SALE AND LEASE

MULTIPLE CHOICE QUESTION PACK

Question 1:

According to which decision does a lessee of immovable property automatically retain the right to occupation upon change in ownership of the property?

(1) De Jager v Sisana 1930 AD 71
(2) Genac Properties JMB (Pty) Ltd v NBC Administrators CC 1992 (1) SA 566 (A)
(3) Weilbach v Grobler 1980 (3) SA 998 (O)
(4) Genna-Wae Properties (Pty) Ltd v Medio-Tronics (Natal) (Pty) Ltd 1995 (2) SA 926 (A)
(5) Ndlovu v Ngcobo, Bekker v Jika 2003 (1) SA 113 (SCA)

Answer: 4

Question 2:

In De Jager v Sisana 1930 AD 71 the court

(1) Held that the penalty provisions of article 9 of the Placaat of Holland of September 1658 did not apply in South Africa
(2) Held that the lessee of immovable property automatically retains the right to occupation upon change of ownership of the property
(3) Applied the general contractual principles applicable to mora debitoris where the lessee failed to pay the rent
(4) Found that the occupier did not acquire a real right
(5) Confirmed that the condition in which the thing is delivered must be in accordance with the provisions of the lease

Answer:

Question 3:

Jay hired a shop premises from Sbu for the agreed upon purpose of carrying on an antique dealers business, the roof of the shop was found to have leaks. When it rained small pools formed in the shop, the leaks mainly affected the front of the shop. On one occasion a couch became wet and couldn't be sold. During the rainy season and especially at night and over weekends, Jay the lessee was constrained to move his Persian rugs and antiques to the dry rear of the shop. He was deprived of the advertising advantage of his shop window. After the rain water continued to drip for a few days thereby detracting from the overall appearance of the shop.

Which common law obligation does Sbu breach?

(1) He must deliver the thing
(2) He must guarantee Jay against eviction
(3) He mustn't disturb Jay in his possession
(4) He must deliver the thing in a specific condition and maintain it
(5) He must ensure that the contract is legal

Answer: 4

Question 4:

Which case would you consult in this regard?

(1) Sishen Hotel (Edms) Bpk v Suid-Afrikaanse Yster en Staal Industriele Korporasie Bpk 1987 (2) SA 932 (A)
(2) Genae Properties JMB (Pty) Ltd v NBC Administrators CC 1992 (1) SA 566 (A)
(3) Genna Wae Properties (Pty) Ltd v Medio-Tronics (Natal) (Pty) Ltd 1995 (2) SA 926 (A)
(4) Sweets from Heaven (Pty) Ltd v Ster Kinekor Films (Pty) Ltd 1999 (1) SA 796 W
(5) Poynton v Cran 1910 AD 205

Answer: 5

Question 5:

Is the obligation which rests on Sbu

(1) An ex lege warranty
(2) A tact warranty
(3) An express warranty
(4) A real right
(5) An incidental term of the contract?

Answer: 1

Question 6:

In Goldburg v Buytendag Boerdery Beleggings (Edms) Bpk 1980 (4) SA 775 (A) the court

(1) Found that the occupier did not acquire a real right
(2) Confirmed that the condition in which the thing is delivered must be in accordance with the provisions of the lease
(3) Held that the penalty provisions of article 9 of the Placaat of Holland of September 1658 did not apply in South Africa
(4) Held that the lessee of immovable property automatically retains the right to occupation upon change of ownership of the property
(5) Applied the general contractual principles applicable to mora debitoris where the lessee failed to pay the rent

Answer: 5

Question 7:

Tom leases Thandi's farm for one year for R6000 per month. Tom permanently stays on the farm. Which goods are not subject to Thandi's tacit hypothee?

(1) Tom's money in the safe in the farmhouse
(2) Tom's furniture in the farmhouse where Tom stays
(3) The tractor which Tom's brother lent to Tom for use while Tom is on the farm
(4) The furniture which Tom's sister stored in the shed on the farm while she is overseas for 6 months
(5) The furniture of Tom's sub-tenant who leases the cottage on the farm from Tom until Tom's lease expires and who is in arrears with his rent

Answer: 4

Question 8:

In which case did the court hold that the seller will only be deprived of the protection afforded by a voetstoots clause where the buyer can prove that the seller was actually aware of the existence of a defect in the thing sold at the time of contracting and dolo malo kept silent about its existence with the purpose of defrauding the buyer?

(1) Glaston House (Pty) Ltd v Inag (Pty) Ltd 1977 (2) SA 846 (A)
(2) Van der Merwe v Meades 1991 (2) SA 1 (A)
(3) Phame (Pty) Ltd v Paizes 1973 (3) SA 397 (A)
(4) Dibley v Furter 1961 (4) SA 73 (C)
(5) Janse Van Rensburg v Grieve Trust CC 2000 (1) SA 1315 (C)

Answer: 2

Question 9:

THESE FACTS RELATE TO QUESTIONS 9 – 11:

J sells his Cr to M for R50 000, to be delivered to her at the end of the month. M is, however, concerned that in the present economic climate she may be retrenched soon. The parties agree that should she be retrenched within 3 months of the conclusion of the contract, the contract will lapse and they will return the performances. While the car is still in is possession, J is involved in a collision with the car when he speeds through a red robot. The cost of the repairs to the car is R20 000. J tenders delivery of the damaged car to M at the end of the month.

Which of the following statements is CORRECT?

