



PROGRAMME : BCOM

MODULE : COMMERCIAL LAW 1A

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Winter ONLINE Main Examination

DURATION : 2 Hours 30 minutes

TOTAL MARKS : 80

EXAMINER : DR. S. HUNEBERG; MR. J. LENONG; MR. C. LUPTON; MS N ISMAIL MR. S. REDDY

MODERATOR : PROF. J. CALITZ

NUMBER OF PAGES :

EXAM TOOK PLACE ONLINE VIA BLACKBOARD AND INCLUDED POOLING OF QUESTIONS.

Long application question (15 marks)

Boboza is a world-renowned digital application developer. Just recently, Boboza developed an algorithm that can predict with 90% accuracy, when any animal needs to relieve itself. However, to bring this digital product to market, Boboza needs the help of a digital hardware developer to produce the sensor band that will have to go on pets or any relevant animal. Tech-Ninjas (Pty) Ltd together with Digital Samurai (Pty) Ltd, are the two biggest industry players in the development of animal-based digital hardware.

On 1 May 2021, Boboza enters into an exclusive contract with Tech-Ninjas (Pty) Ltd for the company to produce the hardware that will work with his algorithm. According

to the contract, the product will be named 'Poopi-pet' and will be launched on 30 May 2021. Consequently, Boboza needs to deliver the algorithm to Tech-Ninjas (Pty) Ltd on 29 May 2021 for synchronisation with the hardware. On 28 May 2021, the team at Tech-Ninjas (Pty) Ltd notice an advertisement from Digital Samurai (Pty) Ltd promoting a new product named 'Doodi-pet' with Boboza's face next to it.

Answer the following questions:

1. Identify and define the potential type of breach of contract in the above set of facts. (4)
2. Firstly, state the test which needs to be applied to determine the intention of the defaulting party and secondly, apply the test to the facts above and conclude whether the form of breach identified in question 1 is present or not? (5)
3. What would be the appropriate remedy for Tech- Ninjas and why would you recommend it? (3)

3 marks for spelling and grammar

Short application question (8 marks)

Nawe and Tsho are both barley farmers from Taung in the Northern Cape. During the draught of 2018 Tsho's crops were totally devastated. Nawe who had a great number of reserves left in silos borrowed 150 tonnes of barley to Tsho which will keep him and his farm afloat. The debt is due 30 May 2021 at the prevailing market price on that day. On 20 May 2021, a locust plague destroyed all of Nawe's crops and Tsho, in turn, borrows him 80 tonnes of barley, which he also links to the prevailing market price on 30 May 2021. Consequently, Tsho only delivered 70 tonnes to Nawe on 30 May 2021.

Answer the following questions:

1. Identify and define the agreement which terminates some of the obligations between Nawe and Tsho? (4)
2. What requirements need to be present for this type of agreement between Nawe and Tsho? (4)

Short questions

MC Q's (10 marks – 5 application style)

Which of the following instances are correct regarding when a contract can be cancelled?

- i. Cancellation due to positive malperformance
- ii. Cancellation due to rescission
- iii. Cancellation due to restitution
- iv. A cancellation clause in the contract
- v. Cancellation due to *mora debitoris*

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

Which of the following are incorrect possible court orders which may be granted in terms of an application for the execution of a contract?

- i. An order for *mora creditoris*.
- ii. An order for reduced performance.
- iii. An order for specific performance.
- iv. An order for prevention of performance.
- v. An order for patrimonial loss.
- a) Only i, ii, iv and v are incorrect
- b) Only ii, iii and v are incorrect
- c) Only i, iv and v are incorrect
- d) All of the above is incorrect

What is the consequence of the defence of the *exceptio non adimpleti contractus* (or the defence of the incomplete contract)?

- a) The defendant needs to sign the contract in order to complete it.
- b) One party cannot claim performance from the other party unless they have performed as well.
- c) Both the defendant and the plaintiff will have to pay damages.
- d) The incomplete contract is the defence for the innocent party to claim back the diminishing of his patrimony due to the breach of contract.

The differences between specific performance and reduced performance are the following:

- i. With specific performance, a party's performance is made impossible and with reduced performance the court orders to interdict a party.
- ii. Specific performance cannot be ordered where performance is impossible, wherewith reduced performance a party has rendered defective or incomplete performance.
- iii. Specific performance seeks the fulfilment of the contract and with an order for reduced performance, a party can only claim performance where they have performed or are willing to do so.
- iv. Specific performance seeks to balance the interests of both parties and an order for reduced performance seeks to attribute patrimonial damages.
- a) Only i and iv are correct
- b) Only ii and iii are correct
- c) Only ii and iv are correct
- d) All of the above is incorrect

Which of the following statements regarding cancellation for *mora debitoris* are correct?

- i. An innocent party can cancel the contract where the breach is serious.
- ii. An innocent party can cancel the contract in terms of prevention of performance with a lawful justification.
- iii. An innocent party can cancel the contract where the breach is material.

- iv. An innocent party can cancel a contract due to a defect with the performance.
- v. The innocent party can cancel the contract where there is a cancellation clause.
- a) Only i, ii and iii are correct
- b) Only i, iii and iv are correct
- c) Only ii, iv and v are correct
- d) Only i, iii and v are correct

Beth and Carlos enter into an agreement where Carlos has the exclusive right to market and promote Beth as an artist. However, a month into the agreement Carlos finds a billboard of Beth, working with the sponsor promoting her upcoming show. Carlos applies to court for an order to restrain Beth from her actions. This form of court order to ensure the execution of the contract is:

- a) Specific performance
- b) Reduced performance
- c) An interdict
- d) Prevention of performance

Siya pays Themba upfront on the first day of each month for the coming months' bread deliveries, according to their contract. However, no date for performance is stipulated for Themba, but he normally delivers one hundred loaves of bread to Siya at the end of each month. For the last two months, Themba has not delivered any bread to Siya. Consequently, Siya drafts a letter to Themba notifying him of his intention to cancel the agreement if Themba does not deliver the outstanding bread orders within the next 48 hours. The method of placing Themba in *mora* is known as:

- a) *Mora debitoris*
- b) *Mora ex re*
- c) *mora ex persona*
- d) *Mora creditoris*

