



NOVEMBER EXAMINATION

SUBJECT : CONSTRUCTION LAW 2B

CODE : CLWCOB2CLWCO2B

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DURATION : 3 HOURS

TOTAL MARKS : 100

EXAMINER : MISS N ISMAIL

MODERATOR : MRS S HASSEN

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QUESTION 1: Multiple Choice Questions

(23)

Answer the following questions by choosing the most correct statement in each instance.

1. The effect of the *caveat subscriptor* rule on a signatory who signs an agreement is that the:
 - a. signatory may decide whether to comply with the written agreement.
 - b. signatory is not bound by the written agreement.
 - c. signatory is bound by the written agreement.
 - d. None of the above
2. Several defences exist to rebut the *caveat subscriptor* rule. Which of the following is not such a defence?
 - a. Misrepresentation
 - b. Misinterpretation
 - c. Illegality
 - d. Mistake
3. Which of the following is a prerequisite of the parol evidence rule?
 - a. The agreement must not be reduced to writing or integrated into a single complete document.
 - b. The agreement must be concluded verbally.
 - c. No agreement must be entered into between the parties.
 - d. The agreement must be reduced to writing or integrated into a single complete document.
4. Which of the following provides a legitimate reason for a contract to be rectified?
 - a) To remedy a failure by one of the parties to comply with the law.
 - b) To remedy a reasonable error that transpired when the agreement was put into writing.
 - c) To ratify the contract.
 - d) None of the above.
5. In general terms, rectification means to -
 - a) correct something (usually an error).
 - b) approve or give formal consent to something or someone.
 - c) All of the above.
 - d) None of the above.
6. Identify the correct combination of requirements for a set-off agreement from the following:
 - i. Debts must be of a similar nature;
 - ii. Debts must be equal in sum;

- iii. Debts must be liquidated;
- iv. Debts must be claimable;
- v. Debts must be between the same persons.

- a) Only i, ii, iii are correct.
- b) Only iii and v are correct.
- c) Only i, ii, iii and iv are correct.
- d) Only i, iii, iv and v are correct.

7. Xolani and Boeta-Joe enter into an agreement for the R500 that Xolani owes Boeta-Joe to be extinguished and replaced with an obligation for Xolani to deliver his new pair of Nike sneakers, also worth R500 to Boeta-Joe. What is such an agreement called?

- a) Merger;
- b) Settlement;
- c) Novation;
- d) Set-off.

8. The following statements regarding cession are correct:

- i. Cession is where a party to a contract transfers his rights and duties to a third party;
- ii. Cession is where a debtor delegates his duties towards a creditor to a third party;
- iii. To effect cession no formalities are required;
- iv. With cession, the debtor's permission is not required for its validity.

- a) All of the above are correct
- b) Only i and iv are correct
- c) Only ii and iv are correct
- d) Only iii and iv are correct

9. Trudy enters into an agreement to purchase Karel's vintage rocking chair for R200 00.00 and immediately pays the purchase price. According to the agreement Karel needs to deliver the chair the following day before 1 pm. The night before delivery is to take place, a lightning storm hits Karel's home, which catches fire and the chair is completely destroyed. The contract is consequently terminated. What is the reason for the termination of their contract?

- a) Initial impossibility of performance
- b) Supervening impossibility of performance
- c) Prevention of performance
- d) Breach of contract

