

## **Memo Supplementary Exam 2019**

### Question 1

- 1.1.1. Delegation – the transfer of duties (1) from one person to another (1)
- 1.1.2. Merger – When a person becomes both the creditor and the debtor (1) in respect of the same obligation. (1)
- 1.1.3. Release – an agreement between the creditor and debtor (1) in terms of which the creditor will release the debtor from his/her contractual obligations (1).

1.2.1. *Interdict*: A court order commanding (1) a person to not do something or prevent them from doing something (1).

*Specific performance*: A court order which commands (1) a contracting party to render the performance he/she has undertaken to render i.t.o the contract (1).

1.3. Extinctive Prescription: where a person is released (1) from an obligation through a passage of time (1).

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

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

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

3 years: any other debt (1)

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. •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)

1.5.2. Principal (1) and Third party (1)

1.5.3. The agent (1)

1.6. – Performance must be delayed/no performance at all at the required time (1)

- Performance must already be claimable/performance must be due and enforceable (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. Forfeiture clause (2)
- 2.4. Suspensive (1) time-clause (1)

- 2.5. Warranty (1)
- 2.6. Penalty Clause (2)
- 2.7. Resolutive (1) time-clause
- 2.8. Suspensive (1) time-clause (1)

[15 marks]

#### Question 3

- 3.1. - To compensate the mandatary for expenses (1)
- To pay the mandatary the agreed remuneration (1)

- 3.2. -To carry out the mandate (1)
- To perform the mandate personally (1)
- To act in good faith (1)
- To account to the mandatory (1)
- Not to exceed the terms of the mandate (1)
- To act with skill and care (1)
- To render accounts (1)

[9 marks]

#### Question 4

- 4.1. – Specific performance (1): Verusha may force them to perform (continue to build the house) (1)

Cancellation (1): Verusha may cancel the contract if there is a cancellation clause, she acquires a right to cancel or where time is of the essence (1).

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

- 4.2. Plaintiff (1).

4.3 By looking at the financial position she would have been in if the contract had been carried out and breach had not occurred (1) and Verusha's actual financial position (1).

- 4.4. R 1 000 000 (1).

[10 marks]

#### Question 5

- 5.1. Njabulo – Debtor (1)
- Volkswagen – Cedent (1)
- Wesbank – Cessionary (1)

[3 marks]

#### Question 6

##### **Email Format (1)**

##### **Clarity of expression (1).**

6.1. Breach of contract has been committed (1) in the form of Prevention of performance (1) by the creditor (1) (Andrew). Andrew has culpably rendered performance by Bennie impossible (1).

6.2. Bennie will be discharged from his duty to perform (1) and he is still entitled to receive Andrew's performance (the amount for the puppy) (1). Bennie may cancel the contract (1) and claim damages (1).

6.3. Prevention of performance by the creditor – the debtor's performance is made impossible and can never be rendered (1) vs *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 (1).

[12 marks]