DURATION: 3 HOURS
TOTAL MARKS: 100

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INSTRUCTIONS

1. This paper consists of SIX (6) pages. Please make sure you have them all.
2. This paper consists of TWO SECTIONS. SECTION A AND B which must be answered in separate answer booklets.
3. In SECTION A students must answer all the questions.
4. In SECTION B, students must answer question one and either A or B of question two.
5. Students are requested, in their own interests, to write legibly.
SECTION A

QUESTION 1

State whether the following statements are true or false.

1.1 The Prescription Act provides for prescription to be interrupted; examples of interruption are the service of summons by the creditor and if the debtor is still a minor.

1.2 If you wanted to become the owner of a res nullius you would buy it from the seller, pay for it and thereafter take it and exercise control over it with the intention of being the owner.

1.3 In Cloete v Smithfield Hotel 1955 (2) SA 622 (O) it was held that when representations originally made were correct, but material circumstances subsequently change rendering the original information untrue, one has a duty to speak failing which a misrepresentation by silence will take place.

1.4 In Lourens v Genis 1962 (1) SA 431 (T) it was held that a reasonable person would have not been misled and would have not been induced to act upon a ludicrous misrepresentation and the relief sought was denied.

1.5 If offeror (A) makes an offer in a letter, and thereafter encloses both the letter and a cheque in the same envelope, the offerree (B) upon receipt of the letter and the cheque will need to communicate his acceptance to the offeror in order for a valid contract to come into existence.
1.6 In light of the rules governing an acceptance of an offer by telephone, the decision in *S v Henckert* 1981 (3) SA 445 (A) provides that the contract by telephone is deemed to have been concluded where and when the offeree pronounces his acceptance.

1.7 On 15\(^{th}\) March 2013 Lily lends Mike R50 000. On the 17th of April 2014 Mike transfers R25000 into Lily’s account to re-pay part of the loan. In these circumstances the date on which Lily’s claim for repayment of the loan by Mike will prescribe is the 17 of April 2017.

1.8 John Smith, 20 years old, agrees to purchase 200 grams of dagga from Peter Jones, 27 years old, for R 1 000. John pays Peter R 1 000 on 23 August 2012, but Peter refuses to deliver the dagga to him. If John sues Peter for the delivery of the dagga or repayment of the purchase price, the courts will favour John as the *par delictum* rule states that in equal guilt the law favours the buyer.

1.9 Where the purchaser of a thing is already in possession of it, but does not hold it as owner, and after the sale he holds it as owner this is known as symbolic delivery.

1.10 The baker of a cake who uses ingredients belonging to another person becomes the owner of the cake through accession, alternatively through manufacture.

[Total Sec A Q1: 20 Marks]
QUESTION 2
Define the following terms:

a) Voidable contract [Total Q 2(a): 2 Marks]

b) Incidental fraud [Total Q 2(b): 2 Marks]

c) Undue influence [Total Q 2(c): 2 Marks]

d) Reliance theory [Total Q 2(d): 2 Marks]

e) Partial illegality [Total Q 2(d): 2 Marks]

[Total Sec A Q2: 10 marks]

QUESTION 3
Discuss the concept of a misrepresentation as a cause of a voidable contract.

Your discussion must include but not be limited to the following:

- Elements of misrepresentation;
- Methods of misrepresentation;
- Categories of misrepresentation; and
- Remedies of a misrepresentation.

[Total Sec A Q3: 20 Marks]

[TOTAL SECTION A: 50 MARKS]
SECTION B

QUESTION 1

All students must answer this question.

Mr Way-Too-Clever is a first year LLB student at the School of Law, University of KwaZulu-Natal, Pietermaritzburg. Having ‘aced’ his Foundations exam he goes with a group of his classmates to the Stage Coach bar to participate in a celebratory drinking spree. During the evening Mr Way-Too-Clever flirts outrageously with Mr Too-Cute a second year LLB student and they end up spending the night together at Mr Way-Too-Clever’s digs. Neither man raises the issue of safe sex or HIV before the sex. They do not use condoms.

Five days after the night of passion Mr Too-Cute claims that Mr Way-Too-Clever raped him and he applies in terms of section 30 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, No. 32 of 2007 for an order requiring Mr Way-Too-Clever to be tested for HIV and to have the results disclosed to him. Mr Way-Too-Clever strenuously denies the rape and argues that the sex was consensual. He approaches the Campus Law Clinic for advice. As a candidate attorney in the clinic, advise Mr Way-Too-Clever on:

(i) The requirements that would have to be met in order for a magistrate to grant a compulsory testing order in terms of the Sexual Offences Act.

[Total Q 1(i): 12 marks]

(ii) Whether, if it was found that he was HIV positive and had been aware of his HIV status for a period of 2 years Mr Too-Cute could charge him with attempted murder? Refer to decided cases.

[Total Q 1(ii): 12 marks]

(iii) Whether any defences to attempted murder are available to Mr Way-Too-Clever?

[Total Q 1(iii): 6 marks]

[Total Sec B Q1: 30 marks]

Continued/…
**QUESTION 2**

Students must answer either question (a) or question (b)

(a) Write a short note on the facts, judgement and outcome of the case *Hoffmann v SAA 2001 (1) SA 1 (CC).*

   [Total Sec B Q2: 20 marks]

OR

(b) Write a short note on the circumstances in which a doctor may disclose a patient’s HIV status to a third party.

   [Total Sec B Q2: 20 marks]

[TOTAL SECTION B: 50 MARKS]

TOTAL FOR PAPER: 100 MARKS