10. Kwena Productions (Pty) Ltd and Mbali Management Services (Pty) Ltd enter into a contract for the superstar Baba-Blessers - who is signed under Mbali Management Services, to perform at Kwena Productions' "Wena Slay-Queen Festival". However, unknown to the contracting parties Baba-Blessers passed on (died) three days before the conclusion of the contract from a drug overdose. The contract is consequently terminated. What is the reason for the termination of their contract?
- a) Supervening impossibility of performance
 - b) Prevention of performance
 - c) Initial impossibility of performance
 - d) Breach of contract
11. Nivashan who lives and works in Pretoria wants to be close to his family in Cape Town for Diwali celebrations. Consequently, Nivashan enters into a rental contract with Tyson for his Bloubaai beachside apartment for three days at R1000 a day, payable in full the day before Diwali. However, Tyson needs to provide Nivashan with his banking details to pay for the rental. On Diwali, Tyson has still not shared the information with Nivashan. The contract is consequently terminated. What is the reason for the termination of their contract?
- a) Supervening impossibility of performance
 - b) Prevention of performance
 - c) Positive malperformance
 - d) Initial impossibility
12. Which one of the following statements regarding prescription is incorrect?
- a) Any debt owed to the State and arising from an advance or loan of money, or a sale or lease of land by the State to the debtor will only prescribe after a period of 15 years;
 - b) A debt arising from a bill of exchange or other negotiable instrument or a notarial contract will only prescribe after a period of 6 years;
 - c) A debt secured by mortgage bond, judgment debt, a debt in respect of any taxation imposed or levied by or under the law will only prescribe after a period of 30 years;
 - d) Any other debt, except where a statute provides otherwise will only prescribe after a period of 3 years.
13. Firebrick Construction (Pty) Ltd is indebted to Thala Electricals CC for the amount of R100 000 for electrical work done on a variety of their building projects. On 11 October 2021, Firebricks Construction acquired one hundred percent of Thala Electrical's shareholding. This is known as a -
- a) Merger;
 - b) Settlement;
 - c) Novation;
 - d) Set-off.

14. Which of the following are correct forms of prescription?

- i. Recission prescription;
 - ii. Acquisitive prescription;
 - iii. Extinctive prescription;
 - iv. Inquisitive prescription.
-
- a) Only i is correct;
 - b) All of the above are correct;
 - c) Only ii and iii are correct;
 - d) Only i, iii and iv are correct;
 - e) Only iii and iv are correct.

15. Complete the following statement: "Prescription will start running as soon as...":

- i. ... the contract is formulated;
 - ii. ... the claim becomes enforceable;
 - iii. ... the claim is liquidated;
 - iv. ... the obligation is discharged;
 - v. ... the debt becomes due.
-
- a) Only ii and iv are correct
 - b) Only i, iii and iv are correct
 - c) Only ii and iii are correct
 - d) Only ii and v are correct

16. Which of the following is not a guideline which is usually considered by courts when interpreting contracts?

- a. Interpretation is a matter of law, not fact.
- b. The meaning of a word or provision must be determined by examining its language in the light of its factual context.
- c. The purpose of contract interpretation is to ascertain the objective meaning of the language in issue, not the common intention of the parties.
- d. Only a judge can interpret the true meaning of a contract.

17. Meghan agrees to cater for Portia's birthday party on 21 August for R5000. Portia and Meghan agree that Meghan will make two chicken dishes and two vegetarian dishes. In respect of repudiation, which of the following statements are correct?

- i. Meghan calls Portia on 20 August and tells Portia that she will not cater for her birthday.
- ii. Meghan denies that a contract came into existence and says she will not perform.
- iii. Meghan makes two chicken dishes and one vegetarian dish for the party and delivers it on 21 August.
- iv. Portia sees an advertisement on 20 August that informs him that Meghan is actually going to be catering for another event on 21 August and will not be catering for Portia's birthday party.

