INSTRUCTIONS

1. This paper consists of NINE (9) pages. Please make sure you have them all.
2. This paper consists of TWO SECTIONS. SECTION A AND SECTION B must be answered in separate answer booklets.
3. Students must answer all questions in SECTION A and SECTION B.
4. Students are requested, in their own interests, to write legibly.
SECTION A

QUESTION 1

MULTIPLE CHOICE QUESTIONS

(Each question carries two marks)

1. Gary sees an advertisement in SA Sports Illustrated for a Bafana Bafana replica shirt for R200 at a shop. To save money he writes a letter to the suppliers of the shirt, Rave Replicas CC, enclosing a cheque for R150 and asking them for a shirt. Rave Replicas CC banks the cheque which takes seven days to clear. Before the cheque clears Gary phones Rave Replicas CC to say that he doesn’t want the shirt and that he has instructed the bank not to pay out on the cheque. Rave Replicas says that there is valid contract and they demand payment. Would you advise them that:

a) An advertisement is not an offer so it cannot be accepted to form a contract.
b) An advertisement may be an offer but acceptance must be communicated.
c) Gary’s letter was an offer and acceptance does not always have to be communicated.
d) Gary’s letter was an offer and acceptance must always be communicated to form a contract.
e) There was no intention to contract on the part of Gary

2. In researching your answer to 1. above which case should you refer to:

a) Wood v Davies
b) Bloom v American Swiss
c) McKenzie v Farmers Co-Op
d) Crawley v Rex
e) All of the above
3. Mr Shady and Mr Dodgy are business associates. Mr Shady is often able to find second hand car parts at a very good price. Mr Dodgy often buys car parts from Mr Shady because the price is so good. He suspects that Mr Shady is involved in a motor car theft gang and that he is selling stolen car parts but he doesn’t care because the price is good. One day Mr X comes to see Mr Dodgy and asks him for parts for his Mercedes Benz, he pays Mr Dodgy in advance. Mr Dodgy goes to see Mr Shady and pays him money to ‘find’ the parts. Mr Shady never finds any parts and Mr Dodgy wants to get his money back. You advise him:

a) He had a contract and can claim cancellation and get a court order for the return of his money.
b) The court will apply the Ex turpi causa rule and say that this is an illegal contract and order restitution.
c) The court will refuse to hear any claim for return of his money.
d) The court will apply the In pari delictum rule and say that Mr Shady can keep the money.
e) The court will say that Mr Shady has been unjustifiably enriched and order that he pays back the money.

4. In the scenario set out in 3 above Mr X comes back to Mr Dodgy and demands the parts. What must Mr Dodgy legally do?

a) Find spare parts from another source and deliver them to the customer,
b) Pay the customer back from his own money,
c) Say that performance is impossible and terminate the contract,
d) Give the customer Mr Shady’s details and tell him to get his parts from Mr Shady.

5. AJ makes an offer to purchase Peter’s piano on 10 March 2012. Which of the following statements correctly describes the legal position?

a) Once AJ has made the offer then she may not revoke it under any circumstances.
b) AJ may revoke the offer that she has made at any time even after Peter has accepted the offer.
c) If AJ makes it difficult or impossible for Peter to communicate his acceptance to her, then it is sufficient for Peter to show that he has made a reasonable attempt to notify her of his acceptance.
d) If AJ prescribed a particular manner of acceptance, Peter may accept the offer in whatever mode of communication he so wishes, even if it results in the acceptance not being communicated timeously.
e) None of the above.
6. Lucky Khumalo, a student at UKZN, goes to the Law Library to obtain some material for his Foundations assignment. When he goes into one of the shelves, he sees that somebody has left a black leather wallet on the shelf. Lucky immediately takes the wallet and hands it to Risk Management Services (RMS). The next day, Lucky reads a notice on the notice board whereby the owner of the wallet, a certain Paul Jones, is offering a reward of R200 to anyone who can assist him in retrieving the wallet. Lucky contacts RMS and learns that Paul has already collected the wallet from them. Nevertheless, Lucky decides to contact Paul in order to claim the reward of R200. Paul, however, refuses to pay the money to Lucky. Which of the following statements correctly describes the legal position?

a) A contract between Lucky and Paul can never come into existence as a notice (just like an advertisement) can never constitute an offer under any circumstances.
b) A contract between Lucky and Paul can never come into existence as the offer must be directed at a specified individual in order to be valid.
c) Paul is obliged to pay Lucky; after all he helped him a lot.
d) None of the above is correct.

