:

1. The contract between Prof Absent and Basie is void because Prof Absent made a mistake of fact.
2. The contract between Prof Absent and Basie is voidable because Prof Absent made the misrepresentation that his car had been stolen.
3. **The contract between Prof Absent and Basie is valid because mistake in motive has no influence on consensus.**
4. The contract between Prof Absent and Basie is valid because Prof Absent made an innocent misrepresentation.

Question 15

Thabo wants to buy Frank's car. Thabo and Frank agree that Thabo may take the car, but Frank is under the impression that Thabo is only hiring the car from him.

Which ONE of the following statements is INCORRECT?

1. No contract came into existence between Thabo and Frank.
2. The parties have reached consensus with regard to the object of performance.
3. The parties have the intention to be contractually bound.
4. **The parties have reached consensus.**

Question 16

At an auction of vintage motor cars the conditions of sale expressly provide that the auction is held subject to reservation. Deon makes a bid of R30 000 on a vehicle of which the reserve price is R50 000.

Which ONE of the following statements is CORRECT?

1. Deon made a valid offer which the auctioneer is obliged to accept because it was the highest bid.
2. Deon's bid of R30 000 constitutes acceptance of the offer which the auctioneer made to accept the highest bid.
3. A valid contract came into existence when Deon accepted the auctioneer's offer.
4. **Deon made a valid offer which the auctioneer can accept or reject regardless of whether it is the highest bid.**

Question 17

Ari wishes to offer Ben Smith a job. He asks his secretary to telephone Ben so that he can talk to him. The secretary dials the wrong number. Ben Lewis answers the telephone. Ari, who is under the impression that he is talking to Ben Smith, offers the job to Ben Lewis. Ben Lewis accepts the offer.

Which ONE of the following statements is CORRECT?

1. **The contract between Ari and Ben Lewis is void owing to mistake.**

2. The contract between Ari and Ben Lewis is void owing to misrepresentation.
3. Ari and Ben Lewis reached consensus and will be held bound to their declarations of intention.
4. The contract between Ari and Ben Lewis is valid since Ari made a mistake which is not material.

Question 18

Which ONE of the following constitutes a valid offer?

1. Paul advertises his car for sale in the local newspaper.
2. Peter verbally offers to buy John's farm for R500 000.
3. **Sandy says she will pay a reward of R100 to anyone who finds her lost dog.**
4. Cindy makes John a written offer to buy his farm, but her letter is lost in the post.

Question 19

In which ONE of the following situations did undue influence occur?

1. Joel wants to buy a hair dryer for his wife. He takes a small box from the shelf and pay for it, thinking that it is a hair dryer, while the cashier knows that it is in fact a steam iron.
2. Molepo wishes to buy Jan's farm. He asks Jan about the water supply to the farm and Jan assures him that it is good. Molepo buys the farm and later finds out that the water supply to the farm is in fact poor.
3. **Raf finds an uncut diamond in his backyard. He does not know what it is and what it is worth. Lola, a business man, goes to Raf and promises him a loaf of bread in return for the diamond. Raf agrees because Lola tells him that it is just a worthless stone.**
4. Pat wants to sell his TV set for R1 500. Tom comes up to him and, holding a gun to his head, says. "If you don't sell me this TV set for R200, I will kill you". Pat takes the R200 and hands over the TV set to Tom

Question 20

Potsotso has in his possession a number ten soccer jersey, which he believes, Roller, one of the greatest Pretoria Birds players, wore during the 2002 TataZonke Tournament. Without verifying the truth with Roller, Potsotso sells the jersey to Lefty and tells him that it was worn by Roller during the tournament. It later turns out that Roller actually wore jersey number twelve during the tournament.

Which ONE of the following statements is CORRECT?

1. Potsotso is guilty of innocent misrepresentation since he did not take any reasonable steps to verify whether the statement he made about the jersey was true.
2. **Potsotso is guilty of negligent misrepresentation since he did not take any reasonable steps to verify whether the statement he made about the jersey was true.**
3. Potsotso is guilty of intentional misrepresentation since he was reckless with regard to the truth about the soccer jersey.
4. Potsotso is not at fault and therefore Lefty cannot institute a claim based on delict against him.

Question 21

Joel makes an offer to buy Mabina's motor car for R1 000. He gives Mabina 10 days to accept his offer. On the ninth day Mabina informs Joel that he accepts the offer, but that he wants an amount of R1 200.

Which ONE of the following statements is CORRECT?

1. A contract came into existence between Joel and Mabina with a purchase price of R1 200.
2. A contract came into existence between Joel and Mabina with a purchase price of R1 000.
3. Joel's offer still stands.
4. **No contract came into existence between Joel and Mabina as Mabina made a counter-offer, which has not yet been accepted.**

Question 22

Choose ONE of the options below to complete the sentence CORRECTLY.

In terms of the dispatch theory, a contract comes into being at the place where, and the time when

1. the offeror becomes aware of the offeree's acceptance of the offer.
2. the offeree puts his or her acceptance in writing.
3. the offeror receives the acceptance.
4. **the letter of acceptance is posted by the offeree.**

Question 23

Which ONE of the following situations complies with the requirements for a valid offer?

1. Paul tells Makhanya that he can buy one of his cars at a price they may agree upon at a later stage.
2. Supermarket Cheap-Cheap advertises the sale of model XTS toasters for R59.99 in the local newspaper.
3. **The police offer a reward of R10 000 for information leading to the apprehension of escaped convict Xavier.**

4. Vice leaves a message on Jona's answering machine, stating that Jona may buy his car for R21 000. Jona's wife inadvertently erases the message before anyone can listen to it.

Question 24

Which ONE of the following statements is INCORRECT?

1. A mistake about the contents of a contract always excludes consensus between the parties.
2. A mistake about the contents of a contract always renders the contract void.
3. **Some contracts can be valid despite the absence of consensus .**
4. A mistake about the motive or reason for concluding a contract does not affect the validity of the contract.

Question 25

Thandi concluded a contract to rent a flat from Lauren for R800 a month. When they were negotiating the contract, Lauren told Thandi that the monthly levy for water and electricity was R130. In fact, the levy was increased to R 190 three months before the agreement was made. It appears that Lauren, who has always paid the levy by debit order, never looked at her accounts or statements and was unaware of the increase. Thandi would have leased another flat, had she known that the levy was R190.

Which ONE of the following statements is CORRECT?

1. The contract is void because of misrepresentation.
2. The contract is void because of mistake.
3. The contract is valid and Thandi has no legal remedy.
4. **The contract is voidable, but since Lauren did not mislead Thandi on purpose, Thandi cannot claim damages.**
5. Thandi may claim damages from Lauren, and may also choose whether to uphold or rescind the contract.

Question 26

Mr and Mrs Rich invite 250 guests to the wedding reception of their daughter. They agree with Good Food Caterers that the cost of the reception will be calculated at R100 a guest. For that reason Mr and Mrs Rich state expressly on the wedding invitation that no children are invited to the reception. No less than 20 children attend the reception uninvited. Good Food Caterers charge Mr and Mrs Rich extra for the 20 additional guests.

Which ONE of the following statements is CORRECT?

1. Mr and Mrs Rich may not claim the additional costs from the uninvited children, because, as minors, they are not liable for performance in

- terms of the contract, unless their parents or guardians ratify the contract.
2. Mr and Mrs Rich may claim the additional costs from the parents or guardians of the children, because by bringing the children to the reception contrary to the express statement in the offer (invitation) that children were not invited, they committed breach of contract.
 3. Mr and Mrs Rich may refuse to pay Good Food Caterers the additional amount for the uninvited children, since they made a mistake as to the number of guests who would attend the reception, and so did not agree to the additional expenses.
 4. **Mr and Mrs Rich may not claim the additional costs from the parents or guardians of the (uninvited) children, since the invitation constitutes only a social arrangement and not a contract, and failure to abide by its conditions does not amount to breach of contract.**

Question 27

Frans holds a pistol to Thomas's head and threatens to kill him should he not sell his house to him (Frans). Thomas agrees and the contract of sale is signed by both parties.

Which ONE of the following statements is CORRECT?

1. There is no consensus between Frans and Thomas.
2. A valid contract was not concluded between Frans and Thomas because of the absence of consensus.
3. The contract is void as a result of duress.
4. **The contract is voidable because Thomas signed it under duress.**

Question 28

Craig and Sheila arrange a surprise party for their friend, Tim, at an exclusive restaurant. In order to ensure Tim's presence at the party, Craig arranges to pick Tim up at his flat for a game of tennis. Craig arrives at the agreed time, but Tim is not there. The party is cancelled, but Craig and Sheila forfeit the booking fee they have paid. They later find out that Tim could not keep his appointment with Craig, since his car had broken down on his way home from work.

Which ONE of the following statements is CORRECT?

1. Craig and Sheila can recover the booking fee from Tim, because Tim has committed breach of contract by not meeting Craig at the agreed time.
2. Craig and Sheila cannot recover the booking fee from Tim, because Tim cannot be blamed for the fact that his car had broken down.
3. Craig and Sheila cannot recover the booking fee from Tim, because Tim may resile from the contract owing to Craig's misrepresentation as to the reason for their meeting.

4. **Craig and Sheila cannot recover the booking fee from Tim, because Tim and Craig had not entered into a contractual agreement.**

Question 29

Tom and Sam stroll into No-Value Supermarket looking for something to eat. While passing the bakery section they notice that the price sticker on one cake was printed crookedly and reads 95c instead of R21.95, like the stickers on all the other cakes. They take the cake to a till to pay for it. The cashier rings the amount as R21.95 to which they loudly object and an argument ensues between them and the cashier.

Which ONE of the following statements reflects the CORRECT legal position?

1. A contract came into existence between the parties, but it is voidable because the supermarket made a misrepresentation about the price of the cake.
2. The contract between the parties is void, because the supermarket can expect the reasonable consumer to know that 95c is not a reasonable price for such a cake.
3. **A contract did not come into existence between the parties because the price sticker on the cake did not constitute an offer, and without offer and acceptance there cannot be consensus.**
4. A contract did come into existence between the parties because the supermarket made an offer to sell by attaching a price sticker to the cake, which Tom and Sam accepted.

Question 30

Peter makes an oral offer to sell his farm to John. John reduces the terms of the offer to writing. He adds the words "I hereby accept the above mentioned offer", signs the document and hands it to Peter.

1. A valid contract has been concluded, because no auction sale is involved.
2. A valid contract has been concluded, because the buyer is not a company.
3. 1 and 2.
4. No contract has been concluded, because the agreement was not executed before a notary.
5. **No contract has been concluded, because the offeror did not sign the agreement.**

Question 31

Indicate the correct statement?

B (Pty) Ltd offers a reward for the supply of certain information. A supplies the required information quite unaware of the fact that a reward had been offered. Which one of the following statements is correct?

1. B (Pty) Ltd, must pay the reward to A in any event.
2. B (Pty) Ltd, must pay the reward to A on demand.
3. The offer of such a reward is invalid.
4. **A has no claim to the reward.**
5. None of the above.

Question 32

On 1 May 1986 Paul offers to purchase Ben's house for R60 000, provided Paul can secure a loan against a first bond within one month after the date of the contract. Which of the following statements is correct?

1. On 1 May 1989 Paul can already claim that Ben must vacate the house, since the contract is unconditional.
2. On 1 June 1989 Paul still has not secured a loan. Ben must give notice to Paul if he intends selling the house after 1 June, since there is a contract between Paul and Ben.
3. **On 14 May 1989 Paul secures a loan from the bank. Ben can claim the purchase price from Paul as soon as Paul secures the loan.**
4. The contract between Paul and Ben does not come into operation because it was subject to a supposition.
5. 2 and 4.

Question 33

Indicate the correct statement?

1. An offer containing a term that the offer stands until a certain date, falls away if it is not accepted within a reasonable time.
2. **When someone culpably represents to another that a certain state of affairs exists, and induces the other person to act on that belief, to his prejudice, the person making the representation is prevented by the principle of *estoppel* to deny the existence of that state of affairs.**
3. Spouses who intend to apply to the court for a divorce, are compelled to submit to court an agreement according to which they dissolve the marriage.
4. If parties are not in agreement as to the content of the agreement, the contract will always be void for mistake.
5. A contract for the sale of land must be in writing and it must be executed notarially.

Question 34

A and B conclude a contract of sale as a result of an innocent misrepresentation by B (the seller) concerning the qualities of the object of sale. A can :

1. **Cancel the contract.**
2. Maintain the contract and claim damages from B.
3. Force B to deliver the object of sale against payment of the agreed price.
4. Do 1 or 3.

Question 35

When offer and acceptance take place by letter, the contract comes into existence when:

1. The offeror receives the letter of acceptance.
2. The offeree has written the letter of acceptance.
3. **The offeree posts the letter of acceptance.**
4. The offeror reads the letter of acceptance.

Question 36

Peter, who lives in Pretoria, posts a letter in Pretoria. The letter contains an offer to contract with John, and is addressed to John, who lives in Durban. John decided to accept the offer and posts a letter of acceptance in Durban.

1. A contract was concluded when Peter read the letter of acceptance.
2. A contract was concluded when the letter of acceptance was placed in Peter's post office box.
3. A contract was concluded when John posted the letter of acceptance.
4. **A contract was concluded when John wrote the letter of acceptance.**
5. No contract was concluded.

Question 37

Indicate the incorrect statement :

A enters into a contract with B to purchase his 1980 Ferrari. B, who is the owner of both a 1978 and 1980 Ferrari, thinks the contract is for the purchase of this 1978 Ferrari. The contract will be void for mistake if :

1. The mistake is one of fact.
2. **The mistake concerns a material fact.**
3. The mistake does not relate to either the identity of the parties or the terms of the contract.
4. The mistake is a reasonable mistake.
5. The party setting up the mistake is not estopped from doing so.

Question 38

Indicate the incorrect statement

A contract will be voidable due to representation if

1. **The misrepresentation was made by the other contracting party or an outsider.**
2. The misrepresentation was unlawful.
3. The misrepresentation induced the contract as it stands.
4. 1 and 3.
5. 2 and 3.

Question 39

Peter walks past a shop window and sees in the window an article priced at R50. He enters the shop and claims delivery of the article against payment of the sum of R50. The shop-owner, however, tells him that the price of the article has just been raised to R60. The general rule in such a case is

1. **That the display does not in itself constitute an offer, but is only an invitation to do business.**
2. That the shop-owner is legally obliged to deliver the article to Peter against payment of R50.
3. That Peter has an option to buy the article for R50.
4. That a contract of sale at a price of R50 has come into being.
5. 2 and 4.

Question 40

M places an advertisement in the newspaper to the effect that R100 will be paid to any person who supplies information leading to the apprehension of the persons responsible for burgling M's store. N supplies the information without being aware of the advertisement, and as a consequence the burglars are apprehended.

1. M is legally obliged to pay the R100 to N, because N did in fact supply the required information.
2. M does not have to pay the R 100 , because a valid offer cannot be made by way of an advertisement.
3. **M does not have to pay the R100, because no contract came into being between him and N.**
4. 2 and 3.
5. M is obliged to pay, because an offer to the public does not have to be accepted.

Question 41

In case of an auction not subject to reservation,

1. It is the bidder who is the offeror.
2. The auctioneer may reject a bid, even if it is the highest bid.
3. **The auctioneer offers to sell to the highest bidder.**
4. The auctioneer may lay down further conditions after conclusion of the auction.
5. None of the above.

Question 42

When offer and acceptance takes place by telephone, the contract comes into existence:

1. **At the place from which the offeror speaks.**
2. At the place from which the offeree speaks.
3. Only if the contract is confirmed by letter.
4. Only if the contract is confirmed by telex.

Question 43

With which of the following requirements must a misrepresentation comply before it can afford ground for the avoidance of an agreement?

1. There must be a misrepresentation.
 2. The misrepresentation must be made by the other contracting party or by someone acting either in his employ or in collusion with him.
 3. The misrepresentation must be wrongful.
 4. The misrepresentation must be the cause of the contract as it stands.
- (a) 1, 2 & 4;
(b) 2, 3 & 4;
(c) 1, 3 & 4;
(d) **1, 2, 3 & 4.**

Question 44

John buys a car from David because he mistakenly thinks that the car is capable of a speed of 180 kilometers per hour.

