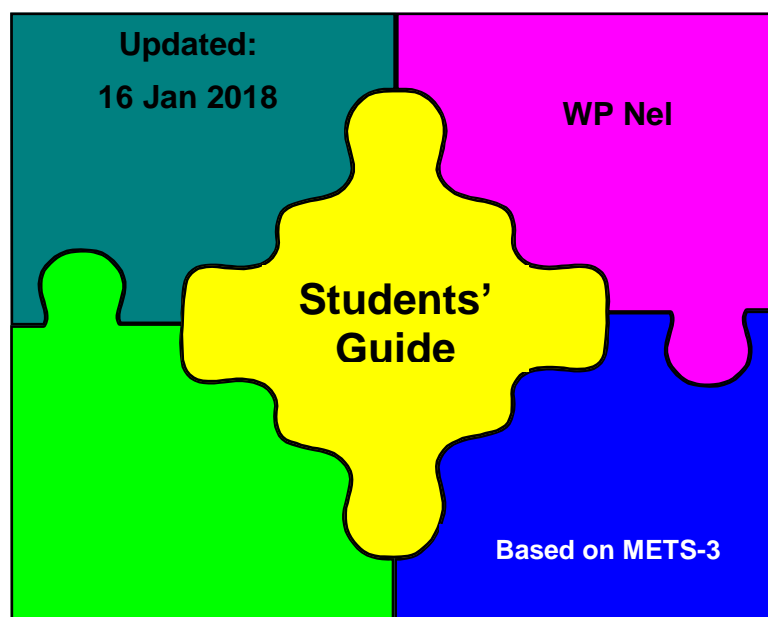

Workbook for Students

Chapter 6 – Engineering Contracts and Law



**Based on: 'Management for Engineers,
Technologists and Scientists' (METS-3)**

Suggested solutions
Chapter 6, Engineering Contracts and Law
(METS-3: 106-137)

Section 6A – True/False questions

This section consists of true/false questions. State whether the following statements are true or false. In your answer book, write down 'true' or 'false' and provide a brief explanation for your answer.

6A.1 The following **true/false questions** are based on **section 6.1 “Introduction”** (METS-3: 106-107) of the textbook.

6A.1.1 The principal agent may be one of the parties involved in a complex building contract. (1)

6A.1.2 The law of obligation is based on the principle that one must honour one's promises. (1)

6A.1.3 In return for performing construction or engineering work, a building contractor would expect counter-performance from the client. (1)

6A.2 The following **true/false questions** are based on **section 6.2 “Obligations, the concepts of contract and requirements for validity”** (METS-3: 107) of the textbook.

6A.2.1 All agreements between persons are contracts. (1)

6A.2.2 A contract is an agreement that creates rights and duties. (1)

6A.2.3 Parties must reach agreement before a contract can be formed. (1)

6A.2.4 A contract can only come into existence when both parties have contractual capacity. (1)

6A.3 The following **true/false questions** are based on **section 6.3 “Performance, personal rights, creditors and debtors”** (METS-3: 108) of the textbook.

- 6A.3.1 The debtor is the person who may claim performance. (1)
- 6A.3.2 Often the parties to a contract are simultaneously debtors and creditors. (1)
- 6A.3.3 A purchasing and construction contract entered into between a developer, building contractor and future home-owner is an example of a multipartite contract. (1)
- 6A.3.4 The creditor has a duty to perform. (1)
- 6A.3.5 In terms of a contract, a debtor is a person who has a duty to perform. (1)

6A.4 The following **true/false questions** are based on **section 6.4 “Agreement”** (METS-3: 109-112) of the textbook.

- 6A.4.1 The most common way to determine whether there has been agreement is to identify an offer, and acceptance of that offer. (1)
- 6A.4.2 A request for a quotation constitutes a firm offer to do business. (1)
- 6A.4.3 One of the requirements of an offer is that it must be definite and complete. (1)
- 6A.4.4 A tender that was called for constitutes an offer. (1)
- 6A.4.5 An advertisement is an offer to do business. (1)
- 6A.4.6 One of the requirements of an offer is that it must be directed at a definite person or persons. (1)
- 6A.4.7 A contract has not yet been concluded when a counter-offer is made. (1)
- 6A.4.8 An offer lapses or expires when a counter-offer is made. (1)
- 6A.4.9 An offer lapses on the death of the offeror or offeree. (1)
- 6A.4.10 The acceptance of an offer must be unconditional for a valid contract to be formed.

6A.4.11 In South Africa contracts may, in principle, be concluded orally or even by conduct alone. (1)

6A.5 The following **true/false questions** are based on **section 6.5 “Circumstances affecting consensus”** (METS-3: 112-116) of the textbook.

6A.5.1 “Consensus” is the basis for the validity of every contract. (1)

6A.5.2 If the consensus of one of the parties is legally invalid, there can be no contract. (1)

6A.5.3 Duress arises when a prospective contractant is forced/compelled by means by of an unlawful threat/intimidation by the other party (or someone acting on his/her behalf), which causes fear in the prospective contractant, to conclude the contract. (1)

6A.5.4 Duress usually results in a void contract because the consent of one party is obtained in an improper manner. (1)

6A.6 The following **true/false questions** are based on **section 6.6 “Contractual capacity”** (METS-3: 116-118) of the textbook.

6A.6.1 A minor under the age of seven has no contractual capacity. (1)

6A.6.2 For a contract with the state (where government is one of the parties) to be valid, such a contract must be authorised by the relevant minister. (1)

6A.6.3 Minors, who are older than seven years, have limited contractual capacity. (1)

6A.7 The following **true/false questions** are based on **section 6.7 “Formalities”** (METS-3: 119-120) of the textbook.