(1) The sale is not perfecta because it is subject to a suspensive condition
(2) The sale is perfecta even though it is subject to a suspensive condition
(3) The sale is not perfecta because it is subject to a resolutive condition
(4) The sale is perfecta even though it is subject to a resolutive condition
(5) None of the above

Answer: 4

Question 10:

If the contract had contained a term giving M the right to return the car after a month if she is not satisfied with it, we are dealing with

(1) A contractual term which is contra bonos mores and unenforceable
(2) A suspensive time clause
(3) A pactum displicentiae
(4) A modal clause
(5) None of the above

Answer: 3

Question 11:

Assuming that M has a claim against J for breaching the contract by delivering a damaged car, which form of breach is applicable?

(1) Mora debitoris
(2) Mora creditoris
(3) Positive malperformance
(4) Repudiation
(5) Prevention of performance

Answer: 3

Question 12:

J buys a farm from Z. They agree that J will take immediate occupation of the farm. When J moves to the farm, he discovers that P is already on the farm and that he cannot take occupation of the farm. J's application for an eviction order fails because P can prove that he bought the farm before J did, even though transfer has not yet been given to P. You may assume that a valid contract of sale was concluded. On what possible grounds could J institute action against Z?

(a) Misrepresentation (intentional or negligent)
(b) Latent defect
(c) Eviction
(d) Breach of the duty to give vacua possession
(e) Dictum et promissum

(1) (a), (c) and (d)
(2) (a), (d) and (e)
(3) (a) and (d)
(4) (a), (b) and (d)
(5) all the grounds

Answer: 1

Question 13:

On the 5th of January, Z sells her cow to J for a price to be determined by P. They agree that the cow has to be delivered to J's farm on the 10th of January. On the 8th of January, P determines the price to be R10000 which is 3 times the actual value of the cow. The cow calves on the 9th of January. Z delivers the cow without the calf on the 10th of January but J refuses to accept the cow. Which of the following is INCORRECT?

(1) The contract of sale became perfecta on 8 January
(2) Z committed a breach of contract by not delivering both the cow and the calf to J
(3) The legal consequences where the 3rd party determines an unreasonable price has been settled for many years
(4) The agreement that the cow has to be delivered at J's farm amends the general rule that the seller is only obliged to make the thing available to the buyer
(5) The parties concluded a valid contract of sale on 5th January.

Answer: 3

Question 14:

Z sells his second hand car to J for R10 000 on 5 January. The car has to be delivered on the 10th of January. Z delivers the car on the 10th of January and at the same time Z gives J an extension of time until the 15th of January to pay the purchase price. J pays the price on 15 January. Which one of the following statements is CORRECT?

(1) Ownership of the car passed to J on the 5th of January, because the contract of sale was concluded on that date
(2) Ownership of the car passed to J on the 5th of January, because the contract of sale was perfecta on that date
(3) Ownership of the car passed to J on 10 January because the car was delivered to J on that date
(4) Ownership of the car passed to J on the 10th of January because the car was delivered to J on that date and the contract of sale was a credit sale at that stage
(5) Ownership of the car passed to J on the 15th of January because the price was paid on that date.

Answer: 4.

Question 15:

Z sells her 2nd hand car to J for R50 000 on 5th January. The car has to be delivered on 10 January. J refuses to accept delivery of the car on 10 January. Z's husband repeatedly kicks the door of the car on 11 January in a fit of fury. It will cost R5000 to repair the car. Z and her husband are married out of community of property. Which of the following statements is INCORRECT?

(1) J will be able to claim the R5000 damages from Z's husband after Z has ceded her claim against her husband to J.
(2) Z's duty of custody arose on 5 January when the contract was concluded and continued even after 10 January
(3) J's refusal to accept delivery of the car amounts to mora creditoris
(4) Z will only be liable if she damages or destroys the car through ordinary negligence after J has refused to accept delivery of the car
(5) J may not refuse to accept delivery of the damaged car if Z offers delivery of the car again.

Answer: 4

Question 16:

Z sells her house to J for R800 000. Their contract is not reduced to writing. J undertakes to pay R100 000 immediately to Z and the rest of the purchase price on the date of registration. J pays Z the R100 000 and immediately takes occupation of the house. Before the sale, Z lets her house for R5000 per month. J vacates the house after 3 months but before the registration in his name can take place. Which one of the following statements is INCORRECT?

(1) J does not breach the contract by vacating the house
(2) Ownership of the house did not pass to J
(3) J can claim back the payment of the R100 000 from Z
(4) Z will probably be able to claim R15 000 from J as this amount is probably reasonable compensation for the occupation of the house
(5) J cannot claim any interest on the R100 000 he paid to Z.

Answer: 5

Question 17:

In which case was it held that a seller would be deprived of the protection of a "voetstoots" clause if the seller was aware of a latent defect in the thing sold at the time of the conclusion of the contract and *dolo malo* concealed its existence from the buyer with the purpose of defrauding the buyer?

(1) Janse van Rensburg v Grieve Trust CC 2000 (1) SA 315 (C)
(2) Kroonstad Westlike Boere Ko-operatiewe Vereniging Bpk v Botha 1964 (3) SA 561 (A)
(3) Phame (Pty) Ltd v Paizes 1973 (3) SA 397 (A)
(4) Dibley v Furter 1961 (4) SA 73 (C)
(5) van der Merwe v Meades 1991 (2) SA 1 (A)

Answer: 5

Question 18:

Which of the following statements regarding the Alienation of Land Act 68 of 1981 ia INCORRECT?

