

# LAW FOR ENGINEERS

## EXAM 2021

### QUESTION ONE

#### (Extended Matching Question)

- A. Precedent
- B. Legislation
- C. Constitution
- D. Common Law
- E. Customary Law

For each of the items below, select the most appropriate answer option(s) above. Each answer option may be used once only.

- A. This source of law prevails over the common law, where there is a conflict between the two.
- B. This source of law may fill the gaps in existing laws and must be passed in parliament.
- C. This source of law requires proof by an expert that it has been in existence for a lengthy time period and is generally observed by the community.
- D. This source of law, which is generally unwritten, may be done away with if it is no longer used or applied in practice.
- E. This source of law helps to ensure legal certainty and consistency across judicial decisions.

### QUESTION TWO

Thembisa is employed in terms of a fixed term contract of two years in duration. Her manager tells her 3 months before her contract is due to expire that it will be renewed unless the company she works for has a bad financial year. Despite COVID, the company has a bumper year. So when her employer advises her that her contract will not be renewed two weeks before its end, she is extremely disappointed and feels that she's been treated unfairly. She therefore refers a dispute straight to the Labour Court alleging unfair dismissal.

Choose the most correct answer. Which of the following will the Judge consider in determining whether or not a dismissal has occurred?

- a. Whether a reasonable expectation of renewal existed, based on the terms of Thembisa's contract and past practice.
- b. Whether a reasonable expectation of renewal existed, based on the terms of Thembisa's contract, past practice and assurances that her contract would be renewed.
- c. Whether a reasonable expectation of renewal existed, based on the duration of Thembisa's contract and her salary, in light of the pressure on companies due to COVID.
- d. The Judge will not consider any of these factors, as the Labour Court does not have jurisdiction to hear this dispute.

- e. Whether a reasonable expectation of renewal existed, based on past practices, assurances of renewal received, the duration of the contract and the nature of Thembisa's employment.

### QUESTION THREE

Which of the following constitutes an automatically unfair dismissal under the Labour Relations Act?

- a. Following a valid and fair retrenchment process, Sarah is notified that she will be retrenched in two weeks. Shortly afterwards, she advises her employer that she is pregnant.
- b. John and Tito are dismissed after they stay away from work in protest against the government's response to the COVID pandemic.
- c. Vongai is a Zimbabwean citizen who works as a consulting engineer for Company X which is based in Cape Town. When her visa expires, her contract is automatically terminated as it is a condition of her contract that she has a valid working visa. She alleges that this is discrimination on the basis of her nationality.
- d. Sipho, Shenaaz and Amelia join a trade union after their employer refuses to increase their wages for the fifth year running. When they support the union's request for a wage increase, they are advised that their contracts will be terminated for causing trouble.
- e. Tsala is a farm manageress on a struggling farm. The farm advises her that it can no longer afford to keep her; without consultation or any 'meaningful engagement', she is then retrenched.

### QUESTION FOUR

Which of the following is not a principle endorsed (ie supported) by the Code of Good Practice: Dismissals?

- a. Employers should implement a system of graduated warnings before dismissal.
- b. Employers should never dismiss an employee for a first offence, regardless of the nature of the offence.
- c. Employers should ensure that they conduct a hearing before dismissing one or more employees, which may be formal or informal in nature.
- d. Employees should be treated alike both in terms of the employer's past practices in relation to dismissals and in respect of the nature of the offence and dismissal.
- e. Mitigating factors like the employee's length of service and previous disciplinary record should be considered when determining the fairness of dismissal as a sanction.

### QUESTION FIVE

Robin is a consulting engineer at 'Engineers Are Us (Pty) Ltd' (the company) a cutthroat engineering firm in Natal. At a meeting of all the consultants, Robin's manager advises the staff that a retrenchment process will follow in the coming months. They are then provided

with written notices which include the information specified in s 189(3) of the LRA. The reason for the retrenchment is that the company plans to introduce new technology into the workplace which will allow it to increase its profits by reducing its staff members.

Which of the following statements is correct?

- a. Increasing profits cannot be a fair reason for retrenching staff.
- b. There is no trade union in the workplace, so the company does not need to consult further with the employees about the proposed retrenchments.
- c. Given that the company has already made a decision to introduce the new technology into the workplace and therefore retrench staff, it is only obliged to consult about the number of dismissals, severance pay and selection criteria with the employees in advance of the retrenchments.
- d. 'Last in First Out' is generally a fair selection criterion.
- e. The employees may not refuse reasonable offers of alternative employment.