7. In researching your answer to 6 above which case should you refer to:

a) Wood v Davies
b) Bloom v American Swiss
c) McKenzie v Farmers Co-Op
d) Crawley v Rex
e) None of the above

8. On 26 March 2012, Darren (who resides in Pietermaritzburg) phones Rowen (who resides in Johannesburg) and tells him that he wants to buy his car for R 100 000. Darren tells Rowen that if he wants to accept his offer, then he must contact him before the 30 March 2012. On the 29 March 2012, Rowen posts a letter to Darren from Johannesburg. The letter, however, only reaches Darren on 5 April 2012 and he only reads the letter on this date. Which of the following statements correctly describe the legal position?

a) The expedition theory applies in this instance and the contract is concluded on 29 March 2012.
b) The reception theory applies in this instance and the contract is concluded on 29 March 2012.
c) Rowen has not accepted the offer timeously and Darren is not obliged to purchase the car as his original offer has lapsed.
d) If Rowen phoned Darren on 29 March 2012 to communicate his acceptance instead of posting it to him, then the contract would have been concluded in Johannesburg.
e) None of the above.
9. Pieter is a 16 year old full-time student who is currently in Grade 10. Pieter wants to buy a motorbike but his parents refuse to purchase one for him as they feel that it is too dangerous. Pieter then decides to work part-time during his holidays so that he can earn pocket money to buy the motorbike. Pieter eventually finds out that one of his friends, Martin, is selling a second hand motorbike for R 20 000. Pieter uses the pocket money that he earned during the vacation and pays Martin a deposit of R 5 000. Martin then delivers the motorbike to Pieter and it is agreed that the full outstanding balance must be paid within three months. Pieter, hoping that his parents have had a change of heart, decides to ask them to give him the money to pay Martin. His parents refuse, however, and tell Pieter that he ‘must sort out his own mess’. After three months, Martin approaches Pieter to ask him for his money. Pieter, however, tells Martin that he does not have the money and Martin then demands that Pieter return the motorbike to him immediately. Despite this, Pieter has still not returned the motorbike to Martin. Martin wants to sue Pieter for breach of contract. Which of the following statements correctly describes the legal position?

a) The contract between Pieter and Martin is void as Pieter was not assisted by his guardian in concluding the contract.
b) The contract between Pieter and Martin is voidable as Pieter was not assisted by his guardian in concluding the contract.
c) Pieter is not bound by the contract but he may keep the motorbike that was sold to him.
d) Pieter is not bound by the contract but he if chooses to enforce the contract then he must also comply with his obligations under the contract.
e) All of the above.

10. In the case of Cloete v Smithfield it was held that:

a) Prior positive conduct gives rise to a duty to speak in order to avoid misrepresentation by silence.
b) If circumstances change, from the time of negotiation to the time of concluding an agreement, one has a duty to speak in order to avoid misrepresentation by silence.
c) The representor who deliberately misleads the other party, i.e. preys on his stupidity, cannot rely on this stupidity and defend himself in an action by simply saying the other party ought not to be deceived so easily.
d) All of the above.

11. For transfer of ownership following a sale the following requirements must be met:

a) delivery or registration of transfer
b) both parties intending that ownership should pass
c) transferor must be in the position or have title to pass on ownership
d) Purchase price paid, or credit granted
e) All of the above are correct.
12. The Prescription Act provides for prescription to be interrupted. Examples of interruption are:

1. Payment of an amount by the debtor
2. A letter of demand from the creditor
3. Service of a summons by the creditor
4. An IOU (an acknowledgement of indebtedness) from the debtor
5. Where the debtor is a minor
6. Where the debtor is outside of the country.

Which of the above examples is/are illustrations of interruption?

a) 1, 4 and 6
b) 2, 3 and 4
c) 3, 5 and 6
d) 1, 3 and 4
e) All of the above

13. A real right is the legal relationship which exists between:

a) A legal subject and a legal object
b) A legal object and another legal object
c) A legal subject and another legal subject
d) Parties to a contract
e) A buyer and seller

14. If you wanted to become the owner of a res nullius you would:

a) Simply take it and exercise control of it.
b) Buy it from the seller and pay for it.
c) Ask the owner if you could have it.
d) Abandon it.
e) None of the above.

