

CLA1501 QUESTIONS AND ANSWERS

QUESTION 1

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 **Correct answer**

Explanation

5 is the **CORRECT** answer. Foreign Law is **NOT** an authoritative source of South African Law. It has persuasive authority only.

QUESTION 2

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. **4 is the CORRECT answer.**

Explanation

4 is the **CORRECT** answer. It is **NOT** a requirement that a customary rule must have been reduced to writing for it to be recognised as a legal rule.

QUESTION 3

Solomon works on a Welkom goldmine. Before leaving his home in Limpopo he asked his nephew, Bheki, to look after his cattle during his absence and gave him permission to use the cattle. Everyone in their village now considers the cattle to be Bheki's as Solomon has been gone for so long. Bheki 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 the circumstances?

1. Bheki is the usufructuary of the cattle. **1 is the CORRECT answer.**
2. Bheki is the holder of a praedial servitude in the cattle.
3. Bheki is the pledgee of the cattle.
4. Bheki is the mortgagee of the cattle.
5. Bheki is the owner of the cattle through prescription.

Explanation

1 is the **CORRECT** answer. Bheki has been granted the right to use the cattle in his personal capacity. The cattle are movable. Solomon remains the owner.

QUESTION 4

Freddie gets involved in an argument with a man in a sports bar one Friday evening, on the merits of a certain rugby team. The argument gets heated, Freddie loses his temper and assaults the other man, to the extent that the man loses consciousness. Freddie decides to go home. On his arrival, he finds his two year old son seriously ill. Still upset from the incident at the pub, he rushes to take the child to the emergency ward of the local hospital. On his way there he is caught driving 140 km/h in a 80 km/h zone. He is summoned to appear in court on a charge of contravening the traffic regulations.

On which **ONE** of the following grounds of justification can Freddie rely?

1. Necessity **1 is the CORRECT answer.**
2. Provocation
3. Self-defence
4. Consent

Explanation

1 is the **CORRECT** answer. Necessity exists when a person is through external forces placed in such a position that the person's legitimate interests can only be protected through a reasonable infringement of the rights of another. Here, Freddie protected his interest (his sick child) by violating the law.

Provocation exists where a person is provoked or incited by another's words or actions to cause harm to that other person. Although Freddie might have been provoked at the pub, his exceeding the speed limit does not meet the requirements for provocation as ground of justification: his conduct (exceeding the speed limit) does not constitute immediate and reasonable retaliation against the body of the provoker. The position would be different if he is charged with assaulting the other person in the bar.

In cases of self-defence a person defends himself or herself against an actual imminent unlawful attack by another to defend his or her own or another's legally acknowledged right. Freddie was not under any threat or unlawful attack when he exceeded the speed limit.

Where a person legally capable of expressing his or her will gives consent to injury or harm, the causing of such harm will be lawful. Here, Freddie did not give consent to anyone.

QUESTION 5

Robert wants to rent a house belonging to Johnny. Johnny tells Robert about the terms of his offer. Robert 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 Johnny is approached by Masedi who also wants to rent the house.

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

1. Johnny may let the house to Masedi because there is no contract that forbids him from doing so.
2. Johnny may let the house to Masedi while his offer to Robert is still open.
3. Johnny must keep the offer open for a period of one week until Robert has rejected or accepted it. **3 is the CORRECT answer.**
4. Johnny may not let the house to Masedi even after the period of one week has lapsed, but must wait until Robert has given him an answer.

Explanation

3 is the **CORRECT** answer. When Johnny agreed to keep the offer open for one week, an option came into being. Johnny may therefore neither offer the house to Masedi nor accept Masedi's offer in respect of the house for the duration of the option.

QUESTION 6

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. **3 is the CORRECT answer.**
4. No contract came into existence because the parties did not reach consensus.

Explanation

3 is the **CORRECT** answer. A valid contract came into existence because all the requirements for a valid contract were met even though consensus was obtained in an improper manner. The innocent party may elect to uphold or rescind it.

QUESTION 7

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

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

1. Arthur, a Jamaican businessman who is domiciled and resident in Jamaica
2. Mabel, a very wealthy widow.
3. Pepe, a sixteen year old computer whiz-kid. **3 is the CORRECT answer.**
4. Pedro, a billionaire's son with prodigal tendencies.

Explanation

3 is the **CORRECT** answer. Pepe will **NOT** be able to contract because he is still a minor and has limited capacity to act. He will require the assistance of his guardian until he reaches the age of majority after which he will have full capacity to act.

QUESTION 8

Vic and Tahira married out of community of property on 1 November 1999. Which **ONE** of the following statements is **CORRECT**?

1. Vic and Tahira have a joint estate.
2. Vic and Tahira both lose their full capacity to act on marriage.
3. Vic and Tahira are jointly and severally liable to third parties for debts incurred for necessities for the common household. **3 is the CORRECT answer.**
4. Tahira has to give her consent for the sale of a farm which belongs to Vic.

Explanation

3 is the **CORRECT** answer. Spouses married out of community of property are obliged to make pro rata contributions in respect of necessities for the common household. They are also jointly and severally liable to third parties for all debts incurred by either spouse for necessities for the common household.

QUESTION 9

After ten years in a business partnership with Paul, which sells tyres, Tim wants to terminate the partnership. Since Tim's business partner, Paul will be entitled to half of the assets of the partnership at the time of termination, Tim concludes a contract with a professional killer, Mr Assassin, in terms of which he will pay Mr Assassin the amount of R20 000 to kill Paul. The next day Paul dies of natural causes.

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

1. Mr Assassin is not entitled to payment in terms of the contract because performance has become impossible.
2. Mr Assassin is not entitled to payment because the agreement between him and Tim is contrary to public policy. **2 is the CORRECT answer.**
3. Mr Assassin is entitled to payment in terms of the contract because performance has become impossible.
4. Mr Assassin is not entitled to payment because it is an implied term of the contract that Paul must be killed by Mr Assassin, not die of natural causes.

Explanation

2 is the **CORRECT** answer. An agreement to commit a crime is contrary to public policy and therefore legally unenforceable. Mr Assassin will therefore not be entitled to payment because the agreement between him and Tim is contrary to public policy.

QUESTION 10

Victor places a bet with Derick, a bookmaker at the local totalisator, that the Proteas will win the cricket test against Australia. The Proteas win the test, but Derick refuses to pay Victor his winnings. The bets at this totalisator are regulated by the National Gambling Act.

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

1. Victor has no enforceable right against Derick for his winnings, since at common law a wagering contract is invalid.
2. Victor has no contractual claim against Derick for his winnings, since their contract is contrary to good morals.
3. Victor has an enforceable right against Derick on the grounds of unjustified enrichment.
4. Victor has an enforceable right against Derick for his winnings, since the contract is valid and lawful. **4 is the CORRECT answer.**

Explanation

4 is the **CORRECT** answer. The National Gambling Act 33 of 1996 provides that any gambling debt which is lawfully incurred in the course of any gambling activity regulated by any law and which is not in any respect in conflict with that law, is enforceable, notwithstanding the provisions of the common law or any other law. Victor has an enforceable right against Derick since the debt was incurred in the course of a regulated and lawful gambling activity. Such a debt is valid and enforceable.

QUESTION 11

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 take the watch back, because a valid contract of donation was concluded. **1 is the CORRECT answer.**
2. Aunt Martha is entitled to take back the watch, because the contract of donation should have been in writing and signed by Aunt Martha.
3. Aunt Martha can claim the watch from Liz on the ground of unjustified enrichment.
4. Liz is obliged to give back the watch, but she can claim damages from Aunt Martha.

Explanation

1 is the **CORRECT** answer. In terms of the General Law Amendment Act 50 of 1956, a contract of donation need only be reduced to writing where performance is due in the future. In the present instance no performance is due in the future. The contract between aunt Martha and Liz is valid because performance has taken place. Liz is therefore the rightful owner of the watch.

QUESTION 12

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. **3 is the CORRECT answer.**
4. An advanced electronic signature results from an accredited process and allows the recipient to verify the date and time it was sent.

Explanation

3 is the **CORRECT** answer. In terms of the Electronic Communications and Transactions Act 25 of 2002, a scanned handwritten signature qualifies as an electronic signature.

QUESTION 13

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

This is an example of a ...

1. resolutive condition. 1 is the **CORRECT** answer.
2. suspensive condition.
3. resolutive time clause.
4. suspensive time clause.

Explanation

1 is the **CORRECT** answer. This is an example of a resolutive condition. A condition is a contractual term which renders the operation and consequences of the contract dependent on the occurrence or non-occurrence of a specified *uncertain* future event, whereas a time clause is subject to a specified *certain* future event, either determined or ascertainable. Because it is uncertain whether Rose will ever buy a house, the contract between Rose and Sandra is dependent on the occurrence of a specified *uncertain* future event. The term is therefore a condition. A time clause or condition is resolutive if the obligations flowing from the contract will only have effect until the future event occurs: an uncertain event in the case of a condition; and a certain event in the case of a time clause. Because the contract of lease will only have effect until Rose buys her own house (if she ever does), and will terminate if she does, the condition is resolutive.