## QUESTION SIX

Carly resigns from her job after her employer exposed her to what she believes to have been intolerable working conditions. Which of the following is most correct?

- a. Carly will succeed in a claim for constructive dismissal at the Commission for Conciliation, Mediation and Arbitration (CCMA).
- b. Carly may approach the Labour Court on review.
- c. Carly may approach the Commission for Conciliation, Mediation and Arbitration (CCMA) for conciliation, alleging constructive dismissal.
- d. Carly may proceed to the Commission for Conciliation, Mediation and Arbitration (CCMA) for arbitration or to the Labour Court (sitting as a Court of first instance) for adjudication, alleging constructive dismissal.
- e. If the commissioner's decision is unfair or unreasonable, the Labour Court will set it aside on appeal.

## QUESTION SEVEN

Which of the following acts or omissions would not qualify as an unfair labour practice in terms of the Labour Relations Act?

- a. An employer transfers manager A from its Cape Town branch to its Bloemfontein branch without explanation or consultation.
- b. An employer suspends an employee without reason.
- c. An employer fails to conduct a fair hearing before demoting an employee on the basis of poor work performance during the employee's probationary period.

- d. An employer disciplines an employee who blew the whistle on the employer after he uncovered fraud at the workplace.
- e. All of these qualify as unfair labour practices.

### QUESTION EIGHT

Which of the following is most correct?

- a. Dismissal disputes fall under the general category of disputes of interest.
- b. Wage disputes fall under the general category of disputes of interest.
- c. A wage dispute qualifies as a matter of mutual interest between an employer and its employees, and so it may amount to a dispute of right.
- d. All disputes must be referred to the Commission for Conciliation, Mediation and Arbitration (CCMA) for arbitration.
- e. When a dispute about wages cannot be resolved by the parties themselves, the employees may go on strike immediately.

### QUESTION NINE

Following unsuccessful conciliation at the Commission for Conciliation, Mediation and Arbitration (CCMA) and the receipt of a certificate of non-resolution, the employees of Powerplants for Plants (Pty) Ltd (an eco friendly energy company) send a written notice to their employer of their intention to strike. Their grievance is that a particularly popular fellow employee was dismissed, and the employees believe that her dismissal was unfair. There are no collective agreements between the employer and the employees as there is no representative trade union in their workplace. The company does however have a Code of Conduct which stipulates that employees who are aggrieved by the company's conduct, must refer their disputes to the Human Resources Department before taking action of their own accord. Which of the following is most correct?

- a. As the dismissal of the popular employee may be referred to the CCMA for conciliation and then arbitration as unfair dismissal, this is an unprotected strike.
- b. The procedural requirements for the strike to be protected have definitely been met.
- c. The Code of Conduct is like an agreement which requires disputes about dismissals to be submitted to Human Resources before other action is taken. This means that the strike is unprotected as an agreement exists which regulates the issue in dispute.
- d. None of these statements is true.
- e. The strike is unlawful because a trade union is not involved.

## QUESTION TEN

Employers are obliged by Schedule 8 of the Labour Relations Act (the Code of Good Practice: Dismissals) to follow certain procedures and consider various factors before dismissing employees for participating in an unprotected strike. Which of the following factors should commissioners hearing disputes about dismissals for participating in unprotected strikes not take into account when determining whether the dismissal of the strikers was fair?

- a. Whether or not the employer failed to allow the striking employees a lawyer at their disciplinary hearing.
- b. Whether the employees (or their trade union) tried to meet the requirements of the Labour Relations Act prior to embarking on the strike.
- c. The duration and nature of the strike (eg whether it was violent).
- d. Any unjustified conduct on the part of the employer, such as the withdrawal of a benefit usually granted to the employees without good reason or consultation, which might have constituted a catalyst for the strike.
- e. Whether the striking employees were permitted to strike over the issue in dispute in terms of the Labour Relations Act.

## QUESTION ELEVEN

Which of the following is not a factor for consideration in equal pay for equal work disputes?

- a. The seniority of the employee who is being paid more.
- b. Whether the complainant employee is working in a job which has the same value of the employee who is being paid more.
- c. Whether the complainant employee who is being paid less is an immigrant who requires a working visa.
- d. Whether the complainant employee is employed in the position for a short period of time.
- e. Whether the employee who wishes to be paid more is meeting his or her performance targets.

