



SUPPLEMENTARY EXAMINATION
MEMORANDUM

SUBJECT : CONSTRUCTION LAW 2B

CODE : CLWCOB2

DATE : **TBC**

DURATION : 3 HOURS

TOTAL MARKS : 100

EXAMINER : MISS N ISMAIL

MODERATOR : MRS S HASSEN

NUMBER OF PAGES : 6 PAGES

INSTRUCTIONS :

1. Answer all questions.
2. Questions must be answered on the question paper.
- 3. No marks will be awarded if answers are not written in full sentences.**
4. Write legibly.

QUESTION 1

- 1.1 **Full. None**
 - 1.2 **Limited. Guardian + Master of the High Court**
 - 1.3 **No CC. None**
 - 1.4 **Limited. Guardian**
 - 1.5 **Full. None**
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QUESTION 2

- 2.1.1 **Lex commissoria**
 - 2.1.2 **Warranty**
 - 2.1.3 **Voetstoots**
 - 2.1.4 **Essentialia**

 - 2.2.1 **Resolutive time clause**
 - 2.2.2 **Resolutive time clause**
 - 2.2.3 **Suspensive time clause**
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QUESTION 3

- 3.1.1 ***Mora creditoris***
Fault + failure to accept proper performance... or fails to co-operate...
 - 3.1.2 **Dischargeable**
Tender proper performance
Failure to co-operate
 - 3.1.3 **Not guilty**
No fault

 - 3.2.1 **Prevention of performance by the creditor**
Creditor → performance impossible
 - 3.2.2 **Positive malperformance**
Defective performance

 - 3.3.1 **Cancellation**
 - 3.3.2 **Prohibitory interdict**
 - 3.3.3 **Order for specific performance**
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QUESTION 4

4.1.1 **3**

4.1.2 **30**

4.1.3 **6**

4.1.4 **15**

4.2 **Delayed: one year**
Creditor = minor

4.3.1 **Cession: transfer → rights**

4.3.2 We Care

QUESTION 5

5.1.1 **Sameera**

5.1.2 **Huur gaat voor koop rule: property is taken subject to the lease.**
Purchaser → lessor + lessor's rights + bound lessor's duties
Unregistered long-term lease: bound to lease for ten years
Unsuccessful

5.1.3 **Successful**
Discuss effect of unregistered long-term lease

5.2.1 **Maintain the leased property**
Renders it suitable for purpose

5.2.2 **Normal contractual remedies**
Reduction in rent
Repair + claim compensation

QUESTION 6

6.1.1 **Any two of the following:**
nature of contract
thing sold
purchase price

6.1.2 **Passing of risk**

6.1.3 **Requirements are agreement on thing sold, agreement on purchase price**
and if the contract contains a suspensive condition, it must have already
been fulfilled. Then contract is *perfecta*.

6.1.4 **Cape 2 Oceans Wine Distributor (Pty) Ltd**

6.1.5 **Yes**

Performance rendered impossible = breach of contract

He is liable for any damage caused by his own fault

6.2.1 **Warranty against eviction**

6.2.2 **Seller guarantees that no one with a better title or right to the thing will disturb the buyer in his use and enjoyment or possession of the *merx***

6.2.3. **Thabang must notify Samantha of the threatened eviction which enables Samantha to assist and put up a strong defence against the claim of Piet**

6.2.4. **Cancellation + Return of the purchase price + Damages**

QUESTION 7

7.1 **Guiliana**

JLaw

Mr Jackson

7.2 **Use discretion**

The Principal must have been in existence when the Agent purported to act on his/her behalf. The agent must have made it clear that s/he was acting as a representative of another when entering into the agreement with the third party. The Principal must be named or ascertainable. The Principal must have the capacity to ratify the unauthorised act. The Principal must actually ratify the unauthorised contract in its entirety. Ratification must take place within a reasonable time.

7.3 **Doctrine of the undisclosed principal**

If an agent enters into contract on behalf of the principal without disclosing his representative capacity = no contract between the principal and the third party

Once the representative reaches an agreement with the third party, the principal may step in the agent's shoes as the real party to the contract = third party can hold the principal liable.

Discretion:

Agent will be personally liable on the contract. The principal may demand performance from the third party, provided that the third party did not perform to the agent.

The undisclosed principal may elect to claim the performance promised to the agent. If the principal does not make his claim, the third party is liable to the agent

If the third party performs to the agent before the principal intervenes, the third party is discharged and performance to the principal cannot be enforced

Essentially, the third party can hold either the principal or agent liable. Once he makes a decision, he is bound by it

QUESTION 8

8.1 Words or symbols must be given ordinary grammatical meaning.

The contract as a whole and the surrounding circumstances are taken into account.

Ambiguous or unclear words are interpreted in a manner least favourable to the party who stipulated it or is responsible for its drafting.

The law uses various presumptions, such as;

Parties intend that their agreements are valid and enforceable: Courts attempt to interpret the contract in a manner that does not affect its validity.

Parties do not attempt to deviate from the common law unless expressly indicated.

Written contracts are subject to the parol evidence rule.

8.2 The signatory is usually bound by the ordinary meaning and effect of the words which appear over his or her signature, as the signature signifies assent to the document

Misrepresentation, fraud, illegality, duress, undue influence and mistake

8.3 A supplier can assume consent where:

- a) The customer reads and understands the document and, by his/her conduct indicates that the terms have been accepted.
- b) It is impossible to prove that the customer read the document, but the supplier took reasonable steps to ensure that the customer was alerted to the terms and the customer thereafter, by his conduct, indicated that the terms were accepted.

In order to determine whether the customer receiving the ticket is bound to the terms thereof, the following questions must be answered:

1. Did the customer know or ought to have known that there were certain words printed on the ticket (irrespective of whether he/she read the ticket or not)?
2. Did he/she know that these words were the terms of the contract?
3. The receiver will be bound to the terms if both of these questions are answered in the affirmative.
4. If any of the questions were answered in the negative, the following question must be asked:
5. Did the supplier do everything reasonably within his power to draw the attention of the customer to the fact that these words are terms of their contract?

6. If the answer is affirmative, the customer will be bound by the terms.
7. If the answer is negative, there will not be bound by the terms.

END OF MEMORANDUM

TOTAL: 100 MARKS