- a. i, ii, iii are correct.
 - b. i, ii, iv are correct.
 - c. ii and iii are correct.
 - d. All the above are correct.
18. Which of the following is NOT a requirement for *mora creditoris*?
- a. The creditor must fail to give his co-operation.
 - b. The debtor must render performance.
 - c. Performance must be dischargeable.
 - d. Performance must be impossible.
19. Which of the following is/are examples of *mora debitoris* in terms of this scenario?
Kyle must pay R5000 rent on the 1st day of every month.
- i. Kyle does not pay rent on 1 October 2021.
 - ii. Kyle pays his August rental on 5 October 2021.
 - iii. Kyle pays R4000 rent on 1 October 2021.
 - iv. Kyle pays R5000 rental on 2 October 2021.
- a. i, iii, iv are correct.
 - b. All the above are correct.
 - c. None of the above are correct.
 - d. i, ii, iv are correct.
20. In terms of repudiation, which of the following statements are true?
- i. There must be a lawful excuse for the repudiation to constitute a breach of contract.
 - ii. There must be an act of repudiation and an intention to repudiate.
 - iii. The repudiating party makes his performance impossible to perform.
 - iv. Repudiation is usually a form of anticipatory breach.
- a. All are correct.
 - b. None are correct.
 - c. ii, iii, iv are correct.
 - d. ii, iv are correct.
21. In terms of positive malperformance, which statement/s is/are correct?
- i. The breach may consist of a positive or negative act.
 - ii. The defaulting party renders incomplete performance.
 - iii. The defaulting party renders defective performance.
 - iv. This breach relates to the quality or content of the performance.
- a. All the above are correct.
 - b. i, iii, iv are correct.
 - c. i, ii, iii are correct.

- d. i, ii, iv are correct.
22. Which of the following ARE examples of breach of contract:
- i. John must pay his cellphone bill of R500 on the 15th day of every month, however he forgets to pay his monthly instalment in the third month.
 - ii. John must pay his cellphone bill on the 15th day of every month, however in the third month, John pays the R500 a day before the bill is due.
 - iii. John must pay his cellphone bill on the 15th day of every month, however in the third month he pays R400 on the 15th day.
 - iv. John must pay his cellphone bill on the 15th day of every month, however in the third month he pays R500 on the 17th day.
- a. ii, iii, iv are correct.
 - b. i, iii, iv are correct.
 - c. All the above are correct.
 - d. i, ii, iv are correct.
23. Which of the following is an example of *mora debitoris*?
- a. Mel agrees to deliver a couch to Sam on 1 October. On 1 October Sam's gate is locked and Mel cannot gain access to the property to deliver the couch.
 - b. Mel agrees to deliver a couch to Sam on 1 October. On 28 September, Mel sends an email to Sam to tell her that she is too tired to deliver the couch on 1 July.
 - c. Mel agrees to deliver a couch to Sam on 1 October. On 1 October Mel forgets to deliver the couch to Sam.
 - d. Mel agrees to deliver a couch to Sam on 1 October. On 1 October there is a protest on Sam's street and Mel cannot gain access to Sam's premises to deliver the couch.
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QUESTION 2: True or false

(11)

- 1. To rectify means to approve or give formal consent to something.
- 2. The debtor is the person who needs to perform an obligation under the contract.
- 3. Where Frank transfers his personal right to Colin and John is the person who needs to perform under this contract, Colin is known as the cessionary.
- 4. Where there is an agreement between Sandoka (Pty) Ltd and Gencore (Pty) Ltd for the transfer of both rights and duties this will constitute an assignment.
- 5. Cancellation is an act of withdrawing from a contract due to reasons other than a breach of contract.
- 6. In a contract between Mary and Susan, where Susan owes Mary performance in the form of 10 goats and Mary waives the obligation for Susan to deliver the 10 goats in total. This is known as release.

7. A ticket case or services is whereby one contracting party gives the other a document that sets out terms & conditions of the supplier's business but is not intended to be signed by the customer.
 8. With a 'click-wrapped' agreement, the clicking indicates acceptance of the terms of the contract offered by way of a linked webpage.
 9. In prevention of performance by the creditor, the debtor's performance must still be possible to perform.
 10. In terms of positive malperformance, the breach can relate to a positive act or negative act.
 11. Jo agrees to build a bookshelf for Tony on 15 July. He only builds the bookshelf on 18 July. This type of breach is known as positive malperformance.
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QUESTION 3: Fill in the missing word

(12)