QUESTION 14

Clarence wants to purchase a stand from June only if the beach is visible from the stand. June is not sure whether the beach is visible from the stand. They agree that Clarence will purchase the stand if the beach is visible from the stand.

What is such a contractual term called?

1. a warranty
2. a condition
3. a modus
4. a supposition **4 is the CORRECT answer.**

Explanation

4 is the **CORRECT** answer. This is a supposition because the existence of the contract is dependent on a state of affairs which exists at the time that the contract is concluded, although neither party is certain what the state of affairs is at the time of the conclusion of the contract.

A condition is a contractual term which renders the operation and consequences of the contract dependent on the occurrence, or non-occurrence, of a specified uncertain future event. To constitute a condition a contract must contain a reference to a specified event which may or may not take place in the future. Whether the beach is visible from the stand or not, is a fact which already exists, and the term is therefore a supposition.

A modus is a contractual term which obliges a contracting party to do something or to refrain from doing something.

QUESTION 15

Thabo and Tshepo 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 Thabo requests it. Assuming that Thabo will not invoke this term, Tshepo signs the contract. Two months later, Thabo calls up the loan with immediate effect.

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

1. Tshepo is entitled to apply for the rectification of the written contract.
2. Thabo has committed breach of contract by calling up the loan and Tshepo can claim damages.
3. Tshepo can rely on the oral agreement between herself and Thabo and can refuse to repay the loan immediately.
4. The integration rule (parol evidence rule) prevents Tshepo from relying on the oral agreement and she is obliged to repay the loan immediately. **4 is the CORRECT answer.**

Explanation

4 is the **CORRECT** answer. In terms of the integration rule (parol evidence rule), the written document is the only record of the agreement. The document containing the parties' agreement stands as the only evidence of the terms of their contract. The effect of this rule is that once a contract has been recorded in writing, a contracting party will not be allowed to submit evidence that the real agreement was different from what was recorded in writing. Therefore Tshepo may not rely on the oral agreement between herself and Thabo, and she is obliged to perform in accordance with the written document. Tshepo is obliged to repay the loan immediately.

QUESTION 16

Penelope and Hugh conclude a written agreement for the sale of a three piece lounge suite. At a later stage Hugh discovers that he accidentally wrote "a four piece lounge suite".

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

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

Explanation

3 is the **CORRECT** answer. Rectification will be granted if Hugh can prove that because of an error the written document does not reflect their true intention.

QUESTION 17

Leon, who owns a shop that sells seafood, buys fresh fish from Seasong Fisheries. Leon and Seasong Fisheries agree that Seasong Fisheries will deliver the fish to Leon's shop on 16 April. On that date Leon forgets that Seasong will deliver the fish, and closes his shop for the day in order to attend a funeral in a nearby town. When Seasong Fisheries arrives at Leon's shop with the fresh fish, the doors are locked and there is nobody to receive the fish.

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

1. Leon committed breach of contract in the form of mora debitoris.
2. Leon committed breach of contract in the form of mora creditoris. **2 is the CORRECT answer.**
3. Leon committed breach of contract in the form of repudiation of the contract.
4. Leon committed breach of contract in the form of prevention of performance by the debtor.
5. Leon committed breach of contract in the form of prevention of performance by the creditor.

Explanation

2 is the **CORRECT** answer. Mora creditoris occurs where the creditor causes the debtor's performance to be delayed. Leon was the creditor in respect of the delivery of the fish. The creditor, Leon's, co-operation was required for Seasong Fisheries (the debtor) to render performance. Because Leon wasn't present when Seasong Fisheries wanted to deliver the fish, he caused Seasong Fisheries's performance to be delayed and committed breach of contract in the form of mora creditoris.

QUESTION 18

In terms of a written agreement, Conrad purchased a house from Leonard for R650 000. Conrad paid an amount of R100 000 as deposit. The balance of the purchase price was to be covered by a loan from the bank payable on registration. Owing to fault on Leonard's part, the transfer of the house into Conrad's name was delayed. Conrad sent a letter to Leonard demanding that transfer be effected within two months, and he would then pay the balance of the purchase price. Conrad also stated in the letter that he would rescind from the contract and demand repayment of the deposit and claim damages if Leonard failed to co-operate.

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

1. Conrad is not entitled to send a letter of demand to Leonard, because Conrad has not paid the agreed purchase price for the house in full. **2 is the CORRECT answer.**
2. Conrad is entitled to claim transfer of the house into his name.
3. Because Conrad is in mora, Leonard will be released from his obligation to perform unless his non-performance is intentional or due to his own gross negligence.
4. Because Leonard is in mora, Conrad is released from his obligation to perform even if his non-performance is intentional or due to his own gross negligence.

Explanation

2 is the **CORRECT** answer. As this is a reciprocal agreement, the debtor remains entitled to the performance due to him even though the creditor refuses to accept performance. However, the obligation towards the creditor is not, as a result of mora creditoris, automatically regarded as having been fulfilled.

QUESTION 19

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 to Brian or the books to Chris.

Which **ONE** of the following statements is **CORRECT** 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 book respectively. **1 is the CORRECT answer.**
2. Brian cannot claim delivery of the car but can only cancel the contract.
3. Chris is immediately entitled to cancel the contract for the sale of the books.
4. Brian cannot apply for an interdict to prevent Alex from selling the car to Edward at a higher price.

Explanation

1 is the **CORRECT** answer. The innocent parties, Brian and Chris may claim specific performance, which is delivery of the car and the books.

QUESTION 20

Connie wins a gift voucher from Shine Car Fixtures. In terms of the voucher, she is entitled to a free car wash. Since she does not own a car, she cedes her right to the car wash to her friend Barry.

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

1. An agreement between Connie and Shine Car Fixtures in terms of which a new obligation is created between Shine Car Fixtures and Barry, is a cession of rights.
2. An agreement between Connie and Barry in terms of which Barry becomes entitled to performance by Shine Car Fixtures, is a cession of rights. **2 is the CORRECT answer.**
3. An agreement between Connie and Barry in terms of which a new obligation is created between Shine Car Fixtures and Barry, is a cession of rights.
4. An agreement between Shine Car Fixtures and Barry in terms of which a new obligation is created between Shine Car Fixtures and Barry, is a cession of rights.
5. An agreement between Shine Car Fixtures and Barry in terms of which Barry becomes entitled to the performance of Shine Car Fixtures, is a cession of rights.

Explanation

2 is the **CORRECT** answer. Cession is an agreement between the holder of a right (Connie in our case) and a third party (Barry) to the effect that the third party shall henceforth be the holder of the right. In other words, it is an agreement by which a personal right (the free car wash) is transferred to Barry.

QUESTION 21

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

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

Explanation

4 is **CORRECT**. The works of the Roman-Dutch jurists, the statutes of Holland and the collections of old Dutch opinions and court decisions, form the basis of the South African legal system.

QUESTION 22

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 **2 is CORRECT.**
3. the litigating parties themselves
4. the Sheriff

Explanation

2 is **CORRECT**. The Registrar of the High Court is responsible for the issue of process, the enrolment of cases, the maintenance of records and the issuing of orders of the High Court.

QUESTION 23

The right to claim performance from someone is a/an...

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

Explanation

4 is **CORRECT**. Personal rights are rights in terms of which some or other conduct, referred to as performance may be demanded from a person. Personal rights may come about through contract, delict, or through various other causes of which the most important example is unjust enrichment.

QUESTION 24

Solomon works on a Welkom goldmine. Before leaving his home in Limpopo he asked his nephew, Bheki, 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 Bheki's as Solomon has been gone for so long. Bheki uses the dung of the cattle to fertilise his fields and he sells and consumes their milk.

Under these circumstances, which **ONE** of the following statements is **CORRECT**?

1. Bheki is the usufructuary of the cattle. **1 is CORRECT.**
2. Bheki is the holder of a praedial servitude in the cattle.
3. Bheki is the pledgee of the cattle.
4. Bheki is the mortgagee of the cattle.

5. Bheki is the owner of the cattle through prescription

Explanation

1 is **CORRECT**. Bheki has been granted the right to use the cattle in his personal capacity. Solomon remains the owner.

QUESTION 25

Shaun studies B Com at Unisa. While writing an examination he sees a beautiful girl, Sandy, at the examination hall and falls head over heels in love with her. He rushes to her, 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. Shaun arrives on time, but Sandy is not there. After he has waited for more than two hours, he goes home, and consults his Commercial Law textbook to see whether he can take legal action against Sandy for not honouring their appointment. Only later Shaun learns that Sandy's car broke down on her way to Sterland.

Which **ONE** of the options provided below will complete the following sentence **CORRECTLY**?

Shaun'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. **2 is CORRECT.**
3. it was not physically possible for Sandy to honour their appointment.
4. it was not juridically possible for Sandy to honour their appointment.

Explanation

2 is **CORRECT**. A mere social appointment, for instance to go to the movies, is not a contract since the parties do not have the intention to create legally enforceable obligations. A social appointment has no legal consequences and at most creates a moral duty.

QUESTION 26

Robert wants to rent a house belonging to Johnny. Johnny tells Robert about the terms of his offer. Robert is not sure whether he should accept Johnny's 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 Johnny is approached by Masedi who also wants to rent the house.