1. The contract for the purchase of David's car is void because of mistake if John's mistake was reasonable.
2. The contract is void because there was no consensus between the parties.
3. The contract is not void.
4. **1 and 2.**
5. The contract will be void if David has said that the car is capable of doing 180 kilometers per hour.

Question 45

In order to render a contract void, a mistake must *inter alia* :

1. **Be a mistake relating to a rule of law.**
2. Be a mistake in motive.
3. 1 and 2.
4. None of the above.

Question 46

Where A makes a false statement of fact to B with the specific intention of thereby inducing B to enter into a contract with him, and B, although he knows A's statement to be false, contracts with A, then B may :

1. Rescind the contract and claim damages based upon his positive interest.
2. **Not rely upon A's false statement in order to escape the performance of his own obligations in terms of the contract, or to claim relief from A by way of damages or rescission.**
3. Rescind the contract, but not claim damages.
4. Rescind the contract and claim damages based upon his negative interest.

Question 47

When a person is induced to enter into a contract under duress :

1. The contract is valid and the victim cannot claim the cancellation of the contract but only damages for breach of contract.
2. The contract is totally void because 'consent' obtained under duress is not regarded as consent.
3. The contract is valid and enforceable under all circumstances because it was not concluded without consent.
4. **The contract is voidable and the victim can have the contract declared void at his discretion.**

Question 48

A very excited Craig, who has just heard that he is the winner of a new bicycle, telephones Ronny and tells him the good news, He offers to give his old bicycle to Ronny, who gladly accepts. They agree that Craig will deliver the old bicycle to Ronny once he has received his new bicycle. Indicate the correct statement.

1. **Craig and Ronny have concluded a valid contract.**
2. The agreement between Craig and Ronny is not a contract, because no price has been specified.
3. The agreement between Craig and Ronny is void because it is not contained in a written document.

4. A valid contract will only arise once Craig has received his new bicycle.

Question 49

Andrew undertakes that, one month after Xaba's death, he will buy Bernhard a new house.

Which one of the following statements is correct?

1. The moment for performance cannot be determined since it is uncertain when Xaba will die.
2. **A contractual relationship between Andrew and Bernhard arises and neither of them may resile from the contract.**
3. This is an example of a resolutive condition since the continuance of the contract depends on a specified uncertain event.
4. This is an example of a resolutive time clause since the contractual obligations only have effect until the arrival of a certain moment.
5. This is an example of a suspensive condition since the contractual obligations are suspended until the condition is fulfilled.

Question 50

A wishes to offer B a job and asks his secretary to telephone B so that he can talk to him. The secretary dials the wrong number and A offers the job to C, who answers the telephone and has the same first name as B. A is under the impression that he is talking to B and offering the position to B. C accepts the offer. Which one of the following statements is correct?

1. **The contract between A and C is void due to mistake.**
2. The contract between A and C is void due to misrepresentation.
3. A and C reached consensus and will be held to their declarations of intention.
4. The contract between A and C is valid since the mistake is not material.

Question 51

Which one of the following situations indicates that consensus does not exist:

1. Arni tells the purchaser that he is buying a 1992 model car, while in fact it is a 1990 model.
2. **Arni does not know whether the purchaser is Jonathan Lee or his brother, John Lee.**
3. Surgeon X convinces a very sick Y shortly before an operation to sell his car cheaply to him.
4. Arni persuades Xaba at gun point to sell him his 1994 model Enzo car for R5.

Question 52

X wants to buy Y's car. X and Y agree that X may take the car, but Y is under the impression that X is only hiring the car from him. Which one of the following statements is incorrect?

1. **No contract came into existence between X and Y.**
2. The parties have reached consensus with regard to the object of performance.
3. The parties have the intention to be contractually bound.
4. The parties have reached consensus .

Question 53

A and B negotiated the sale of a house. A represented to B that the house had a sound foundation and that there was no danger of the walls starting to crack. They both signed the contract and two days later, after a heavy thunderstorm, three walls cracked as a result of the house having been built in clay. Which one of the following statements is correct?

1. The agreement between A and B is void on grounds of misrepresentation.
2. B does not have any remedies, since he signed the contract of sale.
3. **The contract between A and B is voidable on grounds of misrepresentation.**
4. No contract came into existence because the parties did not reach consensus.

Question 54

A holds a pistol to B's head and threatens to kill him should he not sell his house to A. B agrees and the contract of sale is signed by both parties. Which one of the following statements is incorrect?

1. Consensus exists between A and B.
2. A valid contract was concluded between A and B.
3. The contract is voidable as a result of duress.
4. **This contract is void because A forced B to sign it.**

Question 55

Indicate which one of the following situations complies with the requirements for a valid offer which could lead to the conclusion of a contract.

1. B tells C that he can buy one of his cars at whatever price they agree upon at a later stage.
2. Supermarket Cheap-Cheap advertises the sale of model XTS toasters for R59,99 in the local newspaper.
3. **The police offer a reward of R10 000 for information leading to the apprehension of escaped convict X.**

4. X leaves a message on Y's answering machine, stating that Y may buy his car for R21 000. Y's wife inadvertently erases the message before anyone can listen to it.

Question 56

A bank promises a reward of R50 000 to any member of the public who supplies information relating to a bank robbery. Without knowing of the reward, Peter calls the bank and as a result of the information supplied by him, the robbers are taken into custody. He claims the reward from the bank. Which one of the following statements is correct?

1. There was never a valid offer, because it was not made to a specific person.
2. There was a valid offer, and through his act (calling the bank) Peter accepted the offer and a contract arose.
3. **There was a valid offer, but because Peter did not originally provide information with the intention of accepting the offer, no contract arose.**
4. There was only an invitation to do business and when a member of the public reacted to this invitation, he made an offer to the bank.

Question 57

Sipho tells the purchaser Thabo that he is buying a 1994 model car while Sipho knows that it is a 1992 model.

Which one of the following statements is correct?

1. The contract between Sipho and Thabo may possibly be void because of misrepresentation.
2. The contract between Sipho and Thabo may possibly be void because of mistake.
3. **The contract between Sipho and Thabo may possibly be voidable and damages could be claimed.**
4. The contract between Sipho and Thabo is valid and Thabo has no remedies.

Question 58

In which one of the following cases will the contract be valid, in spite of a mistake by one or both of the parties to the contract?

1. Diliza buys a motor car from Gamba because he mistakenly believes that he has inherited R30 000 from his uncle Mahluli.
2. **Diliza sells his motor car under the impression that the buyer is Gamba, but in fact the buyer is Mahluli.**
3. Diliza makes an offer to buy Mahluli's house in Cape Town, while Mahluli is under the impression that the offer is for his (Mahluli's) house in Durban.

4. Diliza is under the impression that he is concluding a contract of sale with Mahluli in terms of which he is buying Mahluli's motorcar. Mahluli is under the impression that they are concluding a contract of lease.

Question 59

Len makes an offer in writing to sell his motorbike for R5 000. He receives a telephone call from Fred, who accepts the offer. As he puts down the phone, the doorbell rings. It is Garth, who hands him his (Garth's) written acceptance of the offer. What is the legal position?

1. Since Len's offer was in writing, it could be accepted only in writing. A valid contract exists between Len and Garth.
2. **Although Len's offer was in writing, it could be accepted in any way, also orally. A valid contract exists between Len and Fred.**
3. Since Len made the offer, he can decide who the other contracting party is, he has to exercise his choice within a reasonable time.
4. Len is not bound to any contract yet. The parties first have to sign a written document.

CHAPTER 5

Question 1

Susan is eighteen years old and lives with her parents. She concludes a written contract in terms of which she buys a flat from Steven, a thirty-five-years old man, for R20 000. She intends to use money she received as a gift from her uncle after passing her matric examinations for the purchase price.

Which ONE of the following statements is CORRECT?

1. The contract between Susan and Steven is void, because it was concluded without the consent of her guardian and the Master of the High Court.
2. The contract between Susan and Steven is void, because it was concluded without the consent of the High Court.
3. **The contract between Susan and Steven is not enforceable against Susan, because it was concluded without the consent of her guardian.**
4. The contract between Susan and Steven is void, because Susan does not have the capacity to act.

Question 2

Chris, a minor over the age of seven, inherits livestock worth R150 000 from his late grandmother. He lives in a flat with his guardian, Gerrit. Chris wants to sell the livestock and invest the money.

Indicate the CORRECT statement:

1. **Chris needs Gerrit's assistance to sell the livestock.**
2. Chris does not need Gerrit's assistance to sell the livestock.
3. Chris needs Gerrit's assistance as well as the consent of the Master of the High Court to sell the livestock.
4. Chris needs Gerrit's assistance as well as the consent of a Judge of the High Court to sell the livestock.

Question 3

Bailey owns a hardware store. He needs to appoint a sales person and to replace his delivery van with a bigger vehicle. He parks the old vehicle in front of the shop with a notice advertising that it is for sale and indicating the price. People who come to apply for the job see the vehicle. If Bailey finds a buyer for the van and a suitable sales person he will conclude two contracts: a contract of sale in respect of the old vehicle and a contract of employment with the suitable applicant.

The vacancy and the van are so attractive that several people are interested in both.

Which ONE of the following people does NOT have the full capacity to conclude both of the contracts with Bailey?

1. Mrs Jackie Morobe, 20 years old, who has been married to Shakes Morobe for the last two years. They are married out of community of property.
2. **Basie Terblanch, whose estate was sequestered after he lost a fortune in a shady business deal and who has not been rehabilitated yet.**
3. Ahmed Fortuin, who is married in community of property to Patricia.
4. Charlie Jacobs, 19 years old, whose parents left him behind when they emigrated to Australia because he was doing so well with the little computer agency he was running from his house. He inherited the property from his grandmother and also lives there.

Question 4

The following parties are involved in contractual negotiations for the establishment of the first multi-million rand virtual reality theme park in Cape Town called "Cyber Cape 1".

Which ONE of them will NOT have the capacity to contract independently?

1. Mr Marley, a Jamaican businessman.
2. Mrs List, a very wealthy widow.
3. **Thebogo, a sixteen year old computer whiz-kid.**
4. Prince Naseem, aged 21, a millionaire's son with prodigal tendencies.

Question 5

Which ONE of the following statements is CORRECT?

1. A minor loses the capacity to act once a marriage to which he/she is a party, is dissolved by divorce.
2. As a perpetual minor a juristic person always requires the assistance of a natural person to conclude juristic acts.
3. Joe, a prodigal, will be liable for the purchase price of the shares in Newco Ltd which he bought telephonically through Tom, a stock broker.
4. **An insolvent person may enter into a contract of marriage.**
5. A spouse has the right to share in the accrual of the other spouse's estate in a marriage in community of property.

Question 6

Becky, a sixteen-year old girl, works as a cook at the Canyon Spur restaurant. Becky started to work as she wanted to supplement the R50 a month pocket money she receives from her parents. One Saturday evening just after she finishes her shift, Becky borrows R400 from Tom, the owner of the restaurant. The next Saturday evening Becky fails to show up for work. Tom finds out that Becky has started dating and that she does not want to work at the Spur anymore.

Tom contacts Becky and he demands his money back, but Becky tells him that she cannot pay him back as she has given her new boyfriend a watch which she bought for R150 and has spent R100 on a new hockey stick for herself as she is the captain of her school's hockey team and needed a new stick. She tells Tom that with the rest of the money she bought a gold bracelet which she gave to her grandmother for her eightieth birthday. Tom approaches Becky's father, Sam but Sam refuses to discuss the matter with Tom. Sam informs Tom that he does not accept any liability for Becky's debt and that he thinks Tom is crazy to lend a sixteen-year old girl R400.

Tom approaches you for legal advice.

Indicate which ONE of the following statements CORRECTLY reflects Tom's legal position:

1. Tom may sue Becky for unjustified enrichment for the amount of R400.
2. Tom may sue Becky for unjustified enrichment for the amount of R400.
3. Tom may claim surrender of the watch and the golden bracelet or their value.
4. **Tom may sue Sam for unjustified enrichment for the amount of R100.**

Question 7

In which ONE of the following cases can Philip, who is 19 years old and not emancipated, conclude a valid contract without his guardian's consent?

1. **Philip concludes an insurance policy on his life with Ripuree.**
2. Philip rents a flat from Ripuree.
3. Philip buys a plot from Ripuree for R20 000.
4. Philip donates a motorcycle to Ripuree.

Question 8

Albert and Rosie got married out of community of property on 1 November 1999.

Which ONE of the following statements is INCORRECT?

1. Albert and Rosie concluded an antenuptial contract.
2. Unless the parties explicitly agreed otherwise, the accrual system will apply with regard to their marriage.
3. Rosie and Albert both have full contractual capacity.
5. **Rosie has to give her consent to the sale of a farm which belongs to Albert.**

Question 9

Consider the following statements:

- a. An insolvent loses his or her capacity to act.
- b. A person with a propensity to squander his money has limited capacity to act.
- c. A minor over the age of seven years has limited capacity to act.
- d. A minor under the age of seven years has no capacity to act.

Which ONE of the following reflects the CORRECT legal position?

1. a is INCORRECT but b is CORRECT.
2. b is CORRECT but c is INCORRECT.
3. c is INCORRECT but d is CORRECT.
4. **d is CORRECT but a is INCORRECT.**
5. None of the above.

Question 10

Johnny, a twelve year old boy, enters into an agreement with Mr Jones, in terms of which Johnny agrees to sell his computer to Mr Jones. Mr Jones pays Johnny R1 000 for the computer which he will collect at Johnny's home during that same afternoon. Johnny uses the money to buy himself video games to the value of R800 and school uniforms for R200 to replace the ones

he has outgrown. When Mr Jones arrives at Johnny's home, Johnny refuses to give him the computer.

Indicate the INCORRECT statement:

1. Johnny will not be liable to Mr Jones for performance, because the contract is not enforceable.
2. Johnny will be liable to give up (surrender) the video games to Mr Jones or repay him the R800 which the video games are worth.
3. Johnny will not be liable to repay Mr Jones R200, but his parents will be, because as his guardians they are responsible for payment of Johnny's necessities, and are enriched by this amount.
4. **Johnny will not be liable on the contract. The contract is void because it was concluded without the assistance of Johnny's parents.**

Question 11

Which ONE of the following persons has limited capacity to perform juristic acts?

1. A major unmarried woman.
2. A divorced woman of nineteen years old.
3. **A man who has been declared a prodigal by the court.**
4. A minor under the age of seven years.

Question 12

Simon, who is 16 years old, sells his computer to Lynn, a 19-year-old divorced woman, for R500 without the consent of his guardian. Lynn regards this as a big bargain and keenly pays Simon the agreed amount. They agree that Simon will deliver the computer the following week. Simon recklessly squanders the R500, and decides not to deliver the computer.

Which ONE of the following statements is CORRECT?

1. Simon's guardian is liable to repay Lynn the R500.
2. **Lynn has no contractual claim against Simon for the return of the R500.**
3. Lynn can sue Simon for the return of the R500 on the ground of unjust enrichment.
4. Simon committed breach of contract and Lynn can therefore claim specific performance of the contract.

Question 13

Which ONE of the following statements is the MOST CORRECT?

1. **A contract in terms of which a person who has been declared a prodigal acquires rights without incurring obligations, is valid.**

2. A contract concluded by a person during a lucid moment but subsequent to a declaration by the court that he is mentally deficient, is nevertheless void.
3. A contract in terms of which a person who has been certified as mentally deficient, acquires rights without incurring obligations, is valid.
4. A contract in terms of which an insolvent person disposes of his assets is void.

Question 14

Which ONE of the following persons has limited capacity to perform juristic acts?

1. A major unmarried woman.
2. A divorced woman of 19 years old.
3. A minor under the age of seven years.
4. **A man who has been declared a prodigal by the court.**

Question 15

Michael and his grandfather agree that the grandfather will leave his game farm in Mpumalanga, to Michael in his will.

How would you judge this agreement between Michael and his grandfather?