Kgori and Kwena enter into a contract, where Kgori pays Kwena R80 000 for the construction of a saltwater fish tank containing ten different tropical fish types. Kgori performs according to the contract. However, when Kwena delivers the fish tank it is a freshwater fish tank containing five river fish. Kgori would be able to cancel the contract and claim a remedy for material breach under:

- a) *Mora debitoris*
- b) Prevention of performance by the creditor
- c) Positive malperformance
- d) Prevention of performance by the debtor

Kgori and Kwena enter into a contract, where Kgori pays Kwena R80 000 for the construction of a saltwater fish tank containing ten different tropical fish types. Kgori performs according to the contract. However, when Kwena delivers the fish tank it is a freshwater fish tank containing five river fish. Kgori would be able to cancel the contract for positive malperformance due to:

- a) the rejection of a materially important obligation.
- b) time being of the essence.
- c) the defect being of such a serious nature that the creditor cannot be expected to abide by the contract.

d) the breach being serious and material.

Lunga, Tessa, Mabatho and Ronald are all parties to a supply-chain contract. According to which, Lunga supplies the steel, Tessa manufactures steel gates, Mabatho is the exclusive reseller of these gates and Ronald is the exclusive installer of all steel gates sold. Ronald is successful with a court application for breach of contract where Tessa and Lunga were found to be selling and installing some of the gates themselves and now seeks damages. What would be a court's objective with allowing Lunga's claim for damages?

- a) To place Ronald in the same patrimonial position he would have been in had the contract been carried out or fulfilled.
- b) To punish Lunga and Tessa for their breach of contract.
- c) To increase the patrimony of Ronald at the expense of Lunga and Tessa.
- d) To show the causal link between the breach and Ronald's suffered loss.

Match the column (3 x 5 mark)

"In the event of any form of default in terms of this agreement, the innocent party will be entitled to terminate this agreement with a written notice to the other party"	Cancellation clause
Sonto continues to care for Tyson's animals that Tyson was late to collect, by feeding them and giving them water at her expense. Tyson breached their contract by not collecting them for 10 days after the stated date of performance.	Mitigation of damages
Dollie could not follow the market trends, because she had to draft a letter of demand against Martha and consequently suffered loss in the form of the 2 million Rand depreciation of her stock portfolio and a further 1 million Rand, due to Martha's <i>mora debitoris</i> . Dollie can only claim the 1 million Rand she lost due to Martha's breach from Martha under the contract.	Causal connection
The value of Khosi's estate would have been R50 000 before the breach of contract by Tommy. It is now valued at R20 000.	Patrimonial loss
Where Tanya and Rhulani need to perform simultaneously, Tanya can only claim performance from Rhulani if she has performed as well.	<i>Exceptio non adimpleti contractus</i>

	Cancellation due to positive malperformance
	Cancellation due to prevention of performance by the debtor
	Penalty Clause

Execution of the contract	Primary remedy
Where an innocent contractual party's rights are infringed	Breach of contract
A court order for execution of the contract to perform in terms of the contract	Specific performance
A court order for execution of the contract where a party has rendered defective or incomplete performance	Reduced performance
Court order to force or restrain a defaulting party in terms of the contract	Interdict
	Prevention of performance
	Damages
	Patrimonial loss

Thoko terminates the contract due to a material breach where the defect is so serious that Thoko cannot be expected to abide by the contract.	Cancellation due to positive malperformance
Mandisa terminates the contract due to Sophia's SMS within which she rejects her contractual duties to perform a materially important obligation.	Cancellation due to repudiation
Tammy terminates the contract due to Fanny not performing on the specific date stipulated in the contract, which led to a serious and material breach of the contract.	Cancellation due to <i>mora debitoris</i>
The difference between the value of Danny's patrimony had the contract been carried out and the actual value of his patrimony at the time of the breach of contract.	Proof of loss
Sam, as the defendant, is only liable for loss that can be foreseen by the parties.	Claim for damages
	Cancellation due to prevention of performance
	Cancellation due to <i>mora creditoris</i>
	Contributory negligence

Fill in the missing word (6 marks)

With damages, a defendant will only be liable for the loss that can be [] by the parties.

A defendant's [] is limited to the loss that is naturally and generally flowing from the breach or that which was actually foreseen by the parties.

An innocent party can claim [] as a result of breach of contract even where they have cancelled the contract or claimed execution thereof.

The test for limiting damages is having regard to the subject matter in terms of the contract, whether the harm that was suffered can be said to have been [] foreseeable as a realistic possibility.

Cancellation of the contract due to positive malperformance relates to the [] of the performance of the debtor.

According to the legal principle, he who alleges must prove, the onus is on the [] to prove damages.

True or false (6 marks)

The remedy of cancellation for repudiation does not require a materially important obligation where the contract contains a cancellation clause.

Mika sends Gibraltar an email stating that she will not be able to perform at her birthday party anymore due to an opportunity to perform at this year's BET Awards ceremony in the United States of America, which is taking place on Gibraltar's birthday. This would be a repudiation of a materially important obligation.

Marcus is a rally driver and enters into a contract with Tito to deliver a specifically customised Mercedes-Benz to him on or before the national rally race at 1 PM on 20 May 2021. Tito defaults in his performance to deliver the Mercedes-Benz to Marcus by the specific date. Marcus would be entitled to cancel the contract due to *mora debitoris*.

Skhumba can cancel his contract with Miya due to breach in the form of repudiation where Miya communicates to him her intention to reject her contractual duties due to a lawful justification.

With *mora creditoris* (or default by the creditor) an innocent party can only cancel the contract when time is of the essence.

Compensation for pain and suffering can be claimed in contract where it is as a result of a breach of contract.