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

1. Johnny may let the house to Masedi because there is no contract that forbids him from doing so.
2. Johnny may let the house to Masedi while his offer to Robert is still open.
3. Johnny must keep the offer open for a period of one week until Robert has rejected or accepted it. **3 is CORRECT.**

- Johnny may not let the house to Masedi even after the period of one week has lapsed, but must wait until Robert has given him an answer.

Explanation

3 is **CORRECT**. When Johnny agreed to keep the offer open for one week, an option came into being. Johnny may therefore neither offer the house to Masedi nor accept Masedi's offer in respect of the house for the duration of the option.

QUESTION 27

Which **ONE** of the following could have an influence on a natural person's legal capacity?

- mental deficiency
- being under the influence of alcohol or drugs
- having been declared a prodigal by the High Court
- all of the above
- none of the above **5 is CORRECT**.

Explanation

5 is **CORRECT**. None of the given options will have an influence on a natural person's legal capacity. Capacity to act must be distinguished from legal capacity. Legal capacity is the capacity to be the bearer of rights and duties. Every legal person, irrespective of whether he or she is a natural person or a juristic person has legal capacity. Not every person who has legal capacity has capacity to act. Options 1 to 3 have a bearing on a person's capacity to act, and not on a person's legal capacity.

QUESTION 28

Andrie, who is 16 years old, sells his computer for R1 500 to Abila, a 19-year-old divorced woman, without the consent of his guardian. Abila regards this as a big bargain and keenly pays Andrie the agreed amount. They agree that Andrie will deliver the computer the following week. Andrie recklessly squanders the R1 500, and decides not to deliver the computer.

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

- Andrie's guardian is liable to repay Abila the R1 500.
- Abila has no contractual claim against Andrie for the return of the R1 500. **2 is CORRECT**.
- Abila can sue Andrie for the return of the R1 500 on the ground of unjustified enrichment.
- Andrie committed breach of contract and Abila can therefore claim specific performance of the contract.

Explanation

2 is **CORRECT**. A contract entered into by a minor without the necessary assistance of his or her guardian is not enforceable against the minor. Abila will not have any contractual claim against Andrie.

QUESTION 29

Which **ONE** of the following contracts between Mr Fox and Mrs Angel will be legally possible to perform?

1. Mr Fox undertakes to have all Mrs Angel's speeding tickets quashed in return for her husband's rugby tickets for the season.
2. Mr Fox accepts a wager from Mrs Angel in terms of which he undertakes to pay her R20 000 if the horse Dream Catcher wins the Durban July Cup. **2 is CORRECT.**
3. Mr Fox agrees with Mrs Angel to murder her husband, who is having an affair with Miss Small, his secretary, for R 10 000.
4. Mr Fox sells hundred square kilometres of ocean just off Mossel Bay to Mrs Angel for R500 000 to be registered in terms of title deed no T/ 456 in the Cape Town Deeds Office.

Explanation

2 is **CORRECT**. At common law a wagering contract is mostly valid. A party to such a contract may indeed render his or her performance in terms of the contract and validly pay his or her debt. The law will, however, not enforce the obligation despite recognising its existence.

QUESTION 30

Harry illegally sells unlicensed cycads to Nicky. Nicky pays the agreed purchase price in cash. Harry subsequently refuses to deliver the cycads to Nicky.

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

1. Nicky can claim delivery of the cycads from Harry on the basis of the contract which arose between them.
2. Nicky can reclaim the purchase price from Harry on the ground of unjustified enrichment.
3. The contract between Harry and Nicky is void due to legal impossibility. **3 is CORRECT.**
4. Options (2) and (3) above are both correct.

Explanation

3 is **CORRECT**. The contract between Harry and Nicky is unlawful and therefore void owing to legal impossibility.

QUESTION 31

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. **3 is CORRECT.**
4. An antenuptial contract has to be registered only if it provides for donations under which performance is still due.

Explanation

3 is **CORRECT**. In terms of the Deeds Registries Act 47 of 1937 an antenuptial contract must be registered in order to be effective against persons who are not parties to it.

QUESTION 32

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 sold. **3 is CORRECT.**
4. A contract where a house is leased.

Explanation

3 is **CORRECT**. In terms of the Alienation of Land Act 68 of 1981, in order for a contract of alienation of land to be valid it must be contained in a written contract of alienation which is signed by the parties to the contract or by their agents acting on their written instruction.

QUESTION 33

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

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

Explanation

3 is **CORRECT**. Incidentalialia are additional terms included in a contract to provide for special requirements of the contracting parties.

QUESTION 34

While at work, Dirk and Sunette agree that Sunette will purchase Dirk's old lounge curtains, provided that they are blue and not green. The curtains are at Dirk's house, but because he is colour blind, he is not sure what the colour is.

This contract contains a...

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

Explanation

1 is **CORRECT**. This is a supposition because the existence of the contract is dependent on a state of affairs (the colour of the curtains) which exists at the time that the contract is concluded, although neither party is certain what the state of affairs is at the time of the conclusion of the contract.

QUESTION 35

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 **1 is CORRECT.**
2. if the parties can prove their true intention as well as the fact that when the contract was concluded, they agreed that the integration rule would not apply
3. if the parties can prove their true intention and that rectification of the contract will not be to the detriment of any third party

Explanation

1 is **CORRECT**. Sometimes a written document does not reflect the true intention of the parties because an error slipped in when the agreement was put into writing. As a result of the operation of the parol evidence rule the parties are usually not able to submit extrinsic evidence which is in conflict with the contract. To remedy this state of affairs the law recognises that in appropriate circumstances, a written contract may be improved in order to record the parties' true intention. Thus rectification is permissible if the parties who apply for it can prove both the parties' true intention and that the written document does not accurately reflect their intention.

QUESTION 36

The Guggenheim Gallery has invited Jane to exhibit twenty of her most recent sculpture works at an exhibition which opens on 1 September. David and Jane enter into an agreement in terms of which David agrees to build stands for Jane's sculptures. David agrees to make the stands out of stainless steel in order for them to contrast properly with the bronze of the sculptures. They agree that Jane will pay

David R100 000 when she collects the stands from him on 25 August. David uses plastic to build the stands for the sculptures. Jane meets David on 25 August to collect the stands. David claims payment of R100 000 for the stands. Jane refuses to pay for the stands. She claims that David has used plastic to build the stands and that there is not enough time to build twenty stainless-steel stands in time for the exhibition which opens on 1 September. Jane is of the opinion that David has breached their agreement.

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

1. David's building the stands out of plastic constitutes repudiation.
2. David's building the stands out of plastic constitutes positive malperformance.
2 is CORRECT.
3. David's building the stands out of plastic constitutes mora debitoris.

Explanation

2 is **CORRECT**. Positive malperformance is a form of breach of a contract where a debtor renders performance contrary to the terms of the contract. The fact that David used plastic instead of stainless steel was contrary to the terms of their agreement.

QUESTION 37

Neil and Grant are members of a close corporation known as Fireflies CC, a business which sells fireplaces. 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 an instance, neither of the members will carry on the business of selling fireplaces within seven kilometers of the premises of Fireflies CC for a period of one year after resignation. Neil resigns as member of Fireflies CC and immediately opens another shop selling fireplaces just around the corner from Fireflies CC.

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

1. Neil's behaviour amounts to repudiation, because it indicates that he does not intend honouring his obligations in terms of the association agreement.
2. Neil is not in breach of contract, because he has resigned as member of Fireflies CC and in doing so is no longer bound to the terms of the association agreement.
3. Although Neil is in breach of contract, Grant cannot enforce the restraint clause unless he can prove that it is reasonable.
4. Unless Neil can show that the restraint clause is contrary to public policy, his contravention of the restraint clause will constitute breach of contract. If Neil can show that the restraint clause is contrary to public policy, the restraint clause will not be enforceable. **4 is CORRECT.**

Explanation

4 is **CORRECT**. This is an example of positive malperformance. If Neil can, however, show that the restraint clause is unreasonable; it will be regarded as contrary to public policy.

QUESTION 38

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 to Brian or the books to Chris.

Which **ONE** of the followings statements is **CORRECT** 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. **1 is CORRECT.**
2. Brian cannot claim delivery of the car but can only cancel the contract.
3. Chris is immediately entitled to cancel the contract for the sale of the books.
4. Brian cannot apply for an interdict to prevent Alex from selling the car to Edward at a higher price.

Explanation

1 is **CORRECT**. The innocent parties, Brian and Chris may claim specific performance. In this instance specific performance entails delivery of the car and the books.

QUESTION 39

Connie wins a gift voucher from Shine Car Fixtures. In terms of the voucher, she is entitled to a free carwash. Since she does not own a car, she cedes her right to the carwash to her friend Barry.

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

1. An agreement between Connie and Shine Car Fixtures in terms of which a new obligation is created between Shine Car Fixtures and Barry, is a cession of rights.
2. An agreement between Connie and Barry in terms of which Barry becomes entitled to performance by Shine Car Fixtures, is a cession of rights. **2 is CORRECT.**
3. An agreement between Connie and Barry in terms of which a new obligation is created between Shine Car Fixtures and Barry, is a cession of rights.
4. An agreement between Shine Car Fixtures and Barry in terms of which a new obligation is created between Shine Car Fixtures and Barry, is a cession of rights.

