



Engineers Past exam pape

Time: 2 hours + 15 minutes reading time.

The paper consists of three parts. Part A is worth 10 marks, Part B is worth 20 marks and Part C is worth 30 marks. The paper is worth 60 marks in total and counts 60% of your overall year mark (unless you were exempted from one or both of the tests).

Part A:

Part A consists of fill in the blank/missing word type questions. Read each question carefully and fill in the word that would be most suitable. There is no negative marking.

Part B:

Part B consists of 10 true/false questions, with reasons. In each case indicate clearly whether the statement is true or false and explain why you consider the statement to be true or false. It is very important that you explain your reasoning fully. Refer to the applicable legal principle and/or source of law (e.g. the Matrimonial Property Act) in each case where relevant. The mark allocation for each question is 2 marks. ½ mark for correctly identifying whether the statement is true or false, and 1½ marks for the explanation.

Part C: (Answer in book)

Part C consists of four problem and short questions. Provide a comprehensive, reasoned answer in each case. Note the mark allocation for each question.

REMEMBER TO WRITE CLEARLY AND LEGIBLY. DO NOT WRITE IN THE END-MARGINS OF THE ANSWER BOOK.

NO CALCULATORS OR SMART-WATCHES MAY BE USED DURING THE EXAM.

PART A: (10 marks)

1. An _____ is a term of a contract that is binding on the parties even though they have not mentioned it expressly in their verbal or written agreement.
2. An _____ involves a process of taking a case from an inferior court to a higher court in the hope of getting a different judgement.
3. The way that a Judge's decision or ratio decidendi becomes law is through the principle of _____
4. For a custom to be law it must be a rule of conduct that has been established through long use, it must be generally followed, it must be certain and _____
5. A contract entered by an infans (that is to say a minor below the age of 7 is completely _____.
6. In common law the risk of accidental loss passes to the buyer as soon as the sale is _____ even if the thing has not yet been delivered to him.
7. Sales talk" or general lauding or praise of a *merx* without any specific details is known under the common law as _____.
8. Ross purchases an engagement ring for his girlfriend from XZ Jewellers. The ring is too big and Ross accordingly agrees to leave the ring in the possession of XZ Jewellers who will then make the ring smaller. Delivery of the ring to Ross has taken place by means of _____.

PART B (20 MARKS)

1. **Statement:** A contract that has been induced by some form of misrepresentation is voidable. A person who has entered into a contract which has been induced by misrepresentation can only claim contractual damages. Therefore, delictual damages cannot be claimed from a contract arising from, misrepresentation. Delictual damages can only be claimed on the basis of mistake and undue influence.

T/F

Explanation

2. Kidneys are the most-frequently sold organs for a simple reason: humans have two and can live a healthy life with just one. Selling kidneys, then, might seem like a simple matter of supply and demand — the demand for kidneys is high, so willing donors should, in theory, be able to negotiate their price from a position of strength. Sipho and John decide to start a company that sells kidneys to unlisted patients in the black market. Their client base consists of elite clients who prefer to pay in cash. One of Sipho and John's clients have failed to pay the balance of their outstanding purchases. Sipho and John want to institute legal action against their client based on unjustified enrichment

Statement: Your advice to him would be that he should institute legal action at the high court and not the magistrate court as the high court has jurisdiction to give effect to his order.

T/F

Explanation

3. 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.

Statement: This is a clear example of an error in negotio, an Immaterial mistake relating to the type of contract.

T/F

Explanation

4. If a contract is objectively impossible, the contract will be voidable. This means that both parties are excused from performing and there can be no breach of contract.

T/F

Explanation

5. Masego receives an email from Books Galore (Pty) Ltd, indicating that Books Galore (Pty) Ltd is currently offering a full box-set of Stephenie Meyer's "Twilight" novels for just R599.00. Masego orders a box-set and pays for the set in full by way of an electronic funds transfer (EFT). He is informed by Books Galore (Pty) Ltd that the box-set will be delivered to his door within 14 days. Two days after Masego has placed the order, he changes his mind and decides that he no longer wants the box-set. He contacts Books Galore (Pty) Ltd and informs them that he has changed his mind and would like his money back.

Statement: A valid contract has been concluded between the parties, and it is impossible to cancel the agreement.

T/F

Explanation

6. A clause in a contract reads as follows: *“This contract of sale is subject to the Purchaser obtaining a suitable bond from a registered South African bank or financial institution, by no later than 15 December 2018.”*

Statement: This clause is an example of a resolutive condition.