Short Questions

Normal MCQ's

[5 marks]

1. Zodwa borrows an amount of R10 000 from Mzwa, a loan shark, which must be paid back to him over a period of one year. Two months later, Zodwa and Mzwa realise that they are madly in love with each other and get married in community of property. Identify the method of termination of personal rights depicted herein.
 - a. Merger
 - b. Release
 - c. Set-off
 - d. Settlement

2. Siya bought a fridge from Kathlego for R5 000. Siya had to pay off the fridge in monthly instalments. To date, Siya paid Kathlego an amount of R4 800 in total. Siya has not made any payment to Kathlego for the past three months as he has lost his job. Kathlego informs Siya that he does not have to make payment of the remaining R200 owed to her. Siya is appreciative of Kathlego's kindness. Identify the method of termination of personal rights depicted herein.
 - a. Merger
 - b. Release
 - c. Set-off
 - d. Settlement

3. Which one of the following is not an example of a merger?
 - a. A marriage in community of property by a debtor and creditor of the same contract.
 - b. Where the lessee buys the leased premises.
 - c. Where a testator bequeaths his claims against a beneficiary to the latter.
 - d. Where partners in a partnership invest in shares together.

4. Richard, a mechanic, bought fishing equipment from Billy for R2 000. They agree that Richard will make payment to Billy at the end of the month. Instead of Richard paying Billy the R2 000, both parties decide to enter into a contract with Richard to fix his car in exchange for the fishing equipment. Identify the method of termination of personal rights depicted herein.
 - a. Novation
 - b. Release
 - c. Discharge
 - d. Settlement

5. Adam and Mpumi enter into a contract whereby Adam must sew Mpumi a wedding dress according to her specifications for R20 000. The dress must be ready for collection on 1 June 2021. On 1 June 2021 Mpumi collects her wedding dress from Adam which she finds to be just perfect. She then pays him R20 000 via an EFT before leaving his shop. Identify the method of termination of personal rights depicted herein.
 - a. Novation
 - b. Release
 - c. Discharge
 - d. Settlement

6. Betsy enters into a contract of sale with Gail. In terms of the contract, Betsy will sell her collection of books to Gail for R2000. Betsy decides that she wants to donate R2000 to a local charity called "I Care". Betsy transfers her right to claim R2000 from Gail to the charity, "I Care". Identify the most correct statement.
- The method of transferring this personal right is known as cession.
 - The person to whom the right is transferred to is called the cedent.
 - The cedent is Gail.
 - The cessionary is "I Care".
 - Cession terminates the previous obligation and creates a new obligation.
- All the above is correct.
 - All of the above are incorrect.
 - Only i, iv and v are correct.
 - Only i and iv are correct.
7. Tshepo owes his friend, Hembu, R500. Hembu then borrows R200 from Tshepo to pay for his groceries as Isolomzi Grocery Store does not accept payment in the form of any debit or credit cards. Identify the most correct statement.
- This method of terminating personal rights is known as release.
 - The debts between the parties do not have to be of a similar nature.
 - The debts between the parties must be fluid.
 - The debts between the parties do not have to be claimable.
 - The debts between the parties can be between the same persons in different capacities.
- All the above are correct.
 - All of the above are incorrect.
 - Only i, iv and v are correct.
 - Only i and iv are correct.
8. On 1 May 2021 Keith hires Pets-R-Us to come to his home on Friday, 21 May 2021, to wash and groom his cat, Candy. On Thursday, 20 May 2021, Candy runs out of the yard and is hit by a car and dies. Identify the most correct statement.
- The scenario depicts initial impossibility of performance which occurs prior to the conclusion of a contract.
 - This form of impossibility of performance results in a breach of contract.
 - An external factor beyond the control of the parties resulted in objective impossibility of performance.
 - This scenario depicts supervening impossibility of performance which occurs after the conclusion of a contract.
 - This form of impossibility of performance results in a termination of the contract.
- Only i, iii and v are correct.
 - Only i, iii and iv are correct.
 - Only ii, iii and iv are correct.
 - Only iii, iv and v are correct.

9. Which of the following statements regarding assignment are correct?
- Assignment is the transfer of duties only.
 - Assignment is the transfers of both rights and duties.
 - All three parties must agree to the assignment.
 - The debtor's permission is not required for the validity of assignment but he should be informed about it.
 - Assignment occurs when there is proper performance of the obligation or fulfilment of the contract.
- Only iii and v are correct.
 - Only I and iv are correct.
 - Only iii and iv are correct.
 - Only ii and iii are correct.
10. Which of the following statements regarding rescission and cancellation are correct?
- Cancellation is the withdrawal from the contract due to breach of contract.
 - Rescission is an act of withdrawal from a contract due to reasons other than breach of contract.
 - Rescission and cancellation both have the same effect on a contract.
 - Rescission can occur in a voidable contract.
 - A contract can be cancelled automatically if the contract contains a cancellation clause and one of the parties committed an immaterial breach of contract.
- All the above are correct.
 - All of the above are incorrect.
 - Only i, iv and v are correct.
 - Only i and iv are correct.

True and False

[6 marks]

- The Vice-Chancellor of Gauteng University enters into a contract of sale for a Toyota Fortuner with the Toyota Auckland Park dealership. Two days before delivery, the dealership as well as all of its stock are destroyed during a hailstorm. As a result, the Toyota Auckland Park dealership is unable to deliver a Fortuner to the Vice-Chancellor of Gauteng University. The contract between the Vice-Chancellor of Gauteng University and Toyota Auckland Park is terminated by initial impossibility of performance.
- Right and duties which arise from a contract may not be transferred to third parties.
- Abe rents his house to Ben for an amount of R9 000 a month for a period of one year. However, Ben is transferred to Ghana after three months of concluding the lease agreement. Ben reaches an agreement with Abe that Ben will transfer his right to use and enjoyment of the house and the duty to pay rent to Xolani. This is known as delegation.
- In terms of a bilateral juristic act, the contract may be discharged when one party to the contract has performed his/her contractual obligations fully.
- A settlement as a method of terminating personal rights is also known as a compromise.
- Anisha bought a car worth R70 000 from Avesh but failed to make payment. Avesh alleges that the prescription period for this contract is 3 years.

Fill in the missing word**[6 marks]**

1. The prescription period for a debt secured by a mortgage bond is _____ years.
2. The prescription period for a debt arising from a negotiable instrument is _____ years.
3. The prescription period for a debt owed to the State arising from a loan of money is _____ years.
4. The prescription period for a debt arising from a delict is _____ years.
- (three/3)
5. The prescription period for a debt arising from a notarial contract is _____ years.
6. The prescription period for a judgment debt is _____ years.