1. Where written agreements do not reflect the true _____ of the parties (due to an error), rectification is permissible.
 2. According to the *caveat subscriptor* rule, a _____ is bound by the written agreement where she or he has signed it.
 3. The signatory is bound by the _____ meaning & effect of the words of the contract, according to the *caveat subscriptor* rule.
 4. In terms of fulfilment or discharging of a contract with a unilateral act suggest that no co-operation by the _____ is necessary.
 5. With supervening impossibility of performance, the contract is terminated between the parties after its conclusion, because _____ becomes objectively impossible due to an external factor.
 6. Once cession is effective, only the _____ can claim the debt.
 7. With a delegation, the debtor delegates his/her _____ towards a creditor to a third party.
 8. *Mora ex* _____ is where no date to perform has been stipulated and the innocent party must demand that the defaulting party perform on or before a certain date and the defaulting party fails to perform by this date.
 9. *Mora ex* _____ is where a specific date or time for performance has been stipulated in the contract and the debtor fails to perform on or before the appointed time.
 10. In prevention of performance by the creditor, the creditor culpably renders the debtor's performance _____.
 11. In terms of repudiation, the defaulting party can indicate by words or _____ that s/he will not honour his/her contractual obligations.
 12. John agrees to pay R100 000 for Jim's Ford Fiesta. Jim agrees to deliver the car to John in 5 days' time. _____ is the debtor in this scenario.
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QUESTION 4: Capacity (6 marks)

1.1 Shoba, an unrehabilitated insolvent, enters into a contract whereby she sells her beach house to Petronela for R5 000 000.

1.1.1 Indicate the contractual capacity of Shoba. (1)

No contractual capacity

Full contractual capacity

Limited contractual capacity

1.1.2 Indicate whose consent is required by Shoba. (1)

Spouse

Curator

Guardian

Trustee

1.2 Sven, a sixteen-year-old unemancipated child, sells his house that he inherited from his late father for R500 000 to Precious.

1.2.1 Sven is a/an - (1)

Infans

Minor

Major

1.2.2 Indicate the contractual capacity of Sven. (1)

No contractual capacity

Full contractual capacity

Limited contractual capacity.

1.2.3 Indicate whose consent is required by Sven. (1)

Judges of the High Court

Guardian

Master of the High Court

Judges of the High Court & guardian

Judges of the High Court; Master of the High Court & guardian.

- 1.3 Siphokazi, a five-year-old child, sells his iPad to his eighteen-year-old cousin, Beyonce, for R1 500. Siphokazi is a/an - (1)

Infans

Minor

Major

QUESTION 5: Terms (1 mark x 4 = 4 marks)

1. Cynthia enters into an agreement with Barry to transport grain from his farm to his clients for a period of six months. According to the agreement, Cynthia will compensate Barry R100 for each kilogram of grain that is lost during the transportation process.
2. “All the parties undersigning this agreement may not amend or alter this agreement in any other form except through written amendment.”
3. Craig and Maponya agree that if Craig fails to deliver the goods by the first of each month, he would not be able to claim back the deposit which he has paid upfront.
4. “In the event that the boxing match does not happen on 1 August 2021, Betty claims absolute responsibility for any losses incurred by all parties involved.”

QUESTION 6: Conditions & time clauses (2 marks x 4 = 8 marks)

5. Bheki enters into an agreement with Sammy for the installation and maintenance of cybersecurity software for Bheki’s business digital network. According to their agreement, the contract between them will automatically terminate if at any point there is an undetected cyber-attack on Bheki’s company.
6. Luther will become the official team manager of Rain FC if the team fails to qualify for the 2021 World Club Championship.
7. According to the contract of sale between Abe and 4-Leave Mills (Pty) Ltd, Abe must deliver forty bags of sunflower seeds at sunrise on 1 November 2021. The contract only comes into existence once delivery of the sunflowers is made.
8. If Rendani signs up twenty new clients for Ransom Sales (Pty) Ltd in the month of September, Rendani will be appointed as sales manager of the company.

QUESTION 7: Column A & B (12 marks)

Match the description with the corresponding term or concept.

