QUESTION 1 – 25 MARKS

(1) Referring to the decided cases, explain the requirements that a response to an offer must comply with in order to constitute an acceptance. After doing this, comment briefly on the legal position in the following cases:

(a) Sibisi and Boola meet for lunch and Sibisi mentions that he has a 4 x 4 vehicle that he wishes to sell. Boola says that he is not interested in buying the vehicle, and the discussion moves on to another topic. A few days later, Boola sends a fax to Sibisi saying that he has reconsidered the matter and agrees to buy the 4 x 4 for the price mentioned by Sibisi. Boola concludes as follows: ‘If I do not hear from you by the end of next week, I shall assume that the sale is concluded and shall arrange for the money to be transferred into your account.’ Sibisi does not respond within the time stated.

(b) After negotiations between the parties, Velvet offers to sell his motor car to Black for R50 000, payable within 3 months of delivery. Black replies by fax: ‘Will you accept R45 000, payable within 2 months of delivery?’ Velvet does not answer this fax. Black then sends another fax: ‘I think you are pushing a hard bargain. A price of R45 000 would seem to be a fairer. Nevertheless, I have decided to accept your offer provided that the car has done the mileage you say it has and has no latent defects. As far as the time for payment is concerned, I can’t give you any immediate answer because I have not spoken to my employer, who is financing the deal.’ A few days later, Black sends a message to Velvet: ‘My employer tells me that the required finance has come through. I can definitely manage payment within 3 months. When can I take delivery of the car?’

[15]

(2) ‘The court has no power to supplement the bargain between the parties by adding a term which they would have been wise to agree upon, although they did not. The fact that the suggested term would have been a reasonable one for them to adopt or that its incorporation would avoid an inequity or hardship to one of the parties, is not enough.’

Continued…/
Question 1 (continued)

In the light of this statement, explain when a court will imply a tacit term in a contract. Illustrate by referring to the decided cases.

[10]

QUESTION 2 – 25 MARKS

Making reference to the decided cases, explain the following:

(1) The juristic nature of cession.

(2) The cedability of personal rights in general, and the various restrictions on cedability.

(3) The requirements for a valid cession (provide an outline of what is, and what is not, required).

(4) The consequences of cession and, in particular, whether the debtor may raise defences against, claim relief from, 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) XY Bank, having advanced a sum of money on overdraft to its customer, Cedric, cedes its right to payment in terms of the overdraft to Herbert. Cedric, who does not want the details of his financial position to become generally known, inquires whether XY Bank has the power to cede its overdraft right without first consulting him and obtaining his consent?

(c) C1, who is owed a money debt by D, cedes his right to payment of the debt to C2, but fails to inform D of the cession. D subsequently pays the amount of the debt in good faith to C1’s secretary (who has authority to accept payment). C2 wants to know what the legal position is and whether he can recover the amount of the debt.

(d) 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. 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 (ie, R5 000, payable in instalments of R1 000) 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 has ‘rescinded 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.

Continued…/
Question 2 (continued)

(e) S sells and delivers goods to B, payment of the 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 price arrives. S responds by selling and ceding his right to payment of the 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.

QUESTION 3 – 25 MARKS

(1) Outline the requirements which must be satisfied for set-off to take place and explain the operation and effect of set-off. Having done so, answer the following questions, giving brief reasons for your answer 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) Explain where the set-off operates 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 by one of the parties?

(e) What is the effect of the expression, ‘without deduction or set-off’?

[10]

(2) Mora debitoris is traditionally defined as the culpable (wrongful) failure by a debtor to perform his obligation timeously. Discuss this definition fully, making reference to the reported cases. In the course of your answer, explain the distinction between mora ex re and mora ex persona, and consider whether a party may fall into mora simply for failing to perform within a reasonable time after conclusion of the contract.

[15]

QUESTION 4 – 25 MARKS

‘The right of a contractant to a decree of specific performance is not an absolute one. In certain circumstances, the court is obliged to refuse specific performance, and in all other cases it has a discretion to do so.’

Continued…/
Question 4 (continued)

Write notes explaining each of the following:

(1) The meaning of the term ‘specific performance’ and the forms that an order of specific performance may take.

(2) The nature of a contractant’s entitlement to claim specific performance.

(3) The nature of the court’s discretion to refuse specific performance.

(4) Factors that are commonly regarded as militating against, or favouring, the granting of specific performance.

In the course of your answer comment on the decisions in *ISEP Structural Engineering and Plating (Pty) Ltd v Inland Exploration Co (Pty) Ltd* 1981 (4) SA 1 (A) and *Benson v SA Mutual Life Assurance Society* 1986 (1) SA 776 (A).

Having completed your discussion, briefly consider the following problems.

(a) L lets his house to T for 5 years. The contract provides that T is not entitled to make improvements to the premises, and that on expiry of the term of the lease, he must restore the premises to L in the same good order and condition in which he (T) received them. While the lease is in force, T installs expensive Italian tiles in the bathroom and lays carpets throughout the house, increasing the overall value of the property by some R15 000. When T vacates at the end of the lease, he does not remove the tiles and carpets. L ascertains that the reasonable cost of doing this will be R5 000 and wishes to recover this amount from T.

(b) B agrees to buy 1000 shares from S at a price of R50 per share, payment to be made on delivery of the share certificate. On the date agreed upon for delivery and payment B goes to S’s office and is told that S has left for London on urgent business and will only be back in two week’s time. The trading price of the shares on the Stock Exchange at this time is R50 per share. Before S returns, the price of the shares on the Stock Exchange soars to R80 per share. On S’s return, B again goes to see him and demands delivery of the shares against payment of R50 000. S refuses to deliver.

(c) Smiley, a carpenter who specializes in the making of cupboards, enters the employment of Mustah Builders (Pty) Ltd (MB). Smiley signs a written contract stating that, for the duration of the contract (a period of three years), he will not work as a carpenter for any other business manufacturing cupboards or enter the services of any competitor of MB. After a year, Smiley abandons his job at MB and goes to work for one of MB’s competitors. MB want to prevent him from doing so.

(d) Archibald is employed as the chief accountant and financial manager for Mainstream Products (Pty) Ltd. After an argument with the Managing Director of the company, he is unlawfully dismissed. He wants to obtain an order compelling the company to reinstate him.

Continued…/
(e) Orville engages Bricklay to build a wall across the front of his (Orville’s) property in return for payment of a lump sum on completion. Bricklay does part of the job and then refuses to perform any further until he receives part payment for the work he has done. Orville is satisfied with the quality of workmanship so far and wants an order compelling Bricklay to finish the job. He is happy to pay the contract price once the wall has been completed.

(f) The Bridal Suite at the Lush Hotel is a detached rondavel. To improve the attractiveness of the suite, the hotel orders an enormous circular water-bed from Eezee Furnishers, to be specially made for R300 000. Before Eezee Furnishers start making the bed, the rondavel is struck by lightning and destroyed. The hotel management informs Eezee Furnishers of this fact and asks them not to make the bed, as it will be too big to fit any other room in the hotel and they will have no use for it. Eezee Furnishers reply that they are going ahead with the order and will demand R300 000 on delivery of the bed in due course. Having completed the bed, they demand payment of R40 000 against delivery.