(1) The executor of a deceased estate needs the written authorization from the Master to sell land in a deceased estate
(2) A written authorization of a member of ABC Estate Agents to conclude a sale of land on behalf of the principal is valid authorization
(3) A written authorization of an agent (representative) to sell land need apparently not be signed by the principal
(4) The parties to a deed of alienation may validly sign anywhere in the document
(5) The contract where one party swaps a Porsche car for another party's sectional title flat has to be in writing in order for it to be valid.

Answer: 1

Question 19:

X buys Y's TV for R7000. During negotiations, X tells Y that he wants to buy her TV because it is a high definition set which is able to receive digital broadcasting but Y does not tell him that the TV can't do this as she wants to sell her TV to him. X pays the price and takes the TV. He then discovers that the TV is not a high definition and can't receive digital broadcasting. X has a claim against Y on the following possible ground(s):

(a) Y has made an intentional misrepresentation
(b) Y has made a dictum et promissum
(c) Y has made an innocent misrepresentation
(d) Y gave an express warranty

(1) (a)
(2) (d)
(3) (a) and (d)
(4) (a), (b) and (d)
(5) (a), (b), (c) and (d)

Answer: 1

Question 20:

Which case would you consult to determine the answer to Question 19 above?

(a) Minister van Landbou Tegniese Dienste v Scholtz 1971 (3) SA 188 (A)
(b) Glaston House (Pty) Ltd v Inag (Pty) Ltd 1977 (2) SA 846 (A)
(c) Dibley v Furter 1961 (4) SA 73 (C)
(d) Phame (Pty) Ltd v Paizes 1973 (3) SA 397 (A)

(1) (a)
(2) (b) and (c)
(3) (b) and (d)
(4) (b), (c) and (d)

Answer: 2

Question 21:

X orders a lounge suite from Y for R20 000. They agree that Y will make the suite from stinkwood and pine which X will provide. X delivers the wood but before Y can make the suite, the wood is destroyed in a fire caused by lightning.

Which one of the following statements is CORRECT?

(1) Y's claim for payment of R20 000 will succeed as the contract is perfecta
(2) The parties concluded a valid emptio rei speratae
(3) Y's claim for payment of the R20 000 will fail as the contract was terminated due to initial Impossibility of performance
(4) The parties concluded a valid locatio conductio operas
(5) All the above statements are correct.

Answer: 4

Question 22:

Which case would you consult to determine what type of contract Y and X concluded in Question 21 above?

(1) Minister van Landbou Tegniese Dienste v Scholtz 1971 (3) SA 188 (A)
(2) SA Wood Turning Mills (Pty) Ltd v Price Bros (Pty) Ltd 1962 (4) SA 263 (T)
(3) Glaston House (Pty) Ltd v Inag (Pty) Ltd 1977 (2) SA 846 (A)
(4) Dibley v Furter 1961 (4) SA 73 (C)
(5) Phame (Pty) Ltd v Paizes 1973 (3) SA 397 (A)

Answer: 2

Question 23:

Peter orders a lounge suite from Koos for R20 000. They agree that Koos will make the suite from pine wood which Peter will provide. This is an example of:

(1) A locatio conductio rei speratae
(2) An emptio rei speratae
(3) An emptio spei
(4) A locatio conductio operas
(5) A locatio conductio operarum

Answer: 4

Question 24:

Sam orders a dress from her tailor, who then quotes her R5000 to make the dress. This is an example of:

(1) A locatio conductio rei speratae
(2) An emptio rei speratae
(3) An emptio spei
(4) A locatio conductio operas
(5) A locatio conductio

Answer: 2

Question 25:

Which case would you consult to determine the type of contracts above in Questions 23 and 24?

(1) Minister van Landbou Tegniese Dienste v Scholtz 1971 (#) SA 188 (A)
(2) Kroonstad Westlike Boere Ko-operatiewe Vereniging Bpk v Botha and another 1964 (3) SA 516 (A)
(3) SA Wood Turning Mills (Pty) Ltd v Price Bros (Pty) Ltd 1962 (4) SA 263 (T)
(4) Dibley v Furter 1961 (4) SA 73 (C)
(5) Phame (Pty) Lts v Paizes 1973 (3) SA 397 (A)

Answer: 3

Question 26:

Jane rents a flat from Janet from 1 January to 31 December 2006. However, before Jane can move in, Janet informs her that she needs the flat for her own purposes and that Jane must look elsewhere for accommodation. What form of breach has Janet committed?

(1) Repudiation
(2) Mora debitoris
(3) Mora creditoris
(4) Prevention of performance.

Answer: 1 - She will not abide by her contractual obligations and has therefore repudiated the contract.

Question 27:

Refer to the facts above – Janet proceeds to let the same flat for the same period to Michael but for more rent. Which one of the following statements is CORRECT?

(1) Jane may only claim possible damages from Janet on the basis of breach of contract
(2) Jane has no legal remedy to prevent Michael from occupying the flat
(3) Jane has the expectation of acquiring a real right for occupation of the flat which she may enforce by way of an interdict
(4) Jane has a personal right against Janet for occupation of the flat which she may enforce by way of an interdict

Answer: 4 - Jane indeed has a personal right against Janet for occupation of the flat which she may enforce by way of an interdict.