1. It is a valid contract, since both parties agreed.
2. **It is an agreement in terms of which the grandfather's freedom to participate in legal intercourse is restrained.**
3. It is an unenforceable agreement since it is prohibited by legislation.
4. This agreement constitutes a contract that is physically impossible.

Question 16

Which ONE of the following statements is CORRECT?

1. **A minor obtains full capacity to act upon marriage.**
2. The Age of Majority Act 57 of 1972 provides that any person who has reached the age of twenty-one years must apply to a High Court for an order to be declared a major.
3. The Age of Majority Act 57 of 1972 provides that a person becomes a major when he or she reaches the age of eighteen.
4. A married minor loses the capacity to act if he or she should divorce before reaching the age of majority.

Question 17

Jomo wants to sell his old computer for R2000. Bago, an eighteen year old boy, wants to buy it. He tells Jomo that he is twenty three years old and may therefore conclude the contract of sale without his parents' assistance. Jomo and Bago agree that Bago will pay a deposit and that he will pay the balance

in instalments. Bago's parents reduce his pocket money and as a result Bago is unable to pay the instalments as agreed.

Which ONE of the following statements is CORRECT?

1. Bago is not liable for paying the purchase price of the computer as the contract is not enforceable against him.
2. Bago is not liable for paying the purchase price of the computer as Jomo should have known that he was a minor.
3. Bago is liable for paying the purchase price of the computer as he is an emancipated minor.
4. **Bago is liable for paying the purchase price of the computer as he fraudulently posed as a major.**

Question 18

Tanya and Nic are married in community of property. Their marital regime has certain patrimonial consequences. There is an exception to one of these consequences.

Which ONE of the following statements regarding the exception is CORRECT?

1. **If Tanya's grandfather bequeathed his farm to Tanya with the express condition that it is to be excluded from the joint estate, it is possible for Tanya to retain the farm as specific separate property.**
2. If Tanya's grandfather bequeathed his farm to Tanya with the express condition that it is to be excluded from the joint estate, it is impossible for Tanya to retain the farm as specific separate property, because in a marriage in community of property there is only one common estate.
3. If Tanya's grandfather bequeathed his farm to Tanya with the express condition that it is to be excluded from the joint estate, it will only be possible for Tanya to retain the farm as specific separate property if Nic gives the required written consent.

Question 19

Moloko, a minor, has just finished a computer course and decides to start a business designing business cards and wedding invitations. His father, an estate agent, finds business premises for him in the local shopping mall. His mother buys a computer and furniture for the business.

Which ONE of the following statements is CORRECT?

1. Moloko is not emancipated, since his parents did not expressly consent to his economic independence.
2. **Moloko has been tacitly emancipated by his parents, since they allow him to lead an economically independent life.**

3. Moloko's minority has been terminated, since his emancipation gave him the capacity to act.
4. Moloko may marry without his parents' consent since he has been emancipated.

Question 20

Consider the following persons:

- a. a fourteen-year old boy.
- b. a seven year old girl.
- c. a six-year old boy.
- d. a twenty-one year old girl.
- e. a juristic person.

Which of the above persons have NO capacity to perform juristic act?

1. only a and b.
2. a, b and c.
3. only b and d.
4. b, c and e.
5. **only c and e.**

Question 21

Consider the following factors:

- a. mental deficiency
- b. the influence of alcohol or drugs
- c. declaration as a prodigal by the High Court
- d. marriage
- e. sequestration

Which ONE of the following statements is CORRECT?

1. Factors a-e have an influence on a natural person's legal capacity.
2. **Factors a-e have an influence on a natural person's capacity to act.**
3. Factors a-e have no influence on a natural person's legal capacity or capacity to act.
4. Factors a-e have an influence on a natural person's legal capacity and capacity to act.

Question 22

Without the consent of his guardian, Robert, a 17 year old boy, sells his bicycle for R600 to Graham, who is a major. Graham pays the R600 and arranges to collect the bicycle the following day. On his arrival Robert refuses to give him the bicycle and informs Graham that he has bought a new school uniform with the R600.

Which ONE of the following statements is CORRECT?

1. **Robert's guardian is liable to repay Graham the R600 on the grounds of unjustified enrichment.**
2. Robert has spent the R600 and cannot be sued for the R600 on the grounds of unjustified enrichment.
3. Robert committed breach of contract and Graham can claim specific performance in terms of the contract.

Question 23

Albert and Rosie married out of community of property on 1 November 1999.

Which ONE of the following statements is CORRECT?

1. Albert and Rosie must conclude an antenuptial contract for the accrual system to apply.
2. Albert and Rosie both lose their full capacity to act on marriage.
3. **Albert and Rosie are jointly and severally liable to third parties for debts incurred for necessities for the common household.**
4. Rosie has to give her consent for the sale of a farm which belongs to Albert.

Question 24

Which ONE of the following statements is CORRECT?

1. A minor loses his/her capacity to act once a marriage to which he/she is a party, is dissolved by divorce.
2. A juristic person does not require the assistance of a natural person to conclude juristic acts.
3. **An insolvent person may enter into a contract of marriage.**
4. A spouse has the right to share in the accrual of the other spouse's estate in a marriage in community of property.

Question 25

Raiza is nineteen years old and a full-time student. During the vacation, she concludes a contract of employment with Mpho, who operates a fast food delivery service. Raiza's salary will be R1 500 for the five-week vacation. After having worked for a week, Raiza asks Mpho for an advance of R800 on her salary. Mpho lends the money to Raiza, who spends R500 on a pair of sunglasses as a twenty-first birthday present for her boyfriend, Amod. Raiza does not return to her job, and uses the remaining R300 for a bus ticket to visit a friend in Durban. Raiza's father is furious when Mpho tells him what has happened. He would never have agreed to Raiza's taking a holiday job, as he feels that he provides her with enough money for her needs and that she should spend vacations with her family.

Which ONE of the following statements is CORRECT?

1. Mpho can enforce the contract against Raiza, because Raiza is an emancipated minor.
2. Mpho can enforce the contract against Raiza's father, because Raiza is still dependent on him.
3. Mpho can recover the sunglasses from Amod, and the value of the bus ticket from Raiza's father.
4. **Mpho has no enforceable legal remedy.**

Question 26

A is a seventeen year old school pupil. He purchases on credit from B a motor cycle for R1 000, as well as school clothes for R100 to replace his present outfit which is in tatters. Before any payment can be made by A, either in respect of the motor cycle or the school clothes, the motor cycle is destroyed as a result of A's recklessness. B can claim the following from A:

1. R1 100.
2. R1 000.
3. R100.
4. **Nothing.**

Question 27

A minor, without his guardian's consent, borrows R20 from a major. He uses the money to buy sweets (which he consumes) for R10 and clothes for R10. The major has the following remedy at his disposal:

1. He may claim the R20 from the minor's guardian.
2. He may claim the R20 from the minor.
3. **He may claim the clothes or their value from the minor's guardian on the basis of unjust enrichment.**
4. He may claim the value of the sweets and the clothes from the minor.

Question 28

A person acquires majority *inter alia* :

- a. By exhibiting the degree of judgment normally expected from an adult.
- b. By reaching the age of 25 years.
- c. **By declaration of majority by the High Court after reaching the age of 18 years.**
- d. a and c.

Question 29

Which of the following statements is incorrect? Minority terminates :

- a. By marriage in community of property.

- b. On reaching the age of 21 years.
- c. By marriage out of community of property.
- d. On emancipation.**
- e. On declaration of majority by the High Court.

Question 30

Indicate which one of the following statements is incorrect?

- a. A 20 year old typist working in Hillbrow and living in her own apartment with the consent of her guardian, does not need her guardian's assistance to enter into contract.
- b. The guardian as well as the Master of the High Court must consent to the alienation of immovable property belonging to the minor if the value of the property is less than R100 000.
- c. If a minor enters into a contract without the necessary assistance of his guardian the other party incurs liabilities as against the minor and performance thereof may only be enforced with the assistance of the guardian if the minor renders to tenders his performances.
- d. Where a minor concludes a contract without the necessary assistance, he cannot be sued on the ground of unjust enrichment if the full amount has been squandered at the time when the action is instituted.
- e. If the guardian ratifies a contract the minor concluded without his assistance, the contract is binding on the guardian.**

Question 31

Which of the following persons have no capacity to act?

- a. minors over the age of 7 years.
- b. unrehabilitated insolvents.
- c. mentally deficient persons.**
- d. prodigals.

Question 32

Bongani is 19 years old and lives with his parents. Without his guardian's consent, he sells his motorcycle for R2 000 to Mxali who is 25 years old. On enquiry by Mxali Bongani lies about his age and says that he is 21 years old. On the strength of this statement, they conclude the contract. Mxali pays the R2 000, but Bongani refuses to deliver the motorcycle to Mxali. Which one of the following statements is correct.

- a. Mxali has no contractual claim against Bongani for the return of the R2 000.
- b. Mxali can sue Bongani for the return of the R2 000 on the grounds of unjustified enrichment
- c. Bongani's guardian is liable to repay Mxali the R2 000.
- d. Bongani committed breach of contract and Mxali can claim specific performance of the contract.**

CHAPTER 6

Question 1

Which ONE of the following statements is INCORRECT?

1. A wagering contract is valid.
2. **A wagering contract is void.**
3. A wagering contract is unenforceable.

Question 2

Which ONE of the following contracts between Mr Sly and Mrs Naive will be legally possible to perform:

1. Mr Sly sells fifty square kilometers of ocean just off Mossel Bay to Mrs Naive for R200 000 to be registered in terms of title deed no T/ 456 in the Cape Town Deeds Office.
2. Mr Sly undertakes to have all Mrs Naive's speeding tickets quashed in return for her husband's soccer tickets for the season.
3. **Mr Sly, the owner of the Johannesburg Totalisator, accepts a wager from Mrs Naive in terms of which he undertakes to pay her R10 000 if the horse Yankee Doodle wins the Queen's Cup.**
4. Mr Sly agrees to murder Mrs Naive's husband for R50 000 because he (Mrs Naive's husband) is having an affair with his secretary.

Question 3

Which ONE of the following statements is CORRECT?

1. If, in an insurance contract, John describes the house from where he operates a brothel as a "dwelling house", a valid contract of insurance will come into existence, because prostitution is not illegal.
2. If Jabo bets Sancho R500 that the All Blacks will win the next Rugby World Cup, the contract between them will be void, because it is a wagering contract.
3. If Frans, the famous chef and owner of Cajun Cafe, agrees with Karl, the buyer of the restaurant, that Frans will never again open or work in a restaurant in South Africa, the contract will be enforceable, because it is a principle of South African law that parties have freedom to contract.
4. **If Cassim, who is deeply in love, offers to give Shareen, the object of his affections, the sun, the moon and the stars in a contract of donation, a valid contract does not come into existence because the objects of the donation are not capable of being privately owned.**

Question 4

Peter leases his house to James for R600 a month. Unknown to them the house was burnt down to the ground the previous day.

Indicate the CORRECT statement:

1. A valid contract is concluded and James can claim alternative housing.
2. A valid contract is concluded arose, but was terminated because of supervening impossibility of performance.
3. The contract is void because of mistake.
4. **The contract is void because of initial impossibility of performance.**

Question 5

Which ONE of the following contracts must be in writing and signed in order to be valid?

1. A contract where a wager is made.
2. A contract where a car is sold.
3. **A contract where land is bartered.**
4. A contract where a house is leased.

Question 6

Choose the CORRECT option:

In terms of the common law wagering contracts are:

1. valid and enforceable.
2. valid but voidable.
3. illegal and void.
4. unlawful and voidable.
5. **valid but unenforceable.**

Question 7

Mpho and Molefe enter into an agreement that Molefe will purchase Mpho's BMW car for R10 000. Molefe is unaware that Mpho's car was stolen the day after Molefe saw Mpho driving it. Mpho does not tell Molefe that the car was stolen, because he is optimistic that the police will soon find it.

Indicate the CORRECT statement:

1. The contract is invalid because performance depends on chance or luck.
2. The contract is invalid because performance is not determined and ascertainable.
3. **The contract is invalid because performance is physically impossible.**
4. The contract is invalid because performance is against good morals.

Question 8

Consider the following statements:

1. Impossibility of performance renders a contract void if the impossibility exists at the time that the agreement is being concluded.
2. Impossibility of performance is a form of breach of contract if the impossibility occurs after conclusion of the contract and is caused by the fault of one of the contracting parties.
3. Impossibility of performance is a way whereby rights arising from contracts are terminated if the impossibility occurs after conclusion of the contract and if it is caused by factors beyond the control of the contracting parties.

Which of the above statements is/are CORRECT:

1. Only 1
2. Only 2
3. 2 and 3
4. **1, 2 and 3**

Question 9

Which ONE of the following statements is CORRECT?

1. John, who is desperate for money to start a supermarket business, may sell an area of ten square kilometers of the Indian Ocean to a developer to promote tourism.
2. Peter, an ardent believer in freedom of conscience, movement and speech may agree with Tom to erect a facility to teach safe sex and to allow primary school pupils to practice it.
3. **Susan, who sells sugar cane at R3 a bale and who has delivered to Musa three of the fifteen bales that he ordered from her, may demand payment for the three bales.**
4. Performance is divisible in a contract pertaining to the sale of the car.

Question 10

Sue is the plaintiff in a civil case. Her attorney tells her that she doesn't have a good case and that she will probably not succeed with her claim. Sue nevertheless continues with her claim. She decides, however, that the only way to ensure success would be to give Mr Mokgethi, the magistrate hearing her case, an amount of money. She goes to his chambers, and hands him a suitcase full of twenty rand notes. He promises that he will ensure that her claim succeeds.

Mr Mokgethi delivers judgment against Sue in favour of the defendant.

Indicate the CORRECT statement:

1. Sue will succeed with an action against Mr Mokgethi to reclaim the money she paid him since he is in breach of contract.
2. Sue will not succeed with an action against Mr Mokgethi to compel him to make a ruling in her favour since they did not reach consensus on the amount.
3. Sue will succeed with an action against Mr Mokgethi to reclaim the money she paid him, because he is unjustifiably enriched.
4. **Sue will not succeed with an action against Mr Mokgethi since her agreement with him is contrary to public policy and therefore legally impossible.**

Question 11

Mr Reed, a wealthy businessman, married his twenty-one year old secretary. In terms of their duly registered antenuptial contract, he appoints her as the sole heir to his fortune. On his death, his children contest the validity of this undertaking in the antenuptial contract.

Indicate the CORRECT statement:

1. The appointment is not valid since it is contrary to good morals.
2. The appointment is not valid since it cannot be legally executed.
3. The appointment is valid since it amounts to a valid donation between the living.
4. **The appointment is valid since a party about to be married may appoint the other spouse as heir in an antenuptial contract.**

Question 12

Which ONE of the following agreements is NOT unlawful?

1. A contract which is against public policy
2. **A contract which is unreasonable or unjust.**
3. A contract which is contrary to good morals.
4. A contract which is contrary to a statute

Question 13

Which ONE of the following statements is INCORRECT?

1. **An illegal agreement is valid until one of the parties decides to set it aside.**
2. The parties to an illegal agreement do not have any enforceable rights or obligations arising out of the illegal agreement.
3. A party who suffered damage as a result of an illegal agreement cannot rely on the agreement in order to claim damages.
4. The party who has the right of performance in terms of an illegal agreement cannot rely on the contractual obligation to enforce his / her right.

Question 14

Peter places a bet with Stan, a bookmaker at the local totalisator, that the horse Treble Chord will win the Durban July horserace. Treble Chord wins the race, but Stan refuses to pay Peter his winnings. This is a regulated activity.

Which ONE of the following statements is THE MOST CORRECT/CORRECT?

1. **Peter has an enforceable right against Stan, since the contract is valid and lawful.**
2. Peter has no enforceable right against Stan for his winnings, since at common law a wagering contract is mostly invalid.
3. Peter has no contractual claim against Stan for his winnings, since their contract is contrary to good morals.
4. Peter may institute a claim against Stan, but only on delictual grounds.

Question 15

Anton sells uncut diamonds illegally to Bevan. Bevan pays the agreed purchase price in cash. Anton subsequently refuses to deliver the diamonds to Bevan.