Match Columns**[15 marks]**

Table 1

	Column A	Column B
1.	A method to gain or lose a right through the passage of time.	Prescription
2.	Where a creditor transfers his/her rights from a contract to a third party.	Cession
3.	When the parties to a valid and binding contract conclude a second contract with the intention of terminating and substituting the existing contract with the second contract.	Novation
4.	When the debtor and the creditor of a contract is the same person, it has the effect of extinguishing the obligation.	Merger
5.	The contract is terminated where performance becomes objectively impossible, after the conclusion of a contract, due to an external factor.	Supervening impossibility of performance.
		Assignment
		Discharge
		Release
		Prevention of performance

Table 2

	Column A	Column B
1.	To acquire rights through the passage of time.	Acquisitive prescription
2.	Where a debtor transfers his/her duties from a contract to a third party.	Delegation
3.	An agreement between the parties to settle an existing dispute between them which has the effect of terminating the first contract and substituting it with a second contract.	Compromise
4.	When the parties to a contract owe each other money, these amounts may be _____	Set-off

	against each other and has the effect of partially or totally discharging obligations.	
5.	A person to whom a personal right is transferred to.	Cessionary
		Extinctive prescription
		Cession
		Cedent
		Novation

Table 3

	Column A	Column B
1.	Where a party to a contract is released from his/her obligations through the passage of time.	Extinctive prescription
2.	Where a party to a contract transfers both his/her rights and duties to a third party.	Assignment
3.	An agreement between the creditor and the debtor in terms of which the creditor releases the debtor from his/her contractual obligation.	Waiver
4.	The party who transfers their personal rights to a third party.	Cedent
5.	A contract is terminated if both parties to the contract fulfil their contractual obligations properly and fully.	Discharge
		Acquisitive prescription
		Delegation
		Cessionary
		Compromise

Section B: Long Application Questions

Long Application Question:

[15 marks]

Brooke and Saad agree that Saad will install cameras as well as an alarm system in Brooke's house for an amount of R50 000 on the 21st of May 2020. On the said date, Saad arrives at Brooke's house only to find it locked and he is unable to gain access to Brooke's premises in order to carry out the installation. Answer the following questions:

1. Identify and fully explain the type of breach depicted in this scenario. (4)
2. List the requirements for the form of breach identified in Question 1 above and apply the set of facts to these requirements.
3. Identify all the remedies that are available to Saad in this instance. (3)
4. Assume, for this question only, that Brooke was unable to accept performance because she was suddenly hospitalized after contracting Covid 19. Discuss whether Brooke would be guilty of breach of contract. (2)

Shorter Application Question:

[8 marks]

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. (5)

MULTIPLE CHOICE QUESTIONS

Question 1

In a contract of agency, which of the following statements are correct?

- i. The agent enters into the contract with the third party on behalf of the principal.
- ii. The principal is obliged to perform in terms of the contract concluded by the agent on the principal's behalf.
- iii. The agent is automatically bound by the agreement concluded with the third party.
- iv. The contract of agency must comply with the requirements for a valid contract and the agent must also receive authority from the principal.

- A. i, ii, iii are correct.
- B. i, ii, iv are correct.
- C. ii and iii are correct.
- D. All the above are correct.

Question 2

Which of the following is NOT a requirement for a valid contract of agency?

- A. Lawfulness
- B. Authority
- C. Contractual Capacity
- D. Foreseeability

Question 3

Which of the following are duties of the agent?

- i. To act in good faith.
- ii. To exercise care and diligence when performing the instructions.
- iii. To indemnify the principal.
- iv. To account properly.

- 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.

Question 4

An agent's authority may be received in different ways. Which of the following are true?

- i. From the friend of the principal.
- ii. From the principal himself/herself.
- iii. The agent does not need authority.
- iv. From the operation of law.

- A. All are correct.
- B. None are correct.
- C. ii, iii, iv are correct.
- D. ii, iv are correct.

Question 5

An agent's authority may terminate in various ways. Which statement/s is/are correct?

- i. Death of the principal.
- ii. A rejection of the authority by the agent given by the principal.
- iii. The principal revokes the authority given to the agent.
- iv. If the agent has performed the act for which the authority was given.

- A. All the above are correct.
- B. i, iii, iv are correct.
- C. i, ii, iii are correct.
- D. i, ii, iv are correct.

Question 6

In terms of agency, there are certain requirements that apply when a principal ratifies the act of an agent. Which of the following statements are correct?

- i. The principal must be named or ascertainable.
- ii. Ratification has no time limit and the principal may take his/her time to ratify the agent's act.
- iii. The principal must ratify the agent's act in its entirety.
- iv. The principal must have the capacity to ratify the agent's unauthorized act.

- A. ii, iii, iv are correct.
- B. i, iii, iv are correct.
- C. All the above are correct.
- D. i, ii, iv are correct.

Question 7

Choose the most appropriate answer relating to what ratification means in the law of agency.

- A. The principal corrects the error made by the agent.
- B. The principal voids the agency contract.
- C. The principal approves the unauthorized act done by the agent.
- D. The principal can use estoppel.

Question 8

What is estoppel?

- A. Where the principal culpably creates the false impression that another person has authority to conclude juristic acts on his or her behalf and the third party acts on this representation to his/her detriment, the principal is estopped from denying such authorisation and will be bound to the contract.
- B. Where the agent culpably creates the false impression that another person has authority to conclude juristic acts on his or her behalf and the third party acts on this representation to his/her detriment, the principal is estopped from denying such authorisation and will be bound to the contract.
- C. Where the principal culpably creates the true impression that the principal has authority to conclude juristic acts and the third party acts on this representation to his/her advantage, the principal is estopped from denying such authorisation and will be bound to the contract.
- D. The principal stops the agent from performing the act and authority is withdrawn by the principal.

Question 9

In terms of the law of agency, what is the purpose of the agent?

- A. The agent is a secret agent that gathers information for the principal.
- B. The agent performs acts for his/her own benefit with a third party.
- C. The agent performs a juristic act on behalf of the principal.
- D. The agent instructs the principal to perform in a certain way.

Question 10

What is a contract of mandate?

