



PROGRAMME : BCOM
MODULE : COMMERCIAL LAW 1A
CODE : COL41A1/KMR1A11
DATE : AUGUST 2019
Special Examination
DURATION : 8:30-10:30
TOTAL MARKS : 80

EXAMINER : DR. S. HUNEBERG; MR. J. LENONG; MS. J. MAHOLO;
DR. A. MUNYAI; MR. S. REDDY
MODERATOR : PROF. J. CALITZ
NUMBER OF PAGES : 4 (including this one)

INSTRUCTIONS:

1. Answer all the questions in your script.
 2. Write clearly and legibly.
 3. Leave a line open between each answer (for example, between questions 1.1 and 1.2).
 4. Ensure the correct use of grammar and spelling.
 5. Please indicate the name of your lecturer on your answer booklet.
 6. Please hand in your question paper separately at the door.
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QUESTION 1

- 1.1. Provide the definition for the following terms:
- 1.1.1 Novation (2)
 - 1.1.2 Settlement (2)
 - 1.1.3 Assignment (2)
- 1.2. Identify the three (3) common law remedies as provided for when a breach of contract occurs. (3)
- 1.3 Identify three specific prescription periods and provide an example of each. (6)
- 1.4 Terms can be incorporated into a contract in three various ways. Identify the ways in which terms may be incorporated in a contract. (3)
- 1.5. Karabo appoints Jackie to purchase a painting from John Sniper on her behalf.
- 1.5.1. What is the above scenario known as? (1)
 - 1.5.2. List the requirements for the validity of this contract. (5)
 - 1.5.3. Name the parties that acquire rights and duties in terms of this contract. (2)
- 1.6 When may a party to a contract cancel the contract when *mora debitoris* occurs? (3)
- 1.7 Explain what the purpose of claiming damages is when a breach of contract occurs. (2)

SUB-TOTAL	[31]
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QUESTION 2

Identify the type of contractual terms listed below:

- 2.1 Allan sells his house to Brian for R2 000 000. The contract has the following provision: "This sale is subject to Brian obtaining a loan for 80% of the purchase price (R1 600 000) from JFK Bank within 60 days from the signing of the contract." (2)
- 2.2 Daniel leases his farm to Oliver. The parties agree that as soon as Daniel's son, Jack, obtains his Bachelor of Science Agriculture degree, the contract between Daniel and Oliver will dissolve, as Jack will be farming on this land. (2)
- 2.3 Mary undertakes that she will buy Susan a new house after her husband Patrick's death. (2)
- 2.4 Neville rents Raj's house for a period of one (1) year. When this period of a year expires, Neville will have to vacate the house. (2)
- 2.5 William sells a stud bull to Harry. William assures Harry that the bull is capable of breeding. (1)
- 2.6 "If any claim is in any respect fraudulent or intentionally exaggerated or if any fraudulent means or device is used by the insured ... all benefit under the policy shall be forfeited." (2)

- 2.7 Jack gives Jane a cheque. The cheque is payable 90 days after Jack's death. (2)
- 2.8 Harry hires a farm from Jeff for 10 years. (2)

SUB-TOTAL	[15]
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QUESTION 3

Thabo appoints Sershiv to purchase a vehicle from BMW on his behalf. Thabo instructs Sershiv that he wants the latest BMW 3 series. Answer the following questions:

- 3.1 Explain Sershiv's duties in terms of his contract with Thabo. (5)
- 3.2 Explain the duties expected of Thabo in terms of the contract. (3)
- 3.3 Suppose that Sershiv does not disclose to BMW that he is acting on behalf of Thabo in this contract. Explain the validity of the contract and who will be liable in this instance? (4)

SUB-TOTAL	[12]
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QUESTION 4

Bob the builder is instructed by Verusha to tile her new bathroom with only white tiles. Bob has black tiles left over from a previous job and decides that he will tile Verusha's bathroom with black and white tiles. He completes the job and sends Versusha an invoice for the agreed amount of R10 000. Verusha is unhappy as this is not what she instructed Bob to do.

- 4.1. Identify and explain the type of breach committed by Bob. (4)
- 4.2. What remedies are available to Verusha in this specific circumstance? Explain your answer. (4)

SUB-TOTAL	[8]
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QUESTION 5

Njabulo recently got his first job as a candidate attorney with BLC Incorporated. He wants to purchase his first car with Volkswagen as a gift to himself. He decides to buy himself the new Polo 1.4 model. However, Njabulo does not have the cash to purchase the car fully from Volkswagen and therefore, he requires a loan from Wesbank. This means that Wesbank will finance the car for Njabulo and he will pay monthly instalments to Wesbank. Volkswagen is satisfied with this agreement as the car has been paid for in full by Wesbank. This means that Volkswagen has transferred its personal right against Njabulo to Wesbank.

- 5.1 Identify the correct legal names of the parties mentioned above in terms of cession. (3)

SUB-TOTAL	[3]
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QUESTION 6

Whitney purchases a 2015 Volkswagen Polo from a private seller, Shannon, on 1 May, 2019 for R85 000. The parties agree that Shannon will deliver the vehicle to Whitney on 4 May, 2019. On the 3rd of May, 2019 there is a flash flood in Shannon's area and the vehicle gets washed away as a result of the flash flood.

Write a **formal business letter** to Whitney answering the following questions:

- 6.1 Whitney is now very confused as to what happens to the contract between her and Shannon. Explain to Whitney the effect of the above scenario on the contract and the obligations between them? Provide reasons for your answer. (5)
- 6.2 Suppose Shannon realises that the car is insured for R120 000 and gets the car deliberately stolen so that she can rather get the greater amount from her insurer. How would your answer at 6.1 above differ in this regard? (4)

Format (1)

Clarity of expression (1)

SUB-TOTAL	[11]
GRAND-TOTAL	[80]