Which ONE of the following statements is CORRECT?

1. Bevan can institute action against Anton to claim the diamonds on the basis of the contract which arose between them.
2. **The contract between Anton and Bevan is void owing to legal impossibility.**
3. Bevan can reclaim the purchase price from Anton on the ground of unjustified enrichment.
4. Options (2) and (3) above are correct.

Question 16

Jo owes Lloyd an amount of R5 000. Jo and Lloyd enter into an agreement in terms of which Lloyd will cancel the debt if Jo agrees to divorce his wife so that Lloyd can marry her.

Which ONE of the following statements is CORRECT?

1. Jo and Lloyd's contract is lawful because they have reached consensus.
2. Jo and Lloyd's contract is lawful because they both have capacity to enter into juristic acts.
3. **Jo and Lloyd's contract is unlawful because their agreement is contrary to good morals.**
4. Jo and Lloyd's contract is unlawful because their agreement is contrary to public policy.

Question 17

Refilwe's only daughter, Sandra, is getting married. Refilwe is a prominent figure in the community and she expects many guests at the wedding celebration. She agrees with Sebake, a farmer, that she will buy from him two of the five head of cattle he has shown her as well as three 10 kg bags of rice for catering purposes.

Which ONE of the following statements is CORRECT?

1. **The contractual obligation between Refilwe and Sebake is generic, since Refilwe has a choice of performance from the five head of cattle that Sebake has shown her.**
2. The contractual obligation between Refilwe and Sebake is alternative, since Refilwe has chosen to buy only three 10 kg bags of rice from Sebake.
3. Once Refilwe has selected two head of cattle, she is not allowed to reverse her choice even if she is dissatisfied with the cattle.
4. Even though Sebake has an obligation to deliver three 10 kg bags of rice, he can rely on impossibility of performance if he is unable to deliver them.

Question 18

Which ONE of the following statements is CORRECT?

1. John, who is desperate for money to start a supermarket business, may sell an area of ten square kilometers of the Indian Ocean to a developer to promote tourism.
2. Peter, an ardent believer in freedom of conscience, movement and speech may agree with Tom to erect a facility to teach safe sex and to allow primary school pupils to practise it.
3. **Susan, who sells sugar cane at R3 a bale and who has delivered to Musa only three of the fifteen bales that he ordered from her, may demand payment for the three bales.**
4. Performance is divisible in a contract pertaining to sale of a car.

Question 19

Choose ONE of the options provided below to complete the following sentence CORRECTLY.

Contracts in restraint of trade are

1. in principle invalid and unenforceable, because a person's freedom to compete in the employment market is restrained and it is therefore contrary to public policy.
2. **in principle valid and enforceable, because the law permits the restraint of a person's freedom to trade if the parties freely conclude an agreement to this effect.**

3. in principle, valid but unenforceable, because parties may conclude an agreement to this effect but a court will give precedence to public interest over contractual commitment if these interests are in conflict.

Question 20

Which ONE of the following statements is CORRECT?

1. The performance due in terms of a contract will be determined even if there is no agreement between the parties regarding the performance.
2. The performance due in terms of a generic obligation is determined by selecting one from a number of choices.
3. The performance due in terms of an alternative obligation is determined by describing a kind (genus) of commodity in terms of number or mass or measure.
4. **The performance due in terms of a contract will be ascertainable if, at the time of concluding the contract, the parties agree on a criterion or a formula to identify the performance or if they agree that a specified person will determine the performance.**

Question 21

After fifteen years of married life, John wants to end his marriage. Since his wife Jill will be entitled to half of his estate if he divorces her, he concludes a contract with a professional killer, Mr Shoot, in terms of which he will pay Mr Shoot the amount of R12 000 to murder Jill. The next day Jill dies of natural causes.

Which ONE of the following statements is CORRECT?

1. Mr Shoot is not entitled to payment in terms of the contract because performance has become impossible.
2. Mr Shoot is entitled to payment because John committed breach of contract.
3. Mr Shoot is entitled to payment in terms of the contract because performance has become impossible.
4. **Mr Shoot is not entitled to payment because the agreement between him and John is contrary to public policy.**

Question 22

Which ONE of the following agreements is valid and enforceable?

1. **John is an Internet web site designer. He agrees to design a web site for Mita, an attorney, and they enter into an agreement. The agreement restrains John from designing web sites for other attorneys for a period of two months.**
2. Abe and Dan enter into a wagering contract in terms of which Abe will pay Dan R2 000 if Dan's baby, Mici, wins a baby crawling race.

3. Steve, a prosecutor in the Magistrates Court, enters into an agreement with Sonja not to prosecute her for shoplifting, provided Sonja accompanies him to his sister's wedding.
4. Basil sells twenty wild buck to Ken, a nature conservationist, for an amount of R200 each. Only after the conclusion of the agreement does Ken realise that the buck are not in captivity, but that they roam Basil's farm freely. Ken is only able to catch one buck as the others migrated to the south two months before.

Question 23

Which ONE of the following statements is CORRECT?

1. **If Cassim, who is deeply in love, offers to give Shareen, the object of his affections, the sun, the moon and the stars in a contract of donation, a valid contract does not come into existence because the objects of the donation are not capable of being privately owned.**
2. If Jabo bets Sancho R500 that the All Blacks will win the next Rugby World Cup, the contract between them is void, because it is a wagering contract.
3. If Frans, the famous chef and owner of Cajun Café, agrees with Karl, the buyer of the restaurant, that Frans will never again open or work in a restaurant in South Africa, the contract will be enforceable, because it is a principle of South African law that parties have freedom to contract.
4. John and Peter decide to run a brothel and draw up an agreement on how they will divide the profits. A valid contract comes into existence.

Question 24

Which ONE of the following statements is CORRECT?

1. John and Peter decide to run a brothel and draw up an agreement on how they will divide the profits. A valid contract comes into existence.
2. If Jabo bets Sancho R500 that the All Blacks will win the next Rugby World Cup, the contract between them is void, because it is a wagering contract.
3. If Frans, the famous chef and owner of Cajun Cafe, agrees with Karl, the buyer of the restaurant, that Frans will never again open or work in a restaurant in South Africa, the contract will be enforceable, because it is a principle of South African law that parties have freedom to contract.
4. **If Cassim, who is deeply in love, offers to give Shareen, the object of his affections, the sun, the moon and the stars in a contract of donation, a valid contract does not come into existence because the objects of the donation are not capable of being privately owned.**

Question 25

An agreement is prohibited by common law if :

1. **It is against public policy.**
2. It is unreasonable.
3. Performance is objectively impossible.
4. There is no consensus.

Question 26

Indicate the incorrect statement :

The following agreements are prohibited by common law because they are either against the public interest or contrary to good morals:

1. Contracts concluded with the enemies of the state.
2. Contracts which are voidable due to fraud.
3. **Contracts to dissolve a marriage.**
4. Contracts to commit an immoral act.

Question 27

The *par delictum* rule is applied without relaxation :

1. To enforce claims *ex contractu* in the case of illegal contracts.
2. **To refuse a claim on the ground of unjust enrichment where both parties are equally guilty of an unlawful transaction.**
3. To refuse a claim where the contractual cause of action of the claimant is base.
4. To grant redress where the performance of one party is less shameful than that of the other party.

Question 28

Wagering contracts are:

1. Void because they are lawful.
2. **Not enforceable in the courts, although a wagering debt cannot be reclaimed once it has been paid.**
3. Invalid, and any payment made as a result thereof can be reclaimed.
4. Enforceable if in writing.

Question 29

A contract in restraint of trade is :

1. Valid, but enforceable only upon proof that it is not contrary to public policy.

2. Void.
3. **Valid, but unenforceable upon proof that it is contrary to public policy.**
4. Void, but enforceable upon proof that it is not contrary to public policy.

Question 30

A, illegally sells uncut diamonds to B. B pays in cash for the diamonds. A, subsequently refuses to deliver the diamonds to B. Which one of the following statements is correct?

1. B can institute an act against A to claim the diamonds on the grounds of the contract between A and B.
2. B can reclaim the purchase price from A on the ground of unjust enrichment.
3. **The contract between A and B is void due to legal impossibility.**
4. A and C above.

Question 31

Peter places a bet with Stan, a bookmaker at the local totalisator, that the horse Treble Chord will win the Durban July horserace. Treble Chord wins the race, but Stan refuses to pay Peter his winnings. Which one of the following statements is the most correct?

1. **Peter has no enforceable rights in terms of the wagering contract, but Stan can, nevertheless, elect to pay Peter his winnings validly.**
2. Peter has a contractual claim against Stan for specific performance, since a wagering contract is valid.
3. Peter has no contractual claim against Stan, since a wagering contract is void.
4. Peter can rely on the wagering contract in order to claim compensation from Stan, because this particular type of contract is regulated by legislation.

Question 32

Angus selects and buys 20 personal computers from PC (Pty) Ltd on Friday. He arranges to pick up the computers on Monday. The computers Angus chooses are set aside in a storeroom. Angus and PC agree that the price for the computers will be R60 000. During the weekend, an electrical fault causes a fire in the storeroom in which the computers are kept. The computers are completely destroyed.

Select the most accurate statement :

1. All the contractual obligations are terminated because of supervening Impossibility of performance.
2. PC has committed a breach of contract in the form of mora debitoris.

3. **Angus will still have to perform in terms of the contract, but he is not entitled to receive 20 new computers.**
4. PC is obliged to replace the destroyed computers with another 20 computers.

CHAPTER 7

Question 1

For an ante-nuptial contract to be valid between parties thereto (that is the husband and the wife) the contract :

- a. Need not necessarily be in writing.
- b. Must be in writing, but need not necessarily be signed by either party.
- c. **Must be in writing and be signed by both parties.**
- d. Must be in writing, be signed by both parties and be notarially executed and registered in accordance with provisions of the Deeds Registries Act, No 47 of 1937.

Question 2

Ismail wants to sell his car to Bernie. On 12 February 2000 they reach agreement on the purchase price. They agree that the contract should be reduced to writing. On 30 March 2000 Ismail's attorney puts the agreement in writing and Ismail and Bernie sign it.

Indicate the CORRECT statement:

1. Since no formalities are required by legislation, the contract came into existence on 12 February 2000.
2. Since legislation requires that a contract for the sale of a vehicle must be in writing, the contract came into existence on 30 March 2000.
3. **It will depend on the intention of Ismail and Bernie whether the contract came into existence on 12 February or 30 March 2000.**
4. The contract will come into existence when Ismail delivers the car to Bernie.

Question 3

Indicate the CORRECT statement:

1. Formalities are required for the formation of all contracts.
2. Parties are obliged to prescribe formalities for their contract.
3. Writing is a formality for all contracts of sale.
4. **Normally a contract of lease is formed without any formalities.**

Question 4

Which ONE of the following donations has to be in writing and signed by the donor?

1. Frans gives his nephew Paul, who is eight years old, a bicycle for his birthday.
2. John gives his wife Sue, to whom he is married out of community of property, a new motor vehicle.
3. **Sipho gives his old bicycle to his friend Thabo, who may only come and collect it as soon as Sipho's new bicycle is delivered.**
4. Kate gives her mother a gift voucher to the value of R200.

Question 5

Allen wants to sell land to Brian. Which ONE of the following statements is INCORRECT with respect to compliance with formalities as a requirement for the formation of a contract?

1. The contract of sale must be in writing.
2. **If Allen is overseas, he may authorize Charles telephonically to sign the contract on his behalf.**
3. The statutory provision which requires the contract of sale of land to be in writing is not the General Law Amendment Act 50 of 1956.
4. If Charles, who has been authorized telephonically by Allen to sign the contract on his behalf, does so, Allen cannot enforce the contract.

Question 6

In respect of which ONE of the following contracts does legislation NOT require any formalities?

1. **Contracts of lease.**
2. Contracts for the alienation of land.
3. Contracts of suretyship.
4. Antenuptial contracts.

Question 7

Before their wedding Musa and his fiancée, Lisa, agreed on the following:

- a. that Musa's house at 20 Borokong Street, Randburg, would be the family home of the couple;
- b. that the said house would be registered in Lisa's name;
- c. that Musa would stand surety for the loan Lisa needed to buy a new car;
- d. that the marriage would be out of community of property;
- e. that Musa would attend to the typing, signing and registration of all the documents that require to be in writing, registered or signed.

After the wedding none of the documents required to be in writing and signed had been typed or executed.

Which ONE of the following statements is CORRECT?

1. **Musa and Lisa will not be bound by the terms of their antenuptial contract because Musa forgot to type or register it.**
2. Lisa is the legal owner of the family home.
3. Lisa is solely liable for the purchase price of her car.

Question 8

The requirement that a contract of suretyship must be in writing and signed by or on behalf of the surety was introduced by

1. The common law.
2. **Legislation.**
3. Our courts.
4. The Financial Services Board.

Question 9

Roger has been asked by Thomas to stand surety for a debt that Thomas owes Ulrich. Roger asks your advice: he says he has heard that...

- a. if the suretyship contract is in writing, then the only person who can sign it is Roger.
- b. the suretyship contract must be in writing.
- c. the suretyship contract can be oral or in writing.
- d. the surety or his agent must sign the suretyship contract.

Which of the above statement/s is/are CORRECT?

1. Only a and c
2. Only a
3. **Only b and d**
4. Only c and d

Question 10

On her birthday Liz receives an expensive watch as a gift from her Aunt Martha. Four months later, Aunt Martha informs Liz that she wants the watch back. What is the legal position?

1. **Aunt Martha is not entitled to have the watch back, because a valid contract of donation was concluded.**
2. Aunt Martha is entitled to have the watch back, because the contract of donation should be in writing and signed by Aunt Martha.
3. Aunt Martha can claim the watch from Liz on the grounds of unjustified enrichment.
4. Liz is obliged to give the watch back, but she can claim damages from Aunt Martha.

Question 11

Amod and Janet intend getting married out of community of property. They accordingly have an antenuptial contract drawn up. In terms of the antenuptial contract, Amod undertakes to donate a house worth at least R100 000 to Janet within a year after their marriage. Both parties duly sign the antenuptial contract, but their attorney forgets to have it registered within three months as required by the Deeds Registries Act 47 of 1937. Two years after the wedding, Amod runs into financial difficulties. He has also not yet donated any house to Janet. Janet, however, inherits a large sum of money from her grandfather with which she buys a house worth R100 000 which she has registered in her own name. Janet now wants to divorce Amod.

Which ONE of the following statements is CORRECT?

1. Amod's creditor cannot rely on the fact that the antenuptial contract was never registered, because he was not a party to it.
2. Janet cannot rely on the antenuptial contract to force Amod to donate a house worth R100 000 to her, because the antenuptial contract was never registered in terms of the Deeds Registries Act 47 of 1937.
3. Amod can rely on the fact that the antenuptial contract was never registered with the consequence that they are married in community of property and that he is therefore entitled to half of Janet's inheritance.
4. Amod's creditor cannot rely on the fact that the antenuptial contract was never registered, because he would not have known about it even if it had been registered.
5. **In an action against Amod, Janet can rely on the antenuptial contract to enforce him to comply with his undertaking regarding the house.**

Question 12

Abel and Jack agree that Jack will buy Abel's house for R150 000. Abel writes a contract of sale on the back of a cigarette box, and Abel and Jack place their signatures on it.

Which ONE of the following statements is CORRECT?

1. A valid contract for the alienation of land was concluded since no formalities are required for the alienation of land.
2. **A valid contract for the alienation of land was concluded since the contract was in writing and signed by the parties to it.**
3. A valid contract for the alienation of land was not concluded since the required formalities for the alienation of land were not complied with.
4. A valid contract for the alienation of land was not concluded and the parties will have special enrichment actions against each other because of non-compliance with the prescribed formalities.

Question 13

Which ONE of the following statements is CORRECT?

1. An antenuptial contract has to be in writing in order to be effective against persons who are not parties to it.
2. An antenuptial contract has to be registered in order to be binding on the contracting parties.
3. **An antenuptial contract has to be registered in order to be effective against persons who are not parties to it.**
4. An antenuptial contract has to be registered only if it provides for donations under which performance is still due.