## QUESTION TWELVE

Nonwabisa is a security guard working at a high end hotel in the Waterfront. One night, she leaves work late and is approached by a regular customer of the hotel who shows her a pornographic picture on his phone and asks her 'if she is interested?'. Nonwabisa says 'no' in a loud voice and rushes off home. Fortunately, she is not bothered by the man again that night or the night after. When she reports the matter to her boss, however, he shrugs it off saying that the customer had probably just had too much to drink. As he was a regular customer,

Nonwabisa's boss did not want to confront him about. Which of the following is most correct?

- a. Nonwabisa has been sexually harassed and her employer is responsible.
- b. Nonwabisa's boss should have taken reasonable steps to prevent the customer from harassing Nonwabisa again.
- c. There is no obligation on the employer to protect its employees from sexual harassment in terms of s 60 of the Employment Equity Act, in these circumstances.
- d. The employer may be held vicariously liable for the customer's conduct as Nonwabisa's boss did not take the necessary steps, following notification of the harassment, to prevent the harassment from occurring again by consulting with all relevant parties and the like, in accordance with s 60 of the Employment Equity Act.
- e. Nonwabisa should have reported the matter to her boss's manager, in accordance with the Act.

### QUESTION THIRTEEN

Which of the following is most correct?

- a. Employers must prohibit and eliminate unfair discrimination in the workplace through the implementation of affirmative action measures.
- b. The obligation to implement affirmative action means that employers must hire people based on the colour of their skin, with little concern for their qualifications and skills.
- c. Quotas in employment equity plans are not permissible under the Employment Equity Act.
- d. COIDA deals with unemployment insurance, while UIA regulates compensation for injuries and diseases which employees may acquire at work.
- e. There is a constitutional right to social security which means that all people should be entitled to a basic income grant.

### QUESTION FOURTEEN

John has been working at the Telecommunications Institute of South Africa as a registered engineer for ten years. In order to ensure that he complies with the Engineering Code of Conduct, John must:

- a. Supervise university students for 3 hours every year.
- b. Engage in continuing professional degrees.
- c. Ensure that he conducts his work with the same degree of care and skill that he was taught during his university degree and subsequent internship at the Institute.

- d. Ensure that he never accepts gifts from anyone.
- e. Be an advocate for the environment in every sphere of his life.

### QUESTION FIFTEEN

Choose the statement that is most correct. Which one of the following entities does not have separate legal personality?

- a. A company
- b. A partnership
- c. A close corporation
- d. A sole proprietor
- e. Sole proprietor and partnership

### QUESTION SIXTEEN

Angie, Benjie and Christa are students at UCT. They decide to start a business that will provide extra lessons for students who struggle with the law syllabus. Which of the following could be considered to be the main advantages of using a company as the vehicle for their business?

- a. They are hoping to grow the number of people involved in the business and legislation defines the number of people that is required for each type of business entity.
- b. The shareholders of a company are generally not liable for the debts of the company.
- c. The company does not enjoy perpetual succession so if Angie, Benjie and Christa decide to sell their shares, the company will not be able to continue with completely different students involved.
- d. The 2008 Companies Act enables Angie, Benjie and Christa to incorporate a company without submitting any formal documentation so, provided the company remains small, complete confidentiality of the business of the company is assured.
- e. None of the answers is correct.

### QUESTION SEVENTEEN

The following factors should be considered when choosing a business entity:

- a. The potential size of the entity.
- b. The number of persons that will be involved in the management of the entity.

- c. The tax implications of the particular entity.
- d. Legal personality.
- e. All the answers are correct.

### QUESTION EIGHTEEN

Which one of the following scenarios is an example of a partnership?

- a. Thuli and Maite enter into an agreement to operate a refreshment kiosk on the UCT campus. Thuli will run the kiosk and will be paid a market related salary for her services. Maite will contribute the necessary capital for the setting-up of the kiosk and all initial expenses. In return, Maite will receive all the profits generated from the kiosk.
- b. Thuli and Maite enter into an agreement to operate a refreshment kiosk on the UCT campus. Thuli will run the kiosk and Maite will contribute the necessary capital for the setting-up of the kiosk and all initial expenses. In return, Thuli will receive a third of the profits generated from the kiosk and Maite will receive the rest.
- c. Thuli and Maite enter into an agreement to operate a refreshment kiosk on the UCT campus. Thuli will run the kiosk and Maite will contribute the necessary capital for the setting-up of the kiosk and all initial expenses. Thuli will receive an amount dependent on the income generated in the kiosk, up to a maximum of R5 000 per month. Maite will receive all income above this amount. Thuli and Maite do not consider themselves to be partners. Thuli considers herself to be an employee of the business.
- d. Thuli and Maite enter into an agreement to promote the advancement of Sepedi as a spoken language on campus. They will each contribute labour and a small capital amount to this project. They do not expect any profit from the venture.
- e. These all constitute partnerships.

