

Memo Special Supplementary Exam 2019

Question 1

- 1.1.1. Novation – the debtor and creditor agree to extinguish the previous debt between them (1) and replace it with a new debt (1).
- 1.1.2. Settlement – an agreement between parties (1) to settle an existing dispute between them. (1)
- 1.1.3. Assignment– the transfer (1) of both rights and duties from one person to another (1).

1.2. *Specific performance (1); cancellation (1) and damages (1).*

1.3. 30 years (1): Debt secured by mortgage/judgment debt (1)

15 years (1): any debt owed to the State and arising from an advance or loan of money (1)

6 years (1): debt arising from a bill of exchange or other negotiable instrument (1)

3 years (1): any other debt (contract/delict) (1) – **Any 3 of the above with the applicable example.**

1.4. Expressly (words or conduct) (1). Tacitly (1). Implied by law (1).

1.5.1. Agency (1)

1.5.2. •Parties must have reached consensus (1)

•Parties must have contractual capacity (1)

•Contract must not be illegal and performance thereof must be physically possible (1)

•Formalities, if applicable, have to be complied with (1)

•The agent must have the necessary authority to conclude the contract on behalf of his principal. (1)

1.5.3. Principal/Karabo (1) and Third party/John Sniper (1)

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

- Where the party acquire a right to cancel (1)

- Where there is a cancellation clause (1)

1.7. The purpose of claiming damages is to restore the innocent party's patrimony (1) to what it was before the breach of contract occurred (1). (Recover a loss suffered by the innocent party).

[31 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. Forfeiture Clause (2)
- 2.7. Suspensive (1) time-clause
- 2.8. Resolutive (1) time-clause (1)

[15 marks]

Question 3

3.1. - To perform his mandate (1)

- To act in good faith (1)
- To account to the principal (1)
- To keep the principal's property separate (1)
- To return any property (1)

3.2. -To compensate the agent (1)

- To indemnify the agent (1)
- To reimburse the agent (1)

3.3. The doctrine of the undisclosed principal comes into play (1) as Sershiv did not disclose to BMW that he was acting on behalf of Thabo (1). BMW may then elect which party to hold liable (1). That is, BMW can elect to uphold the contract with Thabo or Sershiv (1).

[12 marks]

Question 4

4.1. – Positive malperformance (1). This means that the debtor does perform (1) but performs incorrectly (1). In this case, Bob does tile the bathroom but does not perform as he was meant to in terms of the contract (1).

4.2. Verusha may force Bob to perform correctly, ie retile the bathroom with the correct colour tiles (1) (specific performance)

Verusha may only cancel the contract if there is a cancellation clause (1), or where the breach is considered material (1).

Damages (1): Verusha has suffered a patrimonial loss and therefore is entitled to claim damages.

[8 marks]

Question 5

5.1. Njabulo – Debtor (1)

Volkswagen – Cedent (1)

Wesbank – Cessionary (1)

[3 marks]

Question 6

Formal letter Format (1)

Clarity of expression (1).

6.1. The contract is terminated (1) due to supervening impossibility (1). The contract comes to an end (1) as a force of nature is to blame for the impossibility of performance (1). Restitution between the parties must then take place (1).

6.2. In this specific case, prevention of performance by the debtor takes place (1). This is breach of contract (1) and would thus entitle Whitney to the common-law remedies (1). Here performance is made impossible to the fault of Shannon (1).

[11 marks]