5. An agreement between Shine Car Fixtures and Barry in terms of which Barry becomes entitled to the performance of Shine Car Fixtures, is a cession of rights.

Explanation

2 is **CORRECT**. Cession is the agreement between the holder of a right (Connie in our case) and a third party (Barry) to the effect that the third party shall henceforth be the holder of the right. In other words, it is an agreement by which a personal right (the free carwash) is transferred to Barry.

QUESTION 40

Caleb owes Don R20 000 in respect of several debts. Caleb pays Don R10 000, but does not stipulate which debt/s 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. **2 is CORRECT.**
3. Onerous debts do not have preference over non-onerous debts.
4. Old debts do not have preference over new debts.

Explanation

2 is **CORRECT**. This principle will apply in this case. If the debtor fails to make an allocation when he or she owes creditor money in respect of several debts, due debts will be paid before debts not yet fallen due. It is very important to note that this is a general principle and can be altered by the parties by way of agreement.

QUESTION 41

The law in South Africa, authoritative and persuasive, is drawn from a number of sources.

These sources may include:

- A. a single recorded and comprehensive piece of South African legislation
- B. the codified legal systems of certain continental European countries
- C. works of Roman-Dutch authors
- D. judgments of local and foreign courts

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

1. only A
2. only A and B
3. only B, C and D **3 is CORRECT.**
4. only C and D
5. only A, C and D

Explanation

3 is **CORRECT**. B, C and D are **CORRECT**. B is **CORRECT** because although the codified legal systems of certain countries on the European continent are not

authoritative sources of South African law, they do have persuasive authority. These countries are those whose legal systems also derive from Roman law. C is **CORRECT**, because in the absence of South African legislation or decided cases, works of the writers on Roman-Dutch law can be consulted. D is **CORRECT** because if none of the authoritative sources can cast any light on a legal problem, the courts will turn to decisions of other local courts, like those of Zimbabwe and Namibia and foreign courts. Remember that decisions of foreign courts only have persuasive and not authoritative value.

QUESTION 42

Winston provided in his will that on his death ownership of his farm, Green Park, which is situated close to Vereeniging, would pass to his younger son Noel and that Winston's widow, Miriam would have the right to stay on the farm and use it as long as she lived, a so-called life-interest. During his lifetime Winston used the property for dairy farming, for growing wheat crops and for cultivating vegetables.

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

1. Miriam's right is an example of a personal servitude and is called a usufruct. **1 is CORRECT.**
2. The farm, Green Park, is called the dominant tenement.
3. Miriam may replace the wheat fields with a dirt track racing course, for which a need exists in Vereeniging and which would be less work for her than cultivating wheat.
4. Noel is entitled to the dairy products and vegetables produced on the farm.

Explanation

1 is **CORRECT**. A usufruct is a personal servitude and attaches to the holder personally, whereas a praedial servitude attaches to the owner of property in that person's capacity as owner of that property.

QUESTION 43

Mpho owns a smallholding of ten acres. Neil, Mpho's neighbour, owns a smallholding called "Prosperity". Neil has abundant grazing on his smallholding. Since May 1968 Mpho has been driving his flock of sheep onto Neil's plot during the winter months. Neil has allowed Mpho's practice. Neil has now given Mpho a letter in which he forbids him to make use of the grazing in future, as from May 2000.

Mpho is of the opinion that he has obtained certain rights by means of prescription.

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

1. Mpho has obtained a personal servitude in respect of grazing, by means of prescription.
2. Mpho has obtained a real right of occupation by means of prescription for the winter months.
3. Mpho has obtained a usufruct in respect of grazing by means of prescription.
4. Mpho has obtained a praedial servitude in respect of grazing by means of prescription. **4 is CORRECT.**

Explanation

4 is **CORRECT**. Mpho has obtained a praedial servitude in respect of grazing by means of prescription. Servitude is a limited real right which entitles the holder to use property in a certain way. Servitude of grazing is an example of a praedial servitude, where the owner of a piece of land obtains certain rights in respect of the adjacent land. As it is clear from the facts that Mpho had openly driven his flock of sheep onto his neighbour's property to graze for an uninterrupted period from 1968 to 2000, namely a period of more than thirty two years, he has obtained a praedial servitude of grazing by means of prescription.

QUESTION 44

Which **ONE** of the following is **NOT** a requirement for the conclusion of a valid contract?

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

Explanation

4 is the **CORRECT** answer. It is **NOT** a requirement for the conclusion of a valid contract that the contract must be in writing, signed or dated. For example, a contract of sale is concluded when a newspaper is bought from a street vendor but such a contract is rarely signed. In those cases where the law does require a contract to be in writing, for example, contracts for the sale of land, the contract will only be valid if it is in writing and signed.

QUESTION 45

Mr and Mrs Party 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 per guest. For that reason Mr and Mrs Party state expressly on the wedding invitation that no children are invited to the reception. No less than 20 children attend the reception. Good Food Caterers charge Mr and Mrs Party extra for the 20 additional guests.

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

1. Mr and Mrs Party 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 Party may claim the additional costs from the parents or guardians of the children, because by bringing extra 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 Party 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 Party 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. **4 is CORRECT.**

Explanation

4 is **CORRECT**. Social appointments, of which wedding invitations are an example, have no legal consequences. Since the parties do not have the intention to create legally enforceable obligations, their agreement is not a contract.

QUESTION 46

Shaun studies B Com at Unisa. While writing an examination he sees a beautiful girl, Sandy, at the examination hall and falls head over heels in love with her. He rushes to her, 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. Shaun 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 Shaun learns that Sandy's car broke down on her way to Sterland.

Which **ONE** of the options provided below will complete the following sentence **CORRECTLY**?

Shaun'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. **2 is CORRECT.**
3. it was not physically possible for Sandy to honour their appointment.
4. it was not juridically possible for Sandy to honour their appointment.

Explanation

2 is **CORRECT**. A mere social appointment, for instance to go to the movies, is not a contract since the parties do not have the intention to create legally enforceable obligations. A social appointment has no legal consequences and at most creates a moral duty.

QUESTION 47

Which **ONE** of the following could have an influence on a natural person's legal capacity?

1. mental deficiency

2. being under the influence of alcohol or drugs
3. having been declared a prodigal by the High Court
4. all of the above
5. none of the above **5 is CORRECT.**

Explanation

5 is **CORRECT**. None of the given options will have an influence on a natural person's legal capacity. Capacity to act must be distinguished from legal capacity. Legal capacity is the capacity to be the bearer of rights and duties. Every legal person, irrespective of whether he or she is a natural person or a juristic person has legal capacity. Not every person who has legal capacity has capacity to act. Options 1 to 3 have a bearing on a person's capacity to act, and not on a person's legal capacity.

QUESTION 48

Taffy, a twelve year old boy, enters into an agreement with Roelf, in terms of which Taffy sells his computer to Roelf. Roelf pays Taffy R2 000 for the computer which he will collect at Taffy's home during that same afternoon. Taffy uses the money to buy himself video games to the value of R1 000 and school uniforms for R400 to replace the ones he has outgrown. When Roelf arrives at Taffy's home, Taffy refuses to give him the computer.

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

1. Taffy is liable to Roelf for performance, because the contract is enforceable.
2. Taffy will not be liable to give up the video games to Roelf or repay him the R1 000 which the video games are worth.
3. Taffy is not liable to repay Roelf the R400 he spent on school uniforms, but his parents will be, because as his guardians they are responsible for payment of Taffy's necessities and are enriched by this amount. **3 is CORRECT.**
4. Taffy is not liable in terms of the contract. The contract is void because it was concluded without the assistance of Taffy's parents.

Explanation

3 is **CORRECT**. Taffy used R400 to buy necessities, here school uniforms, for which his parents would normally have to pay. This amount brings about a saving in expenditure for Taffy's parents which they will have to repay, otherwise they will have been unjustifiably enriched by this amount.

QUESTION 49

Which **ONE** of the following contracts **IS NOT** legally impossible in terms of the common law?

1. Anna lends money to Barry, for him to divorce from his wife and so that he can marry her.
2. Betty is angry because someone parked in her parking bay. She pays the car guard R10 to damage the wipers of the car.

3. Sam and Birgit are engaged. They include a clause in their antenuptial contract to the effect that Sam makes Birgit his heir. **3 is CORRECT.**
4. Jeff and Joe decide to run a brothel and draw up an agreement on how they will divide the profits.

Explanation

3 is **CORRECT**. Contracts could be contrary to public policy because they restrict people's freedom to participate in legal or commercial intercourse. However, as an exception, the law does allow engaged couples to include a clause in their antenuptial contract by which one spouse appoints the other as his or her heir. This exception enables the first-dying spouse to provide for the maintenance of the surviving spouse.

QUESTION 50

Which **ONE** of the following contracts between Mr Fox and Mrs Angel will be legally possible to perform?