6A.7.1 In South Africa, a contract for the sale of land must be in writing for it to be valid. (1)

6A.7.2 When the representatives of two companies agree that their verbal contract must be reduced to writing, then a valid contract will only be concluded once it has been reduced to writing. (1)

6A.8 The following **true/false questions** are based on **section 6.8 “Performance must be objectively possible”** (METS-3: 120-121) of the textbook.

6A.8.1 Performance must be objectively possible during the conclusion of a contract. (1)

6A.9 The following **true/false questions** are based on **section 6.9 “The conclusion of the contract, its performance and its object must be lawful”** (METS-3: 121-122) of the textbook.

6A.9.1 A contract is unlawful when the performance to be rendered is forbidden by law. (1)

6A.9.2 A contract to commit a crime, eg fraud, would be void (not valid). (1)

6A.10 The following **true/false questions** are based on **section 6.10 “The parties to a contract, parties commonly associated with engineering and construction contracts”** (METS-3: 122-125) of the textbook.

6A.10.1 The registration of professional engineers, technologists and technicians are regulated by the ECSA (Engineering Council of South Africa). (1)

6A.10.2 A resident engineer must watch and supervise the design and execution of works. (1)

6A.11 The following **true/false questions** are based on **section 6.11 “Terms of a contract”** (METS-3: 125-128) of the textbook.

6A.11.1 The purchase price of an item is an example of the naturalia of a contract of purchase and sale. (1)

6A.11.2 The essentialia of a contract are the terms that the law deems essential for placing a contract into a certain category. (1)

6A.11.3 To sell something “voetstoots” (as is) would normally form part of the naturalia of a (purchase and sale) contract. (1)

6A.11.4 The incidentalia are the additional terms that are included in a contract in order to provide for special requirements of the parties. (1)

6A.11.5 Express terms are terms in a contract that are incorporated into contracts by operation of law. (1)

6A.11.6 Implied terms are terms in a contract which the parties incorporate into a contract. (1)

6A.11.7 Tacit terms are incorporated into contracts without having to be expressed in words. It is based on the parties’ true intention. (1)

6A.11.8 A warranty is a contractual term whereby a contracting party assumes absolute liability for proper performance. (1)

6A.11.9 A condition is a clause in a contract that entitles a contracting party to summarily cancel the contract owing to the other’s breach. (1)

6A.11.10A supposition is a clause in a contract that states that the party who commits breach of contract must render a specified performance to the aggrieved party. (1)

6A.12 The following **true/false questions** are based on **section 6.12 “Interpretation of contracts”** (METS-3: 128-129) of the textbook.

6A.12.1 Primary, secondary and tertiary rules can be used to interpret contracts. (1)

6A.13 The following **true/false questions** are based on **section 6.13 “Breach of contract”** (METS-3: 129-131) of the textbook.

6A.13.1 The law of contract recognises five distinct ways in which breach of contract may occur. (1)

6A.13.2 *Mora debitoris* means “default by the debtor”. (1)

6A.13.3 *Mora creditoris* means “default by the creditor”. (1)

6A.13.4 If a party to a contract indicates that he/she does **not** intend to perform in terms of the contract, there is a breach of contract in the form of positive malperformance. (1)

6A.14 The following **true/false questions** are based on **section 6.14 “Remedies for breach of contract”** (METS-3: 131-133) of the textbook.

6A.14.1 An innocent party (to a contract) is always entitled to claim specific performance. (1)

6A.14.2 Cancellation (recission) of a contract is possible only in exceptional circumstances. (1)

6A.15 The following **true/false questions** are based on **section 6.15 “The transfer and termination of obligations arising from a contract”** (METS-3: 134-135) of the textbook.

6A.15.1 Delegation is when contractual duties are transferred from the original debtor to a third party. (1)

6A.15.2 Release is when a contract is replaced by a new contract. (1)

6A.15.3 Novation is when a contract is cancelled by agreement. (1)

6A.15.4 If John owes Lucky R1000 whilst Lucky owes John R800 then John owes Lucky R200 after set-off. (1)

6A.16 The following **true/false questions** are based on **section 6.16 “Differentiating between the contract for the letting and hiring of work, and the contract for the letting and hiring of services”** (METS-3: 135-136) of the textbook.

6A.16.1 No formalities are required for letting and hiring of work contracts. (1)

Section 6 B – Multiple choice questions

This section consists of multiple-choice questions. In your answer book, write down the number of the question, and next to it the number representing the correct option, for example '6.9 [1]'.

6B.1 The following **multiple choice questions** are based on **section 6.1 “Introduction”** (METS-3: 106-107) of the textbook.

6B.1.1 Read the following 3 statements (Example: answer is provided):

- a) The principal agent may be one of the parties involved in a complex building contract.
- b) The law of obligation is based on the principle that one must honour one's promises.
- c) In return for performing construction or engineering work, a building contractor would expect counter-performance from the client.

Which of the above statements is/are **correct**?

(2)

- [1] a
- [2] a and b
- [3] a, b and c
- [4] a and c
- [5] None of the options (1, 2, 3, or 4) is correct.

6B.2 The following **multiple choice questions** are based on **section 6.2 “Obligations, the concepts of contract and requirements for validity”** (METS-3: 107) of the textbook.

6B.2.1 Read the following 3 statements (Example: answer is provided):

- a) All agreements between persons are contracts.
- b) A contract is an agreement that creates rights and duties.
- c) Parties must reach agreement before a contract can be formed.

Which of the above statements is/are **correct**?

(2)

- [1] a
- [2] a and b
- [3] a, b and c
- [4] b and c
- [5] None of the options (1, 2, 3, or 4) is correct.