Question 14

Which ONE of the following contracts must be in writing and signed in order to be valid?

1. **A contract where land is sold/donated.**
2. A contract where a car is sold.
3. A contract where a wager is made.
4. A contract where a house is leased.

Question 15

Haliwell makes an offer to buy Yoyo's motor car on condition that Haliwell obtains a loan from Zero Bank for an amount of R5 000 within three weeks. Yoyo accepts the offer by Haliwell.

Which ONE of the following statements is CORRECT?

1. No binding contractual relationship has come into being between the parties.
2. **If Haliwell does not obtain the loan within three weeks, the contractual obligations are terminated.**
3. Yoyo can enforce the contract against Haliwell, because a valid contract has come into being.
4. Yoyo can withdraw from the contract if, after a week, it appears that Haliwell's chances of obtaining the loan are remote.

Question 16

Alan wants to sell land to Brian.

Which ONE of the following statements regarding the contract for the alienation of land, is INCORRECT?

1. A contract for the sale of land must be in writing.
2. **Alan may telephonically authorise his agent Charles to sign a contract for the alienation of land on his (Alan's) behalf.**

3. A contract for the sale of land between Alan and Brian may be deemed valid even if it contravenes the Alienation of Land Act 68 of 1981 if both parties have performed in full.
4. If Charles signs the contract for the sale of land on behalf of Alan without Alan's written instructions, Alan cannot enforce the contract.

Question 17

Which ONE of the following statements regarding the signing of electronic transactions is CORRECT?

1. An electronic signature always performs the same legal function as a handwritten signature.
2. Where a signature is required by law, the typing of a name at the end of the document will be an acceptable signature.
3. **A scanned handwritten signature qualifies as an electronic signature.**
4. An advanced electronic signature results from an accredited process and allows the recipient to verify the date and time it was sent.

Question 18

Compliance with formalities is a requirement for the validity of :

1. All contracts.
2. All written contracts.
3. Only those contracts where legislation prescribes it.
4. **Only those contracts where formalities are prescribed by legislation or the contracting parties.**

Question 19

Four people are discussing the law about formalities for contracts.

1. Amanda says that the contracting parties can make contracts in any way they wish: just to say the words of offer and acceptance is enough.
2. Belinda says that it is necessary to sign some contracts, and that only the contracting parties are entitled to sign,
3. Chantelle agrees that it is necessary. to sign some contracts, but says that the contracting parties and their agents are entitled to sign.
4. Danielle says that it is necessary to sign some contracts, and says that the contracting parties can authorise their agents by telephone to sign on their behalf.

Whose opinion is the most correct?

- (a) Amanda.
- (b) Belinda.
- (c) **Chantelle.**
- (d) Danielle.

CHAPTER 8

Question 1

Bongani undertakes to deliver the racing horse, Lightning, to Xaba, but the contract further provides that Bongani may, at his sole discretion, deliver another racing horse of similar standard. This is a / an ...

1. **Facultative obligation.**
2. Generic obligation.
3. Alternative obligation.
4. Invalid contract.

Question 2

Choose the CORRECT word from the options provided to complete the following phrase:

" are terms which the law attaches to every contract of a particular class. "

1. *Essentialia.*
2. ***Naturalia.***
3. *Incidentalia*

Question 3

Consider the following situations:

- a. In September Unisa accepts Thabo, a grade twelve learner, as a B Com-student for the next year, on condition that Thabo passes grade twelve (matric) this year.
- b. In September Unisa accepts Motau, an attorney, as an LLM- student for the following year although the course only commences in April.

Which ONE of the following statements is CORRECT:

1. Contract a contains a suspensive time clause and contract b a supposition.
2. Contract b contains a suspensive condition and contract a a resolutive time clause.
3. **Contract a contains a suspensive condition and contract b a suspensive time clause.**

Question 4

Bobby wants to purchase a house from Rick only if the house faces east, but Rick is not sure whether the house faces east or north. They agree that Bobby will purchase the house provided it faces east.

Which contractual term is included in this contract?

1. a warranty.
2. a condition.
3. a modus.
4. **a supposition.**

Question 5

Indicate the INCORRECT statement:

1. A *rouwged* clause is not subject to the provisions of the Conventional Penalties Act.
2. A forfeiture clause makes provision for a party who is in breach of contract to lose his / her right to restitution.
3. A cancellation clause entitles a contracting party to cancel the contract if the other party is in breach of contract.
4. A penalty in terms of a penalty clause is recoverable merely on the grounds that the debtor has committed breach of contract. The creditor need not prove that he or she has suffered damages.
5. **An entrenchment clause provides that the agreement may only be altered by means of written amendment, except if the parties are in complete agreement with regard to the proposed amendment.**

Question 6

A contractual term that provides that the agreement may be altered by means of a written amendment only, is known as a / an

1. Rectification clause.
2. Rouwkoop clause.
3. **Entrenchment clause.**
4. Penalty clause.

Question 7

Francesca buys an Uno from Lakeside Motors. One of the terms of the contract is that the colour of the car must be red. This is a / an ...

1. Suspensive condition.
2. **Express term.**
3. Resolutive condition.
4. Supposition.

Question 8

Haliwell makes an offer to buy Yoyo's motor car on condition that Haliwell obtains a loan from Zero Bank for an amount of R5 000 within three weeks. Yoyo accepts the offer by Haliwell.

Which ONE of the following statements is correct?

1. **If Haliwell does not obtain the loan within three weeks, the contractual obligations are terminated.**
2. No binding contractual relationship has come into being between the parties.
3. The contractual obligations come into operation on acceptance of the offer by Yoyo.
4. Yoyo can enforce the contract against Haliwell, because a valid contract has come into being.
5. Yoyo can withdraw from the contract if, after a week, it appears that Haliwell's chances of obtaining the loan are remote.

Question 9

Andrew undertakes that, one month after Xaba's death, he will buy Bernard a new house.

Which ONE of the following statements is CORRECT?

1. The moment of performance cannot be determined since it is uncertain when Xaba will die.
2. **A contractual relationship between Andrew and Bernard arises and neither of them may rescind the contract.**
3. This is an example of a resolutive condition since the continuance of the contract depends on a specific uncertain event.
4. This is an example of a suspensive condition since the contractual obligations are suspended until the condition is fulfilled.

Question 10

Which ONE of the following statements is an example a modus?

1. Paul lets his car to Thabo. The agreement provides that their contract of lease will be dissolved if Thabo buys her own car.
2. Tom and his pregnant wife Zinzi agree that Tom will buy Zinzi a car when their child is born.
3. **Molope donates his farm to his son Tshepo subject to the term that Tshepo will grow tomatoes on that farm.**
4. Greg wants to purchase a watch from Zola only if it is gold-plated. Zola is not sure if the watch is gold-plated or silver-plated.

Question 11

Abe and Sue enter into a contract in terms of which Abe agrees to buy Sue's sailing boat for R30 000. Abe pays Sue R20 000 and he agrees to pay the balance within thirty days. Abe takes possession of the sailing boat and he sets sail to the Bahamas. However, on the first day of the journey, Abe becomes severely seasick. Abe wishes to cancel the contract.

Indicate the CORRECT statement:

1. If the contract contains a forfeiture clause, Abe will have the right to claim R20 000 from Sue.
2. **If the contract contains a forfeiture clause, Abe's cancellation of the contract will not be in breach of contract.**
3. If the contract contains a forfeiture clause, Sue loses her right to claim restitution.
4. If the contract contains a forfeiture clause, Sue may claim damages.

Question 12

Koos and Gert conclude a contract of lease in terms of which Koos will lease his farm, Mooifontein, to Gert until Gert's death. This term is an example of a

1. Suspensive time clause.
2. **Resolutive time clause.**
3. Suspensive condition.
4. Resolutive condition.

Question 13

Charles lets his house to Daniel. It is a material term of their contract that during the local arts festival, Daniel will host Edward for a week, and that if he does not do so, Charles may cancel the contract. Four statements are made about this contract:

- a. The contract of lease is subject to the condition that Daniel must host Edward for that week.
- b. The contract entitles Daniel to occupy the house even though the arts festival has not yet begun.
- c. Charles may cancel the contract before the arts festival if he is notified by Daniel that he does not intend to host Edward.
- d. If Daniel breaches the material term about hosting Edward, Charles must notify Daniel of his intention to cancel the contract before he will be entitled to cancellation.

Indicate the CORRECT statements:

1. Only a and b
2. **Only b and c**
3. Only a and d
4. Only c and d

Question 14

Bobby and Chris agree that Bobby will take a load of bricks to Cape Town for Chris, provided that Bobby can arrange to borrow David's truck for two days.

The proviso that Bobby must be able to borrow the truck for two days is known as a ...

1. Modus.
2. Resolutive time clause.
3. Warranty.
4. **Suspensive condition.**

Question 15

Which ONE of the following contractual terms is a condition?

1. A term that Keanu will rent Lyle's house if Lyle fences the stand on which the house is situated.
2. A term that Keanu will rent Lyle's house while Lyle is overseas.
3. **A term that Keanu will rent Lyle's house if Lyle's employer should send him overseas for a period of three months or longer.**

Question 16

Abel donates a farm to Charity Unlimited, a charitable organisation. In terms of the contract of donation Charity Unlimited is obliged to erect an old-age home on the premises. However, Charity Unlimited feels that the property is better suited to the construction of a hospital and proceeds with this.

Choose the CORRECT statement.

1. Charity Unlimited has become the owner of the property and is free to use the property for any charitable purpose,
2. **Charity Unlimited has committed breach of contract because it has not complied with the *modus*.**
3. Charity Unlimited has not yet become the owner of the property because it has not yet complied with the condition,
4. Charity Unlimited has breached the supposition under which the donation was made.

Question 17

Betty is appointed as director of Toko Ltd in terms of a contract which will terminate after three years. In her last year as director she concludes a building contract on behalf of Toko Ltd. In terms of the second contract, building will start two months before Betty's contract with Toko Ltd terminates. Four statements are made about these contracts:

- a. Betty's contract as director is subject to a suspensive time clause.
- b. Betty's contract as director is subject to a resolutive time clause.
- c. The building contract is subject to a resolutive time clause.
- d. The building contract is subject to a suspensive time clause.

Which of the above statements are CORRECT?

1. Only a and d
2. Only a and c
3. Only b and c
4. **Only b and d**

Question 18

Amod and Pierre enter into a building agreement. In terms of this agreement, Amod undertakes to effect alterations to Pierre's house by no later than 31 August 2000. A penalty clause is added to the contract, in terms of which Amod must pay Pierre an amount of R100 for each day that the construction operations exceed the agreed date of completion. Amod is 20 days late and only completes the alterations to Pierre's house on 20 September 2000.

Which ONE of the following statements is CORRECT?

1. Pierre can claim R2 000 from Amod in terms of the penalty clause as well as damages suffered by him in the amount of R500 since he was unable to rent out one of the rooms in his house for the month of September 2000 because the building operations were not completed.
2. The penalty clause is invalid in terms of the Conventional Penalties Act 15 of 1962, because it can create a serious injustice if one considers that the penalty is recoverable merely on the ground of Amod's breach of contract and that the extent of the penalty is predetermined.
3. Since the house was not ready for occupation before 20 September 2000, Pierre has a choice of enforcing the penalty clause or of claiming damages in the amount of R2 500 that he suffered by having had to pay for accommodation for his family for the extra 20 days that Amod was late with the completion of the alterations.
4. The Conventional Penalties Act 15 of 1962 would not be applicable if Amod and Pierre had agreed that, if Amod did not complete the alterations to Pierre's house by 31 August 2000, he would build a swimming pool on Pierre's property without any charge instead of paying R1 00 per day as a penalty.
5. **If Pierre can prove that Amod has breached the contract by not having completed the building operations on his house by 31 August 2000, he can hold Amod liable for payment of the penalty, because it is unnecessary for Pierre to prove that he has suffered damages or to prove the amount of damages suffered by him.**

Question 19

Pitso wants to donate his computer to Thuto Library. Pitso and the librarian agree in writing that Pitso will only deliver the computer on 31 December as he first needs to complete a project on the computer.

Which ONE of the following statements is CORRECT?

1. Pitso may refuse to deliver the computer to Thuto Library on the agreed date if he changes his mind about donating it to the library.
2. Pitso may refuse to deliver the computer to Thuto Library on the agreed date if he has not completed his project by the end of the year.
3. Thuto Library may demand delivery of the computer from Pitso any time before 31 December as the computer has already been donated to the library.
4. **Thuto Library may only demand delivery of the computer from Pitso on 31 December as the contract will only then be enforceable.**

Question 20

Choose ONE of the options provided below to complete the following sentence CORRECTLY:

A term in a contract which allows one party to retain the performance of the other party if the contract is cancelled due to breach of contract, is known as a

1. *rouwgeld* clause.
2. **forfeiture clause.**
3. penalty clause.
4. condition.

Question 21

Which ONE of the following statements is INCORRECT?

1. **The *essentialia* of a contract are the terms which the law attaches to every contract of a particular case.**
2. The *naturalia* of many contracts known to South African law are based mainly on ideas originating in Roman law.
3. The *incidentalia* are the additional terms which are included in a contract in order to provide for special requirements of the parties.

Question 22

Which ONE of the following statements is CORRECT?

1. A *rouwgeld* clause is subject to the provisions of the Conventional Penalties Act.
2. A cancellation clause makes provision for a party who is in breach of contract to lose his/her right to restitution.
3. A penalty in terms of a penalty clause is recoverable on the ground that the debtor has committed breach of contract, provided that the creditor proves that he/she has suffered damages.
4. **An entrenchment clause provides that the agreement may only be altered by means of written amendment.**

Question 23

When will a court apply the guideline of interpreting a contractual term against the interest of the party who formulated that term?

1. Whenever the term appears to the court to be unfair.
2. Only when the term appears in a standard-form contract.
3. **Only when the term is ambiguous or vague.**
4. The court will never apply such a guideline.

Question 24

James and Bertie agree that James will buy Bertie's motor car for R55 000. They further agree that James will pay a deposit of R20 000 and will pay the balance of the amount in seven instalments of R5 000 each over the next seven months. They fail to make any provision for the possibility that the car might contain a latent defect.

The term dealing with the deposit and instalments is an example of ...

1. an *essentiale* of the contract.
2. **an *incidentale* of the contract.**
3. a *naturale* of the contract.
4. an implied term of the contract.

Question 25

Rebella enters into an agreement with her friend Philly in terms of which Rebella will use Philly's house until she buys her own house.

This is an example of a ...

1. resolute condition.
2. suspensive condition.
3. **resolutive time clause.**
4. suspensive time clause.

Question 26

If X and Y agree that X will buy Y's car if it is a model which was registered for the first time in 1980 by a municipal licensing authority, the agreement is:

1. Subject to a suspensive condition.
2. Subject to a resolute condition.
3. Subject to an assumption.
4. **None of the above.**

Question 27

Indicate the correct statement?

- a. **A contractual term which makes the existence of the contract dependent on an event which has already taken place or a state of affairs which exists in the present, is a supposition.**
- b. A contractual term which makes the existence of the contract dependent on an event which is certain to take place in the future, is a condition.
- c. A condition is always expressed positively.
- d. A resolutive condition has the result that the contract becomes valid and binding as soon as the condition is fulfilled.
- e. A contractual party who guarantees that he will render a certain performance, is obliged to render that performance, but breach of warranty does not constitute breach of contract.

Question 28

A and B conclude a contract of sale in which it is stipulated that any of the parties may withdraw from the contract on payment of the sum of R5 000

1. The amount is subject to reduction because a court may reduce the penalty for which a penalty clause makes provision, to an amount that it considers reasonable.
2. The amount is subject to reduction because a court may reduce the penalty for -which a "**rouwkoop**" clause makes provision, to an amount that it considers reasonable.
3. **The whole amount is recoverable if one of the parties withdraws, as the clause is a "**rouwkoop**" clause.**
4. None of the above.

Question 29

Which of the following are essentials of valid contract?

1. The parties must have the intention to be contractually bound.
2. The agreement must be lawful
3. The agreement must always be in writing.
4. Performance must be possible.