15. Is possession a right? Or is it a requirement of ownership?

a) It is a right.
b) It is a requirement.
c) It is both.
d) It is neither.
e) It depends on the person in possession.
16. Sipho owns the frame and body of a ‘go-kart’, James owns a small lawn mower engine and Asha has some wheels. They decide to combine their property and build a motorised go-kart. The engine is welded (joined) to the frame and the wheels bolted on. Which of the following best describes the ownership situation?

a) The go-kart is owned by all three in undivided shares because of ‘mixing’.
b) Each person owns their parts of the go-kart and can remove them when they want to.
c) Sipho owns the whole go kart through ‘accession’.
d) ‘Specification’ describes making a new thing and this is what applies here.
e) Sipho owns the whole go kart through ‘occupation’.

17. In the scenario above: Asha wants to take the wheels back from the go-kart. Factually this can be done without damaging the go-kart. Which of the following best describes the situation?

a) Asha cannot take the wheels because this will ruin the economic (functionality) of the go-kart.
b) Asha can only take the wheels if she pays for them.
c) Asha cannot take the wheels based on the ruling in J L Cohen Motors SWA (Pty) Ltd v Alberts

d) Asha cannot take the wheels based on the ruling in Underwater Construction and Salvage Co (Pty) Ltd v Bell.
e) None of the above.

18. In order for ownership to pass the most important element of traditio is:

a) Payment of the purchase price.
b) Giving of possession.
c) The reason why ownership is passing.
d) Delivery with intention.
e) Delivery with payment.

19. A spoliation order is:

a) A remedy someone deprived of possession can bring against the owner who unlawfully deprived them of possession.
b) A remedy which the owner of a thing can use to get that thing back from whoever has it.
c) A remedy someone deprived of possession can obtain against any person who unlawfully deprived them of possession.
d) An order confirming possession.
e) Part of traditio
20. An omission might be unlawful where there is a legal duty to act, according to:
   a) Khan v Minister of Law and Order
   b) Minister Van Polisie v Ewels
   c) Minister of Forestry v Quathlamba (Pty) Ltd
   d) S v Mokgethi
   e) Crawley v Rex

[Total Q1: 40 marks]

QUESTION TWO

Joe is the proud new owner of a Golf GTI motor car. He loves to drive as fast as possible with his music turned up loudly. One day, after a particularly heavy rain storm, he is driving along and bends down to change the radio station on the car’s radio. When he looks up he sees that he is now in the wrong lane and headed directly towards an oncoming minibus taxi. He immediately applies the brakes and swerves into the proper lane and avoids the taxi. However the taxi driver also took evasive action at the same time and swerved to avoid the oncoming Golf. Unfortunately the taxi crashed into a wall and suffered severe damage. Later tests showed that the taxi had faulty brakes and faulty steering. The taxi owner wants to recover losses from Joe.

(a) In brief, set out the elements which the taxi owner will have to prove in order to recover money from Joe on the basis of delict.

(b) Joe says that he did not hit the taxi and therefore did not cause the accident. Discuss this defence referring to case law and provide a conclusion on the prospects of Joe being successful.

[Total Q2: 15 Marks]

QUESTION THREE

Set out the seven essential elements of a contract and explain, in one or two sentences each, what each one means. Then explain what is meant by ‘voidable’ and give an example of circumstances which may make a contract ‘voidable’.

[Total Q3: 15 Marks]

[TOTAL SECTION A: 70 MARKS]
SECTION B

(Please answer in a separate answer booklet)

QUESTION ONE

Write a short note where you discuss the facts, judgment and outcome in *Hoffman v South African Airways* 2001 (1) SA 1 (CC)

[Total Q1: 20 Marks]

QUESTION TWO

Amy and Adam have been married for a few years. Amy is pregnant with their third child. Like many pregnant women she is offered HIV testing as part of the ante-natal care. Her results come back HIV positive. The counsellor explains to her it is important to inform one’s sexual partner about HIV status or use condoms. Amy says she cannot inform Adam. She is worried that Adam will blame her for bringing HIV into the house and throw her and the children out of the house. This happened once when she did not cook dinner for him. She also says if she introduces condoms Adam will be suspicious that she has been having other affairs.

Her counsellor approaches you for legal advice. Explain to her the circumstances under which HIV status may be disclosed without a patient’s consent.

[Total Q2: 10 Marks]

[TOTAL SECTION B: 30 MARKS]

TOTAL FOR PAPER: 100 MARKS