Question 28:

Goldberg v Buytendag applies the general contractual principles applicable to:

(1) Positive malperformance
(2) Mora debitoris
(3) Mora creditoris
(4) Prevention of performance

Answer: 2 - Mora debitoris is applicable where the lessee is in default with payment of the rent.

Question 29:

Which one of the following statements is INCORRECT?

(1) A person need not be the owner of a thing to validly sell it
(2) The Aediltian actions are available where the thing sold suffered from a latent defect
(3) The seller's liability for damage to the thing sold after conclusion of the contract but before delivery is based in delict
(4) A registered servitude can interfere with the seller's duty to deliver the thing sold.

Answer: 3 - The seller's liability for damage to the thing sold after conclusion of the contract but before delivery is not based in delict but in contract.

Question 30:

Which one of the following statements is INCORRECT?

(1) In *Kessoopersadh v Essop 1970 (1) SA 265 (A)* the court disapproved of the views expressed in *Alternators (SA) (Pty) Ltd v Boulanger 1969 (3) SA 75 (T)*
(2) In *Poynton v Cran 1910 AD 205* the court confirmed that the condition in which the thing is delivered must be in accordance with the provisions of the lease.
(3) In *De Jager v Sisana 1930 AD 71* the court held that the occupier did not acquire a real right.
(4) In *Spies v Lombard 1950 (3) SA 469 (A)* the court held that the *Placaat* of Holland of September 1658 did not apply in South Africa. (1)

Answer: 4 - Spies v Lombard 1950

Question 31:

X hired shop premises from Y for the purpose of carrying on an antique dealer's business. The roof of the shop was found to have leaks. When it rained small pools formed in the shop, the leaks mainly affected the front section of the shop. On one occasion a precious chaise-longue became sopping wet and could not be sold. During the rainy season and especially at nights and over weekends X, the lessee, was constrained to move his Persian rugs and antiques to the dry rear of the shop. He was thus deprived of the advertising advantage of his shop window. After the rain the water continued to drip for a few days thereby detracting from the overall appearance of the shop. Which common-law obligation does Y breach?

(1) Y must deliver the thing.
(2) Y must guarantee X against eviction
(3) Y must not disturb X in his possession
(4) Y must deliver the thing in a specific condition and maintain it (1)

Answer: 4 - The lessor must deliver the thing in a condition in accordance with the express or implied provisions of the agreement and fit for the purposes for which it was intended.

Question 32:

Refer to the set of facts in Question 31. Is the obligation which rests on Y:

(1) An *ex lege* warranty?
(2) A real right?
(3) A personal right?
(4) A tacit warranty? (1)

Answer: 1

Question 33:

Simon leases a flat from Ezra for two years. After two years Simon remains in the flat and continues to pay the rent which Ezra accepts. This constitutes:

(1) A continuation of the original lease
(2) A case of holding over
(3) A case where no contract exists between the parties and which falls to be determined in terms of the law of unjustified enrichment
(4) A new lease. (1)

Answer: 4 - This is a tacit renewal which comprises a new lease contract

Question 34:

Which one of the following statements on section 2(1) of the Alienation of Land Act 68 of 1981 is INCORRECT?

(1) Signing a deed of alienation with initials is a valid signature.
(2) A street address is sufficient to identify the land in a deed of alienation.
(3) A term which only contains information need not be in writing in a deed

of alienation.

(4) A principal can validly ratify a deed of ratification which was entered Into by a person who did not have the necessary written authority when he signed the deed of alienation.

Answer: 4

Question 35:

Jack agrees with John to sell his house to John for an amount of R750 000. including agent's commission. Later the agreement is reduced to writing but the contract does not stipulate that the price includes agent's commission although it does state that agent's commission is payable by the purchaser. Jack now asserts that John must pay agent's commission in addition to the purchase price. What would the appropriate remedy for John be in the circumstances?

(1) An action for breach of contract
(2) An action for declaring the contract void for material mistake
(3) An action based on misrepresentation
(4) A claim for rectification.

Answer: 4 - Deed of alienation does not accurately reflect intention of the parties but is prima facie valid and capable of being rectified.

Question 36:

In *Glaston House (Pty) Ltd v Inag (Pty) Ltd 1977 (2) SA 846 (A)* the plaintiff succeeded on the basis of

(1) The Aedilitian remedies
(2) The *actio empti*
(3) Breach of contract by way of positive malperformance
(4) Fraudulent misrepresentation. (1)

Answer: 4

Question 37:

Which one of the following statements is CORRECT?

(1) The purchaser can always select the thing sold in an alternative sale
(2) A valid contract does not arise if the two *essentialia* for a sale is absent as terms of the contract
(3) A contract of sale for a reasonable price can be valid in certain circumstances
(4) A contract of sale in which the price is to be determined by a third party, only comes Into being after a reasonable price has been determined by the third party. (1)

Answer 3

Question 38:

Which one of the following statements is CORRECT?