T/F

Explanation

7. 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 2017, at precisely 14h00. David arrives at Laura’s factory on Saturday, 19 November 2017 at 14h00, but he has only 108 000 window-frames with him.

Statement: David’s action can be considered to be cancellation of the agreement

T/F

Explanation

8. Jill sells her 10-speed bicycle to her friend, Darren. Darren pays R700 to Jill for the bicycle on Monday, and Jill agrees to deliver it to Darren the next day (Tuesday). **There are no other terms to the contract between Jill and Darren.** Jill decides to take the bicycle out for one last spin on Monday evening. She decides to be daring and ride the bike through one of Cape Town’s most dangerous areas. On her ride she is hi-jacked but manages to get home safely.

Statement: Jill will have to reimburse Darren in the sum of R700.

T/F

Explanation

T/F

9. **Statement:** There are only two authoritative sources of South African law.

T/F

Explanation

T/F:

10. **Statement:** Amazon (Pty) Ltd is a good example of a law-abiding natural person.

T/F

Explanation

T/F:

PART C: (30 MARKS)

Question 1

[4 marks]

Nazreen enters into a contract with Bob, in terms of which Nazreen will purchase a horse from Bob for R80 000. The contract is concluded on 1 May 2018. They further agree that Bob will deliver the horse to Nazreen on 7 May 2018. However, on 5 May 2018, the horse gets struck by lightning and dies. Nazreen is very concerned about what happens to her contract with Bob in this instance and approached you for advice on this matter.

Answer the following questions regarding Nazreen's rights with reference to the above contract with Bob:

a) Is there a valid contract between Nazreen and Bob? Explain your answer. (1)

- b) Would you consider Bob to be in breach of contract? Explain the answer fully, your answer should provide an indication on whether Bob can still perform in terms of the contract? (3)

Question 3

[5 Marks]

Mr Thulani Nduli owns a painting, which he purchased at an art fair when he was a student.

Mr Jacob Landlover notices the painting one morning, while he is at Thulani's house carrying out some repairs. Jacob asks Thulani if Jacob can buy the painting from Thulani, as the painting is by Jacob's wife's favourite painter. Thulani tells Jacob that he is not interested in selling the painting, as it reminds him of his carefree student days.

Two days later, Jacob approaches Thulani while Thulani is in his driveway. He again asks to buy the painting, and Thulani again refuses. Jacob proceeds to pull a knife out of his pocket, holds the knife to Thulani's throat, and asks Thulani again if Thulani will sell the painting to Jacob. Frightened, Thulani agrees to sell the painting to Jacob. Thulani hands the painting to Jacob, and Jacob places R2,000 in cash on Thulani's car as payment for the painting. Jacob then leaves Thulani's street, taking the painting with him.

Is the contract of purchase and sale that has been concluded between Thulani and Jacob valid? Explain your answer.

Question 4

[4 Marks]

Mr Jonas and Mr Areff negotiate the purchase by Mr Areff of Mr Jonas's holiday home in Margate, Kwa-Zulu Natal.

During the negotiations, Mr Jonas tells Mr Areff that the holiday home is constructed on “prime” (top-class) beachfront property and that, accordingly, the holiday home is worth approximately R5,500,000.

Following further negotiations, Mr Jonas and Mr Areff conclude a written contract for the sale and purchase of the holiday home, in terms of which contract Mr Areff agrees to pay to Mr Jonas a purchase price of R5,100,000 for the holiday home.

Answer the following questions:

- 4.1 Assume, for the purposes of this question 4.1, that what Mr Jonas told Mr Areff regarding the quality of the land on which the holiday home is built is incorrect and that Mr Areff later discovers that the true market value of the holiday home is only R3,800,000. Mr Areff approaches you for advice, telling you, his attorney, that he would not have purchased the home from Mr Jonas had he known the true quality of the land on which the holiday home is built and of the true value of the holiday home. Mr Areff would like to claim damages from Mr Jonas. What amount of damages is Mr Areff entitled to claim from Mr Jonas? Provide only the amount, in Rand.
- 4.2 Assume, for the purposes of this question 4.2 only, that Mr Jonas had warranted in the written contract that the holiday home, as a result of its prime location, is worth R5,500,000. Mr Areff later discovers that the true market value of the holiday home is only R3,800,000. Mr Areff approaches you for advice. What amount of damages is Mr Areff entitled to claim from Mr Jonas? Provide only the amount, in Rand.