1. Mr Fox undertakes to have all Mrs Angel's speeding tickets quashed in return for her husband's rugby tickets for the season.
2. Mr Fox accepts a wager from Mrs Angel in terms of which he undertakes to pay her R20 000 if the horse Dream Catcher wins the Durban July Cup. **2 is CORRECT.**
3. Mr Fox agrees with Mrs Angel to murder her husband, who is having an affair with Miss Small, his secretary, for R 10 000.
4. Mr Fox sells hundred square kilometres of ocean just off Mossel Bay to Mrs Angel for R500 000 to be registered in terms of title deed no T/ 456 in the Cape Town Deeds office.

Explanation

2 is **CORRECT**. At common law a wagering contract is mostly valid. A party to such a contract may indeed render his or her performance in terms of the contract and validly pay his or her debt. The law will, however, not enforce the obligation despite recognising its existence.

QUESTION 51

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

1. contracts of lease for less than ten **years 1 is CORRECT.**
2. contracts for the alienation of land
3. contracts of suretyship
4. antenuptial contracts

Explanation

1 is **CORRECT**. The only instances for which formalities are required by law, are contracts for the alienation of land, suretyship, donations where performance is due in the future, and antenuptial contracts. The general rule regarding all other contracts, such as the contract of lease is that no formalities are required except

where required by the parties or in cases where land is leased for more than ten years.

QUESTION 52

Neil and Kate have decided to start a retail business together. They have already discussed and reached agreement on the duties of each of them and the division of the profits. They decided that Kate would write down everything on which they reached agreement and supply each of them with a copy of the contract. However, just as Kate starts writing, Neil changes his mind about the contract and informs Kate that he no longer wants to be involved in the business.

Which **ONE** of the following statements regarding the validity of the agreement between Neil and Kate is **CORRECT**?

1. A valid contract has come into existence and Neil is bound to it.
2. A valid contract has not yet come into existence and Neil is still entitled to withdraw.
3. A valid contract has not yet come into existence, but nevertheless Neil cannot withdraw at this stage.
4. A valid contract will not have been concluded if the intention of the parties was that they would only be bound by the written document, and not the oral agreement. **4 is CORRECT.**

Explanation

4 is **CORRECT**. Formalities may be required by the parties to a contract. There must be distinguished between two possible situations where formalities are required by the parties. Firstly, the parties may have a clear common intention that the contract between them should be in writing in order to be valid. Writing is then required as a formality. Secondly, it could be the parties' intention that the oral contract be valid but that they are putting it in writing to facilitate proof of the oral contract. Therefore, the intention of the parties will determine whether a valid contract has been concluded or not.

QUESTION 53

Rudi and Charles agree that Rudi will transport five head of cattle to Brits for Charles, provided that Rudi can arrange to borrow Rian's truck for two days. The proviso that Rudi must be able to borrow the truck for two days is known as a....

1. modus.
2. resolute time clause.
3. warranty.
4. suspensive condition. **4 is CORRECT.**

Explanation

4 is **CORRECT**. The proviso in this contract is a suspensive condition, because it renders the performance of the contract dependent on the occurrence of a specified uncertain future event. Here it is not certain whether Rian will agree to lend Rudi his truck for two days. It is suspensive because the contractual obligations are

suspended until the condition has been fulfilled. If the condition is not fulfilled, the contract is terminated.

QUESTION 54

Lindiwe donates a large property in Johannesburg to the Care for Kids Foundation, a charitable organisation. In terms of the contract of donation the Care for Kids Foundation is obliged to erect a child care centre on the premises. The Care for Kids Foundation feels, however, that the property is better suited to the construction of a hospital for HIV/AIDS patients and proceeds with this.

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

1. The Care for Kids Foundation has become the owner of the property and is free to use the property for any purpose.
2. The Care for Kids Foundation Charity has committed breach of contract because it has not complied with the modus. **2 is CORRECT.**
3. The Care for Kids Foundation has committed breach of contract because it has not complied with the suspensive condition.
4. The Care for Kids Foundation has committed breach of contract because it has not complied with the supposition under which the donation was made.

Explanation

2 is **CORRECT**. The obligation to build a child care centre is a modus which burdens the contracting party. The contract is unconditional but if the Care for Kids Foundation fails to build the child care centre they will have committed breach of contract and Lindiwe will be able to use the ordinary contractual remedies.

QUESTION 55

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. does not exclude evidence of agreements reached after conclusion of the written contract. **2 is CORRECT**
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.

Explanation

2 is **CORRECT** because the rule only operates in respect of agreements reached before or at the time of conclusion of the contract.

QUESTION 56

Penelope and Hugh conclude a written agreement for the sale of a three piece lounge suite. At a later stage Hugh discovers that he accidentally wrote “a four piece lounge suite”.

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

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

Explanation

3 is **CORRECT**. Rectification will be granted if Hugh proves that because of an error the written document does not reflect their true intention.

QUESTION 57

Example 1

Roger agrees to repair Johan's truck. However, before Roger can do so, the truck is burnt out owing to an electrical short-circuit. Johan was not aware of any defect in the electrical system of the truck.

Example 2

Thomas agrees to repair Ann's computer. On the day before Ann must deliver the computer to Thomas, Ann intentionally drops the computer for the purpose of claiming insurance on it.

Which **ONE** of the options below best describes the relationship between these two examples?

1. Example 1 is an instance of prevention of performance by the creditor, and example 2 is an instance of initial impossibility of performance.
2. Example 2 is a case of repudiation and example 1 a case of negligence.
3. Example 1 is a case of supervening impossibility of performance, and example 2 is an instance of prevention of performance. **3 is CORRECT.**
4. In example 1, Johan will be held liable because he was negligent in not having the electrical system repaired and, in example 2, Ann will be held liable for her intentional destruction of the computer.

Explanation

3 is **CORRECT**. Example 1 is a case of supervening impossibility of performance, while example 2 is an instance of prevention of performance.

QUESTION 58

June works for Clare as a hairdresser. A restraint of trade agreement is included in their contract of employment. This agreement stipulates that June may not work for

any rival business within a radius of five kilometres from Clare's business, for a period of five years after she has left the employment of Clare. After working for Clare for three years, June resigns to take care of her family. After staying at home for the next two years, June is offered a job by Maria, also a hairdresser, in the same centre as Clare's salon. June accepts the offer.

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

1. June committed breach contract when she accepted the offer from Maria, and Clare is entitled to a relief.
2. Clare can apply for a prohibitory interdict to stop June from working in contravention of their restraint of trade agreement.
3. Clare can apply for an interdict even if June was offered the job by Maria.
4. Clare cannot apply for an interdict because June stayed home for two years without earning a salary. **4 is the CORRECT answer, because the statement is INCORRECT.**

Explanation

4 is the **CORRECT** answer, because the statement is **INCORRECT**. Where one party to a contract commits breach of contract, the rules of the law of contract protect the innocent party's personal rights and grants him or her redress in the form of a legal remedy which can be enforced through an action in a court of law. Thus Clare is entitled to relief because June breached their restraint of trade agreement. The fact that June stayed at home for a number of years without a salary, is irrelevant.

QUESTION 59

Sam and Benny enter into a contract in terms of which Sam undertakes to supply and install certain equipment for refrigeration purposes in a fishing vessel owned by Benny. The equipment is guaranteed against defective workmanship and material for a period of twelve months. Three weeks after the installation of the equipment, the equipment malfunctions and cannot be repaired by Sam. Benny cancels the contract and tenders to return certain items supplied by Sam in their present condition. Benny is unable to tender the return of the balance of the materials, because these were lost at sea when the vessel sank during a storm.

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

1. Benny is not entitled to cancel the contract and claim back the money that he paid for the equipment, because he is unable to return all the equipment to Sam.
2. Benny does not have to tender return of all the equipment before he can claim the money he paid to Sam, because it was not Benny's fault that part of the equipment was lost at sea. **2 is CORRECT.**
3. Benny is entitled to cancel the contract and claim back part of the money that he paid for the equipment, in proportion to the part of the equipment that he is able to return.
4. Since restitution is still possible, Benny is not entitled to cancel the contract, but can only claim a reduction in the price of the equipment.

Explanation

2 is **CORRECT**. Both parties have performed and each of them has to return to the other what he or she has performed. If such restitution has become impossible, the party who is cancelling the contract is relieved of the duty to return the performance he or she has received, as long as the impossibility is not due to his or her fault. Where restitution has become partially impossible, as is the case here, he or she has to return the remainder.

QUESTION 60

Jabu buys a motor vehicle from Sharks General Motors on hire purchase. Jabu must pay the price and interest in instalments, over a period of 56 months. Jabu obtains a loan from Freedom Bank to finance the transaction. Freedom Bank pays Sharks General Motors the cash price of the vehicle and Sharks General Motors transfer their rights to the hire purchase agreement to Freedom Bank. Consequently Jabu must pay the purchase price, and interest, to Freedom Bank.

Which **ONE** of the following legal instruments was implemented in the above set of facts?