### QUESTION NINETEEN

John, Jake and Gerry form a partnership to drive an Uber taxi. In terms of their partnership agreement, John will contribute his labour, Jake will contribute the use of his car, and Gerry will contribute some money for initial expenses. The partnership agreement does not contain any provisions about how the profits of the partnership will be divided. The partners cannot agree on the valuation of John and Jake's contributions. They ask for your advice about how the profits must be shared. Which one of the following statements would constitute sound advice?



- a. If the contributions of each of the partners cannot be determined, they must share equally in the profits.
- b. If the contributions of each of the partners cannot be determined, the partnership must dissolve.
- c. If the parties did not agree on the extent to which each would share in the profits at the time of entering into the agreement, no valid partnership agreement was entered into.
- d. If one of the partners contributed money, he or she must receive a share of the profits first, because their contribution is certain.
- e. All of the statements are correct.

## QUESTION TWENTY

Which of the following statements is incorrect?

- a. A partnership is an association of persons who jointly own the assets of the partnership and are jointly and severally liable for its debts.
- b. A partnership is aimed at doing business to make a profit or to work together for the advancement of art, culture or sport.
- c. A partnership is a contractual association of persons that does not constitute a separate legal entity.
- d. The 'entity theory' of the nature of partnerships provides that the partners are liable for the debts of the partnership, subject to the requirement that a partnership may sue and be sued in its business name.
- e. All of the statements are correct.

## QUESTION TWENTY-ONE

A partnership conducting business under the name 'All-Gold' had been granted the right to prospect for gold in a specified area of Mpumalanga. Peter, one of the partners, discovered a deposit of gold on land next to the area where All-Gold was prospecting. He contacted a friend and the two of them formed a company Bonanza (Pty) Ltd. Bonanza bought the land on which the gold deposit had been formed and made a considerable profit out of the gold on that land.

Which of the following statements is correct?

- a. Once a partnership agreement is formed, a reciprocal fiduciary relationship between the partners is formed which remains in force until the final liquidation of the partnership takes place.

- b. Peter is not in breach of his duty of good faith towards his partner as the land on which he discovered the gold was outside of the area within which the partnership was conducting its business.
- c. Peter has breached one of the requirements of the duty of good faith by failing to further the partnership's interests above his own.
- d. Peter has not breached any possible duties he may have as a partner, as it is Bonanza (Pty) Ltd who purchased the land and profited from the gold deposits and not Peter in his capacity as a partner.
- e. None of the statements is correct.

## QUESTION TWENTY-TWO

Which of the following statements is incorrect?

- a. A partnership is not a separate legal entity from the partners.
- b. When one of the partner's estates is sequestrated, all the partners' estates are sequestrated, as well as that of the partnership. The various estates are pooled together for purposes of distribution to the creditors of the partnership and of the partners.
- c. When a partnership institutes legal action against a debtor, it may sue in the name of the partnership.
- d. When legal action is instituted against the partnership as a debtor all partners must be named individually.
- e. None of the answers is correct.

## QUESTION TWENTY-THREE

Indicate the statement that is most correct:

- a. In *Cape Pacific v Lubner* the court found that disregarding the separate legal personality of the company can only occur where there is no other remedy available to the injured party.
- b. In *Airport Cold Storage v Ebrahim* the court found that when a corporation is unable to pay its debts this *alone* would constitute sufficient ground for holding the members of the entity personally liable and disregarding the separate legal personality of the company.
- c. In *Pezzuto v Dreyer* the court determined that the separate legal personality of a partnership can be pierced when there is no indication that there is a valid partnership agreement between the parties.

- d. In terms of section 20 (9) of the companies act of 2008 the separate legal personality of the company can be disregarded when there has been an unconscionable abuse of such personality.
- e. The separate legal personality of a company is a sacred cornerstone of corporate law and as such can never be disregarded.

#### QUESTION TWENTY-FOUR

The Memorandum of Incorporation of Software Engineers (Pty) Ltd states that the company can only enter into contracts that are either directly or indirectly related to software development. The CEO of the company enters into a contract for the manufacturing of servers. He thinks that this will steer the company in a new direction taking it to new heights. He concludes a contract with China Tech for the supply of server parts, worth R20 million. The shareholders of the company are really upset about this contract and want to know what their remedies would be. The following advice would apply to the shareholders of the company:

- a. Even though the contract is *ultra vires* it is still binding on the company.
- b. The contract is binding on the company in terms of section 20(1) of the Companies Act, but the shareholders may hold the director liable for damages.
- c. The shareholders may restrain the company from performing in terms of the contract.
- d. All of the answers are correct.
- e. None of the answers is correct.