(1) A valid contract of sale is concluded only after the seller has delivered the thing sold to the purchaser
(2) In *SA Wood Turning Mills (Pty) Ltd v Price Bros (Pty) Ltd* 1962 (4) SA 263 (T) the court held that the contract was a *locatio conductio operas*
(3) An *emptio spei* is a contract of sale subject to a suspensive condition
(4) A contract of sale in which a dentist undertakes to make a set of dentures with the dentist's own material for a patient for R2000 is an *emptio rei speratae.* (1)

Answer: 4

In SA Wood Turning Mills (Pty) Ltd v Price Bros (Pty) Ltd 1962 (4) SA 263 (T) 266 the court held that where a person makes an article from his own material for someone else the contract is one of sale. In this case it is the sale of a thing yet to come into existence or rather an *emptio rei speratae.*

Question 39:

In *Sweets From Heaven (Pty) Ltd v Ster Kinekor Films (Pty) Ltd* the court:

(1) Extended the meaning of commodus usus
(2) Restricted the meaning of commodus usus
(3) Overruled the decision in *Sishen Hotel v Suid-Afrikaanse Yster en Staal Industriele Korporasie Bpk*
(4) Did not regard prevention of loss of profit to the lessee as an obligation implied by law on the lessor.

Answer: 4

Question 40:

Which one of the following statements on section 2(1) of the Alienation of Land Act 68 of 1981 is INCORRECT?

(1) Signing a deed of alienation with initials is a valid signature.
(2) A street address is sufficient to identify the land in a deed of alienation
(3) A term which only contains information need not be in writing in a deed of alienation
(4) A principal can validly ratify a deed of alienation which was entered into by a person who did not have the necessary written authority when he signed the deed of alienation. (1)

Answer: 4

Question 41:

John leases a video camera from Peter for 21 December 2005 in order to video his daughter's 21st birthday celebrations. However, the video camera is defective and does not give a clear picture. Which form of breach of contract is Peter guilty of?

(1) Positive malperformance
(2) Mora debitoris
(3) Mora creditoris
(4) Prevention of performance.

Answer: 1

Question 42:

Peter rents a farm from Michael and erects a security fence around the farmhouse without Michael's knowledge. Upon expiration of the lease Peter will be entitled to:

(1) Claim the expense of erecting the fence
(2) Claim the expense of erecting the fence and remain in occupation of the property until compensated
(3) Remove the fence
(4) Claim the amount by which the fence has increased the value of the property.

Answer: 3

Question 43:

Which one of the following statements is INCORRECT?

(1) In *Kessoopersadh v Essop* the court disapproved of the views expressed in *Alternators v Boulanger*
(2) In *Poynton v Cran* the court confirmed that the condition in which the thing is delivered must be in accordance with the provisions of the lease
(3) In *De Jager v Sisana* the court held that the occupier did not acquire a real right
(4) In *Spies v Lombard* the court held that the Placaat of Holland of September 1658 did not apply in SA.

Answer: 4

Question 44:

Simon leases a flat from Ezra for two years. After two years Simon remains in the flat and continues to pay rent which Ezra accepts. This constitutes:

(1) A continuation of the original lease
(2) A case of holding over
(3) A case where no contract exists between the parties and which fails to be determined in terms of the law of unjustified enrichment
(4) A new lease.

Answer: 4

Question 45:

Z sells her haystack to J for R50 per 50kg bag. A day later, the haystack burns down after being struck by lightning. Z claims that the haystack was at least 100 sacks big and that J owes her R5000. Which of the following is CORRECT?

(a) Z will succeed in her claim of the R5000 from J, cause J carried the risk of destruction of the thing sold
(b) Z cannot claim the R5000 from J cause a valid contract of sale will only arise after the haystack has been measured
(c) Z will succeed in her claim of R5000 from J cause the parties concluded a valid *emptio ad mensuram*
(d) Z can't claim R5000 from J cause the contract of sale is only perfecta when the haystack has been measured.

(1) (a)
(2) (b)
(3) (d)
(4) (a) and (c)
(5) (b) and (d)

Answer: 3

Question 46:

Refer to the set of facts in Question 25. If X institutes a claim for damages against Y what effect would the fact that Y knew about the leaking roof at the time of the conclusion of the contract have on X's claim against Y for damages?

(1) It makes it easier for X to prove damages
(2) X does not have to prove that the leak existed
(3) X will succeed in his claim against Y for damages
(4) X will not succeed in his claim against Y for damages.

Answer: 3

Question 47:

Refer to the set of facts in Question 25. Is the obligation which rests on Y:

(1) An ex lege warranty?
(2) A real right?
(3) A personal right?
(4) A tacit warranty?

Answer: 1

Question 48:

Refer to the set of facts in Question 25. If X had in terms of his lease contract undertaken to effect repairs what repairs would X be expected to effect?

(1) Structural alterations
(2) Ordinary repairs
(3) Both of the above
(4) None of the above.

Answer: 3

Question 49:

Refer to the set of facts in Question 25. At what stage must Y make repairs due to wear and tear?

(1) When wear and tear affect the beauty of the property
(2) When wear and tear were caused by an act of God
(3) When wear and tear make the property unfit for use
(4) As soon as the wear and tear becomes visible.

Answer: 3

Question 50:

Which one of the following statements on Section 2(1) of the Alienation of Land Act 69 pf 1981 is INCORRECT?

(1) Signing a deed of alienation with initials is a valid signature
(2) A street address is sufficient to identify the land in a deed of alienation
(3) A term which only contains information need not be in writing in a deed of alienation
(4) A principal can validly ratify a deed of alienation which was entered into by a person who did not have the necessary written authority when he signed the deed of alienation.

Answer: 4

Question 51:

Which one of the following statements is CORRECT?