1. Delegation
2. Settlement
3. Cession **3 is CORRECT.**
4. Merger

Explanation

3 is **CORRECT**. Cession is the transfer of rights from one party to another. Cession is thus an agreement between the holder of a right (Sharks General Motors) and a third party (Freedom Bank), in terms of which the holder of the right cedes the right (to claim payment from Jabu) to the third party. In this set of facts Sharks General Motors received the purchase price from Freedom Bank and ceded its right to claim payment from Jabu to Freedom Bank. Freedom Bank becomes the holder of the right and can claim the purchase price, and the interest, from Jabu.

QUESTION 61

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 **3 is the CORRECT answer.**
4. The Constitution of the Republic of South Africa, 1996
5. Judgments of the Dutch courts before 1652

Explanation

3 is the **CORRECT** answer. Foreign law is **NOT** regarded as an authoritative source of South African law. It has persuasive authority only.

QUESTION 62

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 **2 is CORRECT.**
3. the litigating parties themselves
4. the Sheriff

Explanation

2 is **CORRECT**. The Registrar of the High Court is responsible for the issue of process, the enrolment of cases, the maintenance of records and the issuing of orders of the High Court.

QUESTION 63

Nkosi wishes to grant Ntola a usufruct to live in Nkosi's house. The parties are not sure of the law regarding usufruct.

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

1. Ntola would have the right to let the house if he had to move to another province.
2. Ntola is entitled to demolish one wing of the house and install a swimming pool in that area. **2 is the CORRECT answer, because the statement is INCORRECT.**
3. Ntola is not allowed to sell Cheslin the right to occupy the house.
4. Nkosi can grant Ntola a usufruct to last until Ntola graduates from university in four years' time.

Explanation

2 is the **CORRECT** answer, because the statement is **INCORRECT**. Ntola, the usufructuary, may not destroy or substantially alter the property.

QUESTION 64

Which **ONE** of the following is **NOT** a requirement for the conclusion of a valid contract?

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, signed and dated. **5 is the CORRECT answer.**

Explanation

5 is the **CORRECT** answer. It is **NOT** a requirement for the conclusion of a valid contract that the contract must be in writing, signed or dated. For example, a contract of sale is concluded when a newspaper is bought from a street vendor but such a contract is rarely signed. In those cases where the law does require a contract to be in writing, for example, contracts for the sale of land, the contract will only be valid if it is in writing and if it is signed.

QUESTION 65

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

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

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

Explanation

3 is **CORRECT**. Tumelo made a counter-offer. No contract came into existence because the parties didn't reach consensus concerning the purchase price. Only if Richard accepts this counter offer, will a contract with the purchase price of R1 200 come into existence.

QUESTION 66

Muzi and Siphokazi arrange telephonically to meet at Jacko's Restaurant. At the restaurant Muzi offers to buy Siphokazi's car for R35 000 which Siphokazi accepts without hesitation. A week later, Siphokazi calls Muzi to tell him how pleasant it 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 Siphokazi accepted the offer at Jacko's Restaurant. **1 is CORRECT.**
2. The moment Siphokazi telephoned Muzi to tell him how pleasant it was doing business with him.
3. The moment Muzi and Siphokazi arranged telephonically to meet at Jacko's Restaurant.
4. The moment the delivery of the car and the payment of the purchase price took place at the Menlyn Shopping Mall.

Explanation

1 is **CORRECT**. A contract comes into being at the time when the offeror learns of the acceptance of the offer by the offeree at the place where the parties happen to be. The contract came into being the moment Siphokazi accepted the offer from Muzi at Jacko's Restaurant.

QUESTION 67

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

1. A minor is any person who has not yet reached the age of majority.
2. A minor is any person who has not yet been declared a major by the court.

3. A minor over the age of seven has limited capacity to act. **3 is CORRECT.**
4. A minor who attained majority through marriage will lose it if the marriage is dissolved before the minor reaches the age of majority.

Explanation

3 is **CORRECT**. A distinction is drawn between minors who have not yet reached the age of seven and those who are between seven and eighteen years old. A minor who is older than seven years has a limited capacity to act, and therefore needs assistance from someone who has full capacity to act, for example, a parent or legal guardian. Although a minor who is older than seven years has an independent intellect and can therefore exercise an independent will, it is assumed that he or she does not possess mature and sound judgement. Such a minor may, however, conclude contracts in terms of which rights but no duties are acquired, for example, where a minor over the age of seven receives a donation. A minor under the age of seven has no capacity to act at all and cannot conclude any contract whatsoever. His or her guardian must act on his or her behalf. The reason is that a person of that age has an insufficient level of development to be able to form a sound judgement of contractual obligations.

QUESTION 68

Andrie, who is 16 years old, sells his computer for R1 500 to Abila, a 19-year-old divorced woman, without the consent of his guardian. Abila regards this as a big bargain and keenly pays Andrie the agreed amount. They agree that Andrie will deliver the computer the following week. Andrie recklessly squanders the R1 500, and decides not to deliver the computer.

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

1. Andrie's guardian is liable to repay Abila the R1 500.
2. Abila has no contractual claim against Andrie for the return of the R1 500. **2 is CORRECT.**
3. Abila can sue Andrie for the return of the R1 500 on the ground of unjustified enrichment.
4. Andrie committed breach of contract and Abila can therefore claim specific performance of the contract.

Explanation

2 is **CORRECT**. A contract entered into by a minor without the necessary assistance of his or her guardian is not enforceable against the minor. Abila will not have any contractual claim against Andrie.

QUESTION 69

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 public policy.
4. Jo and Lloyd's contract is unlawful because their agreement is contrary to good morals. **4 is CORRECT.**

Explanation

4 is **CORRECT**. Jo and Lloyd's agreement is contrary to good morals. An act is contrary to good morals if it is contrary to the community's perception of what is proper and decent and in accordance with the conscience of the community. Contracts which are aimed at promoting sexual misconduct and which impair the stability of marriage are contrary to the South African community's perceptions of what is proper and decent.

QUESTION 70

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 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. **3 is CORRECT.**
4. Mr Sly agrees with Mrs Naive to murder her husband, who is having an affair with Miss Sexy, his secretary, for R50 000.

Explanation

3 is **CORRECT**. At common law a wagering contract is mostly valid. A party to such a contract may indeed render his or her performance in terms of the contract and validly pay his or her debt. The law will, however, not enforce the obligation despite recognising its existence.

QUESTION 71

Before their wedding Musa and his fiancée, Lisa, agree on the following financial arrangements, which are included in their antenuptial contract:

- A. that Musa's house at 20 Borokong Street, Randburg will be the family home of the couple;
- B. that the said house will be registered in Lisa's name;
- C. that Musa will stand surety for the loan Lisa needs to buy a new car;
- D. that the marriage will be out of community of property;
- E. that Musa will attend to the typing, signing and registration of all the documents relating to the antenuptial contract.

After the wedding none of the antenuptial contract documents have been typed, signed or registered.

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 and register it.
2. Lisa is the legal owner of the family home.
3. Lisa is solely liable for the purchase price of her car. **3 is CORRECT.**

3 is **CORRECT**. In terms of the General Law Amendment Act, 1956, a contract of suretyship is valid only if it is in writing and signed by or on behalf of the surety. As Musa has not yet signed the contract he cannot be liable for the purchase price should Lisa fail to pay it. Consequently Lisa is solely responsible for the purchase price.

QUESTION 72

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 take the watch back, because a valid contract of donation was concluded. **1 is CORRECT.**
2. Aunt Martha is entitled to take back the watch, because the contract of donation should have been in writing and signed by Aunt Martha.
3. Aunt Martha can claim the watch from Liz on the ground of unjustified enrichment.
4. Liz is obliged to give back the watch, but she can claim damages from Aunt Martha.

Explanation

1 is **CORRECT**. In terms of the General Law Amendment Act 50 of 1956, a contract of donation need only be reduced to writing where performance is due in the future. In the present instance no performance is due in the future. The contract between Aunt Martha and Liz is valid because performance has taken place. Liz is therefore the rightful owner of the watch.

QUESTION 73

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

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

Explanation

3 is **CORRECT**. Incidentalialia are additional terms included in a contract to provide for special requirements of the contracting parties.

QUESTION 74

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 building 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. A and D
2. A and C
3. B and C
4. B and D **4 is CORRECT, because statements B and D are CORRECT.**

Explanation

4 is **CORRECT**, because statements B and D are **CORRECT**. Statement B is **CORRECT** because Betty's appointment as director is subject to a resolutive time clause. The company and Betty agreed that Betty's contract would have effect only until the expiry of a certain period of time (three years). Statement D is **CORRECT** because the building contract is subject to a suspensive time clause. The contract comes into existence when Betty, acting for the company, concludes the contract with the builder; the parties are bound by the obligations. But the builder's obligation to render his performance in terms of the contract is postponed until a particular moment has arrived (two months before Betty's contract to be a director ends). The builder's obligation to build is not immediately operative, and his performance is not immediately enforceable.

QUESTION 75

Thabo and Tshepo 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 Thabo requests it. Assuming that Thabo will not invoke this term, Tshepo signs the contract. Two months later, Thabo calls up the loan with immediate effect.