#### QUESTION TWENTY-FIVE

The Memorandum of Incorporation of Haphazard Ltd provides that the main object of the company is to manufacture key chains and that the capacity of the company is limited to transactions that will further this main object. Haphazard Ltd's board of directors take the decision to purchase a game farm on behalf of the company. According to the common law (which constitutes the previous legal position) *ultra vires* doctrine ... (complete with the correct phrase):

- a. ...the directors as an organ of the company had the authority to enter into this transaction.
- b. ...the general meeting of shareholders could ratify this transaction by way of a special resolution.
- c. ...the general meeting of shareholders could ratify this transaction by way of unanimous assent.

- d. ...the transaction would be null and void (not binding).
- e. ...the transaction would be fully effective.

### **QUESTION TWENTY-SIX**

Joint and several liability entails that:

- a. When there are multiple debtors they all owe the outstanding amount proportionally.
- b. That the creditor may recover the full amount from any one of the co-debtors.
- c. That the debtor who makes payment in full may recover a proportional share from any one of the co-debtors.
- d. None of the answers is correct.
- e. All of the answers are correct.

### **QUESTION TWENTY-SEVEN**

Tacit authority can be considered a form of ... (complete the sentence):

- a. Ostensible authority
- b. Actual authority
- c. Estoppel
- d. Express authority
- e. It has no equivalent in the options provided.

### **QUESTION TWENTY-EIGHT**

In *Makate v Vodacom*:

- a. The Director of Product Development (Geissler) was not considered to have been given tacit authority by the CEO of Vodacom to conclude the agreement with Makate.

- b. The Director of Product Development (Geissler) was not considered to have been given actual authority by the CEO of Vodacom to conclude the agreement with Makate.
- c. The Director of Product Development (Geissler) was considered to have been given ostensible authority by the CEO of Vodacom to conclude the agreement with Makate.
- d. All of the answers are correct.
- e. Vodacom was estopped from relying on the true state of affairs because of the misrepresentation made by the CEO.

## **QUESTION TWENTY-NINE**

### **(Extended Matching Question)**

- 1. Material Mistake regarding the subject matter
- 2. Objective physical impossibility of performance
- 3. Breach of contract
- 4. Limited Contractual Capacity
- 5. Incidental misrepresentation

For each of the scenarios below, select the most appropriate option above. You may use each answer option once only.

- a. Sithokozile, a successful business woman, is very keen to own a house in Camps bay. She views numerous houses in Camps Bay with an estate agent. After seeing ten houses, Sithokozile decides to make an offer on the house she liked the most. She therefore makes an offer on '3 Rottingdean Road Camps Bay'. Her offer is accepted. Sithokozile subsequently discovers that 3 Rottingdean Road Camps Bay is not the house she thought it was – she got the house addresses confused. She wanted to buy the house situated at 4 Geneva Avenue, Camps Bay.
- b. Jemma and Jabu, two students at UCT, enter into a contract of sale in terms of which Jemma agrees to sell her iPad to Jabu for R 3000. They enter into the contract on 2 July, and agree that both payment and delivery will take place at the same time on 7 July. Neither of them was aware that on 1 July the storeroom where the iPad was kept had been caught in a flood and all the contents had been washed away.

- c. Laura is in the business of building houses. She orders 120 000 window-frames from David. In terms of the contract, David is required to deliver the window-frames to Laura's factory on Saturday, 19 November 2021, at precisely 14h00. David arrives at Laura's factory on Saturday, 19 November 2021 at 14h00, but he has only 108 000 window-frames with him.
- d. Genevieve, a 14-year-old girl, enters into a contract to buy a sports car.
- e. John agrees to rent Anne's flat for R8000 per month. John entered into the contract with Anne after being told that the flat included a garage. The person who told John this fact was the caretaker of the block, who genuinely but mistakenly believed that the flat included a garage. After moving in, John discovers that the flat does not include a garage, and he therefore needs to park his new car on the street. Had John known the true facts, he would never have entered into the contract.

### QUESTION THIRTY

Novamac is a new antibiotic that can fight drug-resistant bacteria. Surgeons will administer the drug during the operation process to prevent infection-causing bacteria in animals and people.