(1) A valid contract of sale is concluded only after the seller has delivered the thing sold to the purchaser
(2) In SA Wood Turning Mills (Pty) Ltd v Price Bros (Pty) Ltd the court held that the contract was a *locatio conducto operis*
(3) An *emptio spei* is a contract of sale subject to a suspensive condition
(4) A contract of sale in which a dentist undertakes to make a set of denture's with the dentist's own material for a patient for R2000 is an *emptio rei speratae.*

Answer: 4 - SA Wood Turning Mills said the sale in casu was a emptio rei speratae when the seller uses his own material.

Question 52:

Which one of the following statements is CORRECT?

(1) The purchaser can always select the thing sold in an alternative sale
(2) A valid contract does not arise if the two essentialia for a sale is absent as terms of the contract
(3) A contract of sale for a reasonable price can be valid in certain circumstances
(4) A contract of sale in which the price is to be determined by a third party only comes into being after a reasonable price has been determined by the third party.

Answer: 3 - (The word "always" in option (1) should indicate this is incorrect. Regarding option (2), a valid CONTRACT can arise, it may just not Be a sale contract!)

Question 53:

The "cooling off" right in terms of Section 29A of the Alienation of Land Act 68 of 1981 is available to the purchaser in the following instances:

(1) Sale of agricultural land
(2) Sale of residential land by a closed corporation
(3) Sale of a unit as defined by section 1 of the Sectional Titles Act 95 of 1986 for a price of R300 000
(4) None of the above.

Answer: 2

Question 54:

X, a merchant, sells Y an Easy Wash wshing machine for R2000. Which one of the following statements is INCORRECT?

(1) This is a generic sale
(2) X must deliver the washing machine to Y's home without any agreement between X and Y to this effect
(3) X must individualise the washing machine from X's other stock
(4) X must place the washing machine, which was individualized, at the disposal of Y.

Answer: 2

Question 55:

In SA Wood Turning Mills (Pty) Ltd v Price Bros (Pty) Ltd the court held that the contract was one of:

(1) *Locatio conductio operas*
(2) *Locatio conductio operarum*
(3) *Quantum meruit*
(4) *Emptio et venditio.*

Answer: 4

Question 56:

A clause in a contract of sale excluding the seller from liability for eviction will not preclude a claim by the purchaser for:

(1) Restitution
(2) General damages
(3) Special damages
(4) Specific performance. (1)

Answer: 1

Question 57:

Which one of the following statements is INCORRECT?

(1) A contractual discretion which confers on one party the right to reasonably determine the price is valid
(2) A tacit undertaking to pay for a certain price is valid
(3) A contract of sale for a reasonable price can be valid in certain circumstances
(4) A contract of sale in which the price is to be determined by a third party is valid.

Answer: 1

Question 58:

Peter rents a farm from Michael and erects a security fence around the farm house without Michael's knowledge. Upon the expiration of the lease Peter will be en titled to:

(1) Claim the expense of erecting the fence and remain in occupation of the property until compensated
(2) Remove the fence
(3) Claim the amount by which the fence has increased the value of the property
(4) More than one of the above. (1)

Answer: 2 - Article 12 of the Placaats which provides that structures erected without the consent of the owner must be broken down or remain without compensation to the tenant.

Question 59:

In *Glaston House (Pty) Ltd v Inag (Pty) Ltd* the plaintiff succeeded on the basis of:

(1) The Aedilitian remedies
(2) The *actio empti*
(3) Breach of contract by way of positive malperformance
(4) Fraudulent misrepresentation.

Answer: 4

Question 60:

Van der Merwe v Meads 1991 implies that where a sale agreement contains a voetstoots clause the seller:

(1) Will not be liable for breach of contract
(2) May be absolved from liability for fraudulent misrepresentation by way of omission
(3) May be absolved from liability for negligent misrepresentation by way of omission
(4) Will not be liable on the basis of tacit warranty.

Answer: 3 - The court held that where there was an omission regarding a latent defect a seller would only be deprived of the protection afforded by a voetstoots clause where the purchaser could prove that the seller was actually aware of the existence of the defect and *dolo malo* or intentionally kept silent with the purpose of defrauding him. The implication is that where the seller is unaware but negligent, he may be absolved from liability for negligent misrepresentation specifically as regards the latent defect.

Question 61:

In *Minister van Landbou Tegniese Dienste v Scholtz 1971* the purchaser based its claim against the seller on:

(1) Breach of an ex lege term
(2) Breach of a tacit warranty
(3) The Aedilitian actions for latent defects
(4) Fraudulent misrepresentation.

Answer: 2

Question 62:

Which one of the following statements is INCORRECT?

(1) In terms of the positive law the lessee of rural property cannot sublet without the Lessor's consent
(2) A stipulation in a lease that the lease will automatically terminate upon the sequestration of either party is invalid
(3) Where an owner rents his or her own property the lease automatically terminates
(4) A lease for a definite period does not automatically terminate upon death.

Answer: 3 - Where an owner rents his or her own property the lease does not always automatically terminate due to merger.

Question 63:

According to which decision does a lessee of immovable property automatically retain a right to occupation upon a change in ownership of the property:

(1) De Jager v Sisana
(2) Genac Properties JMB v HBC
(3) Genna Wae Properties v Medio-Tronics
(4) Ndlovu v Ngcobo, Bekker and Another v Jika.

Answer: 3

Question 64:

A clause in a contract of sale excluding the seller from liability for eviction will not preclude a claim by the purchaser for:

(1) Restitution
(2) General damages
(3) Special damages
(4) Specific performance.