6B.3 The following **multiple choice questions** are based on **section 6.3 “Performance, personal rights, creditors and debtors”** (METS-3: 108) of the textbook.

6B.3.1 Read the following 3 statements (Example: answer is provided):

- a) The debtor is the person who may claim performance.
- b) Often the parties to a contract are simultaneously debtors and creditors.
- c) A purchasing and construction contract entered into between a developer, building contractor and future home-owner is an example of a multipartite contract.

Which of the above statements is/are **correct**?

(2)

- [1] a
- [2] a and b
- [3] a, b and c
- [4] b and c
- [5] None of the options (1, 2, 3, or 4) is correct.

6B.3.2 A surface mining company enters into a contract with an earthmoving company. The purpose of the contractual agreement is to outsource the loading and hauling functions at the mine to the earthmoving contractor at a fee. The fee structure is described in detail in the contract. Read the following four statements:

- a) The surface mining company is both a creditor and a debtor.
- b) As a debtor the surface mining company may claim performance from the earthmoving contractor to do the loading and hauling at the mine.
- c) As creditor, the surface mining company has a duty to perform, namely to pay the earthmoving contractor for loading and hauling services provided.
- d) The earthmoving contractor is a creditor because it may claim the fee from the mine for work done. It is also a debtor because it has to deliver loading and hauling services to the mine.

Which of the above statements is/are **correct**?

(2)

- [1] a, b, and c
- [2] a and d
- [3] a and b
- [4] a, b, c and d
- [5] none (not 1, 2, 3 or 4)

6B.3.3 Read the following 3 statements:

- a) The creditor has a duty to perform.
- b) The debtor is the person who may claim performance.

c) Often the parties to a contract are simultaneously debtors and creditors.

Which of the above statements is/are **correct**?

(2)

- [1] c
- [2] a and c
- [3] b and c
- [4] a, b and c
- [5] None of the options (1, 2, 3, or 4) is correct.

6B.4 The following **multiple choice questions** are based on **section 6.4 “Agreement”** (METS-3: 109-112) of the textbook.

6B.4.1 Read the following 3 statements:

- a) A request for a quotation constitutes a firm offer to do business.
- b) If the consensus of one of the parties is legally invalid, there can be no contract.
- c) The most common way to determine whether there has been agreement is to identify an offer, and acceptance of that offer.

Which of the above statements is/are **correct**?

(2)

- [1] b and c
- [2] a and c
- [3] a and b
- [4] a, b and c
- [5] none (not a, b or c)

6.B.4.2 Richard makes an offer to buy Tumelo's car for R10 000. He gives Tumelo 10 days to accept his offer. On the ninth day, Tumelo informs Richard that he will sell his car to him, but that he wants R12 000 for it.

Which one of the following statements is **correct**?

(2)

- [1] A contract came into existence between Richard and Tumelo with a purchase price of R12 000.
- [2] A contract came into existence between Richard and Tumelo with a purchase price of R10 000.
- [3] No contract came into existence between Richard and Tumelo as Tumelo made a counter-offer, which Richard has not yet accepted.
- [4] Richard's offer still stands.

6B.4.3 Your company (X) wants to enter into a contract with another company (Y), which manufactures components that form part of the product that your company assembles. X offers Y a price of R10,50 per component but Y wants R11,50 per component. Read the following three statements:

- a) There is no agreement between the two parties and therefore no contract.
- b) X's offer expired because Y made a counter-offer.
- c) A contract will come into existence if X informs Y that it is willing to pay R11,50 per component.

Which of the above statements is/are **correct**? (2)

- [1] a and b
- [2] b and c
- [3] a, b and c
- [4] a and c
- [5] None of the options (1, 2, 3 or 4) is correct

6B.4.4 Read the following 3 statements:

- a) One of the requirements of an offer is that it must be definite and complete.
- b) A tender that was called for constitutes an offer.
- c) An advertisement is an offer to do business.

Which of the above statements is/are **correct**? (2)

- [1] b and c
- [2] a and c
- [3] a and b
- [4] a
- [5] None of the options (1, 2, 3, or 4) is correct.

6B.4.5 Read the following 3 statements:

- a) One of the requirements of an offer is that it must be directed at a definite person or persons.
- b) A contract has not yet been concluded when a counter-offer is made.
- c) An offer lapses or expires when a counter-offer is made.

Which of the above statements is/are **correct**? (2)

- [1] b and c
- [2] a and c
- [3] a and b
- [4] a, b and c
- [5] None of the options (1, 2, 3, or 4) is correct.

6B.4.6 Read the following 3 statements:

- a) An offer lapses on the death of the offeror or offeree.
- b) The acceptance of an offer must be unconditional for a valid contract to be formed.
- c) In South Africa contracts may, in principle, be concluded orally or even by conduct alone.

Which of the above statements is/are **correct**?

(2)

- [1] b and c
- [2] a and c
- [3] a and b
- [4] a, b and c
- [5] None of the options (1, 2, 3, or 4) is correct.

6B.5 The following **multiple choice questions** are based on **section 6.5 “Circumstances affecting consensus”** (METS-3: 112-116) of the textbook.

6B.5.1 Read the following 3 statements:

- a) Duress arises when a prospective contractant is forced/compelled by means of an unlawful threat/intimidation by the other party (or someone acting on his/her behalf), which causes fear in the prospective contractant, to conclude the contract.
- b) Duress usually results in a void contract because the consent of one party is obtained in an improper manner.
- c) Culpable misrepresentation (either fraudulent or negligent) is a wrongful statement of fact made by one party (or his or her agent) to the other party (or his/her agent) prior to finalising the contract, which misrepresentation persuades the latter party to conclude the contract.