Novamac's developer, Big Pharma (Pty) Ltd, has been trying to develop a new antibiotic for nearly a decade. Before finally synthesizing Novamac, it spent years and over two billion rand working with several other compounds, none of which yielded a safe and effective antibiotic. Once Big Pharma (Pty) Ltd discovered Novamac, it spent five years testing the drug process, which brought its production costs to well over three billion rand. Big Pharma (Pty) Ltd estimates that if it sells Novamac at R200 per dose, it will recoup its total investment in the drug in just a few years. Big Pharma (Pty) Ltd lodges its patent application with CIPC on 14 June 2020. The patent is registered a month later, on 14 July 2020.

Gen Z (Pty) Ltd is a rival drug company, and they manage to reproduce Novamac at a trivial cost. Despite the difficulty in discovering and testing the compound, Novamac is very easy to mass-produce. Gen Z (Pty) Ltd will start selling the same drug in August 2021.

Which of the following statements is correct?

- a. Big Pharma (Pty) Ltd is allowed to apply for a patent if it shows that it has acquired the right to do so from the inventor. Section 1 of the Patents Act defines the inventor as the person who devised the inventive concept.
- b. The registrar of patents evaluates the efficacy of Novamac by conducting its internal trials at the CIPC office, and only after such evaluation is the patent be granted
- c. Once granted, Big Pharma (Pty) Ltd's patent will expire as soon as reasonable profits have been made on the drug or upon the expiry of 20 years calculated from the date of the application for the patent, whichever one comes first.

- d. None of these statements is correct.
- e. All of these statements are correct.

### QUESTION THIRTY-ONE

Novamac is a new antibiotic that can fight drug-resistant bacteria. Surgeons will administer the drug during the operation process to prevent infection-causing bacteria in animals and people.

Novamac's developer, Big Pharma (Pty) Ltd, has been trying to develop a new antibiotic for nearly a decade. Before finally synthesizing Novamac, it spent years and over two billion rand working with several other compounds, none of which yielded a safe and effective antibiotic. Once Big Pharma (Pty) Ltd discovered Novamac, it spent five years testing the drug process, which brought its production costs to well over three billion rand. Big Pharma (Pty) Ltd estimates that if it sells Novamac at R200 per dose, it will recoup its total investment in the drug in just a few years. Big Pharma (Pty) Ltd lodges its patent application with CIPC on 14 June 2020. The patent is registered a month later, on 14 July 2020.

Gen Z (Pty) Ltd is a rival drug company, and they manage to reproduce Novamac at a trivial cost. Despite the difficulty in discovering and testing the compound, Novamac is very easy to mass-produce. Gen Z (Pty) Ltd will start selling the same drug in August 2021.

Which of the following statements is correct?

- a. The antibiotic produced by Gen Z (Pty) Ltd is a generic medicine and may be legally sold on the market by Gen Z (Pty) Ltd from August 2021.
- b. Novamac is excluded from patentability under the Patents Act because it constitutes a medical treatment method.
- c. 14 July 2020 represents the priority date for Big Pharma (Pty) Ltd's patent application.
- d. None of these statements is correct.
- e. All of the statements are correct.

### QUESTION THIRTY-TWO

#### (Extended Matching Question)

Lindo and Sanele are academics at the University of Cape Town School of Engineering. Aside from their passion for all things engineering, Sanele and Lindo love coffee. They have long dreamt of investing in the coffee business. In 2019, they finally registered their coffee company called Coffee Cartoons (Pty) Ltd. Coffee Cartoons (Pty) Ltd decide that to become profitable, they need to leverage and manage their intellectual property. The company wants to pay close attention to 'everything IP' to ensure that other coffee houses do not closely mimic it.

- a. Patents
- b. Copyright
- c. Industrial design rights
- d. Trade Secrets
- e. Trademarks

For each of the items below, select the most appropriate Intellectual Property Right above to protect each creation. You may use each answer option once only.

1. Coffee Cartoons (Pty) Ltd designs a company logo. The name “coffee cartoons” appears on the logo and is written in a unique font in the colour blue. Immediately below the name “coffee cartoons” sits a rainbow-coloured cartoon character, short, Smurf like but distinguishable from the well-known Smurf characters.
2. They develop a machine and method for producing consistently high-quality coffee cups at high production rates using recycled materials.
3. They design an insulator sleeve to shield sensitive hands from the heat radiating from the cup. These types of sleeves already exist in the market, but Coffee Cartoons (Pty) Ltd has a unique design for theirs.
4. They employ up and coming baristas to create fantastic coffee drinks and other non-coffee drinks. The drinks contain a secret ingredient and the employees sign a confidentiality agreement in this regard.
5. The back of each insulator sleeve has written on it a short story about the rainbow-coloured cartoon man who appears on the company logo. The Man’s name is Rico-Frisca, and he has an unmatched passion for Coffee.

