



<u>FACULTY</u>	: Law
<u>DEPARTMENT</u>	: Practical Business Law
<u>CAMPUS</u>	: DFC
<u>MODULE</u>	: CLWCOB2 Construction Law 2B
<u>SEMESTER</u>	: Second
<u>EXAM</u>	: SSA January 2020

<u>DATE</u>	:	JANUARY 2020	<u>SESSION</u>	:
<u>ASSESSOR(S)</u>	:	MS N ISMAIL		
<u>MODERATOR</u>	:	MRS S HASSEN		
<u>DURATION</u>	:	3 HOURS	<u>MARKS</u>	: 100

NUMBER OF PAGES: 17 PAGES

INSTRUCTIONS:

1. Answer all the 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.
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QUESTION 1: Capacity to Act

(10)

Indicate the contractual capacity in each instance **and** provide whose consent is required, if any, in order to enter into a valid contract.

- 1.1 Liam, a rehabilitated insolvent, enters into a contract whereby he sells his car to Petronela for R300 000. (2)

- 1.2 Kesigan, a seventeen year old unemancipated boy, sells his house worth R95 000 that he inherited from his late grandfather. (2)

- 1.3 Thabiso, a five year old boy, sells his iPad to his six year old cousin, Bongiwe, for R30. (2)

- 1.4 Christa, a thirteen year old unemancipated girl, sells her bicycle to Vuyo, a twenty year old man, for R1 500. (2)

- 1.5 Miriam, who is married to Abed out of community of property with the accrual system, buys a house from Brooke for R700 000. (2)

QUESTION 2: Terms of the Contract

(10)

- 2.1 Identify the following contractual terms.
- 2.1.1 Jack and Jill conclude a contract in terms of which Jack will build a three bedroom house for Jill. The contract clearly states that if Jack is unable to complete the construction of the house within one year, the contract will automatically be terminated. (1)

2.1.2 Kimberly buys a TV from Incredible Collection with an undertaking that it does not contain any defects and should it fail in the first 24 months, she can take it back for a full refund. (1)

2.1.3 Amy and Sarai enter into an agreement whereby Sarai sells her phone to Amy excluding Sarai's liability for any latent defects. (1)

2.1.4 Minimum requirements that parties to an agreement must reach consensus on in order to place the contract into a particular category. (1)

2.2 Indicate whether the following clauses amount to either a resolutive condition, suspensive condition, resolutive time clause or a suspensive time clause.

2.2.1 Nisha allows Andrew to use her car for a period of two months, after which he must return it to her. (2)

2.2.2 Sizwe must remain in the service of his employer until he reaches the age of 65 or until his death, whichever occurs first. (2)

2.2.3 "The full purchase price of the trailer sold is payable by the buyer 30 days after the death of the seller." (2)

QUESTION 3: Breach of Contract and Remedies

(15)

3.1 Brooke and Saad agrees that Saad will install camera's as well as an alarm system in Brooke's house for an amount of R25 000 on the 3rd of November 2019. On the said date, Saad arrives at Brooke's house only to find it locked and he is unable to gain access to the house in order to do the installation.

3.1.1 Identify and define the form of breach of contract from the set of facts. (3)

3.1.2 List the requirements that must be met before Brooke will be guilty of this form of breach of contract identified in Question 3.1.1. (3)

- 3.1.3 Assume, for this question only, that Brooke was unable to accept performance because she was suddenly hospitalized. Discuss whether Brooke would be guilty of breach of contract. (2)

- 3.2 Identify the form of breach of contract in the following instances and provide a reason for your answer.

- 3.2.1 Jade hires Kreesan to redesign her kitchen cupboards. Kreesan arrives on the agreed day and time to commence with redesigning the kitchen only to find out that Jade has burnt her house down in a fit of rage after she caught her husband cheating on her. (2)

- 3.2.2 Kirsty takes her car to Nandi Auto in order to spray paint it crimson red but they painted it ruby red instead. (2)

3.3 Indicate the most appropriate remedy or order that the injured party will be entitled to in the following instances.

3.3.1 Chloe leased a flat in Volksrust from Jack for a period of two years. The contract of lease prohibits any pets being on the leased premises and if contravened the contract would terminate. However, Chloe moves in with her dog, Snookums, and cat, Fabio. (1)

3.3.2 Benny is employed as a designer at Fab Fashion. His contract of employment contains a clause which clearly states that upon resignation, retrenchment or termination of his services as an employee he is prohibited from doing the same work in competition with Fab Fashion in the Gauteng province for a period of two years after leaving Fab Fashion. A month after resigning from Fad Fashion, Benny accepts a position as a designer at A-Z Fashionista in Sandton. (1)

3.3.3 Shay bought a laptop from Kevin for an amount of R3000. Payment of the purchase price was made two weeks ago but Kevin failed to deliver the laptop to Shay to date. (1)

QUESTION 4: Transfer and Termination of Personal Rights (10)

4.1 Provide the periods of prescription for the following:

4.1.1 Anisha bought a car worth R70 000 from Avesh but failed to make payment. (1)

4.1.2 A home loan secured by a mortgage bond. (1)

4.1.3 A debt arising from a cheque. (1)

4.1.4 A debt owed to the State arising from the lease of land by the State to the debtor. (1)

4.2 Kevin, a 15 year old boy, sold his iPad to Travis, 20 year old man, for an amount of R12 000. Travis suppose to make payment to Kevin one month ago but has not paid Kevin a cent. Discuss the effect that the following circumstance has on prescription. (3)

4.3 Basetsana enters into a contract of sale with Gabriela. In terms of the contract Basetsana will sell her Playpalstation to Gabriela for R2000. Basetsana decides that she wants to donate R2000 to a local charity organisation called "We Care". She would like to transfer the monies owed to her by Gabriela to the charity, "We Care".

