

Memo Main Exam 2019

Question 1

- 1.1.1. Cession – the transfer of personal rights (1) from one person to another (1)
- 1.1.2. Set-off – the extinguishing of similar debts (1) between parties (1). (Where each party to a contract owes the other money, these amounts can be set-off against each other).
- 1.1.3. Extinctive Prescription – legal obligations are extinguished (1) through a passage of time (1)

1.2.1. *Essentialia*: the essential minimum characteristics (1) which have to be contained in a contract in order to identify it as a specific contract (1).

1.2.2. *Naturalia*: Those contractual provisions which automatically, naturally (1) and by operation of law form part of a contract (1).

1.2.3. *Incidentalia*: All additional terms (1) and conditions which the parties wish to include in a contract (1).

1.3. Prevention of performance by the creditors occurs where the debtor's performance is made impossible by the creditor's conduct and can never be rendered (2)

Mora creditoris: Occurs where the creditor causes the debtor's performance to be delayed (performance is still possible) (2)

1.4. There is a difference (1). Terms comprise of all the contents of a contract (1) while conditions are a specific type of term in a contract (1). Therefore, all conditions are terms but not all terms are conditions.

1.5.1. Agency (1)

1.5.2. Haleema – Principle (1)

Jabu – Agent (1)

Henry – Third party (1)

1.5.3. The doctrine of the undisclosed principle applies (1). This means that the agent has performed a juristic act on behalf of the principal without disclosing this fact (1) (fails to disclose s/he is acting in a representative capacity), the principal can become a party to the contract in the agent's place (1). The third party can decide if she wants to be bound to the agent or to the principal. Once a decision is made, the third party is bound by it. (1) Yes, there is a valid contract because the agent was authorized and the doctrine applies. (1)

1.6. – Where time is of the essence (1)

- Where the other party acquires a right to cancel (1)

- If there is a cancellation clause (1)

1.7. If the party has suffered a patrimonial loss (1) caused by the breach of contract (1).

[33 marks]

Question 2

2.1 Suspensive (1) Condition (1)

2.2 Resolutive (1) condition (1)

2.3 Suspensive (1) time-clause (1)

2.4 Resolutive (1) time-clause (1)

- 2.5 Warranty (1)
- 2.6 Penalty Clause (2)
- 2.7 Suspensive (1) time-clause
- 2.8 Resolutive (1) time-clause (1) Please note that part marks are to be awarded if the students identifies half of the term as correct eg: suspensive/resolutive =1 and condition/time-clause =1.

[15 marks]

Question 3

3.1.

1. The Principal must have been in existence when the Agent purported to act on his/her behalf (1)
2. 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. (1)
3. The Principal must be named or ascertainable. (1)
4. The Principal must have the capacity to ratify the unauthorized act. (1)
5. The Principal must actually ratify the unauthorized contract in its entirety (1)
6. Ratification must take place within a reasonable time. (1) – Any 5

3.2. The effect is that the contract becomes binding (1) against the principle (1) as if the agent had the authority from the start. (The contract becomes valid)

[7 marks]

Question 4

- 4.1. Yes (1). Mora debitoris/ delay by the debtor has occurred (1). Marco as the debtor has delayed the completion of the house (1).
- 4.2. Luke may claim damages as he is having to spend more money on rent due to the delay (1). He may also claim specific performance and force Marco to finish the building of the house (1). He may only cancel if the contract contains a cancellation clause (1) or if time is of the essence (1) or if he acquires a right to cancel (1).
- 4.3. In such a case, Luke would have to place Marco in mora by demanding performance from Marco (1). Luke would have to deliver a notice of demand where he sets out a time for Marco to perform and if he doesn't perform within a reasonable time then Marco will be in mora ex persona (1).

[10 marks]

Question 5

Letter Format (1)

Clarity of expression (1).

5.1. Repudiation (1). Any behaviour by a party (1) to a contract indicating that he or she may not have the intention to honour the obligations under the contract by withdrawing from the contract without any justification(1).

5.2. An act (1) and an intention to repudiate (1).

5.3. The act of repudiation already constitutes a breach of contract and the innocent party is entitled to remedies. The innocent party can accept (1) or reject the repudiation (1). Rashida can also claim damages if she has suffered a loss (1).

5.4. The contract is NOT automatically terminated (1). Rashida has a choice as to whether to uphold the contract or cancel it (1). Only if Rashida chooses to accept repudiation by Akalwayas will the contract be terminated/cancelled (1). Any two points.

5.5. Rashida may cancel the contract where the repudiation is material (1) or where there is a cancellation clause (1).

5.6. Yes, she can (1). By rejecting repudiation and forcing them to perform.

[15 marks]