Answer: 1 - Vrystaat Motors v Henry Blignaut

Question 65:

According to the Placaat of 1658 the tenant has:

(1) A right to compensation for useful improvements before expiration of the lease
(2) A right to compensation for useful improvements after expiration of the lease
(3) A *ius tollendi*
(4) No rights.

Answer: 3 - In terms of the Placaat the tenant has no automatic claim for useful improvements but he may remove the fixtures.

Question 66:

Which of the following statements regarding the Alienation of Land Act 68 of 1981 is INCORRECT?

(1) Signing of deed of alienation with initials is a valid signature
(2) A street address is sufficient to identify the land in a deed of alienation
(3) A term which only contains information need not be in writing in a deed of alienation
(4) A principal can validly ratify a deed of alienation which was entered into by a person who did not have the necessary written authority when he signed the deed of alienation
(5) The document in which the authority was granted to an agent need apparently not be signed by the principal.

Answer: 4

Question 67:

Which of the following statements on the Alienation of Land Act 68 of 1981 is INCORRECT?

(1) The doctrine of the undisclosed principal cannot find application in regard to the alienation of land
(2) When a company acts through its organs in buying land, the organs acts as agents of the co and require written authority to act on behalf of the co.
(3) S2 of the act does not apply to sales of land by public auction
(4) Waiver of a right in a deed of alienation is not a variation of the deed and need not be in writing
(5) A cancelled deed of alienation may be formally revived by the parties, thus need not be in writing.

Answer: 2

Question 68:

Which statement regarding S29(A) of the Alienation of Land Act 68 of 1981 is INCORRECT?

(1) S29(A) does not apply where the purchase price of the land, or the price offered for the land, exceeds R250 000, or such higher amount as the Minister may prescribe
(2) S29(A) does not apply where the buyer/prospective buyer is a trust or a person other than a natural person
(3) S29(A) does not apply where the buyer has bought the land at a publicly advertised auction
(4) S29(A) does not apply where the buyer and the seller previously entered Into a deed of alienation in respect of the same land
(5) S29(A) does not apply where the buyer buys the land by exercising an option which was open for exercise for a period of at least 5 days.

Answer: 4

Question 69:

The "cooling off right" in terms of S29(A) of the Alienation of Land Act 68 of 1981 is available to a buyer in the following instance:

(1) Sale of a sectional title flat for R220 000 by exercising an option which was open for exercise for 2 days
(2) Purchase of a house at a publicly advertised auction
(3) Sale of a house for R800 000
(4) Purchase of a house by a trust
(5) Sale of a farm.

Answer: 1

Question 70:

Which of the following statements is CORRECT?

(1) A seller can be liable for consequential damages resulting from a latent defect in certain circumstances
(2) An *emptio spei* is a contract of sale subject to a resolutive condition
(3) A sale for a reasonable price can never be valid
(4) The seller can never select the thing sold in an alternative sale
(5) An *emptio spei* often occurs in commerce.

Answer: 1

Question 71:

In Bayer South Africa (Pty) Ltd v Frost 1991 (4) SA 559 (A) the plaintiff succeeded on the basis of:

(1) The aedilitian remedies
(2) The *actio empti*
(3) Breach of contract by way of positive malperformance
(4) Negligent misrepresentation
(5) Fraudulent misrepresentation.

Answer: 4

Question 72:

In Glaston House (Pty) Ltd v Inag (Pty) Ltd 1977 2 SA 846 (A) the plaintiff succeeded on the basis of:

(1) The aedilitian remedies
(2) The *actio empti*
(3) Breach of contract by way of positive malperformance
(4) Negligent misrepresentation
(5) Fraudulent misrepresentation.

Answer: 5

Question 73:

In which case did the court hold that the aedilitian remedies are available to the buyer if the seller made a false material statement to the buyer during negotiations bearing on the quality of the thing sold and going beyond mere praise and commendation?

(1) Glaston House (Pty) Ltd v Inag (Pty) Ltd 1977 (2) SA 846 (A)
(2) van der Merwe v Meades 1991 (2) SA 1 (A)
(3) Phame (Pty) Ltd v Paizes 1973 (3) SA 397 (A)
(4) Dibley v Furter 1961 (4) SA 73 (C)
(5) Janse van Rensburg v Grieve Trust CC 2000 (1) SA 1315 (C)

Answer: 3

Question 74:

Fanie rents a farm from Fran and erects a security fence around the farm with Fran's permission. Upon the expiration of the lease Fanie will be able to:

(1) Claim the expense of erecting the fence and remain in occupation of the property until compensated
(2) Claim the value of the bare materials of the fence at the time of assessment of the value just as if they were removed from the ground and remain in occupation of the property until compensated
(3) Claim the amount by which the fence has increased the value of the property
(4) Claim the value of the bare materials at the time of assessment of the value just as if they were removed from the ground after vacating the property
(5) Remove the fence but only if Fran gives him written permission to do so.

Answer: 4

Question 75:

In Poynton v Cran 1910 AD 205 the court:

(1) Found that the occupier did not acquire a real right
(2) Confirmed that the condition in which the thing is delivered must be in accordance with the provisions of the lease
(3) Held that the penalty provisions of article 9 of the Placaat of Holland of September 1658 did not apply in South Africa
(4) Held that the lessee of immovable property automatically retains the right in occupation upon change of ownership of the property

(5) Applied the general contractual principles applicable to *mora debitoris* where the lessee failed to pay the rent.

