INSTRUCTIONS

1. Students are requested, in their own interests, to write legibly.

2. Please answer all questions.

3. This paper consists of EIGHT (8) pages. Please ensure that you have all pages.
QUESTION 1

Making reference to decided cases, explain the following.

(1) the juristic nature of cession;
(2) the difference between cession, delegation, and assignment;
(3) The cedability of personal rights in general, and the various restrictions on cedability;
(4) The requirements for a valid cession (provide an outline of what is, and what is not, required);
(5) The consequences of cession and, in particular, whether the debtor may raise defences against the cessionary, claim relief from the cessionary, and invoke the counterclaim procedure when sued by the cessionary.

Having completed the above, provide concise answers to the following problems.

A. Sadie, the owner of a construction business, sells and transfers ‘all the book debts, present and future’ of the business, to Paul. Sadie’s estate is then sequestrated and the trustee of his estate subsequently completes one of Sadie’s partially executed contracts. Paul maintains that, by reason of the cession, he is entitled to payment in terms of the completed contract. Is he correct? Explain.

B. S sells goods to B in terms of an instalment sale transaction. The price is R10 000, payable by way of a deposit of R4 000 and six monthly instalments of R1 000 each. B takes delivery of the goods and pays the deposit and the first instalment to S. At this point, S cedes his rights in respect of the balance of the price (i.e. R5 000, payable in instalments of R1 000 each) to C and informs B of the cession. B pays two instalments
to C. It then emerges that the goods have serious latent defects, entitling B to rescind the sale. B notifies the other parties that he hereby rescinds the contract ‘without prejudice to my right to take further appropriate action.’ C, who was unaware that the goods had defects and took cession from S in good faith, contends that B is liable to continue paying instalments to him (C) in terms of the sale. B disagrees. Advise C on the legal position in the circumstances.

C. S sells and delivers goods to B, payment of the purchase price of R50 000 to be made at the end of the month. The goods do not conform to the agreed specifications and, as a result, B suffers loss in the sum of R40 000. He informs S that he has a R40 000 damages claim against him and indicates that he will be paying only R10 000 when the time for payment of the purchase price arrives. S responds by selling and ceding his right to payment of the purchase price to his business associate, V. The latter, who is aware of all the facts and that B has a claim against S for R40 000, sues B for payment of the full price of R50 000 when the end of the month arrives. B wants to know what his legal position is.

[Total Q1: 15 marks]
QUESTION 2

With reference to decided cases, explain

- the requirements which must be satisfied for set-off to take place; and
- the precise effect of set-off.

Having done this, answer the following questions, giving brief reasons in each case:

A. Can a claim for delivery of a cow be set off against a claim for delivery of a horse?
B. Is a gambling debt capable of set-off?
C. Does set-off operate in the following case?: L lets a dwelling to T, the contract providing that L must keep the exterior of the premises in proper repair. The roof develops several leaks, so T calls upon L to have it repaired, but he fails to do so. T has the roof fixed and wants to deduct the cost of repairs from the rent. Assume, for purposes of your answer, that L is liable in law for the repairs.
D. Does set-off have to be specifically invoked?
E. Are there circumstances in which set-off does not operate?

[Total Q2: 10 marks]
QUESTION 3

The principle of reciprocity does not apply without exception. In some instances, it is not applicable at all, with the result that the plaintiff, despite being in default, may demand full counter-performance from the defendant. In other instances, the principle is partially relaxed. In these instances the defaulting plaintiff may compel the defendant to render a reduced counter-performance. Referring to the reported cases, explain the following:

- the nature and effect of the principle of reciprocity;
- when obligations are reciprocal;
- when a contractant who is himself in default may recover full performance from the other party; and
- when a contracting party who is in default may be permitted to recover a reduced performance from the other party.

Having completed your explanation, comment briefly on the following:

A. Bilt finishes the construction of a house 2 weeks after the agreed completion date. Owna, who has had to turn away a prospective tenant because the house was not finished on time, contends that due to the delay in completion he is not liable for payment of the balance of the contract price (which is R300 000) to Bilt.

B. Bilt completes the house on time as agreed but does not tile the main bathroom exactly according to the layout stipulated in the contract. Owna refuses to pay the balance of the contract price (R300 000) until the tiling is changed to comply with the contract. It will cost R50 to do this.

[Total Q3: 10 marks]
QUESTION 4

Referring to decided cases, explain fully the forms of breach known as negative malperformance (mora), positive malperformance and repudiation. Include in your answer (but do not limit your answer to) consideration of the following:

A. how the forms of breach differ from each other;
B. the extent to which fault (culpa) is relevant to mora; and
C. the distinction between mora ex re and mora ex persona and the requirements which an interpellatio must meet in order to be effective in law.

[Total Q4: 10 marks]

QUESTION 5

With reference to reported cases, write a full note on the remedy of compensatory damages: This must include discussion of the basic measure of such damages, the essential elements of the claim, and the rule governing mitigation of loss. Include in your answer discussion of the following:

- the proper time for assessing the quantum of the innocent party’s loss in the case of repudiation;
- whether contractual damages are recoverable for personal injury, pain, suffering, and the like;
- the distinction between factual and legal causation;
- the distinction between the so-called contemplation and convention principles; and
- the distinction between compensatory damages and so-called restitutionary damages.
Having completed your discussion, consider the following problem.

Plof buys a machine from Stof for R50 000 and agrees to collect and take delivery of the machine at his own cost. Stof warrants that the machine has a certain production capacity. Plof requires this capacity in order to be able to carry out his obligations in terms of a contract which he has with Koos. Stof is aware that Plof has this contract. Stof is also aware that Gert, his main competitor, is offering to sell the identical machine for R45 000, but Stof does not mention this to Plof. After concluding the sale, but before taking delivery, Plof spends R15 000 in building special housing for the machine and buying ancillary plant (which will assist in the use of the machine for production purposes). He is then offered the same machine by Gert for R45 000 but he has to decline the offer, having already bought from Stof. Thereafter he takes delivery of the machine that he bought from Stof. The cost of delivery is R3 000. Before paying the purchase price, he discovers that the machine’s production capacity falls well below that specified in his contract with Stof. The breach is a material one, and entitles Plof to cancel the contract. Plof duly cancels the contract and returns the machine to Stof. The cost of doing so is R3 500. Plof establishes that the break-up value of the housing which had been built for the machine is R3 000 and that the ancillary plant has a residual market value of R4 000. Plof also ascertains that the current market value of the type of machine in question is R60 000. Because Plof cannot fulfil his contract with Koos, the latter cancels their contract and claims damages in the sum of R10 000, being the loss he has suffered as a result of Plof’s failure to perform. Plof is able to estimate with reasonable certainty that he would have earned a net profit of R10 000 from the contract with Koos, had he been in a position to carry out the contract.
Plof consults you and asks you to calculate how much he would be entitled to recover from Stof by way of compensatory damages for Stof’s breach of contract. Advise him and provide a specified list of the various items of loss for which he can recover such damages.

[Total Q5: 15 marks]