4.3.1 Identify and define the method of transferring obligations as set out above.

(2)

4.3.2 Identify the cessionary.

(1)

QUESTION 5: The Contract of Lease

(15)

5.1 Devante leases office premises in an office to Sameera for an amount of R15 000 per month for a period of twelve years. The long-term lease between the parties is not registered against the title deed. Sameera runs her environmental consultancy firm from the leased premises.

5.1.1 Identify which party is the lessee.

(1)

5.1.2 Five years into the lease, Devante sells the office block to Xavier. Xavier wants to evict Sameera so that he can convert the office block into a gym. Discuss whether Xavier would be successful in evicting Sameera. (5)

5.1.3 Assume that Devante only sells the office block to Xavier in the eleventh year of the lease, how would your answer differ from Question 5.1.2 above? (2)

5.2 Sizakele leases a three-bedroom house from Prudence. The kitchen wall has collapsed after a heavy rainstorm, the water pipes are leaking and the oven has stopped working after an electrical power surge. Prudence fails to make the necessary repairs to the house after numerous requests from Sizakele.

5.2.1 Identify and briefly explain the duty which Prudence breached. (2)

5.2.2 List the remedies which are available to Sizakele. (5)

QUESTION 6: The Contract of Sale

(20)

6.1 Peter, a vineyard owner and farmer on the farm 'Ground-To-Bottle', concludes an agreement with Cape 2 Oceans Wine Distributor (Pty) Ltd, a wine merchant, in terms of which Cape 2 Oceans Wine Distributor (Pty) Ltd will buy five trucks of wine from Peter for R15 000 per truck. A day before Cape 2 Oceans Wine Distributor (Pty) Ltd were to take delivery of the wine, a thunder storm erupted and lightning struck the vineyard which caused a fire that destroyed the entire existing vineyard and all of the warehouses, including the storehouse which held Cape 2 Oceans Wine Distributor (Pty) Ltd's order.

6.1.1 List two *essentialia* for a contract of sale.

(2)

6.1.2 Which doctrine would be applicable to the above set of facts?

(1)

6.1.3 What requirements have to be met before the doctrine as identified in Question 6.1.2 above will be applicable to the current set of facts? (4)

6.1.4 If the doctrine as identified in Question 6.1.2 above is applied to the set of facts, which party would be held liable for the risk? (1)

6.1.5 Would the position differ if Peter had intentionally burned down his vineyard? Briefly motivate your answer. (3)

6.2 Thabang buys a camera from Samantha. Samantha hands over all the necessary receipts, guarantees, cables and plugs. Two days later Samantha's husband, Piet, phones Thabang and informs Thabang that the camera belongs to him (Piet) and that he wants it back immediately.

6.2.1. Identify the duty which was breached by Samantha. (1)

6.2.2. Briefly explain the duty identified in the question 6.2.1 above. (2)

6.2.3. What are Thabang's duties in this situation?

(3)

6.2.4. State which contractual remedies are available to Thabang?

(3)

QUESTION 7: The Law of Agency

(10)

Giuliana is employed by JLaw, a famous Hollywood actress. Giuliana enters into an agreement with a director, Mr Jackson, on behalf of JLaw, to star in a new movie called 'Hungry Games'.

7.1 Identify which party is the agent, principal and third party. (3)

Agent: _____

Principal: _____

Third party: _____

7.2 Assume that Giuliana exceeded her authority when entering into the contract with Mr Jackson. List four requirements that must be met in order for JLaw to ratify the contract. (4)

7.3 Assume that Giuliana fails to disclose that she is acting on behalf of JLaw. Fully discuss the consequences of the contract. (3)

QUESTION 8: Interpretation of the Contract

(10)

8.1 List the guidelines used to determine parties' intention when interpreting a contract. (5)

8.2 Define the *caveat subscriptor* rule and list two instances when it will be available as a defence. (3)

8.3 Shreya buys a ticket to enter the zoo. The cashier at the counter merely hands Shreya her ticket and she immediately places it in her handbag. While walking towards the lion enclosure Shreya trips over the roots of one of the trees and breaks her leg. Shreya approaches the management of the zoo to compensate her for the medical costs she incurs. Management of the zoo informs Shreya that they are not liable for the loss and points out that the ticket contains a term which excludes liability for any loss, damage or injury sustained by a visitor or their property. By applying the interpretive rules indicate when would management of the zoo be entitled to assume assent to the contract. (2)

END OF EXAMINATION

TOTAL: 100 MARKS