Answer: 2

Question 76:

Fanie leases Fran's flat for one year. In terms of their written agreement Fanie has to pay the rent of R3000 in advance on the first day of the month. Fanie is also given the option to buy her flat for R400000 at any time during the lease. Fanie exercises his option to buy the flat in writing. Which of the following statement(s) is/are correct?

(a) A valid contract of sale for the flat was concluded
(b) The lease is terminated by the fact that Fanie exercised his option
(c) The lease will be terminated when the flat is registered in Fanie's name
(d) Their contract changes one of the naturalia of a contract of lease.

(1) (a), (b) and (d)
(2) (a), (c) and (d)
(3) (a) and (b)
(4) (a) and (c)
(5) (d)

Answer: 2

Question 77:

In Spies v Lombard 1950 (3) SA 469 (A) the court

(1) Found that the occupier did not acquire a real right
(2) Confirmed that the condition in which the thing is delivered must be in accordance with the provisions of the lease
(3) Held that the penalty provisions of article 9 of the Placaat of Holland of September 1658 did apply in South Africa
(4) Held that the lessee of immovable property automatically retains the right to occupation upon change of ownership of the property
(5) Applied the general contractual principles applicable to *mora debitoris* where the lessee failed to pay the rent.

Answer: 3

Question 78:

In De Jager v Sisana 1930 AD 71 the court:

(1) Found that the occupier did not acquire a real right.
(2) Confirmed that the condition in which the thing is delivered must be in accordance with the provisions of the lease
(3) Held that the penalty provisions of article 9 of the Placaat of Holland of September 1658 did not apply in South Africa
(4) Held that the lessee of immovable property automatically retains the right to occupation upon change of ownership of the property
(5) Applied the general contractual principles applicable to *mora debitoris* where the lessee failed to pay the rent.

Answer: 1

Question 79:

In terms of Article 12 of the Placaat of Holland of September 1658 a tenant of rural property who effects improvements to the property without the owners permission

(1) May claim compensation for necessary improvements
(2) May claim compensation for useful expenses
(3) May claim compensation for necessary improvements and useful Improvements but not luxurious improvements
(4) May remove the improvements irrespective of its nature before the expiration of the lease
(5) May remove the improvement irrespective of its nature after the expiration of the lease.

Answer: 4

Question 80:

Which one of the following statements is INCORRECT?

(1) A thing which has not yet come into existence can be let
(2) *Commodus usus* includes the idea of profit where the lessee runs a business from the leased premises
(3) Remission of rent may be viewed as a specific application of supervening Impossibility of performance
(4) In certain circumstances the lessor may be liable for consequential damages resulting from a defect the thing let.

Answer: 2 - Sishen Hotel, the court found that in that case *commodus usus* included the idea of profit where the lessee ran a business from the leased premises. However, this seems to amount to a tacit term implied within the circumstances of that case as opposed to a term which would apply in all cases of a similar nature. This is thus an exception and not a general rule.

Question 81:

The "cooling off" right in terms of section 29A of the Alienation of Land Act 68 of 1981 is available to the purchase in the following instance:

(1) Sale of agricultural land
(2) Sale of residential land by a closed corporation
(3) Sale of a unit as defined by section 1 of the Sectional Titles Act 95 of 1986 for a price of R600 000
(4) None of the above.

Answer: 2

Question 82:

In Phame (Pty) Ltd v Paizes 1973 (3) SA 397 (A) the plaintiff was entitled to a price reduction on the basis of:

(1) Intentional misrepresentation
(2) Negligent misrepresentation
(3) Innocent misrepresentation
(4) A *dictum et promissum.*

Answer: 4

Question 83:

Which of the following statements are CORRECT?

(1) The undertaking to deliver a thing and an undertaking to pay a price are the 2 essentialia of a contract of sale
(2) The undertaking to deliver a thing by the owner and the undertaking to pay a price are the 2 essentialia of a contract of sale
(3) A valid contract of sale comes into being once the contract of sale is perfecta
(4) A valid contract only comes into being once the purchase price has been paid and the thing sold is delivered
(5) None of the above.

Answer: 1

Question 84:

Supervening impossibility of performance fins concrete expression in the law of lease in the guise of:

(1) The Placaat of 1658
(2) Remission of rent
(3) Huur gaat voor koop rule
(4) None of the above.

Answer: 2

Question 85:

ABC Ltd orders 15 Mercedes Benz A180 vehicles from Mercedes at R250 000 per vehicle. The vehicles are to be manufactured and delivered within 6 months. This is an example of:

(a) An *emptio rei speratae*
(b) An *emptio spei*
(c) An *emptio an mensuram*
(d) An alternative sale
(e) A generic sale.

(1) (a) and (c)
(2) (b) and (c)

(3) (b) and (d)
(4) (a) and (c)
(5) (b) and (e)

Answer: 4 - (Answer is also a mensuram but the option is not available – thus use (a) and (e)).

Question 86:

Which of the following statements are CORRECT?

(a) The undertaking to deliver a thing and an undertaking to pay a price are the 2 essentialia of a contract of sale
(b) If one of the essentialia of a sale is absent the contract is always invalid
(c) A valid contract of sale only comes into being once the contract of sale Is perfecta
(d) A valid contract only comes into existence once the purchase price has been paid and the thing sold has been delivered.

(1) (a)
(2) (a) and (b)
(3) (a) and (c)
(4) (a) and (d)
(5) All the statements

Answer: 1