Which of the above statements is/are **correct**?

(2)

- [1] b and c
- [2] a and c
- [3] a and b
- [4] a, b and c
- [5] none (not a, b or c)

6B.6 The following **multiple choice questions** are based on **section 6.6 “Contractual capacity”** (METS-3: 116-118) of the textbook.

6B.6.1 Read the following 3 statements:

- a) A minor under the age of seven has no contractual capacity.
- b) For a contract with the state (where government is one of the parties) to be valid, such a contract must be authorised by the relevant minister.
- c) Minors, who are older than seven years, have limited contractual capacity.

Which of the above statements is/are **correct**?

(2)

- [1] b and c
- [2] a and c
- [3] a and b
- [4] a, b and c
- [5] none (not a, b or c)

6B.7 The following **multiple choice questions** are based on **section 6.7 “Formalities”** (METS-3: 119-120) of the textbook.

6B.7.1 Which one of the following is **not** a requirement for the conclusion of a valid contract?

(2)

- [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] All contracts must be in writing, signed and dated.

6B.8 The following **multiple choice questions** are based on **section 6.8 “Performance must be objectively possible”** (METS-3: 120-121) of the textbook.

None.

6B.9 The following **multiple choice questions** are based on **section 6.9 “The conclusion of the contract, its performance and its object must be lawful”** (METS-3: 121-122) of the textbook.

None.

6B.10 The following **multiple choice questions** are based on **section 6.10 “The parties to a contract, parties commonly associated with engineering and construction contracts”** (METS-3: 122-125) of the textbook.

None.

6B.11 The following **multiple choice questions** are based on **section 6.11 “Terms of a contract”** (METS-3: 125-128) of the textbook.

6B.11.1 Read the following 3 statements:

- a) The purchase price of an item is an example of the naturalia of a contract of purchase and sale.
- b) Tacit or implied terms are incorporated into contracts without having to be expressed in words.
- c) Primary, secondary and tertiary rules can be used to interpret contracts.

Which of the above statements is/are **correct**?

(2)

- [1] b and c
- [2] a and c
- [3] a and b
- [4] a, b and c
- [5] none (not a, b or c)

6B.11.2 Which **one** of the following statements is **incorrect**?

(2)

- [1] The essentialia of a contract are the terms that the law deems essential for placing a contract into a certain category.
- [2] To sell something “voetstoots” (‘as is’) would normally form part of the naturalia of a (purchase-and-sale) contract.
- [3] The incidentalialia are the additional terms that are included in a contract in order to provide for special requirements of the parties.

6B.11.3 Which **one** of the following statements is **correct**?

(2)

- [1] Implied terms are terms in a contract which the parties incorporate into a contract.
- [2] Express terms are terms in a contract that are incorporated into contracts by operation of law.
- [3] Tacit terms are not expressed in words but are based on the parties’ true intention.

6B.11.4 Read the following three statements:

- a) A warranty is a contractual term whereby a contracting party assumes absolute liability for proper performance.
- b) A condition is a clause in a contract that entitles a contracting party to summarily cancel the contract owing to the other's breach.
- c) A supposition is a clause in a contract that states that the party who commits breach of contract must render a specified performance to the aggrieved party.

Which of the above statements is/are **correct**?

(2)

- [1] a
- [2] b
- [3] a and c
- [4] a and b
- [5] None of the options (1, 2, 3 or 4) is correct

6B.12 The following **multiple choice questions** are based on **section 6.12 "Interpretation of contracts"** (METS-3: 128-129) of the textbook.

None.

6B.13 The following **multiple choice questions** are based on **section 6.13 "Breach of contract"** (METS-3: 129-131) of the textbook.

6B.13.1 The carport at Peter's new home was rusty and in a bad condition. He entered into a contract with AAA Carports for the construction of a new carport on 5 January 2018. He paid AAA Carports an amount of R3000 on 5 January 2018. The terms of the contract stated that Peter was responsible for removing the old carport and that AAA Carports had to start constructing the new carport on the same spot at any time on or after 12 January 2018. The company had to complete the carport by 19 January 2018. On 12 January 2018 a supervisor and workers from AAA Carports arrived at Peter's home to start with the construction of the carport. By then Peter had not yet removed the old carport – he did so only on 14 January 2018. Which **one** of the following statements is correct?

(2)

- [1] Peter did not breach the contract because AAA Carports had until 19 January to construct the car port.
- [2] There was a breach of contract known as mora creditoris.

- [3] AAA Carports are in the wrong, because they should have checked with Peter if he had removed the old carport.
- [4] There was a breach of contract, known as repudiation.
- [5] There was a breach of contract, known as *mora debitoris*.

6B.13.2 Which **one** of the following statements is **correct**? (2)

If a party to a contract indicates that he/she does **not** intend to perform in terms of the contract, there is a breach of contract in the form of

- [1] *mora debitoris*
- [2] repudiation
- [3] positive malperformance
- [4] prevention of performance

6B.13.3 Read the following 3 statements:

- a) *Mora creditoris* means “delay of the creditor”.
- b) An offer lapses or expires when a counter-offer is made.
- c) In terms of a contract, a debtor is a person who has a duty to perform.

Which of the above statements is/are **correct**?

(2)

- [1] b and c
- [2] a and c
- [3] a and b
- [4] a, b and c
- [5] none (not a, b or c)

6B.13.4 Read the following 3 statements:

- a) The law of contract recognises five distinct ways in which breach of contract may occur.
- b) *Mora debitoris* means “default by the debtor”.
- c) If a party to a contract indicates that he/she does **not** intend to perform in terms of the contract, there is a breach of contract in the form of positive malperformance.