Column A		Column B	
1.	Performance becomes impossible, without fault by any of the parties, after the conclusion of the contract.	A.	Cancellation
2.	A manner of extinguishing the debts owed reciprocally by two parties.	B.	Novation
3.	The prescription period in respect of a judgement debt.	C.	Restitution
4.	The prescription period of a debt arising from a bill of exchange.	D.	Cession
5.	The transfer of rights from one person to another.	E.	Assignment
6.	The prescription period of any debt owed to the State and arising from an advance or loan of money.	F.	Subjectively
7.	A requirement for a valid set-off.	G.	Merger
8.	Parties to the contract must return any performance received.	H.	30 years
9.	For supervening impossibility to occur, performance must be _____ impossible.	I.	The debt must be claimable
10.	The act of withdrawing from a contract due to breach of contract.	J.	Objectively
11.	To give formal consent after conclusion of the juristic act.	K.	6 years

12.	The person who, in terms of an agreement of cession, transfers the personal right.	L.	15 years
		M.	Cedent
		N.	Initial impossibility
		O.	Set-off
		P.	Cessionary
		Q.	3 years
		R.	Ratification
		S.	Rectification
		T.	Supervening impossibility
		U.	Release
		V.	Delegation

QUESTION 8: Short Question (3 marks)

1. Tshegofatso owes Nino R50 000 for a loan that was given to her. Despite demands, Tshegofatso fails to pay Nino. Nino serves a summons upon Tshegofatso and claims payment of the amount owed. Discuss the effect that the above circumstance has on prescription. (3)

QUESTION 9: Application Questions (3 questions x 7 marks each =21)

9.1 Sihle, a recent accounting graduate, decides to buy himself a new 3 series BMW. He approaches the nearest BMW garage and purchases the new 2020 3 series for R350 000. He does not have the cash to pay for the vehicle, however, BMW arranged a loan for Sihle from Wesbank. Wesbank agrees to provide the loan for the vehicle in return for monthly instalments of R4500 from Sihle. Wesbank therefore pays the cash amount to BMW and now Sihle will pay monthly instalments to Wesbank for the next 36 months. Sihle, as the debtor, will now make payments to Wesbank and BMW will no longer have a claim against Sihle, only Wesbank may claim from him now. Answer the following questions.

1. Identify the legal concept above and provide a definition. (2)
2. Allocate the legal term which describes each of the parties and identify each of these parties to the above-mentioned agreement. (3)

2.1 Debtor:

2.2 Cedent:

2.3 Cessionary:

3. Discuss whether Sihle must consent or be informed about the above-mentioned transaction. (2)

9.2 Zarah purchased a 2019 VW Polo TSI from Susan for R250 000. The contract has been reduced to writing. Answer the following questions:

1. A dispute arises between Zarah and Susan regarding the sale of the vehicle. Susan indicates that she is willing to provide oral evidence (verbal testimony) in court in order to clarify the terms of the contract. Advise Susan whether she may provide oral evidence in court, fully discussing the parole evidence rule. (3)
2. Assume that two months after purchasing the vehicle from Zarah, Susan notices that the contract of sale reflects the purchase price of R25 000 instead of R250 000. The reflection of the incorrect purchase price in the written contract was due to a typing error. Identify and discuss the concept to remedy this error. Your answer should include a definition and requirements of the applicable concept. (4)

9.3 On 13 July 2021, Kane advertises on Facebook to sell his car, a BMW X1 for R300 000. On the same day, Lee sees the advertisement and agrees to buy the car from Kane for the stipulated purchase price. Lee contacts Kane and they agree that Lee will pay the R300 000 to Kane and Kane will deliver the car to Lee on 20 July 2021. On 14 July, Lee pays Kane the agreed amount, however on 16 July she sees that Kane has advertised the car again on Facebook for R350 000. Lee is concerned that Kane is not going to deliver the car as agreed upon. Answer the following questions.

1. Identify and explain the form of breach of contract that Kane has committed? Explain your answer by using the facts given. (2)
2. Explain the requirements for this breach and whether they have been met. (2)
3. What remedies can Lee enforce in this situation? Explain your answer. (3)

END OF EXAMINATION

TOTAL: 100 MARKS