### **QUESTION THIRTY-THREE**

Brandon is a third-year law student at the University of Cape Town. Brandon needs a copy of the contract law textbook, but the book costs R5 000, and Brandon cannot afford it. Brandon considers photocopying the textbook for R450. He is also considering using the photocopying machine at the local library to scan the whole textbook. Scanning the textbook will cost him nothing.

Which of the following statements is correct?



- a. Brandon can scan the whole textbook without the copyright owner's permission because scanning does not constitute reproduction for a literary work under the Copyright Act.
- b. Copying a whole textbook can never be justified under the Copyright Act.
- c. Brandon's act of scanning the prescribed textbook constitutes secondary infringement under the Copyright Act.
- d. Brandon may rely on the copyright exception of fair dealing if he can show that his use is fair under the circumstances. The fairness enquiry is entirely dependent on the facts of each case.
- e. None of the statements is correct.

### QUESTION THIRTY-FOUR

Fikile is a graduate of the University of Cape Town film school. She works as a freelance production assistant on local movie sets, but her dream is to write and direct a stage play. One morning on Fikile's way to work, she sees a second-hand pop-up bookstore. She focuses her attention on a romantic novel and decides to buy it after reading the synopsis. She takes the book home and reads all 500 pages in one night. She then gets the 'crazy idea' of adapting the book into a screenplay. She researches the author of the book Phil Zimo, and she discovers that the author died in 1950 and that the author's children inherited his copyright that same year. She immediately starts working on the screenplay, including sourcing the funds to bring her dream to the Baxter Theatre. Phil Zimo's descendants are aware of Fikile's plan to adapt the book into a stage play. They approach the High Court for an interdict to prevent Fikile from going ahead with the stage play without first applying for a licence. The descendants also argue that if they cannot force Fikile to apply for a licence, they have the right to renew their copyright under South African copyright law.

Which of the following statements is correct?

- a. Fikile does not need the descendant's permission to adapt the book into a stage play. Phil Zimo's copyright expired in 1950, and the book after that fell into the public domain.
- b. Fikile does not need the descendant's permission to adapt the book into a stage play. The inherited copyright expired at the end of the year 2000.
- c. Notwithstanding the expiry of the copyright in 2001, the descendants can renew the copyright for a further 50 years if they apply for renewal within a reasonable time after expiry. What is reasonable depends on the facts of the case.

- d. Notwithstanding the expiry of the copyright in 1950, the descendants can renew the copyright for a further 50 years if they apply for renewal within a reasonable time after expiry. What is reasonable depends on the facts of the case.
- e. None of the statements are correct.

### QUESTION THIRTY-FIVE

Wildfires are uncontrolled fires that burn through vegetation in areas like forests and grasslands. Although a natural part of many ecosystems, because of climate change, amongst other things, many regions are experiencing longer and more dangerous wildfire seasons with longer-lasting and more frequent blazes. Michael and Leo are twin brothers and engineers. They are also equal shareholders in their company called High Tech Solutions (Pty) Ltd. High Tech Solutions (Pty) Ltd is very concerned about the damage that wildfires are causing and has been researching ways to fight wildfires both as they rage and before they occur, using the power of technology.

Michael and Leo develop a product that can be sprayed on dry bush and vegetation, making it more difficult for the fires to spread once they have started. Their product is stickier when compared to similar products in the market. This stickier component makes the product a better fire repellent compared to other products in the market. Leo and Michael assign their rights under the Patents Act to High Tech Solutions (Pty) Ltd, and the company then lodges its patent application on 14 June 2021. High Tech Solutions (Pty) Ltd then sells and assigns its patent to Global Technology (Pty) Ltd, an engineering firm based in the United Kingdom. The assignment agreement between High Tech Solutions (Pty) Ltd and Global Technology (Pty) Ltd is not recorded in the South African patents register.

Which of the following statements is correct?

- a. High Tech Solutions (Pty) Ltd is the patentee/proprietor of the invention under South African patent law.
- b. Global Technology (Pty) Ltd is the patentee/proprietor of the invention under South African patent law.
- c. High Tech Solutions (Pty) Ltd and Global Technology are joint patent owners under South African patent law.
- d. None of the above is correct.
- e. The assignment agreement between High Tech (Pty) Ltd and Global (Pty) Ltd is invalid because it was not recorded in the patents register.