- (a) 1, 2 & 3.
- (b) 1, 2 & 4**
- (c) 2, 3 & 4.
- (d) 1, 3 & 4.

Question 30

Pierre and Andre agree that Andre will rent a flat from Pierre until Andre's death. Their contract is subject to a :

1. Suspensive time clause.
2. **Resolutive time clause.**
3. Suspensive condition.
4. Resolutive condition.
5. Cancellation clause.

Question 31

John, a devoted collector of veteran motor cars, agrees to sell one of the cars in his collection to Carl. Which one of the following terms in their contract amounts to a condition :

- a. "The sale is subject to the undertaking that the car is able to reach a speed of 80 km/h".
- b. "The sale is subject to an undertaking by the purchaser to use only authentic parts when repairing the vehicle and never to spray-paint in a color different from its original color".
- c. **"The sale is subject to the understanding that if the purchaser does not obtain registration as member of the Veteran Collectors Association within six months of the sale, the vehicle will be returned to the seller and the purchase price will be refunded"**.
- d. "The sale is subject to the understanding that if the purchaser falls into arrears with his installments the seller will be entitled to cancel the contract immediately and to reclaim possession of the vehicle".

Question 32

While at work, Xaba and Yoyo agree that Yoyo will purchase Xaba's old attaché case provided it is brown and not black. (At the time of the conclusion of the agreement, the attaché case is at Xaba's home and he cannot recall the colour). This is an example of :

1. condition.
2. **supposition.**
3. *modus.*
4. warranty.

Question 33

In which one of the following examples will we find a resolutive condition?

- a. **Peter rents a flat in Pretoria for R800 per moth from Robert. The parties agree that Peter will rent the flat from Robert until he (Peter) finds work in Cape Town.**
- b. Peter buys a motorcar from Robert. The contract provides that Peter must obtain a loan from his bank within two weeks to pay the deposit.
- c. Peter sells Robert a flat on the condition that Robert give Monica a car.
- d. Peter rents a flat from Robert for 5 years.

Question 34

Anand undertakes that one month after Xaba's death, he will buy Betty a new vehicle. This is a :

- a. suspensive condition.
- b. resolutive condition.
- c. resolutive time clause.
- d. **suspensive time clause.**

Question 35

Abel sells his house to Banga. The contract provides that Abel may keep Banga's deposit if Banga withdraws from the contract. This provision is a:

- a. **forfeiture clause.**
- b. penalty clause.
- c. cancellation clause
- d. *rouwkoop* clause.

CHAPTER 9**Question 1**

Which ONE of the following is NOT a guideline for the interpretation of contracts?

1. Words that carry a technical meaning will be interpreted in accordance with their specific use.
2. Normally, all words will have their ordinary grammatical meaning.
3. **If ambiguity exists, the contract will usually be regarded as invalid.**
4. Where the parties express themselves on a particular matter but omit some detail, common-law rules will regulate that aspect.

Question 2

The law recognizes that, in appropriate circumstances, a written contract may be rectified.

In which ONE of the following circumstances is rectification permissible?

1. **If the parties can prove their true intention and that the contract does not accurately reflect their intention.**
2. If the parties can prove their true intention as well as the fact that when the contract was concluded, they agreed that the parole evidence rule will not apply.
3. If the parties can prove their intention and that the rectification of the contract will not be to the detriment of any third party.

Question 3

Bert and Jean conclude a written contract of loan. When they initially discussed the contract, the idea was that the loan would be repayable only after three years. However, the written document expressly provides for immediate repayment of the loan if Bert requests it. Assuming that Bert will not make use of this term, Jean signs the contract. Two months later, Bert calls up the loan with immediate effect.

Indicate the CORRECT legal position:

1. Jean is entitled to apply for the rectification of the written contract.
2. Bert has committed breach of contract by calling up the loan and Jean can reclaim damages.
3. Jean can rely on the oral agreement between herself and Bert and can refuse to repay the loan immediately.
4. **Jean may not rely on the oral agreement between herself and Bert, and she is obliged to repay the loan immediately.**

Question 4

When will a court apply the guideline of interpreting a contractual term against the interest of the party who formulated that term?

1. Whenever the term appears to the court to be unfair.
2. Only when the term appears in a standard-form contract.
3. **Only when the term is ambiguous or vague.**
4. The court will never apply such a guideline.

Question 5

Anne and Steven conclude a written agreement for the sale of a three piece lounge suite. At a later stage Steven discovers that he has accidentally written the words "four piece lounge suite" in the contract.

Indicate the CORRECT statement:

1. Steven will have to deliver a four piece lounge suite because the mistake occurred as a result of his negligence.
2. Steven will have to deliver a four piece suite because the parol evidence rule precludes him from relying on the intended agreement.
3. **Steven can apply for the rectification of the agreement.**
4. The contract between the parties is void for uncertainty.

Question 6

Which ONE of the following statements is CORRECT?

The parol evidence rule ...

1. operates in respect of evidence which aims to prove that a contract is void.
2. is also called the integration rule because both written and unwritten terms of the contract are integrated when the contract is interpreted.
3. operates in the case of all contracts.
4. **does not exclude evidence of agreements reached after conclusion of the written contract.**

Question 7

Mark agrees to sell his house to Peter for R250 000. Peter may move into the house on 1 June. They also agree to have Mark's secretary type up a written contract of sale. The secretary accidentally types the price as R350 000 and the date of occupation as 1 July. Mark and Peter both sign the contract without noticing the errors at that point. Later, when Peter does notice the errors, he requests your legal advice.

Which ONE of the following statements is CORRECT?

1. The written contract is void because there was no consensus.
2. If the rule that a clause is sometimes interpreted against the party who was responsible for its drafting is applied, the written contract will be interpreted contrary to the interests of Mark, because his secretary typed the contract.
3. There is no difference between a contract concluded orally and one concluded in writing. This is an example of novation (the original obligation between Mark and Peter is extinguished) and this means that only the second agreement will be enforceable.
4. The oral agreement reached before the agreement was put in writing is valid and binding and Peter can rely on it.
5. **Peter will be prevented by the parole evidence rule from submitting evidence that what the parties actually agreed to was different from what was contained in the written contract. Peter will therefore have to apply for rectification.**

Question 8

Which ONE of the following statements is CORRECT?

The parole evidence rule

1. **means that extrinsic evidence cannot be submitted to prove the intention of parties to a written contract.**
2. excludes evidence of agreements reached after conclusion of the written contract.
3. operates in respect of evidence which aims to prove that a contract is void.
4. operates in the case of all contracts.

Question 9

Riaan and Zanette conclude a contract of sale in terms of which Plot 234 is sold to Zanette for R100 000. Riaan's secretary types the written agreement on the following day and erroneously indicates the price as R10 000. Riaan and Zanette sign the agreement without checking it.

Which ONE of the following statements is CORRECT?

1. **The contract may be rectified. The parol evidence rule will not exclude evidence of the parties' real intention.**
2. Because oral contracts of sale for the alienation of land are not valid, the parties will be bound to the price of R10 000.
3. The contract is void because of mistake. Evidence of the oral contract would be admissible in terms of the general principles involved in the interpretation of contracts, and note will be taken of the context in which a word is used, the nature of the transaction and the surrounding circumstances.
4. Because the agreement is in writing, the parol evidence will exclude evidence regarding an oral agreement concluded prior to the written agreement.

Question 10

Jongilanga and Kazandu conclude a written contract of sale in terms of which Plot 156 is sold to Kazandu for R100 000. Prior to this agreement Jongilanga gave an oral undertaking to clear all rubbish from the property. Jongilanga neglected to do so and now denies the undertaking. To determine the true content of the contract between the two parties, the court may consider :

1. evidence relating to both the oral and the written agreements, as the validity of a contract is not affected by the manner of its creation.
2. **evidence relating to the written agreement only as the parol evidence rule applies.**
3. evidence relating to both the oral and the written agreements, as the parol evidence rule does not apply.
4. evidence relating to the oral agreement only, as the parol evidence rule applies.

Question 11

Indicate the CORRECT statement:

The parol evidence rule ...

1. operates in respect of evidence which aims to prove that a contract is void.
2. **does not exclude evidence of agreements reached after conclusion of the written contract.**
3. operates in the case of all contracts.

4. is also called the integration rule because both written and unwritten terms of the contract are integrated when the contract is interpreted.

CHAPTER 10

Question 1

The management of Thutong university enters into an agreement with Roy Building Contractors in terms of which Roy Building Contractors will build two hostels which will accommodate five thousand students. Their contract stipulates that the hostels must be ready before 31 December 2000 in order to enable the management to start allocating the rooms to the students at the beginning of January 2001. Roy Building Contractors only finishes the work at the end of January 2001 and the hostels can only accommodate four thousand and ninety students. The reason for failing to finish the work at the agreed time is that, the builders were given two weeks of holiday leave during December 2000 by their employer, Roy Building Contractors.

Which forms of breach of contract occurred in this contract?

1. prevention of performance by the debtor and *mora debitoris*.
2. ***mora debitoris* and positive malperformance.**
3. *mora creditoris* and positive malperformance.
4. only *mora debitoris*.

Question 2

Which ONE of the following is NOT a remedy for breach of contract?

1. execution of the contract.
2. **repudiation of the contract.**
3. damages.

Question 3

Which ONE of the following forms of breach of contract CANNOT be committed by a creditor?

1. **Positive malperformance.**
2. Repudiation.
3. Prevention of performance.
4. *Mora creditoris*.

Question 4

Which ONE of the following is a requirement for default by the debtor as a form of breach of breach of contract?

1. The debtor tenders defective or improper performance.
2. The debtor renders performance impossible.

3. **The debtor delays performance.**
4. The debtor indicates that performance will be late in the future.

Question 5

In terms of a written agreement, Andrew purchased a house from Roy for R100 000. Andrew paid an amount of R10 000 as a deposit. The balance of the purchase price was to be covered by a loan from the bank owing to fault on Roy's part, the transfer of the house to Andrew was delayed, Andrew sent a letter to Roy demanding that transfer should be effected within two months, upon which he would pay the balance of the purchase price, Andrew furthermore stated in the letter that he would resile from the contract and demand repayment of the deposit and damages if Roy failed to give his co-operation.

Which ONE of the following statements is CORRECT?

1. Andrew is not entitled to send a letter of demand to Roy, because Andrew has not paid the agreed purchase price for the house in full.
2. **Andrew is entitled to claim transfer of the house into his name even if Roy refuses to accept the balance of the purchase price in the amount of R90 000.**
3. Because Andrew is in *mora*, Roy will be released from his obligation to perform if he cannot perform for some reason other than his intentional or gross negligence,
4. Because Roy is in *mora*, Andrew is released from his obligation to perform if he cannot perform because of his intentional or gross negligence.

Question 6

When a debtor does something he may NOT do in terms of the agreement, the breach of contract is referred to as:

1. Prevention of performance.
2. Repudiation.
3. **Positive malperformance.**
4. *Mora debitoris*

Question 7

Aggie, a farmer, buys a flock of sheep from his neighbour, Bobby. Aggie and Bobby agree that Bobby will deliver the sheep to Aggie's farm on the 16th of April. On the 16th, Aggie forgets that Bobby is going to deliver the sheep, and he visits a nearby town. When Bobby arrives at Aggie's farm with the sheep, the gates are locked and there is nobody to receive the sheep.

Indicate the CORRECT statement:

1. **Aggie committed breach of contract in the form of *mora creditoris*.**

2. Aggie committed breach of contract in the form of *mora debitoris*.
3. Aggie committed breach of contract in the form of repudiation of the contract.
4. Aggie committed breach of contract in the form of prevention of performance by the debtor.
5. Aggie committed breach of contract in the form of prevention of performance by the creditor.

Question 8

When a party to a contract indicates that he does NOT intend to perform in terms of the contract, we have breach of contract in the form of.. ..

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

Question 9

Ken and Roger enter into an agreement in terms of which Ken agrees to deliver borehole equipment to Roger by train. The agreement provides for delivery to Roger at Carletonville, by 15th April. On its way to Carletonville the train is delayed as a result of a serious accident between two other trains. Hence the equipment is delivered to Roger only on 17 April.

Which ONE of the following statements is CORRECT?

1. Ken is in breach of the agreement, because he has not performed by the date specified in the contract.
2. Roger can hold Ken liable for breach of contract since it is Ken's own fault that he sent the borehole equipment by train.
3. **If Ken had warranted delivery by 15th April, he would be in breach of contract, even though the late performance was owing to circumstances beyond his control.**
4. Since Roger did not give Ken a reasonable time within which to perform after the accident, Ken is not in breach of contract.

Question 10

ONE of the requirements for default of the debtor as a form of breach of contract is that

1. the debtor must have tendered defective or improper performance.
2. the debtor must have rendered performance impossible.
3. **the debtor must have delayed performance .**
4. the debtor must have indicated that performance will be late in the future.

Question 11

Miriam and Elaine are members of a close corporation known as Goldilocks CC which carries on a hairdressing business. The association agreement contains a restraint of trade clause which regulates the situation should one of them resign as a member of the close corporation. The restraint of trade clause provides that in such a case, neither of the members will carry on the business of a hairdresser within five kilometers of the premises of Goldilocks CC for a period of one year after resignation. Miriam resigns as a member of Goldilocks CC and immediately opens up another hairdressing salon across the road from Goldilocks CC.

Which ONE of the following statements is CORRECT?

1. Miriam's behaviour amounts to repudiation, because it indicates that she does not intend honouring her obligations in terms of the association agreement.
2. Miriam is not in breach of contract, because she has resigned as a member of Goldilocks CC and in doing so is no longer bound to the terms of the association agreement.
3. Miriam is not in breach of contract, because the only job for which she is qualified, is that of hairdressing.
4. Although Miriam is in breach of contract, Elaine cannot enforce the restraint clause unless she can prove that it is reasonable.
5. **If Miriam can show that the restraint clause is contrary to public policy, the restraint clause will not be enforceable.**

Question 12

Which ONE of the following statements is NOT a consequence of *mora creditoris*?

1. *Mora debitoris* is always extinguished if the creditor subsequently falls in *mora*.
2. The debtor's duty of care is diminished if the creditor falls in *mora*.
3. In reciprocal agreements, the obligations of the parties are not terminated as a result of *mora creditoris*.
4. **The debtor is always released from his or her obligation to perform should the performance become impossible while the creditor is in *mora*.**

Question 13

Thabo wants to sell oranges at the school fete which will take place on Saturday. He enters into an agreement with Fresh Produce in terms of which Fresh Produce guarantees delivery of twenty bags of oranges to him on Friday. Fresh Produce delivers the oranges on Sunday morning.

Which ONE of the following statements is CORRECT?

1. Fresh Produce is in *mora ex persona* for failing to deliver the oranges on the stipulated date.
2. Fresh Produce will be in *mora ex persona* if it fails to deliver the oranges after Thabo has demanded performance from it by a specified date.
3. Fresh Produce's failure to perform in terms of the contract will not be *mora ex re* if the failure is not due to Fresh Produce's fault.
4. **Fresh Produce is automatically in mora by failing to deliver the oranges on the specified date and this is called *mora ex reo*.**

Question 14

Example 1

Albert agrees to paint Brian's house. Before Albert can do so, however, the house is burnt down owing to an electrical short-circuit. Brian was not aware of any defect in the electrical system of the house.

Example 2

Xavier agrees to repair Ivy's car. On the day on which Ivy is to deliver the car to Xavier's workshop, Ivy intentionally destroys the car for the purpose of claiming insurance on the car.

Select the option below which best describes the relationship between the above two examples.

1. **Example 1 is an instance of supervening impossibility of performance, and example 2 is an instance of prevention of performance by the creditor.**
2. Example 2 is an instance of repudiation and example 1 is an instance of negligence.
3. Example 1 is an instance of prevention of performance by the creditor, and example 2 is an instance of initial impossibility of performance.
4. Example 1 is an instance of default of the debtor and example 2 is an instance of default of the creditor.