- A. Where one party concludes a contract with another party, in terms of which the latter party undertakes to perform a mandate for the former party.
- B. Where a woman/man agrees to go on a date with a man.
- C. A contract in which one party allows the other party to benefit from the contract without any obligations.
- D. A contract of estoppel.

FILL IN THE BLANKS

1. A contract of mandate can be terminated where either the mandator or dies.
2. A contract of mandate will terminate where the mandatary the mandate.
3. Where the principal culpably creates the false impression that another person has authority to conclude juristic acts on his or her behalf and the third party acts on this representation to his/her detriment, the principal is from denying such authorisation and will be bound to the contract.
4. is the approval by the principal of a juristic act of the agent concluded on the principal's behalf when the agent did not have authority to do so.

5. When performing acts on behalf of the principal, the agent must have the necessary granted by the principal.
6. In estoppel, a principal can make a representation to a third in words or through that an agent had authority to act on the principal's behalf.

TRUE AND FALSE

1. A mandator can renounce the mandate and it will be terminated.
2. In the doctrine of the undisclosed principal, the agent must be authorised to contract on behalf of the principal and ratification is not sufficient.
3. One of the requirements for the ratification of an agent's act on behalf of the principal is that the principal must have been non-existent when the agent acted on the principal's behalf.
4. If the principal ratifies an act performed by the agent on the principal's behalf, the agent becomes liable to the contract.
5. In agency, a third party does not have to prove that he acted on the representation made by the principal that a person had authority to contract on behalf of the principal and only needs to show that representation was to the third party's detriment.
6. An agent may get authority to perform a juristic from the operation of law, for example, the Close Corporation Act.

Identify the contractual terms:

1. Mishka enters into a contract with Paints Plus Ltd who will provide Mishka with 100 litres of outdoor paint for her complex. Paints Plus Ltd assures Mishka that the paint is waterproof and suitable for outdoor use.
2. Resh agrees to buy Kiki a Playstation 5 gaming console if she gets 75% or more for her Commercial 1A Exam.
3. Rihanna will be allowed to work at Drake's law firm as the secretary, until such time that Drake dies.
4. If the kitchen is not fully tiled by 1 August 2021, the tiler, Mike, will have to pay the owner R1000 for every week he is in default.
5. Yash hires two quad bikes from Biker Boyz Ltd for 3 weeks.
6. Sam agrees to rent her flat to Mel for 24 months for R5000 per month.
7. Naz agrees to sell her VW Golf to Sesh for R300 000 in 2 weeks' time on 17 June 2021.
8. Craig agrees to cut Kenny's grass for R2000 if it does not rain the next day.

9. Shreya agrees to give skating lessons for R1000 per session starting in 1 months' time if at least 20 people sign up for the lessons.
10. Pat and Blake are married. Pat agrees to pay for Blake's monthly cellphone bill, however should they get divorced Pat will no longer pay for the cellphone bill.

Match the columns

Question 1

1. Revocation of authority in agency can be done by the	A. Principal
2. Renunciation of authority in agency can be done by the	B. Agent
3. Principal creates a false impression that an agent has authority to act and the third party acts on this representation to his/her detriment. The principal cannot deny that authorization was not given.	C. Estoppel
4. The approval by the principal of a juristic act performed by the agent who did not have authority to perform that act.	D. Ratification
5. The agent fraudulently misrepresents to the third party that he has authorization when the agent in fact does not have authority from the principal.	E. Personal liability of the agent.
	F. Third Party
	G. Rectification
	H. Unenforceable

Question 2

1. One of the requirements for a valid contract of agency.	A. Parties must have contractual capacity.
2. One of the requirements for ratification.	B. The agent must make it clear that she is acting in a representative capacity.
3. A way in which authority can terminate in terms of agency.	C. Performance of the juristic act.
4. A duty of the agent.	D. The duty to follow instructions given.
5. A duty of the principal.	E. The duty to reimburse a party when the juristic act is performed.
	F. The contract must be unlawful.
	G. Rectification
	H. The principal by words or conduct misrepresented to the third party that the agent had authority to act on the principal's behalf.

Question 3

1. Generally, who is liable where the agent acts on behalf of the principal without authority?	A. The agent is liable.
2. Who is liable where the agent acts without authority but the principal ratifies the act?	B. The principal is liable.
3. A duty of the principal.	C. To indemnify the agent against any loss whilst performing the act.
4. A duty of the agent.	D. To exercise care and diligence whilst performing the instructions.
5. The performance of a task or commission for another in terms of a contract.	E. Mandate.
	F. The third party is liable.
	G. Estoppel.
	H. The duty to reimburse the principal

Short application question

Bob the builder is hired by Vee to build a pool for her for R15 000. Bob and Vee agree that Bob will commence the work on 15 June 2021 and complete the pool by 30 June 2021. Vee pays Bob the R15 000 on 10 June 2021, however on 12 June 2021 Bob phones Vee to tell her that he does not feel like building the pool anymore and he will not be arriving on 15 June to build the pool. Vee is highly upset and comes to you for advice.

Answer the following questions: Do not copy and paste your answer from any learning materials

1. Identify and explain the type of breach of contract Bob has committed. (2)
2. In your opinion, what remedy/remedies are available to Vee? (2)
3. How would your answer differ if Bob decides to commence with building the pool on 15 June 2021, however he stops working and does not complete the job? What type of breach would this be? (2)
4. What remedy/remedies will Vee be able to apply for in question 3? (2)

Long question

On 13 June 2021, Willow agrees to buy Sasha's car, an Audi A3 for R300 000. The contract stipulates that once Willow pays the purchase price, Sasha will be obliged to deliver the vehicle to Willow's house. Willow pays Sasha the R300 000 as agreed and Sasha agrees to deliver the car. The next day, Sasha is driving the car very fast and recklessly and crashes it into a street light. The car is damaged beyond repair. Sasha informs Willow that she cannot deliver the car because she was unfortunately in an accident and the car is not in good condition.

Advise Willow on the following:

1. What type of breach of contract has Sasha committed? Explain your answer by using the facts given. (5)
2. If the dispute is taken to court, what is the name used to describe the innocent party (Willow) who institutes the court proceeding? (1)
3. What remedies can Willow enforce? Explain your answer. (3)
4. Explain what the purpose of claiming damages is and how it is calculated. (3)

3 marks to be awarded for spelling and grammar.