### QUESTION THIRTY-SIX

Wildfires are uncontrolled fires that burn through vegetation in areas like forests and grasslands. Although a natural part of many ecosystems, because of climate change, amongst other things, many regions are experiencing longer and more dangerous wildfire seasons with longer-lasting and more frequent blazes. Michael and Leo are twin brothers and engineers. They are also equal shareholders in their company called High Tech Solutions (Pty) Ltd. High Tech Solutions (Pty) Ltd is very concerned about the damage that wildfires are causing and has been researching ways to fight wildfires both as they rage and before they occur, using the power of technology.

Michael and Leo invent a device that can calculate an environment's susceptibility to wildfires and when those fires are likely to occur. The device does this by collecting certain information, such as temperature and wind speed. It then uses this information to establish a pattern, and fire departments are then put on standby in high-risk areas as set out in the device's database. A computer program will be the key to the functioning of this device. High Tech Solutions (Pty) Ltd lodges its patent application on 14 June 2020, and the patent is registered shortly after that on 14 July 2020. In March 2021, High Tech Solutions (Pty) Ltd learns that one of its competitors based in Cape Town has entered into a contract with the Australian government to sell a device that it believes is the same as theirs. High Tech (Pty) Ltd institutes infringement proceedings against its competitor in the Western Cape High Court.

Which of the following statements is incorrect?

- a. High Tech Solutions (Pty) Ltd can only speak of an infringement of its rights if all the key features of its device are found in the device intended for sale by its competitor.
- b. The most appropriate remedy on the facts is an interdict to block the sale and delivery of the infringing devices for destruction.
- c. The competitor company will escape liability if it can show that at least one of the key features of High Tech Solution's device is not present in the device that they intend selling to the Australian government.
- d. High Tech Solutions (Pty) Ltd is the rightful patent owner notwithstanding that the Cape Town based competitor may have devised the invention independently of High-Tech solutions (Pty) Ltd's invention.
- e. High Tech Solutions is the owner of the patent under the Patents Act but its rights under the Act do not allow it to block the impending sale. High Tech Solutions may only act once the sale is complete by relying on one of the revocation grounds in the Act.

### QUESTION THIRTY-SEVEN

Wildfires are uncontrolled fires that burn through vegetation in areas like forests and grasslands. Although a natural part of many ecosystems, because of climate change, amongst other things, many regions are experiencing longer and more dangerous wildfire seasons with longer-lasting and more frequent blazes. Michael and Leo are twin brothers and engineers. They are also equal shareholders in their company called High Tech Solutions (Pty) Ltd. High Tech Solutions (Pty) Ltd is very concerned about the damage that wildfires are causing and has been researching ways to fight wildfires both as they rage and before they occur, using the power of technology.

Michael and Leo invent a facemask that firefighters can wear to help them see through the smoke when fighting a fire. This facemask will give firefighters the much-needed confidence when fighting a dangerous blaze up the mountain or in the bushes and when entering a burning building to rescue civilians, for example.

Which of the following statements is correct?

- a. The facemask is new for patent purposes if all its essential integers as found in the claims of the patent specification have not been disclosed in a single prior disclosure at the priority date.
- b. The facemask is new for patent purposes if all its essential integers as found in the claims of the patent specification have not been disclosed in multiple prior disclosures at the priority date.
- c. The facemask is new for patent purposes if all its essential integers as found in the claims of the patent specification have not been disclosed in a single prior disclosure or multiple disclosures at the priority date.
- d. None of the statements is correct.
- e. If the facemask is found to be obvious for the purpose of patentability, the patents registrar will nonetheless register the patent if the applicant can show that the invention is likely to be profitable in the market.

### **QUESTION THIRTY-EIGHT**

Which of the following statements is correct?

- a. There must be objective similarity between a copyrighted work and an alleged infringing work. The test for objective similarity is set out in the Copyright Act.
- b. In determining objective similarity between a copyrighted work and a later alleged infringing derivative work, the court will consider the derivative work as a whole, because copyright in a derivative work subsists in work in its entirety.

- c. The standard for determining objective similarity is rather low. Our courts have confirmed, but not without resistance, that it is enough for the complainant to establish mere similarity between the copyrighted work and the alleged infringing work.
- d. In determining what constitutes a “substantial part” of the work taken without the owner’s permission, the test is one of the importance of work taken and the amount of work taken, though the former is held to be more important.
- e. None of the statements is correct.

**TOTAL MARKS: 50**