Which of the above statements is/are **correct**?

(2)

- [1] b and c
- [2] a and c
- [3] a and b
- [4] a, b and c
- [5] None of the options (1, 2, 3, or 4) is correct.

6B.14 The following **multiple choice questions** are based on **section 6.14 “Remedies for breach of contract”** (METS-3: 131-133) of the textbook.

None.

6B.15 The following **multiple choice questions** are based on **section 6.15 “The transfer and termination of obligations arising from a contract”** (METS-3: 134-135) of the textbook.

6B.15.1 Read the following 3 statements:

- a) Delegation is when contractual duties are transferred from the original debtor to a third party.
- b) Release is when a contract is replaced by a new contract.
- c) Novation is when a contract is cancelled by agreement.

Which of the above statements is/are **correct**?

(2)

[1] a and c

[2] a

[3] a and b

[4] a, b and c

[5] none (not a, b or c)

6B.15.2 Read the following three statements:

- a) Release is when a contract is replaced by a new contract.
- b) Novation is when a contract is cancelled by agreement.
- c) If John owes Lucky R1000 whilst Lucky owes John R800 then John owes Lucky R200 after set-off.

Which of the above statements is/are **correct**?

(2)

[1] c

[2] b and c

[3] a and c

[4] a, b and c

[5] None of the options (1, 2, 3 or 4) is correct

6B.16 The following **multiple choice questions** are based on **section 6.16 “Differentiating between the contract for the letting and hiring of work, and the contract for the letting and hiring of services”** (METS-3: 135-136) of the textbook.

None.

6B.17 The following **multiple choice questions** are based on **Chapter 6** of the textbook.

Please note that these questions are usually based on more than one section of the chapter.

6B.17.1 Read the following 3 statements:

- a) The law of obligation is based on the principle that one must honour one's promises.
- b) All agreements between persons are contracts.
- c) The creditor has a duty to perform.

Which of the above statements is/are **correct**?

(2)

[1] b and c

[2] a and c

[3] a and b

[4] a

[5] none (not a, b or c)

6B.17.2 Read the following 3 statements:

- a) In South Africa contracts may, in principle, be concluded orally or even by conduct alone.
- b) A contract is unlawful when the performance to be rendered is forbidden by law.
- c) A resident engineer must watch and supervise the works.

Which of the above statements is/are **correct**?

(2)

[1] b and c

[2] a and c

[3] a and b

[4] a, b and c

[5] none (not a, b or c)

6B.17.3 Read the following 3 statements:

- a) The law of contract recognises five distinct ways in which breach of contract may occur.
- b) An innocent party is always entitled to claim specific performance.
- c) Cancellation of a contract is possible only in exceptional circumstances.

Which of the above statements is/are **correct**?

(2)

[1] b and c

- [2] a and c
- [3] a and b
- [4] a, b and c
- [5] none (not a, b or c)

6B.17.4 Read the three statements below regarding the contract for the letting and hiring of work.

- a) This is a contract whereby a specialist is hired to perform a specific piece of work by an owner of a mine, plant, etc.
- b) The hired party (contractor) is not employed by the owner and therefore not under his/her control.
- c) The contractor is entitled to be remunerated for "extras" and variations not provided for in the original contract if the owner consented to them.

Which of the above statements is/are **correct**?

(2)

- [1] a and b
- [2] b and c
- [3] a, b and c
- [4] a and c
- [5] None of the options (1, 2, 3 or 4) is correct

6B.17.5 Read the three statements below:

- a) Performance must be objectively possible during the conclusion of a contract.
- b) A contract is unlawful when the performance to be rendered is forbidden by law.
- c) A contract to commit a crime, eg fraud, would be void (not valid).

Which of the above statements is/are **correct**?

(2)

- [1] a and b
- [2] b and c
- [3] a, b and c
- [4] a and c
- [5] None of the options (1, 2, 3 or 4) is correct

6B.17.6 Read the three statements below:

- a) The registration of professional engineers, technologists and technicians is regulated by the ECSA (Engineering Council of South Africa).
- b) Primary, secondary and tertiary rules can be used to interpret contracts.
- c) An innocent party (to a contract) is always entitled to claim specific performance.

Which of the above statements is/are **correct**?

(2)

- [1] a and b
- [2] b and c
- [3] a, b and c
- [4] a and c
- [5] None of the options (1, 2, 3 or 4) is correct

6.B.7.7 Read the following 3 statements:

- a) A contract is an agreement that creates rights and duties.
- b) When the representatives of two companies agree that their verbal contract must be reduced to writing, then a valid contract will only be concluded once it has been reduced to writing.
- c) *Mora debitoris* means “delay of the debtor”.

Which of the above statements is/are **correct**?

(2)

- [1] b and c
- [2] a and c
- [3] a and b
- [4] a, b and c
- [5] none (not a, b or c)

Section 6 C – short and long questions

6C.1 The following **short and long questions** are based on **section 6.1 “Introduction”** (METS-3: 106-107) of the textbook.

None.

6C.2 The following **short and long questions** are based on **section 6.2 “Obligations, the concepts of contract and requirements for validity”** (METS-3: 107) of the textbook.

Question 6C.2.1

Your company (Company A) wants to enter into a contract with another company (Company B), which manufactures components that form part of the product that your company assembles.

- a) When does a contract come into force/existence? List the requirements for a contract to come into existence.

(4)

- b) Your company offers company B a price of R10,50 per component. Company B wants at least R11,50 per component. Briefly explain whether a valid contract has been concluded or not. (1)

[5]

Or

Your company (Company A) manufactures auto catalysts that are used in the exhaust systems of cars. You want to enter into a contract with a car manufacturer in Europe (Company B).