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

1. Tshepo is entitled to apply for the rectification of the written contract.
2. The parol evidence rule prevents Tshepo from relying on the oral agreement and she is obliged to repay the loan immediately. **2 is CORRECT.**
3. Tshepo can rely on the oral agreement between herself and Thabo and can refuse to repay the loan immediately.
4. Thabo has committed breach of contract by calling up the loan and Tshepo can claim damages.

Explanation

2 is **CORRECT**. In terms of the parol evidence rule, the written document is the only record of the agreement. The document containing the parties' agreement stands as the only evidence of the terms of their contract. The effect of this rule is that once a contract has been recorded in writing, a contracting party will not be allowed to submit evidence

that the real agreement was different from what was recorded in writing. Therefore Tshepo may not rely on the oral agreement between herself and Thabo, and she is obliged to perform in accordance with the written document. Tshepo is obliged to repay the loan immediately.

QUESTION 76

Penelope and Hugh conclude a written agreement for the sale of a three piece lounge suite. At a later stage Hugh discovers that he accidentally wrote "a four piece lounge suite".

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

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

Explanation

3 is **CORRECT**. Rectification will be granted if Hugh proves that because of an error the written document does not reflect their true intention.

QUESTION 77

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

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

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

Explanation

2 is **CORRECT**. Repudiation as a form of breach of contract is any behaviour by a party to a contract indicating that he or she does not intend to honour his or her obligations.

QUESTION 78

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 to Brian or the books to Chris.

Which **ONE** of the followings statements is **CORRECT** 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. **1 is CORRECT.**
2. Brian cannot claim delivery of the car but can only cancel the contract.
3. Chris is immediately entitled to cancel the contract for the sale of the books.

4. Brian cannot apply for an interdict to prevent Alex from selling the car to Edward at a higher price.

Explanation

1 is **CORRECT**. The innocent parties, Brian and Chris may claim specific performance that is delivery of the car and the books.

QUESTION 79

Connie wins a gift voucher from Shine Car Fixtures. In terms of the voucher, she is entitled to a free carwash. Since she does not own a car, she cedes her right to the carwash to her friend Barry.

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

1. An agreement between Connie and Shine Car Fixtures in terms of which a new obligation is created between Shine Car Fixtures and Barry, is a cession of rights.
2. An agreement between Connie and Barry in terms of which Barry becomes entitled to performance by Shine Car Fixtures, is a cession of rights. **2 is CORRECT.**
3. An agreement between Connie and Barry in terms of which a new obligation is created between Shine Car Fixtures and Barry, is a cession of rights.
4. An agreement between Shine Car Fixtures and Barry in terms of which a new obligation is created between Shine Car Fixtures and Barry, is a cession of rights.
5. An agreement between Shine Car Fixtures and Barry in terms of which Barry becomes entitled to the performance of Shine Car Fixtures, is a cession rights.

Explanation

2 is **CORRECT**. Cession is an agreement between the holder of a right (Connie in our case) and a third party (Barry) to the effect that the third party shall henceforth be the holder of the right. In other words, it is an agreement by which a personal right (the free carwash) is transferred to Barry.

QUESTION 80

Ike owes Vera R20 000 which she lent him two months ago.

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

1. Vera may refuse to accept payment of Ike's debt if it is not tendered by Ike himself.
2. Nothing except an amount of R20 000 from Ike to Vera will qualify as payment of his debt.
3. If Len owes Ike R25 000, Ike may cede his claim against Len to Vera to the amount of R20 000.
4. If Ike and Vera get married in community of property Ike's debt will automatically terminate. **4 is CORRECT.**

Explanation

4 is **CORRECT**. If Ike and Vera marry in community of property, what is known as merger takes place. Merger occurs when a person becomes both creditor and debtor. One of the consequences of marriage in community of property is that the separate assets and liabilities of the husband and wife are consolidated (joined) so that there is only one common estate. Since one cannot owe something to oneself, the debt is extinguished.

QUESTION 81

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 **5 is the CORRECT answer.**

Explanation

5 is the **CORRECT** answer. Foreign Law is **NOT** an authoritative source of South African Law. It has persuasive authority only.

QUESTION 82

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. **4 is the CORRECT answer.**

Explanation

4 is the **CORRECT** answer. It is **NOT** a requirement that a customary rule must have been reduced to writing for it to be recognised as a legal rule.

QUESTION 83

Solomon works on a Welkom goldmine. Before leaving his home in Limpopo he asked his nephew, Bheki, to look after his cattle during his absence and gave him permission to use the cattle. Everyone in their village now considers the cattle to be Bheki's as Solomon has been gone for so long. Bheki 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 the circumstances?

1. Bheki is the usufructuary of the cattle. **1 is the CORRECT answer.**
2. Bheki is the holder of a praedial servitude in the cattle.
3. Bheki is the pledgee of the cattle.
4. Bheki is the mortgagee of the cattle.
5. Bheki is the owner of the cattle through prescription.

Explanation

1 is the **CORRECT** answer. Bheki has been granted the right to use the cattle in his personal capacity. The cattle are movable. Solomon remains the owner.

QUESTION 84

Freddie gets involved in an argument with a man in a sports bar one Friday evening, on the merits of a certain rugby team. The argument gets heated, Freddie loses his temper and assaults the other man, to the extent that the man loses consciousness. Freddie decides to go home. On his arrival, he finds his two year old son seriously ill. Still upset from the incident at the pub, he rushes to take the child to the emergency ward of the local hospital. On his way there he is caught driving 140 km/h in a 80 km/h zone. He is summoned to appear in court on a charge of contravening the traffic regulations.

On which **ONE** of the following grounds of justification can Freddie rely?

1. Necessity **1 is the CORRECT answer.**
2. Provocation
3. Self-defence
4. Consent

Explanation

1 is the **CORRECT** answer. Necessity exists when a person is through external forces placed in such a position that the person's legitimate interests can only be protected through a reasonable infringement of the rights of another. Here, Freddie protected his interest (his sick child) by violating the law.

QUESTION 85

Robert wants to rent a house belonging to Johnny. Johnny tells Robert about the terms of his offer. Robert 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 Johnny is approached by Masedi who also wants to rent the house.

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

1. Johnny may let the house to Masedi because there is no contract that forbids him from doing so.
2. Johnny may let the house to Masedi while his offer to Robert is still open.
3. Johnny must keep the offer open for a period of one week until Robert has rejected or accepted it. **3 is the CORRECT answer.**
4. Johnny may not let the house to Masedi even after the period of one week has lapsed, but must wait until Robert has given him an answer.

Explanation

3 is the **CORRECT** answer. When Johnny agreed to keep the offer open for one week, an option came into being. Johnny may therefore neither offer the house to Masedi nor accept Masedi's offer in respect of the house for the duration of the option.

QUESTION 86

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. **3 is the CORRECT answer.**
4. No contract came into existence because the parties did not reach consensus.

Explanation

3 is the **CORRECT** answer. A valid contract came into existence because all the requirements for a valid contract were met even though consensus was obtained in an improper manner. The innocent party may elect to uphold or rescind it.

QUESTION 87

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

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

1. Arthur, a Jamaican businessman who is domiciled and resident in Jamaica.
2. Mabel, a very wealthy widow.
3. Pepe, a sixteen year old computer whiz-kid. **3 is the CORRECT answer.**
4. Pedro, a billionaire's son with prodigal tendencies.

Explanation

3 is the **CORRECT** answer. Pepe will **NOT** be able to contract because he is still a minor and has limited capacity to act. He will require the assistance of his guardian until he reaches the age of majority after which he will have full capacity to act.

QUESTION 88

Vic and Tahira married out of community of property on 1 November 1999.

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

1. Vic and Tahira have a joint estate.
2. Vic and Tahira both lose their full capacity to act on marriage.
3. Vic and Tahira are jointly and severally liable to third parties for debts incurred for necessities for the common household. **3 is the CORRECT answer.**
4. Tahira has to give her consent for the sale of a farm which belongs to Vic.

Explanation

3 is the **CORRECT** answer. Spouses married out of community of property are obliged to make pro rata contributions in respect of necessities for the common household. They

are also jointly and severally liable to third parties for all debts incurred by either spouse for necessities for the common household.

QUESTION 89

After ten years in a business partnership with Paul, which sells tyres, Tim wants to terminate the partnership. Since Tim's business partner, Paul will be entitled to half of the assets of the partnership at the time of termination, Tim concludes a contract with a professional killer, Mr Assassin, in terms of which he will pay Mr Assassin the amount of R20 000 to kill Paul. The next day Paul dies of natural causes.

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

1. Mr Assassin is not entitled to payment in terms of the contract because performance has become impossible.
2. Mr Assassin is not entitled to payment because the agreement between him and Tim is contrary to public policy. **2 is the CORRECT answer.**
3. Mr Assassin is entitled to payment in terms of the contract because performance has become impossible.
4. Mr Assassin is not entitled to payment because it is an implied term of the contract that Paul must be killed by Mr Assassin, not die of natural causes.

Explanation

2 is the **CORRECT** answer. An agreement to commit a crime is contrary to public policy and therefore legally unenforceable. Mr Assassin will therefore not be entitled to payment because the agreement between him and Tim is contrary to public policy.