(3) [15]

Long application question (15 marks)

Werner is a mechanic working for A-Class Motor Mechanics. In terms of his contract with the company, he has agreed not to do any private mechanical work after hours without permission from the company. He has also agreed that he will only use new, genuine parts to fix the vehicles at work.

Sandile approaches Werner privately to fix his bumper after being involved in a minor collision. He does not want to pay the exorbitant prices of A-Class Motor Mechanics and therefore requests Werner to do the work privately. Werner agrees to do this without receiving the necessary permission from his company to do so.

1. Identify and explain the type of breach in this scenario. (4)
2. What remedy would be the most appropriate for A-Class Motor Mechanics to rely on in this set of circumstances? Motivate your answer. (4)
3. Assume for this question that Werner repairs vehicles using second-hand parts whilst at work. Explain the type of breach in this case. (2)
4. What would the appropriate remedy for your answer to question 3 above be? (2)

3 marks for spelling and grammar

Short application question (8 marks)

Xola has agreed to act as an agent for Sisiwe. Sisiwe has asked Xola to drive from East London to Durban to conclude a contract on Sisiwe's behalf with Olive Importers Ltd for the purchase of certain materials for Sisiwe's business. It was agreed that Sisiwe would pay Xola a specified amount of money as well as his expenses, including petrol, accommodation and food. On route, Xola stops to fill up with petrol at a garage in Mtatha and whilst browsing for snacks in the shop at the garage, her car is stolen.

Identify the principal, agent and third party. Explain whether Xola is entitled to claim her damage from Sisiwe? (8 marks)

Short questions

MC Q's (10 marks – 5 application style)

Which of the following statements are incorrect regarding *mora debitoris*?

- vi. The creditor is the cause of performance not been given timeously.
- vii. Performance must be delayed.
- viii. It must still be possible to perform at a later stage.
- ix. Performance must not already be claimable/due.
- x. The delay is with legal justification.
- a) Only i, iv and v are incorrect.
- b) All of the above is incorrect.
- c) Only i, ii and iii are incorrect.
- d) Only iii, iv and v are incorrect.

Which of the following statements regarding the requirements for *mora creditoris* are correct?

- vi. The performance must be dischargeable.
- vii. The creditor must render performance.
- viii. The debtor must fail to give his/her co-operation and thereby delay performance.
- ix. If a specific day for performance has been agreed upon, the creditor will automatically be in default if he/she does not co-operate on that day.
- x. Performance must still be possible.
- a) Only i, ii, iv and v are correct.
- b) Only ii, iii and v are correct.
- c) Only i, iv and v are correct.
- d) All of the above are correct.

Concerning the consequences of *mora debitoris*, which of the following statements are incorrect?

- i. The creditor's default entitles the debtor to the remedies for breach of contract.
- ii. The creditor is entitled to remedies in terms of the law.
- iii. If performance becomes impossible before the debtor has fallen in *mora*, such supervening impossibility of performance does not have the effect of extinguishing the obligation.
- iv. The debtor will still be liable to the creditor if performance becomes impossible whilst he is in *mora*.
- a) Only i, ii and iv are incorrect.
- b) Only i and iii are incorrect.
- c) Only ii, iii and iv are incorrect.
- d) Only iii and iv are incorrect.

The differences between *mora creditoris* and prevention of performance by the creditor are the following:

- v. Prevention of performance by the creditor means that the creditor's performance is made impossible and can never be rendered.
- vi. Prevention of performance by the creditor means the debtor's performance is made impossible and can never be rendered.

- vii. With *mora creditoris*, the creditor merely delays the debtor's performance but does not render it impossible, so that it is still capable of being rendered.
- viii. With *mora creditoris*, the debtor merely delays the creditor's performance but does not render it impossible, so that it is still capable of being rendered.
- a) Only i and iv are correct.
- b) Only ii and iii are correct.
- c) Only ii and iv are correct.
- d) All of the above are incorrect.

Which of the following statements regarding repudiation are correct?

- vi. Repudiation requires an act and an intention to repudiate.
- vii. Repudiation means any behaviour (by words or conduct) by a party to a contract indicating that he or she may not honour the obligations under the contract with lawful justification.
- viii. Repudiation is an anticipatory form of breach.
- ix. The act of repudiation does not constitute a breach of contract.
- x. The innocent party can accept or reject the repudiation.
- a) Only i, ii and iii are correct
- b) Only i, iii and iv are correct
- c) Only ii, iv and v are correct
- d) Only i, iii and v are correct

Hayley agrees to do the catering at Alex's 21st birthday party on 15 May. On 14 May, Hayley phones Alex to inform her that she can no longer do the catering for the party as she is going away for a holiday. This form of breach of contract is:

- a) Positive malperformance
- b) *Mora debitoris*
- c) Repudiation
- d) Prevention of performance by the creditor

Taylor agrees to cater food for Katy's 21st birthday party on 15 May. On 15 May, Taylor does not show up to the party and there is no food. After the party, Katy phones Taylor and Taylor says she has taken down the date incorrectly as 16 May. This type of breach is:

- a) Repudiation
- b) Prevention of performance
- c) *Mora debitoris*
- d) *Mora creditoris*

Liam agrees to sell his horse to Sam for R50 000. The parties conclude the contract on 1 May 2021 and agree that Liam will deliver the horse to Sam on 10 May 2021. On 8 May, Liam remembers that the horse is insured with his insurer for R100 000 and therefore decides to poison the horse in order to get the R100 000 from his insurer. This type of breach is:

- a) *Mora debitoris*
- b) Prevention of performance by the creditor
- c) Positive malperformance
- d) Prevention of performance by the debtor

Fred agrees to buy a car from Kat for R100 000. Fred pays Kat the money and Kat is required to deliver the vehicle to Fred on 12 May. Kat does not deliver the car on the agreed date but instead delivers the vehicle on 15 May. This form of breach of contract is:

- a) Positive malperformance
- b) Repudiation
- c) *Mora debitoris*
- d) *Mora creditoris*