- a) When does a contract come into force/existence? List the requirements for a contract to come into existence. (4)
- b) Company B is willing to pay your company R1 050 per auto catalyst. Your company (A) wants at least R1 120 per auto catalyst. Determine and briefly explain whether a valid contract has been concluded or not. (1)

Question 6C.2.2

Briefly define a contract. (2)

Question 6C.2.3

ABC Electricity Generation Ltd is an independent power producer (IPP). Eskom made ABC an offer to purchase 600 000 MWh of electric energy over a period of one year at a price of 45c/kWh. ABC informs Eskom that it would provide the 600 000 MWh but at a price of 55c/kWh. Determine and explain whether a contract came into existence. (2)

6C.3 The following **short and long questions** are based on **section 6.3 “Performance, personal rights, creditors and debtors”** (METS-3: 108) of the textbook.

Question 6C.3.1

Differentiate between a debtor and creditor – the terminology as used in the context of contracts. (2)

Question 6C.3.2

- a) Define obligation and contractual performance and explain the consequences of the coming into existence of an obligation. Create an example of a contract to illustrate the specific duties of each party to the contract. (6)

Or

- b) A surface mining company enters into a contract with an earth-moving company. The purpose of the contractual agreement is to outsource the loading and hauling functions at the mine to the earthmoving contractor at a fee. The fee structure is described in detail in the contract. Describe obligation and contractual performance in the context of this case. Explain the consequences of an obligation coming into existence. You must use the following terminology in your explanation and it should be clear what these terms mean: debtor, creditor, right and duty. (4)

6C.4 The following **short and long questions** are based on **section 6.4 “Agreement”** (METS-3: 109-112) of the textbook.

Question 6C.4.1

Mary and Susan agree that their verbal contract must be reduced to writing. Explain whether a valid contract will be concluded before it has been reduced to writing. (3)

Question 6C.4.2

- a) List four ways in which an offer lapses or expires. (4)
- b) A mining magnate offers the shareholders of Supersteel (Pty) Ltd, a small local company, R26m for one of their workshops. Indicate whether this offer would still be valid (or not) in each one of the following cases.
- i) The mining magnate changes his mind and withdraw the offer before it was accepted by Supersteel.
 - ii) The offer expired.
 - iii) The mining magnate died of a heart attack before the offer was accepted by Supersteel.
 - iv) Supersteel indicated that they are only willing to sell the workshop for R32m. {4 x ½}

Required: just indicate in each of the four cases whether the offer is still valid or not. (2)

Question 6C.4.3

Why would a *call for tenders* not constitute an offer? (2)

Question 6C.4.4

Explain whether or not a valid offer was made in the following case: Arnold told Ben that he can buy his car at a very low price of which the exact amount can be agreed upon later. (2)

Question 6C.4.5

Briefly list four (4) requirements for the valid acceptance of an offer. (4)

6C.5 The following **short and long questions** are based on **section 6.5 “Circumstances affecting consensus”** (METS-3: 112-116) of the textbook.

Question 6C.5.1

List two factors that can render a contract voidable. (2)

Question 6C.5.2

Define “duress” and state what the consequences of duress could be when drawing up a contract. (2)

Question 6C.5.3

Briefly explain what a mistake is with regard to a contract. (2)

Question 6C.5.4

The top management of a company, which sells complex engineering equipment, has put extreme pressure on its sales engineers to generate new sales and conclude contracts. One of the sales engineers sold some of the company’s products on the basis of qualities that it does not possess. After the client started to use the equipment they realised that it does not have all the qualities that the sales engineer mentioned. They based their purchasing decision on these qualities which are critical to their operations.

Required

- i) May the client cancel this contract? Explain your view. {3}
 - ii) What is this type of action, by the sales engineer, called? {1}
- (4)

6C.6 The following **short and long questions** are based on **section 6.6 “Contractual capacity”** (METS-3: 116-118) of the textbook.

Question 6C.6.1

Explain the contractual capacity of the following parties: (4)

- A company
- A boy, 17 years old
- A child, 6 years old
- The state

6C.7 The following **short and long questions** are based on **section 6.7 “Formalities”** (METS-3: 119-120) of the textbook.

None.

6C.8 The following **short and long questions** are based on **section 6.8 “Performance must be objectively possible”** (METS-3: 120-121) of the textbook.

None.

6C.9 The following **short and long questions** are based on **section 6.9 “The conclusion of the contract, its performance and its object must be lawful”** (METS-3: 121-122) of the textbook.

None.

6C.10 The following **short and long questions** are based on **section 6.10 “The parties to a contract, parties commonly associated with engineering and construction contracts”** (METS-3: 122-125) of the textbook.

Question 6C.10.1

Explain the authority that engineers have to act as the employer’s agent in terms of the General Conditions of Contract.

(15)

6C.11 The following **short and long questions** are based on **section 6.11 “Terms of a contract”** (METS-3: 125-128) of the textbook.

Question 6C.11.1

Differentiate between express, implied and tacit terms.

(3)

Question 6C.11.2

Match each of the following terms of contract with its correct definition. In your answer book, write down the number of each term, and next to it the letter representing the correct option, e.g. 1. j.

(6)

1. Condition	a. Determines a specific time or period within which the contract will either become operative or be dissolved.
2. Time clause	b. A contractual term whereby a contracting party assumes absolute liability for proper performance.

3. Supposition	c. A clause that entitle a contracting party to summarily cancel the contract due to the other's breach.
4. Warranty	d. A clause that states that the party who commits breach of contract must render a specified performance to the aggrieved party.
5. Cancellation clause	e. A contractual term that renders the operation of a contract dependent on an event that has already taken place but the parties to the contract are uncertain as to the true state of affairs.
6. Penalty clause	f. A contractual term that renders the operation and consequences of a contract dependent on the occurrence or non-occurrence of a specific uncertain future event.