Question 15

The "New Art Royal Gallery" in London, United Kingdom, has invited Sim to exhibit thirty of her most recent works at an exhibition which opens on 1 November. John and Sim enter into an agreement in terms of which John agrees to frame thirty of Sim's surrealist paintings of African wildlife. John agrees to make frames for Sim's paintings out of pieces of indigenous plants and wood. They agree that Sim will pay John R100 000 when she collects the framed works from him on 20 October. John uses thin metal frames for framing some of the paintings. Sim meets John on 20 October to collect the paintings. John claims payment of R100 000 for the framing. Sim refuses to pay for the framing of the paintings. She claims that John has used thin metal frames and the paintings cannot be reframed with indigenous plants and wood

in time for the exhibition which opens on 1 November. Sim is of the opinion that John has breached their agreement.

Which ONE of the following statements CORRECTLY reflects the form of breach of contract that John has committed?

1. John's framing of the paintings constitutes repudiation.
2. **John's framing of the paintings constitutes positive malperformance.**
3. John's framing of the paintings constitutes *mora debitoris*.

Question 16

Ken and Roger enter into an agreement in terms of which Ken agrees to deliver borehole equipment to Roger by train. The agreement provides that the equipment be delivered to Roger at St. Slowdown, a small village, not later than 31 December 1995. When the train is halfway to St. Slowdown, a storm comes up and delays the train. Hence the equipment is delivered to Roger only after 31 December 1995.

Which one of the following statements is correct?

1. Ken is in breach of the agreement, because he has not performed by the date specified in the contract.
2. Roger can hold Ken liable for breach of contract since it is Ken's own fault that he sent the borehole equipment by train.
3. Even if Ken had warranted delivery by 31 December 1995, he would not be in breach of contract, because the late performance was owing to circumstances beyond his control.
4. **If the equipment was delivered timeously, but had been damaged because of the storm, Roger cannot claim damages from Ken on the ground of *mora debitoris*,**
5. Since Ken had no control over the storm and Roger did not give him reasonable time within which to perform after the storm, he is not in breach of contract.

Question 17

Indicate the incorrect statement :

1. A debtor is in *mora* when he is late in performing and when he himself is to blame for the delay .
2. Where a specific date for performance has been stipulated, and the debtor culpably fails to perform on or before that date, he is automatically in *mora* and he automatically commits breach of contract.
3. Where no date for performance has been stipulated, and the debtor does not perform within reasonable time, he falls in *mora* only after he has failed to comply with a demand.

4. A demand is a notice addressed by the creditor to the debtor in which the debtor is informed that he must perform on or before a specific date.
5. **If performance becomes impossible after the debtor has fallen in *mora* the debtor is relieved from his obligations.**

Question 18

Indicate the correct statement :

1. Repudiation is a form of breach of contract which of itself entitles the innocent party to cancel the contract.
2. Repudiation is a form of breach of contract which never entitles the innocent party to cancel the contract.
3. **Repudiation is a form of breach of contract, but does not of itself entitle the innocent party to cancel the contract.**
4. Repudiation is not a form of breach of contract.

Question 19

The difference between prevention and performance by the creditor and default of the creditor (*mora creditoris*) is the following :

1. In the case of *mora creditoris*, the debtor's duty of care is diminished, but if the creditor prevents performance, the debtor's duty of care increases.
2. In both cases the debtor is entitled to the creditor's performance.
3. **A consequence of *mora creditoris* is that the debtor is released from his obligation to perform if performance has become impossible (if not through intention or gross negligence); in the case of prevention of performance the debtor is not released from his obligation to perform.**
4. In the case of *mora creditoris*, performance of the contract is still possible (even though late), but if the creditor prevents performance, performance is no longer possible.

Question 20

Thabo undertakes to paint Mpho's house on 3 October. On that day, Thabo does not arrive. On 15 October Mpho hears that Thabo is on holiday until 1 February of the following year and on his return intends to move to another city.

Select the most accurate statement :

1. Because Thabo is in *mora ex persona*. Mpho may claim damages.
2. The contract has become void because of supervening impossibility of performance.
3. Thabo is not released from his obligation to perform because he has prevented his own performance.

4. **Mpho may reasonably conclude that Thabo no longer intends to paint the walls, and so she is entitled to the remedies for breach of contract.**

Question 21

Abel donates a farm to Charity Unlimited, a charitable organisation. In terms of the contract of donation Charity Unlimited is obliged to erect an old age home on the premises. However, Charity Unlimited feels that the property is better suited to the construction of a hospital and proceeds with this. What is the legal position?

1. Charity Unlimited has become the owner of the property and is free to use the property for any purpose.
2. **Charity Unlimited has committed breach of contract.**
3. Charity Unlimited has not yet become the owner of the property because it has not yet complied with the condition.
4. Charity Unlimited has breached the supposition under which the donation was made.

Question 22

Mary, a building contractor, undertakes to build a house for Uli. They agree that Mary will complete the house by 31st May. Mary's delay in ordering certain building materials results in the house being completed only on the 31st July. Mary commits breach of contract in the form of :

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

Question 23

Which one of the following is not an element of *mora creditoris*?

1. the performance must be dischargeable.
2. The default must be due to the fault of the creditor.
3. **The creditor must culpably render his own performance impossible.**
4. The debtor must tender performance.
5. The creditor must fail to give his co-operation.

Question 24

Bert rents a flat in Pretoria from Boris. In the written contract of lease, Bert undertakes not to sublet the flat to anyone else. Bert also undertakes to give a

Month's notice if he wants to terminate the contract. Bert receives an unexpected offer of employment in Durban and wants to move immediately. He sublets the flat to Christine for that month. The legal position is as follows :

1. Bert has committed breach of contract in the form of repudiation
2. Bert has committed breach of contract in the form of *mora debitoris*
3. Bert has committed breach of contract in the form of *mora creditoris*
4. **Bert has committed breach of contract in the form of positive malperformance**
5. Bert has not committed breach of contract.

CHAPTER 11

Question 1

Which ONE of the following is NOT a circumstance under which a contract can be cancelled for breach of contract in the form of *mora debitoris*?

1. if the contract contains a cancellation clause.
2. sending a notice of intention to cancel the contract.
3. failure to perform by the stipulated date where the time of performance is of the essence.
4. **timely but defective performance.**

Question 2

Consider the following set of facts:

The Maroon Baboon is a television character that is extremely popular with young children. Janet, who owns a toy shop, orders fifty Maroon Baboon outfits from Fantasy Clothing at R50 per suit. The parties agree that the suits will be delivered on the 15th November. Janet plans to sell the suits at R120 per suit. At least one hundred customers express interest in buying suits for their children, but Janet cannot supply them as the suits are only delivered on the 15th of January. The reason for the late delivery is that Fantasy Clothing took on more orders than they could cope with. By this time Edmund the Weasel has replaced the Maroon Baboon as television's favourite children's character and the market for Maroon Baboon suits has diminished considerably.

Which ONE of the following statements is INCORRECT:

1. Fantasy Clothing committed breach of contract in the form of *mora debitoris* and Janet has a choice between cancelling the contract or enforcing it.
2. Fantasy Clothing committed breach of contract in the form of *mora debitoris* and Janet can cancel the contract because timely performance was of the essence to this contract.

3. If Janet cancels the contract she can claim damages from Fantasy Clothing in the amount of her positive interest.
4. **If Janet enforces the contract she may claim damages from Fantasy Clothing in the amount of her negative interest.**

Question 3

Which ONE of the following is NOT an order for execution of the contract?

1. An order for specific performance.
2. A prohibitory interdict.
3. **Cancellation of the contract.**
4. An order for reduced performance.

Question 4

Indicate the CORRECT statement:

1. **The right of cancellation allows the innocent party to give the other party the opportunity of rectifying his or her defective performance.**
2. The right of cancellation lapses merely because the innocent party takes an unreasonably long time to exercise that right.
3. The right of cancellation may be exercised by mere cancellation even if the other party is not informed of the innocent party's action.
4. The right of cancellation can be exercised by the innocent party at any time after his or her having become aware of the other party's breach of contract.

Question 5

Indicate the INCORRECT statement:

1. An order for specific performance is a court order which commands a contract party to render the performance he or she has undertaken to render.
2. A prohibitory interdict prevents a party from doing something which he or she may not do in terms of the contract.
3. Cancellation of a contract is an abnormal remedy because the consequence is that the parties do not accomplish what they agreed on.
4. Damages calculated according to the creditor's positive interest places him or her in the same patrimonial position he or she would have been in had proper and timeous performance taken place.
5. **Compensation can be claimed on the basis of contract where pain and suffering is the direct result of the breach of contract.**

Question 6

The legal remedies at the disposal of the innocent party when breach of contract is committed fall in three major categories. Two of these categories are (a) execution of the contract and (b) cancellation of the contract.

Indicate which ONE of the following is the third major category of remedies available.

1. Prohibitory interdicts.
2. Restitution.
3. **Damages.**

Question 7

In which of the following instances will damages be claimed according to the innocent party's positive interest?

1. Misrepresentation.
2. **Breach of contract.**
3. Duress.
4. Undue influence.
5. (1) and (3) above

Question 8

Indicate the INCORRECT statement:

1. A lex commissoria is a cancellation clause.
2. A lex commissoria is an incidentale of a contract.
3. A lex commissoria can be included in a contract by agreement.
4. **A lex commissoria will be available only if the breach of contract is material.**

Question 9

Alex sells his car to Brian and his library of rare books to Chris. It is an express term of his contract with Brian that the car must be delivered by 6 June. The contract between Alex and Chris does not stipulate any date for the delivery of the books to Chris. Alex does not deliver the car or the books to Brian and Chris respectively.

Which ONE of the followings statements is INCORRECT in respect of the legal steps that may be taken against Alex?

1. Brian and Chris may, in principle, claim delivery of the car and the books respectively.
2. Brian has the choice to claim delivery of the car or to notify Alex that he is cancelling the contract.

3. **Chris is immediately entitled to cancel the contract for the sale of the books.**
4. Brian may apply for an interdict to prevent Alex from selling the car to Edward at a higher price.

Question 10

Which ONE of the following is NOT a remedy for breach of contract?

1. Execution of the contract.
2. **Repudiation of the contract.**
3. Damages.

Question 11

An order for specific performance is a court order which

1. prevents a party to a contract from doing something that is contrary to the terms of the contract.
2. allows a party to a contract to withhold his performance until the other contracting party has performed in terms of the contract.
3. **orders a party to a contract to render the performance he undertook to render in that contract.**
4. commands a party to a contract to render defective performance.

Question 12

Tebogo and Peter conclude a contract in terms of which Tebogo will do the interior decorating of Peter's holiday flat. The contract price of R15 000 includes the work and materials. Before Tebogo can start with the project, the flat is completely destroyed by fire as a result of Peter's negligence.

Indicate the CORRECT statement:

1. Tebogo cannot claim anything from Peter, since the contract has been terminated.
2. Tebogo can claim the full contract sum of R15 000 from Peter as damages.
3. Tebogo can insist that Peter find her another project for the same amount.
4. Tebogo can claim only in respect of expenses she already incurred.
5. **Tebogo can claim R15 000 from Peter, less the amount she has saved by not having to perform.**

Question 13

Alexander, a farmer, has his tractor repaired by Bertus. He informs Bertus that he wants his tractor in perfect working order for the forthcoming harvesting season. However, Alexander does not inform Bertus that he also uses the tractor to operate a pump for pumping water out of a small gold mine on the

farm. As a result of Bertus's bad workmanship, the tractor breaks down after a month. Although Alexander immediately returns the tractor to Bertus to rectify his bad workmanship, Bertus only repairs it a month later. By this time, part of Alexander's crop, worth R8 000 (still not harvested), has rotted in the fields. Alexander's mine has also been flooded and, as a result thereof, Alexander has to spend R10 000 to repair the damage to the mine. Alexander is unable to hire or borrow another tractor.

Which ONE of the following statements is INCORRECT?

1. **Alexander can recover all the damage that he has actually suffered from Bertus.**
2. Even if Bertus did not in fact foresee the damage to the harvest in the abovementioned set of facts, he will still be liable if this damage can be regarded as foreseeable.
3. Alexander can claim the R8 000 damage to his harvest from Bertus but not the R10 000 in respect of the gold mine, because Bertus could not have foreseen the damage to the gold mine.
4. Alexander would have been able to claim the R10 000 for damage to the gold mine from Bertus if he had previously informed Bertus that he required the tractor to pump water out of it.
5. If Alexander could have prevented the damage to his harvest and gold mine, he will be unable to claim from Bertus either the R8 000 damage to his harvest or the R10 000 damage to the gold mine.

Question 14

Deon and Rory entered into an agreement in terms of which Deon undertook to manufacture electrical motors for use in the construction of washing machines at an agreed price, and according to certain specifications. On delivery of the motors to him, Rory paid the purchase price of the motors to Deon. However, all the motors were materially defective in that they did not comply with the specifications and were therefore completely useless for application in the construction of washing machines.

Which ONE of the following statements is CORRECT?

1. **Rory is entitled to cancel the above mentioned contract and hold Deon liable for all damages suffered by him as a result of Deon's breach of contract.**
2. Rory is not entitled to cancel the contract since the defect is not of such a serious nature that he cannot reasonably be expected to abide by the contract.
3. Because the agreement does not contain a *lex commissoria* (cancellation clause), Rory is not entitled to cancel the contract on the ground of Deon's breach of contract.
4. Even if the contract contains no *lex commissoria* (cancellation clause), Rory can obtain a right to cancel the contract by informing Deon of his intention to cancel.

5. If Rory elects to cancel the contract, he need not return the motors, because he has suffered damages as a result of Deon's breach of contract.

Question 15

Choose ONE of the options provided below to complete the following sentence CORRECTLY.

An obligation can be terminated by ...

1. prevention of performance.
2. **supervening impossibility of performance.**
3. supervening impossibility of performance where the debtor is in *mora*.
4. initial impossibility of performance.

Question 16

Which ONE of the following statements is CORRECT?

The *exceptio non adimpleti contractus* ...

1. prevents a party from doing something that is contrary to the terms of the contract.
2. **allows a party to a contract to withhold performance until the other contracting party has performed in terms of the contract.**
3. orders a party to a contract to do what he or she undertook to do in that contract.
4. orders a party to render a reduced performance.

Question 17

Which ONE of the following statements is CORRECT?

1. Compensation for pain and suffering can be claimed on the basis of contract where it is the direct result of the breach of contract.
2. Cancellation of a contract is a normal remedy which is always available to contracting parties.
3. **An order for specific performance is a court order which commands a contracting party to render the performance he or she has undertaken to render.**
4. Damages calculated according to the creditor's negative interest places him/her in the same patrimonial position in which he/she would have been had proper and timeous performance taken place.

Question 18

Peter and John conclude a contract in terms of which Peter undertakes to paint John's house. John undertakes to pay R1 000 for the work. Before Peter

can do the work, the house is destroyed by fire as a result of John's negligence. Peter can :

1. Claim nothing from John, because he is no longer able to do the work and earn the R1 000.
2. Claim R1 000 from John, although he has saved expenses because he no longer has to do the work.
3. Claim that John give him another painting job and pay R1 000 for it.
4. 2 and 3.
5. **Claim R1 000 from John, provided he brings into account any expenses he has saved by reason of his no longer being obliged to do the work.**

Question 20

Floodwaters Town Council contracts with Quintin for the construction of a bridge for R5 million. The bridge must have four lanes: two for motor-car traffic, one for pedestrians and one for trains. When finished the bridge can only carry two lanes of motor car traffic. The Town Council finds out that it will cost another R3 million to add the lanes for pedestrians and trains. The Town Council refuses to pay Quintin any money.

Which is the most accurate statement?

1. The *exceptio non adimpleti contractus* does not apply to this case, because the contract is not reciprocal.
2. The Town Council will have to pay Quintin the agreed R5 million if it decides to use the defective bridge.
3. Quintin may use the *exceptio non adimpleti contractus* to institute action for payment.
4. **The Town Council could raise the *exceptio non adimpleti contractus* as " defense when Quintin claims payment.**

Question 21

Indicate the correct statement :

1. In the event of breach of contract in the form of mora debitoris the creditor will be entitled to repudiate the contract.
2. Repudiation by one contract party entitles the other party to cancel the contract.
3. In the event of breach of contract in the form of mora debitoris, by contract party A, contract party B will be entitled to cancel the contract.
4. **The principle of reciprocity means that the plaintiff can claim the defendant's performance only if he himself has performed or is willing to perform.**
5. None of the above statements is correct.