Jesse agrees to tile Alistair's bathroom for R6000. Alistair only wants to put white tiles in the bathroom and informs Jesse of this. Jesse performs the work, however, he uses black and white tiles as he did not have enough white tiles only. This form of breach of contract is:

- a) Positive malperformance
- b) Repudiation
- c) Prevention of performance
- d) Negative malperformance

Match the column (3 x 5 mark)

Indianna and Leon contract for Leon to purchase an iPhone 11 from Indianna for R6000. They agree to meet at Cresta Shopping Centre on 6 May 2021 at 14:00 to perform. Indianna flies out to Cape Town on the day at 8:00 and does not meet with Leon.	<i>Mora debitoris</i>
Indianna and Leon contract for Leon to purchase an iPhone 11 from Indianna for R6000. They agree to meet at Cresta Shopping Centre on 6 May 2021 at 14:00 to perform. Leon goes fly fishing with his friend that morning and does not meet up with Indianna.	<i>Mora creditoris</i>
Sally informs Jane two weeks before her baby shower that she will no longer be baking the cake for the baby shower.	Repudiation
Karabo contracts with Greg to buy a kitten from Greg on 1 June 2021. Karabo arrives at Greg's house to collect the kitten on the day and accidentally slips and falls on the kitten, killing it.	Prevention of performance by the creditor
Siya sublets his flat in contravention of his lease agreement with Ayanda.	Negative aspect of malperformance
	Positive malperformance
	Prevention of performance by the debtor

	Penalty clause
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An act and intention	Requirements for repudiation
Performance must still be possible	Requirement for <i>mora debitoris</i>
Debtor tenders performance that is incomplete	Positive malperformance
Performance becomes impossible due to the fault of one of the parties	Prevention of performance
Debtor must have tendered proper performance to the creditor	Requirement for <i>mora creditoris</i>
	Requirement for specific performance
	Cancellation clause
	<i>Mora ex re</i>

When a specific date for performance has been agreed upon and the debtor does not perform.	<i>Mora ex re</i>
When a specific date for performance has not been agreed upon and the debtor does not perform, the creditor then indicates a reasonable time for the debtor to perform within and the debtor fails to perform.	<i>Mora ex persona</i>
When the intended result is not achieved because of the fault of one of the parties.	Breach of contract
The party who has to perform an obligation	Debtor
The party who is entitled to performance of the obligation	Creditor
	Transfer of rights
	Positive duty
	Termination of contract

Fill in the missing word (6 marks)

In order to prove *mora creditoris*, [] must still be possible and it should be due and claimable.

Repudiation requires [] that the debtor intends not to perform in terms of the contract.

In a fit of rage Gina destroys her laptop that she is meant to deliver to Kabelo the next day. This is breach in form of prevention of performance by the [].

In the case of positive malperformance, the debtor does perform but his performance is [].

The debtor is said to be in *mora* [] if no specific date has been agreed upon for performance and then the creditor demands performance from the debtor within a reasonable time and the debtor fails to perform within the specified time.

If performance has become [] due to the fault of one of the parties, then this is breach in the form of prevention of performance.

True or false (6 marks)

Mika is contracted by Sihle to build a 20m x 20m swimming pool on his property on 1 June 2021. They agree that the swimming pool must be built by 31 July 2021. On 31 July 2021, Sihle is informed that the swimming pool is complete. He goes to inspect the pool and furious to find that Mika built a splash pool of 5m x 5m. This form of breach of contract is *mora creditoris*.

Phil agrees to cater for Andy's twenty-first birthday party on the 12th of May 2021. On the day of the party, Phil doesn't pitch up and when Andy calls Phil to find out where he is, Phil apologises profusely and states that he wrote down the wrong date of 21 May 2021. This type of breach is prevention of performance.

The debtor is said to be in *mora ex re* when a specific date to perform has been agreed upon and the debtor does not perform on that specific day.

John is hired by Bill to paint the inside of his house on 30 May 2021. When John pitches up to the house on the day, Bill is not there. This is an example of *mora debitoris*.

If the debtor is said to be in *mora*, then it means that it is no longer possible to render performance.

In order to prove positive malperformance, there must be an act and an intention to commit breach of contract.

15 mark application question

Lutendo, a vaccine supplier, sees an advertisement for COVID-19 vaccines in a neighbouring city's newspaper. Owing to his desire to be the only COVID-19 vaccine supplier in Johannesburg, Lutendo decides to purchase a large quantity of vaccines from John. In the written contract, the parties agree that John will deliver the vaccines to Lutendo's pharmacy on 1 June at noon. On the stipulated date and time John does not arrive and therefore does not deliver the vaccines. Lutendo is furious and approaches you for legal advice.

Answer the following questions:

1. State whether the contract has been breached in this case and if so, refer to and explain the type of breach committed. (4)
2. Identify and explain to Lutendo the remedies that are available to him in this instance. (4)

3. Distinguish between *mora ex re* and *mora ex persona* and identify which of the two is applicable to the given set of facts. (4)

3 marks to be awarded for spelling and grammar.

[15]

8 mark application question

Joshua and Tosca entered into an agreement whereby Joshua sold his 1950 vintage Ford Mustang to Tosca for R500 000. The agreement was drafted by Joshua's father. Tosca, however, does not understand all the terms of the agreement. More particularly, she is uncertain about three specific contractual terms:

- a) "This transaction is subject to the sale of the Nissan Micra currently owned by Tosca". (3)
- b) "The parties undertake that should one of them breach the agreement, the other will be able to cancel the agreement immediately". (2)
- c) "Joshua assures Tosca that the Ford Mustang is free of any mechanical defects". (3)

Identify and explain each specific contractual term.

[8]

x10 multiple choice questions

1. If Warren and Raj, in their written contract, agree that no amendment or variation is valid unless reduced to writing, the following statements are correct in this regard:
- i) This amounts to an entrenchment clause;
 - ii) The term is expressly incorporated into the contract;
 - iii) This amounts to a forfeiture clause;
 - iv) The term is tacitly incorporated into the contract.
- a) Only ii and iv are correct.
 - b) Only i, iii, and iv are correct.
 - c) Only i and ii are correct.
 - d) Only i and iv are correct.
2. Clauses which indicate that one or both of the parties to a contract will lose their right to restitution in certain circumstances are known as:

- a) Forfeiture clauses
- b) Penalty clauses
- c) Warranty clauses
- d) Cancellation clauses

3. Which of the following statements regarding the parol evidence rule are incorrect?

- i) Evidence of agreements concluded after the contract may be used even if they alter, amend or contradict the contract;
- ii) Evidence is not allowed of prior agreements where the terms of earlier agreements do not contradict, alter or add to the contract;
- iii) Evidence to prove the contract is void or voidable is not allowed;
- iv) The rule applies to both written and verbal contracts.