Question 6C.11.3

Match each of the following terms of contract with the correct example. In your answer book, write down the number of each term, and next to it the letter representing the correct option, e.g. 1. j. (6)

1. Condition	a. On 22 October 2013, John buys steel from XYZ Timber and Steel. They agree that delivery will take place on 3 January 2014.
2. Time clause	b. DEF Mining Company Ltd. enters into a contract with EFG Smelter Construction Ltd for the design and construction of a new smelter. One of the clauses in the contract states that the smelter will have an output of 8 000 ounces of platinum per day.
3. Supposition	c. Peter and John incorporate into their lease contract a clause that if Peter is late in paying rent, John is entitled to cancel the contract.
4. Warranty	d. STU Civil Engineers and Contractors and VWX Hotels and Casinos entered into a contract for the design and building of a new casino. VWX wants the new casino to be completed by 10 December 201X, in time to open for the December holiday season. One of the clauses in the contract states that VWX would be able to claim R10 000 for each day that STU is late.
5. Cancellation clause	e. ABC Exploration Ltd. agrees to buy Lucky's farm provided that the soil contains gold ore that can be economically

	exploited. ABC has done exploration on the farm but has not yet received the assay results from the laboratory and therefore does not know whether the soil is gold-bearing or not.
6. Penalty clause	f. BCD Gold Mining Company agrees that it will buy the farm of Mr Groenewald if BCD's application for a mining right is successful. (Mr Groenewald is the owner of a farm where gold ore has been discovered that can be exploited economically.)

6C.12 The following **short and long questions** are based on **section 6.12 “Interpretation of contracts”** (METS-3: 128-129) of the textbook.

None.

6C.13 The following **short and long questions** are based on **section 6.13 “Breach of contract”** (METS-3: 129-131) of the textbook.

Question 6C.13.1

Briefly distinguish between *mora debitoris* and *mora creditoris*. (2)

Question 6C.13.2

List five ways in which breach of contract can occur. (5)

6C.14 The following **short and long questions** are based on **section 6.14 “Remedies for breach of contract”** (METS-3: 131-133) of the textbook.

Question 6C.14.1

List and discuss three (3) remedies for breach of contract. (6)

6C.15 The following **short and long questions** are based on **section 6.15 “The transfer and termination of obligations arising from a contract”** (METS-3: 134-135) of the textbook.

Question 6c.15.1

Discuss the transfer and termination of obligations arising from a contract. (8)

Question 6C.15.2

Match each of the following terms (related to the transfer and termination of obligations arising from a contract) in the left-hand column with its correct description or example from the right-hand column. In your answer book, write down the number of each term, and next to it the letter representing the correct option, e.g. 1. j. (4)

1. Cession agreement	a. The transfer of contractual duties from the original debtor to a third party.
2. Delegation	b. Peter was required to deliver golden earrings to Sharon. They both agreed that he would deliver a golden ring in its place.
3. Novation	c. Rights arising from a contract can be transferred by the holder thereof to another person.
4. Set-off	d. John owes his father R500. Before he could pay his father this amount, he fixed his father's car for the amount of R1 500. The result is that his father now has to pay him R1 000. Example 2: LG Electronics has entered into a cross licensing agreement with GE Consumer & Industrial that will allow LG and GE to use one another's patents for refrigerators and cooking appliances without paying licensing fees (27 Feb 2008, http://www.appliancemagazine.com).

6C.16 The following **short and long questions** are based on **section 6.16 “Differentiating between the contract for the letting and hiring of work, and the contract for the letting and hiring of services”** (METS-3: 135-136) of the textbook.

Question 6C.16.1

Briefly explain the principles related to the contract for the letting and hiring of work. (4)

6C.17 The following **short and long questions** are based on **Chapter 6** (METS-3: 106-137) of the textbook.

Examples (questions and answers)

Question 6C.17.1

Explain whether your mine, plant or factory must accept the lowest tender, e.g. for drilling blast holes. (6)

Question 6C.17.2

a) List and discuss a number of reasons for making use of contractors. (6)

Other questions

b) List various costs that have to be considered when deciding on whether an activity should be done in-house or to invite contractors to tender for it. (6)

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c) Discuss a number of managerial implications of using contractors at a mine or quarry. (8)

d) What is your mine's policy towards the use of contractors? Discuss some examples of activities that are already contracted out or which should be contracted out in future. Which types of activities on a mine could be contracted out successfully? (8)

Answer 6C.17.2 (a)

Consult the references below when answering 6c.2 b to d.

a) Those operations/activities that are not considered to be the core business of an organisation and which other organisations may provide with greater efficiency and at reduced cost to the company should be outsourced.

Loading and hauling at a mine may be contracted out for the following reasons:

- The contractor must usually provide his/her own equipment. The mining company therefore requires less capital to buy and maintain equipment.
- Production could be increased without increasing the capacity of the loading and hauling fleet of the mine by contracting out some of the work.
- It may sometimes be more cost effective to contract out certain work. A small quarry may for example not fully utilise expensive equipment.
- Some of the requirements of the Mining Charter could be met by contracting such work out to a BEE company.

References:

- Bracher PA, August 1992, Some legal aspects of the tender, Institute of Quarrying of SA

- Ford M, 11 March 1993, Selective and effective use of contractors at Rietspruit opencast services – 24th Annual General Meeting, Institute of Quarrying of SA

Question 6C.17.3

Briefly differentiate between the requirements for a valid offer and a valid contract.