Question 22

In which of the following circumstances can a creditor claim damages based on breach of contract?

1. When performance was already impossible at the conclusion of the contract.
2. **When the debtor should have foreseen that performance would become impossible, but did not take the necessary steps to avert the events leading to impossibility.**
3. Where impossibility of performance is the result of unforeseen circumstances which are out of the debtor's control.
4. Where the object of performance has perished without the debtor's fault.
5. When the creditor's own intentional act was the cause of the impossibility of performance.

Question 23

Indicate the incorrect statement. The *exceptio non adimpleti contractus*:

1. Is a defense in cases where a contract involves reciprocal obligations between the parties.
2. Is only available where performance by both parties must take place simultaneously or where the plaintiff must perform before the defendant.
3. **Cannot be used as a defense in cases where the plaintiff has already rendered defective performance.**
4. Is not available where the plaintiff does not have to perform.
5. 2 and 3.

Question 24

The court might refuse to grant an order for specific performance where:

1. Performance was warranted.
2. The agreement was not subject to a condition.
3. **Specific performance would entail the rendering of services of a personal nature.**
4. The *exceptio non-adimpleti contractus* is not available to the defendant.

Question 25

Indicate the incorrect statement :

1. A demand is not required to place the debtor in mora if a specific date has been stipulated in the contract.
2. A demand is required to place the debtor in mora if the parties have omitted to stipulate a date for performance, and if the time of performance is not of the essence of the contract.

3. **A demand need not require the debtor to render performance by or on a specific date, provided the debtor is granted a reasonable time for performance.**
4. A demand is not required to place the debtor in mora if the parties have not agreed to a specific day for performance but time is of the essence of the contract.

Question 26

A creditor may cancel a contract if :

1. The debtor is in *mora*.
2. The creditor has demanded performance before or on a specific date (which gives the debtor a reasonable time for performance), the debtor has simultaneously been notified that the creditor intends to cancel if performance does not take place within the stipulated time, and the debtor fails to perform within the stipulated time.
3. The debtor is in *mora ex re*.
4. **2 and 3.**

Question 27

Kim sells vegetables and flowers in Bloemfontein. Leslie writes from Winburg to order flowers which must be delivered there by 20 April. Mary telephones from Bloemfontein suburb to order three marrows for 5 April. If Kim does not perform her contracts, which statement is incorrect?

1. **Leslie can claim the extra amount that he had to pay at Bloemfontein on 20 April to get similar flowers.**
2. If Mary intended to resell the marrows, she can sue Kim for the loss of her profit.
3. Leslie can claim the extra amount that he had to pay at Winburg to get similar flowers.
4. If Leslie and Mary manage to replace their purchases more cheaply, Kim has committed breach of contract but need not pay damages.

Question 28

Floodwaters Local Council contracts with Quintin for the construction of a bridge for R5 million. The bridge must have four lanes : two for motor car traffic, one for pedestrians and one for trains. When finished, the bridge can only carry two lanes of motor car traffic. The Local Council finds out that it will cost another R3 million to add the lanes for pedestrians and trains. The Local Council refuses to pay Quintin any money.

Which ONE of the following is the MOST ACCURATE statement?

1. The *exception non adimpleti contractus* does not apply this case, because the contract is not reciprocal.

2. The Local Council will have to pay Quintin the agreed R5 million if it decides to use the defective bridge.
3. Quintin may use the exception non adimpleti contractus to institute action for payment.
4. **The Local Council could raise the exception adimpleti contractus as defence when Quintin claims payment.**

CHAPTER 12

Question 1

Peter buys a car from John for the amount of R15 000. However, Peter only pays John R11 000 as John owes Peter R4 000 arising from a debt that existed prior to the sale of the car.

Which form of termination of personal rights took place in the facts stated above?

1. prescription.
2. **set-off.**
3. merger.
4. discharge.

Question 2

Consider the following statements:

1. Impossibility of performance renders a contract void if the impossibility exists at the time that the agreement is being concluded.
2. Impossibility of performance is a form of breach of contract if the impossibility occurs after conclusion of the contract and is caused by the fault of one of the contracting parties.
3. Impossibility of performance is a way whereby rights arising from contracts are terminated if the impossibility occurs after conclusion of the contract and if it is caused by factors beyond the control of the contracting parties.

Which of the above statements is/are CORRECT:

1. Only 1.
2. Only 2.
3. 2 and 3.
4. **1, 2 and 3.**

Question 3

Mary wins a gift voucher from Spix Car Fixtures, in terms of which she is entitled to a free carwash. Since she does not own a car, she cedes her rights to the carwash to her friend Fran.

Indicate the CORRECT statement:

1. Cession is the agreement between Mary and Spix Car Fixtures in terms of which a new obligation is created between Spix Car Fixtures and Fran.
2. **Cession is the agreement between Mary and Fran in terms of which Fran becomes entitled to Spix Car Fixtures performance.**
3. Cession is the agreement between Mary and Fran in terms of which a new obligation is created between Spix Car Fixtures and Fran.
4. Cession is the agreement between Spix Car Fixtures and Fran in terms of which a new obligation is created between Spix Car Fixtures and Fran.
5. Cession is the agreement between Spix Car Fixtures and Fran in terms of which Fran becomes entitled to Spix Car Fixtures' performance.

Question 4

An obligation can be terminated by

1. **Supervening impossibility of performance.**
2. Prevention of performance.
3. Supervening impossibility of performance where the debtor is in mora.
4. Initial impossibility of performance.

Question 5

Which ONE of the following is NOT a consequence of cession?

1. The right forms part of the patrimony of the cessionary and not of that of the cedent.
2. **The cessionary receives the claim without the disadvantages attached to it.**
3. The claim is transferred to the cessionary in its entirety together with all benefits such as interest.
4. The cessionary alone has the right to collect the debt.

Question 6

Peregrine undertakes to build a wall around Rupert's property. However, Peregrine has too much work and convinces Evered to take over the job. Peregrine, Rupert and Evered now agree on this arrangement. Peregrine's obligation is extinguished because of :

1. Settlement.
2. **Delegation.**
3. Set-off.
4. Cession.

Question 7

Sam order a “battleship” cake for his son’s third birthday party from Bea, a housewife. Sam agrees to pay R150 for the cake and Bea agrees to deliver the cake to Sam at his house at 9h00 on the day of the party.

Which ONE of the following circumstances is an example of supervening impossibility of performance which terminates the obligations arising from the contract?

1. Bea oversleeps and only delivers the cake at 11h00, one hour after the start of the birthday party.
2. Bea does not possess the necessary skills to decorate party cakes and the cake resembles a log.
3. Bea drives at a very high speed to Sam’s house and the cake is destroyed in an accident.
4. **Bea’s kitchen is destroyed in a fire caused by lightning and she cannot bake the cake.**

Question 8

Which ONE of the following will NOT terminate an obligation?

1. **Cession of the obligation.**
2. Discharge / performance of the obligation.
3. Agreement to end the obligation.
4. Supervening impossibility of the performance.

Question 9

Which ONE of the following statements is CORRECT?

1. Rights flowing from a contract are called human rights.
2. Joe may cede a third of what Mike owes him to James without Mike’s consent.
3. Jabu owes Big Bank a total of R100 000 in respect of various transactions. He deposits an amount of R10 000 with the bank, but fails to stipulate how the payment must be allocated. The Bank is obliged to apply the whole sum towards the reduction of Jabu’s obligations in respect of the capital on his home loan.
4. **James (Pty) Ltd’s debt of R10 000 in favour of the Carry-on-Construction Co (Pty) Ltd is extinguished when the two companies merge.**

Question 10

When a creditor is a minor

1. Prescription will not start running.
2. **The completion of prescription is delayed.**

3. Prescription is interrupted.
4. Prescription will run against his / her legal guardian.

Question 11

Which ONE of the following is NOT a type of agreement which parties to a contract may use to end the contractual relationship between them?

1. Two parties settle a dispute between them concerning an actual or supposed obligation.
2. A creditor releases a debtor from his contractual obligations.
3. **A third person is introduced as a party to the contract.**
4. A contracting party becomes both creditor and debtor in respect of the same obligation.

Question 12

The period of prescription in respect of a debt arising from a bill of exchange or other negotiable instrument, is usually

1. three years.
2. four years.
3. five years.
4. **six years.**

Question 13

Choose ONE of the options provided below to complete the following sentence CORRECTLY.

When a creditor is a minor ...

1. **the completion of prescription is delayed.**
2. prescription is interrupted.
3. prescription will run against his/her legal guardian.

Question 14

Peter borrows R10 000 from Ethel. They agree that Peter will repay the money in two instalments over the following two months. At the end of the first month Peter pays Ethel R5 000 and during the second month he pays her only R3 000. Ethel approaches Peter about the outstanding amount of R2 000 but Peter maintains that he only owed Ethel R8 000 and not R10 000. They reach an agreement that Peter will pay her R9 000.

This is an example of a

1. release.
2. novation.
3. **settlement.**

4. delegation .

Question 15

John owes Leo R15 000 in respect of several debts. John pays Leo an amount of R5 000, but does not stipulate which debts he is actually paying.

Which ONE of the following principles will apply in this case?

1. Capital is paid before interest.
2. **Due debts are paid before debts which have not yet fallen due.**
3. Onerous debts do not have preference over nononerous debts.
4. Old debts do not have preference over new debts.

Question 16

Quintin owes Mary R10 000 which she lent him two months ago.

Which ONE of the following statements is CORRECT?

1. Mary may refuse to accept payment of Quintin's debt if not tendered by Quintin himself.
2. Nothing except an amount of R10 000 from Quintin to Mary will qualify as payment of his debt.
3. If Roy owes Quintin R15 000, Quintin may cede his claim against Roy to Mary to the amount of R10 000.
4. **If Quintin and Mary get married in community of property Quintin's debt will automatically terminate.**

Question 17

Which ONE of the following statements regarding novation is CORRECT?

1. Novation does not extinguish the original obligation between the parties.
2. If the novation is void for whatever reason the old obligation is also void.
3. **The effect of novation is to extinguish the original debt and therefore to extinguish accessory obligations.**
4. A valid novation will take place even though the initial obligation was invalid.

Question 18

Which ONE of the following statements is CORRECT?

1. Where a divisible performance becomes partially impossible the whole obligation is terminated.

2. **Where the creditor is prepared to accept partial performance in regard to an indivisible performance, it will have the same consequences as that of impossibility of performance.**
3. A contract can never be terminated by a creditor as a result of temporary impossibility of performance, irrespective of the duration of the impossibility.

Question 19

Which ONE of the following is a consequence of cession?

1. The right forms part of the patrimony of the cessionary and of the cedent.
2. The cessionary receives the claim without the disadvantages attached to it.
3. **The claim is transferred to the cessionary in its entirety together with benefits such as interest.**
4. Both the cessionary and the cedent have the right to collect the debt.

Question 20

A and B agree that B will deliver 100 x 50 cm lead pipes at A's premises on or before 1 April 1989. On 20 March 8 telephonically informs A that he no longer intends delivering the pipes. Indicate the incorrect statement.

1. **Irrespective of whether or not A accepts B's repudiation of 20 March, the contract between himself and B is automatically terminated by the latter's repudiation.**
2. If A ignores B's telephone call, no breach of contract has taken place.
3. If A accepts B's repudiation of the contract A cannot later change his mind and claim fulfillment of the contract.
4. Whether B informs A of his intention telephonically or by letter makes no difference to the fact that he repudiated the contract.
5. A and B.

Question 21

Indicate which statement is incorrect?

1. **Cession is a contract which results in the exchange of debtors.**
2. Cession can be effected orally.
3. Parties to a contract may stipulate that a right will be transferable only in a certain way.
4. As a general rule, a right can be ceded only in its entirety.
5. If parties to a contract prohibit cession no valid cession is possible.

Question 22

Indicate the correct statement.

1. **After a right has been ceded, the cedent may never cede it to another person.**
2. After a right has been ceded, the cedent must collect the debt on behalf of the cessionary.
3. Parties to a contract may never prohibit cession.
4. Cession of a right must always be effected in writing.
5. The debtor may choose whether to pay the cedent (the original creditor) or the cessionary to whom the right was ceded.

Question 23

In an action for breach of contract the innocent party is entitled to :

1. Damages, irrespective of whether he has suffered patrimonial loss or not.
2. **Damages for patrimonial loss suffered based on his positive interest.**
3. Damages for patrimonial loss suffered based on his negative interest.
4. Damages for patrimonial loss suffered only if the contract contains a penalty clause.

Question 24

Which one of the following statements is incorrect?

The transfer of the right from the cedent has several consequences.

1. The right now forms part of the patrimony of the cessionary and not of that of the cedent.
2. The cessionary alone is entitled to collect the debt.
3. Once the cedent has ceded the claim to one person, he can no longer cede it to another person.
4. **The debtor cannot as a rule raise any defense against the cessionary which he had against the cedent at the time of the cession.**

Question 25

Indicate the correct statement. Novation is an agreement between a creditor and a debtor in terms of which :

1. **The old obligation between them is extinguished and a new obligation created in the place thereof.**
2. A creditor's rights are transferred to a third party.
3. The creditor released the debtor from his obligations under their contract.
4. The creditor withdraws from a contract because of the debtor's breach of contract.

Question 26

Novation is an agreement between a creditor and debtor in terms of which :

1. The obligations between them are extinguished.
2. The obligations of the debtor are transferred to a new debtor.
3. **The obligation between them is extinguished and a new one created in its place.**
4. Mutual debts between the parties are extinguished.

Question 27

Cession may be described as :

1. A juristic act in terms of which obligations are brought into being.
2. An agreement in terms of which there occurs a substitution of creditors and debtors.
3. An agreement for the termination of an obligation.
4. **An agreement between the bearer of a right (that is a creditor) and a third party to the effect that the third party shall henceforth be the holder of the right.**

Question 28

For set-off to take place, it is necessary that *inter alia* :

1. The debts in issue must be money debts.
2. **The debts must be similar in nature.**
3. The debts must exist between the same parties in different capacities.
4. 2 and 3.
5. None of the above.

Question 29

Which of the following is not a consequence of cession?

1. The right forms part of the patrimony of the cessionary and not of the cedent.
2. **The cessionary receives the claim without the disadvantages attached to it.**
3. The claim is transferred to the cessionary in its entirety together with benefits such as interest.
4. The cessionary alone has the right to collect the debt.

Question 30

Which of the following is not a type of agreement which parties to a contract may use to end the contractual relationship between them.

1. Two parties settle a dispute between them concerning a supposed obligation.
2. A creditor releases a debtor from his contractual obligations.
3. **A third person is introduced as a party to the contract.**
4. A contracting party becomes both creditor and debtor in respect of the same obligation.

Question 31

The period of prescription for a judgment debt is :

1. three years.
2. six years.
3. fifteen
4. **thirty years**

Question 32

Which one of the following methods is not a way of terminating a contractual obligation?

1. **cession**
2. rescission
3. agreement
4. set-off
5. novation

Question 33

Quintin owes Adam R100 000 which Adam lent to him two months ago.

Indicate the INCORRECT statement:

1. Adam is not obliged to accept a diamond from Quintin instead of the R100 000.
2. Bill can settle the debt owed to Adam even if Quintin does not want him to do so.
3. Quintin may demand a receipt when he offers Adam the payment of R 1 00 000, and is not obliged to accept Adam's explanation that he does not usually give receipts.
4. **If Bill tenders proper payment of Quintin's debt to Adam, Adam is entitled to insist that payment be effected by Quintin himself.**

Question 34

When a debtor, who owes a creditor money in respect of several debts, makes a payment, the debtor is entitled to stipulate which debt or debts he or she wishes to redeem, subject always to any relevant contractual terms.

Indicate which principle will NOT apply if the debtor fails to make an allocation:

1. **Capital is paid before interest.**
2. Due debts are paid before debts which have not yet fallen due.
3. Onerous debts have preference over non-onerous debts.
4. Old debts have preference over new debts.