QUESTION 100

Victor places a bet with Derick, a bookmaker at the local totalisator, that the Proteas will win the cricket test against Australia. The Proteas win the test, but Derick refuses to pay Victor his winnings. The bets at this totalisator are regulated by the National Gambling Act.

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

1. Victor has no enforceable right against Derick for his winnings, since at common law a wagering contract is invalid.
2. Victor has no contractual claim against Derick for his winnings, since their contract is contrary to good morals.
3. Victor has an enforceable right against Derick on the grounds of unjustified enrichment.
4. Victor has an enforceable right against Derick for his winnings, since the contract is valid and lawful. **4 is the CORRECT answer.**

Explanation

4 is the **CORRECT** answer. The National Gambling Act 33 of 1996 provides that any gambling debt which is lawfully incurred in the course of any gambling activity regulated by any law and which is not in any respect in conflict with that law, is enforceable, notwithstanding the provisions of the common law or any other law. Victor has an enforceable right against Derick since the debt was incurred in the course of a regulated and lawful gambling activity. Such a debt is valid and enforceable.

QUESTION 101

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 take the watch back, because a valid contract of donation was concluded. **1 is the CORRECT answer.**
2. Aunt Martha is entitled to take back the watch, because the contract of donation should have been in writing and signed by Aunt Martha.
3. Aunt Martha can claim the watch from Liz on the ground of unjustified enrichment.
4. Liz is obliged to give back the watch, but she can claim damages from Aunt Martha.

Explanation

1 is the **CORRECT** answer. In terms of the General Law Amendment Act 50 of 1956, a contract of donation need only be reduced to writing where performance is due in the future. In the present instance no performance is due in the future. The contract between Aunt Martha and Liz is valid because performance has taken place. Liz is therefore the rightful owner of the watch.

QUESTION 102

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. **3 is the CORRECT answer.**
4. An advanced electronic signature results from an accredited process and allows the recipient to verify the date and time it was sent.

Explanation

3 is the **CORRECT** answer. In terms of the Electronic Communications and Transactions Act 25 of 2002, a scanned handwritten signature qualifies as an electronic signature.

QUESTION 103

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

This is an example of a ...

1. resolutive condition. **1 is the CORRECT answer.**
2. suspensive condition.
3. resolutive time clause.

4. suspensive time clause.

Explanation

1 is the **CORRECT** answer. This is an example of a resolutive condition. A condition is a contractual term which renders the operation and consequences of the contract dependent on the occurrence or non-occurrence of a specified *uncertain* future event, whereas a time clause is subject to a specified *certain* future event, either determined or ascertainable. Because it is uncertain whether Rose will ever buy a house, the contract between Rose and Sandra is dependent on the occurrence of a specified *uncertain* future event. The term is therefore a condition. A time clause or condition is resolutive if the obligations flowing from the contract will only have effect until the future event occurs: an uncertain event in the case of a condition; and a certain event in the case of a time clause. Because the contract of lease will only have effect until Rose buys her own house (if she ever does), and will terminate if she does, the condition is resolutive.

QUESTION 104

Clarence wants to purchase a stand from June only if the beach is visible from the stand. June is not sure whether the beach is visible from the stand. They agree that Clarence will purchase the stand if the beach is visible from the stand.

What is such a contractual term called?

1. a warranty
2. a condition
3. a modus
4. a supposition **4 is the CORRECT answer.**

Explanation

4 is the **CORRECT** answer. This is a supposition because the existence of the contract is dependent on a state of affairs which exists at the time that the contract is concluded, although neither party is certain what the state of affairs is at the time of the conclusion of the contract.

QUESTION 105

Thabo and Tshepo 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 Thabo requests it. Assuming that Thabo will not invoke this term, Tshepo signs the contract. Two months later, Thabo calls up the loan with immediate effect.

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

1. Tshepo is entitled to apply for the rectification of the written contract.
2. Thabo has committed breach of contract by calling up the loan and Tshepo can claim damages.
3. Tshepo can rely on the oral agreement between herself and Thabo and can refuse to repay the loan immediately.

4. The integration rule (parol evidence rule) prevents Tshepo from relying on the oral agreement and she is obliged to repay the loan immediately. **4 is the CORRECT answer.**

Explanation

4 is the **CORRECT** answer. In terms of the integration rule (parol evidence rule), the written document is the only record of the agreement. The document containing the parties' agreement stands as the only evidence of the terms of their contract. The effect of this rule is that once a contract has been recorded in writing, a contracting party will not be allowed to submit evidence that the real agreement was different from what was recorded in writing. Therefore Tshepo may not rely on the oral agreement between herself and Thabo, and she is obliged to perform in accordance with the written document. Tshepo is obliged to repay the loan immediately.

QUESTION 106

Penelope and Hugh conclude a written agreement for the sale of a three piece lounge suite. At a later stage Hugh discovers that he accidentally wrote "a four piece lounge suite".

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

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

Explanation

3 is the **CORRECT** answer. Rectification will be granted if Hugh can prove that because of an error the written document does not reflect their true intention.

QUESTION 107

Leon, who owns a shop that sells seafood, buys fresh fish from Seasong Fisheries. Leon and Seasong Fisheries agree that Seasong Fisheries will deliver the fish to Leon's shop on 16 April. On that date Leon forgets that Seasong will deliver the fish, and closes his shop for the day in order to attend a funeral in a nearby town. When Seasong Fisheries arrives at Leon's shop with the fresh fish, the doors are locked and there is nobody to receive the fish.

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

1. Leon committed breach of contract in the form of mora debitoris.
2. Leon committed breach of contract in the form of mora creditoris. **2 is the CORRECT answer.**
3. Leon committed breach of contract in the form of repudiation of the contract.
4. Leon committed breach of contract in the form of prevention of performance by the debtor.

5. Leon committed breach of contract in the form of prevention of performance by the creditor.

Explanation

2 is the **CORRECT** answer. Mora creditoris occurs where the creditor causes the debtor's performance to be delayed. Leon was the creditor in respect of the delivery of the fish. The creditor, Leon's, co-operation was required for Seasong Fisheries (the debtor) to render performance. Because Leon wasn't present when Seasong Fisheries wanted to deliver the fish, he caused Seasong Fisheries's performance to be delayed and committed breach of contract in the form of mora creditoris.

QUESTION 108

In terms of a written agreement, Conrad purchased a house from Leonard for R650 000. Conrad paid an amount of R100 000 as deposit. The balance of the purchase price was to be covered by a loan from the bank payable on registration. Owing to fault on Leonard's part, the transfer of the house into Conrad's name was delayed. Conrad sent a letter to Leonard demanding that transfer be effected within two months, and he would then pay the balance of the purchase price. Conrad also stated in the letter that he would rescind from the contract and demand repayment of the deposit and claim damages if Leonard failed to co-operate.

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

1. Conrad is not entitled to send a letter of demand to Leonard, because Conrad has not paid the agreed purchase price for the house in full.
2. Conrad is entitled to claim transfer of the house into his name. **2 is the CORRECT answer.**
3. Because Conrad is in mora, Leonard will be released from his obligation to perform unless his non-performance is intentional or due to his own gross negligence.
4. Because Leonard is in mora, Conrad is released from his obligation to perform even if his non-performance is intentional or due to his own gross negligence.

Explanation

2 is the **CORRECT** answer. As this is a reciprocal agreement, the debtor remains entitled to the performance due to him even though the creditor refuses to accept performance. However, the obligation towards the creditor is not, as a result of mora creditoris, automatically regarded as having been fulfilled.

QUESTION 109

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 to Brian or the books to Chris.

Which **ONE** of the following statements is **CORRECT** 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 book respectively. **1 is the CORRECT answer.**
2. Brian cannot claim delivery of the car but can only cancel the contract.
3. Chris is immediately entitled to cancel the contract for the sale of the books.
4. Brian cannot apply for an interdict to prevent Alex from selling the car to Edward at a higher price.

Explanation

1 is the **CORRECT** answer. The innocent parties, Brian and Chris may claim specific performance, which is delivery of the car and the books.

QUESTION 110

Connie wins a gift voucher from Shine Car Fixtures. In terms of the voucher, she is entitled to a free car wash. Since she does not own a car, she cedes her right to the car wash to her friend Barry.

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

1. An agreement between Connie and Shine Car Fixtures in terms of which a new obligation is created between Shine Car Fixtures and Barry, is a cession of rights.
2. An agreement between Connie and Barry in terms of which Barry becomes entitled to performance by Shine Car Fixtures, is a cession of rights. **2 is the CORRECT answer.**
3. An agreement between Connie and Barry in terms of which a new obligation is created between Shine Car Fixtures and Barry, is a cession of rights.
4. An agreement between Shine Car Fixtures and Barry in terms of which a new obligation is created between Shine Car Fixtures and Barry, is a cession of rights.
5. An agreement between Shine Car Fixtures and Barry in terms of which Barry becomes entitled to the performance of Shine Car Fixtures, is a cession of rights.

Explanation

2 is the **CORRECT** answer. Cession is an agreement between the holder of a right (Connie in our case) and a third party (Barry) to the effect that the third party shall henceforth be the holder of the right. In other words, it is an agreement by which a personal right (the free car wash) is transferred to Barry.