- a) Only ii and iv are incorrect
- b) Only i, iii, and iv are incorrect
- c) Only i and ii are incorrect
- d) Only ii, iii and iv are incorrect

4. Thato's assurance to John that the tools sold to him will last at least six months constitutes a:

- a) Resolutive condition
- b) Suspensive condition
- c) Warranty clause
- d) Penalty clause

5. Which of the following are defences to rebut the *caveat subscriptor* rule?

- i) Fraud;
 - ii) Nullity;
 - iii) Undue influence;
 - iv) Mistake.
- a) Only iii and iv are defences.
 - b) Only i, iii, and iv are defences.
 - c) Only i and iv are defences.
 - d) All of the above.

6. Tacit terms are those terms which -

- a) have been expressed in words.
- b) have been expressed verbally.
- c) have not been expressed in words but are based on the parties' intentions or the intention as imputed by law.
- d) have not been expressed in words but can be incorporated into the contract by operation of law.

7. Which of the following statements regarding rectification of a contract are correct?

- i) Rectification cannot be used to rectify a failure to comply with the law;
 - ii) Rectification is permissible if there was a reasonable error when the agreement was put into place;
 - iii) Rectification is necessary in cases where a written document does not reflect the true intention of the parties;
 - iv) Rectification and ratification are not interchangeable concepts.
- a) Only iii and iv are correct.
 - b) Only i and iv are correct.
 - c) None of the above.
 - d) All of the above.

8. Where the contracting parties insert special requirements into the contract, such additional terms may be regarded as:

- a) *Essentialia*
- b) *Incidentalialia*
- c) *Naturalia*
- d) *Supplementalia*

9. The Consumer Protection Act 68 of 2008 contains an important exception to the parol evidence rule. In terms of this exception, one of the factors courts must consider when interpreting a contract is whether -

- a) at the time the contract was entered into, there was any negotiation between the supplier and consumer, and if so, the extent thereof.
- b) prior to the conclusion of the contract, there was any negotiation between the supplier and consumer, and if so, the extent thereof.
- c) at the time the contract was terminated, there was any negotiation between the supplier and consumer, and if so, the extent thereof.

- d) during the subsistence of the contract, there was any negotiation between the supplier and consumer, and if so, the extent thereof.

10. If Paul and Simon verbally agree that the contract concluded between them will not be operational until a certain future event has occurred, the following statements are correct in this regard:

- i) This constitutes a resolutive condition;
 - ii) The parol evidence rule finds application;
 - iii) This is not a term since the contract was concluded verbally;
 - iv) This constitutes a suspensive time clause.
-
- a) Only i, ii, and iv are correct.
 - b) Only ii, iii, and iv are correct.
 - c) Only iv is correct.
 - d) None of the above.

6 fill in the missing word questions

1. The _____ evidence rule can only find application where a contract has been reduced to writing.
2. Rectification is permissible if there was a _____ error when the agreement was put into writing.
3. Terms that identify a contract as a specific contract are called _____.
4. A condition is a contractual term that indicates whether a contract will start, continue to operate or terminate, and the consequences of the contract are dependent on the occurrence or non-occurrence of a specific _____ future event.
5. Daniel and Frederick entered into a building contract. In terms of the contract, they agree that for every day Daniel is late in his performance, he will be liable to pay a fine of R10 000. This is known as a _____ clause.
6. Undue _____ is a defence that exists to rebut the *caveat subscriptor* rule.

x6 true or false questions

1. By virtue of a contract being reduced to writing brings the parol evidence rule into play.

2. Terms that are implied into a specific contract by law are called *essentialia*.
3. In the case of a suspensive condition, if the condition is not fulfilled the contractual relationship is dissolved.
4. Rectification and ratification are interchangeable concepts.
5. In the case of a resolutive condition, the contract comes to an end should the uncertain future event occur.
6. The integration rule holds that the signatory is bound by the written agreement where he/she has signed it and that he/she is bound by the ordinary meaning and effect of the words of the contract.

x 3 Matching of columns (5 marks each)

	A: Question/statement	B: Answers/description
1.	Conditions which delay the operation of a contract until the condition is met.	Suspensive conditions
2.	A manner in which terms may be incorporated into contracts.	Tacitly
3.	Means to correct (usually an error).	Rectification
4.	“The agreement may only be altered by written amendment.”	Entrenchment clause
5.	A defence to rebut the <i>caveat subscriptor</i> rule.	Fraud
6.		Ratification
7.		Forfeiture clause
8.		Resolutive conditions

	A: Question/statement	B: Answers/description
1.	“If any claim be in any respect fraudulent or unconscionable ... all benefit under the policy shall be forfeited.”	Forfeiture clause
2.	Terms that identify a contract as a specific contract.	<i>Essentialia</i>
3.	Means to approve/sign or give formal consent after the juristic act has been performed.	Ratification
4.	Conditions which bring the contract to an end should the uncertain future event occur.	Resolutive conditions
5.	Terms that are implied into a specific contract by law.	<i>Naturalia</i>
6.		Rectification
7.		Entrenchment clause
8.		Suspensive conditions

[5]

	A: Question/statement	B: Answers/description
1.	Terms which have not been expressed in words but are based on the parties' true intention.	Tacit terms
2.	Tommy assures Bob that the laptop is free of any chips or scratches.	Warranty clauses
3.	In terms of this clause the contract will not be operational until the certain future event has materialised or the time has come.	Suspensive time clause
4.	Misrepresentation constitutes a defence to rebut this rule.	<i>Caveat subscriptor</i> rule

5.	A prerequisite of the integration rule.	The agreement must be reduced to writing.
6.		Parol evidence rule
7.		Resolutive time clause
8.		Implied terms

[5]