Question 6C.17.4

You want to rent a workshop for your company and to enter into a contract with the owner of the workshop. List and discuss some of the requirements and terms of this contract. (8)

Question 6C.17.5

Match each of the concepts in the left-hand column with its correct definition or description in the right-hand column. In your answer book, write down the number and next to it the letter representing the correct option, for example 1. z.

Legal concept	Definition or description of concept
1. Contract	a) the terms that the law deems essential for placing a contract into a certain category
2. Mistake	b) terms that naturally form part of a contract
3. Duress	c) additional terms that parties themselves make part of a contract
4. Essentialia	d) an agreement that creates obligations and legal ties
5. Naturalia	e) one or both parties to a contract have the incorrect impression. Such incorrect impression affects the validity of the contract.
6. Incidentalia	f) when a prospective contractant is forced or compelled by means of an unlawful threat or intimidation by the other party
7. Tacit	g) not expressed in words but based on the parties' true intention
8. Repudiation	h) intention of one of the parties not to meet its duties

(8)

Question 6C.17.6

Pete, aged 17, buys a washing machine from Maria on credit for the amount of R1000. He received the appliance from Maria but must still pay her the amount by 1 April. On the due date, Pete forgets to pay her.

- i) Define the obligation in this example. (1)
 - ii) Who is the creditor in this example? (1)
 - iii) Discuss in detail whether this transaction constitutes a contract. Provide reasons. (5)
 - iv) Explain whether and how your answer in question (iii) would change if Pete was married. (2)
- [8]

Question 6C.17.7

Mary, a high school learner, buys a squash racquet from one of her teachers, Mr Schutte, who is her squash coach, on credit for R450. Mary must pay Mr Schutte in one month's time. Mr Schutte gave her the racquet in order to compete in a tournament. On the due date, Mary forgets to pay Mr Schutte.

- 1. Define the obligation in this example. (1)
 - 2. Who is the creditor in this example? (1)
 - 3. Discuss in detail whether this transaction constitutes a contract. Provide reasons. (7)
- [9]

Section 6D – Project work

Note: You will find general guidelines for the answering of projects and the writing of reports in Annexure C, at the end of this document.

None.

Section 6E – Case studies

None

Section 6F – Sources on the world wide web

Engineers in court

- “The South African Wind Energy Association has lodged an official complaint with the National Energy Regulator of South Africa over Eskom’s failure to comply with ministerial determinations. The complaint relates to Eskom’s public refusal to enter into power purchase agreements with Preferred Bidders arising from government’s Renewable Energy Independent Power Produce Procurement Programme. In the event that Eskom is found guilty, SAWEA has requested that NERSA impose the maximum legislated penalty of 10 per cent of Eskom’s annual daily turnover for each day that Eskom continues to delay the programme.” (Source: <http://www.engineeringnews.co.za/article/independent-power-producers-take-on-eskom-through-national-energy-regulator-2016-10-17>)
- The ongoing dispute of a R5-billion contract that Eskom awarded to Areva for the replacement of six steam generators at the Koeberg nuclear power station. (Source: Yelland, C & Clarke, A. 5 Feb 2016. Westinghouse opposes Eskom, Areva appeal to Constitutional Court, and lodges counter appeal. Available online at <http://firstthing.dailymaverick.co.za/article.php?id=74050&cid=2016-02-05#.VrSQ3fl95D8>)
- Read the following article about the Gautrain project: Slabbert, A. 26 April 2016 Gautrain: A new tunnel to solve excess water drainage? Moneyweb Today – Available online at: <http://today.moneyweb.co.za/article?id=586312&acid=kxI2D9I66sMeZeuwhd4cWQ%3D%3D&adid=Rlwcc%2BiUoAI8WkHj2%2BXORA%3D%3D&date=2016-04-26#.Vx8Kik1UCpo> The article starts as follows: “The Gauteng Management Agency (GMA) has to take hard decisions in the next few months on ways to curb excessive water ingress in a part of the train tunnel that could cost billions and see it impact plans to build another tunnel. Unless a court ruling indicates a different direction . . .”
- Grayston Drive bridge collapse
 - Grayston Drive bridge collapse inquiry to resume
<http://www.engineeringnews.co.za/article/grayston-drive-bridge-collapse-inquiry-to-resume-2016-07-01>
 - M1 bridge collapse – Is it all about the clamps?
<http://today.moneyweb.co.za/article?id=602027&acid=kxI2D9I66sMeZeuwhd4>

Section 6G – Further reading (mining and quarry related)

- Bracher PA, August 1992, Some legal aspects of the tender, Institute of Quarrying of SA
- Dunlop, J. S. (2004). Contract versus owner mining—an update on Australasian open pit mining practice. *Mining Technology*, 113(1), 17-29.
- Ford M, 11 March 1993, Selective and effective use of contractors at Rietspruit opencast services – 24th Annual General Meeting, Institute of Quarrying of SA
- Kirk, L.J., 2010. Owner versus contract mining. *Mine Planning and Equipment Selection*, 1, pp.437-442.
- Rupprecht, S.M. Owner versus contract miner – a South African update. *The Journal of the Southern African Institute of Mining and Metallurgy*. Vol 115. Nov 2015. pp. 1021-1025.
- Steenkamp, C.J.H. and van der Lingen, E., 2014. Outsourcing in the mining industry: decision-making framework and critical success factors. *Journal of the Southern African Institute of Mining and Metallurgy*, 114(10), pp.846-854. Available online at http://www.scielo.org.za/scielo.php?pid=S0038-223X2014001000014&script=sci_arttext&tlng=es

- - - - End of Chapter 6 of the workbook - - - -