



**PROGRAMME**

: BCOM

**MODULE**

: COMMERCIAL LAW 1A

**CODE**

: COL41A1/KMR1A11

**DATE**

: 15 JULY 2020

Winter ONLINE Supplementary Examination

**DURATION**

: 3 Hours

**TOTAL MARKS**

: 70

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**EXAMINER**

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**MODERATOR**

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**NUMBER OF PAGES**

:

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

**Multiple choice (10 marks – 10 QUESTIONS 1 MARK EACH)**

**QUESTION ONE**

*[Blackboard: Multiple choice]*

1. Kenisha has won the lotto and wants to purchase a farm. She doesn't have the time to drive around South Africa to view various farms that are for sale, and she instructs Jermaine to act on her behalf by looking at farms and purchasing

a suitable option. Close to the town of Springbok in the Northern Cape, Jermaine purchases a farm on Kenisha's behalf from Gregory.

- a) The contract of sale is entered into between Kenisha and Gregory.
  - b) The contract of sale is entered into between Kenisha, Jermaine and Gregory.
  - c) The contract of sale is entered into between Kenisha and Jermaine.
  - d) The contract of sale is entered into between Jermaine and Gregory.
2. Kenisha has won the lotto and wants to purchase a farm. She doesn't have the time to drive around South Africa to view various farms that are for sale, and she instructs Jermaine to act on her behalf by looking at farms and purchasing a suitable option. Close to the town of Springbok in the Northern Cape, Jermaine purchases a farm on Kenisha's behalf from Gregory.
- a) Kenisha is the principal, Jermaine is the agent, and Gregory is the third party.
  - b) Kenisha is the agent, Jermaine is the principal, and Gregory is the third party.
  - c) Kenisha is the principal, Jermaine is the third party, and Gregory is the agent.
  - d) Kenisha is the third party, Jermaine is the agent, and Gregory is the principal.
3. Which of the following is NOT a requirement for a valid contract of agency:
- a) The contract must be legal.
  - b) Necessary authority of the agent to act on behalf of the principal.
  - c) The parties must have contractual capacity.
  - d) No formalities have to be complied with.
4. James acts as agent for Bobby. Bobby wants to purchase a vintage car. James finds the perfect car and purchases it from Moloi on Bobby's behalf. In all the excitement of finding the perfect car, James fails to inform Moloi that he is acting on behalf of Bobby. In terms of the doctrine of the undisclosed principal:
- a) The contract is between Bobby and Moloi.
  - b) The contract is between James, Bobby and Moloi.
  - c) The contract is between Bobby and James.
  - d) The contract is between James and Moloi.
5. James acts as agent for Bobby. Bobby wants to purchase a vintage car. James finds the perfect car and purchases it from Moloi on Bobby's behalf. In all the excitement of finding the perfect car, James fails to inform Moloi that he is acting on behalf of Bobby. In terms of the doctrine of the undisclosed principal:
- (i) The contract is between James and Moloi.

- (ii) Bobby can become party to the agreement in the place of James should he so choose.
  - (iii) The contract is between Bobby and Moloi.
  - (iv) The contract is between Bobby and James.
- a) Only option (i) is correct.
  - b) Options (i) and (ii) are correct.
  - c) Only option (iii) is correct.
  - d) Only option (iv) is correct.
6. Rachel as agent entered into a contract with Joseph on behalf of Roscoe, the principal. Rachel did not have the authority to enter into this agreement. Roscoe is however satisfied with the agreement that Rachel entered into and wishes to be party thereto. Roscoe can validate Rachel's actions by means of:
- a) ratification.
  - b) rectification.
  - c) estoppel.
  - d) the doctrine of the undisclosed principal.
7. Kristin enters into a contract with Keegan. She tells Keegan that she is acting as agent on behalf of a company with the name of ABC Limited. As it turns out, ABC Limited does not exist.
- a) The contract is entered into between Kristin and Keegan.
  - b) The contract is entered into between Keegan and ABC Limited.
  - c) The contract is entered into between Kristin and ABC Limited.
  - d) No legal relationship exists between the parties.
8. Morgan as agent entered into a contract with Thabo on behalf of Noah, the principal.
- a) If Morgan failed to inform Thabo that she is acting on behalf of Noah, Noah may replace Thabo as party to the contract in terms of the doctrine of the undisclosed principal.
  - b) If Morgan failed to inform Thabo that she is acting on behalf of Noah, Noah may replace Morgan as party to the contract in terms of the doctrine of the undisclosed principal.
  - c) If Morgan failed to inform Thabo that she is acting on behalf of Noah, Noah may replace Morgan as party to the contract in terms of the doctrine of estoppel.
  - d) If the contract that Morgan had entered into was to purchase a large house, but Noah had instructed her to purchase a small flat, Noah will be able to replace Morgan as party to the contract in terms of the doctrine of the undisclosed principal.

9. Daniel is Morris' estate agent and has been instructed by Morris to sell his house. Which of the following is not a circumstance under which this authority will terminate:
- a) Daniel finds a purchaser and proceeds to sell the house.
  - b) As a result of a severe storm, Morris' house was struck by lighting and has burned to the ground so that nothing remains.
  - c) Morris had given Daniel four months to sell his house. After four months have passed, the house has still not been sold.
  - d) Morris has a change of heart and he renounces the authority that he gave to Daniel.
10. Nancy wants to start a business for which she will require space that she can utilise for a small factory. Nancy is so busy applying for a small business loan at various banks that she does not have the time to look at premises that would be suitable. She instructs Maria to look at premises on her behalf and to enter into a lease agreement when she finds something suitable. Maria finds the perfect space for Nancy to use and she enters into a lease agreement with Luwazi, the landlord. The parties in this scenario are:
- a) Nancy as the principal, Maria as the agent, and Luwazi as the third party.
  - b) Nancy as the agent, Maria as the principal, and Luwazi as the third party.
  - c) Nancy as the agent, Maria as the third party, and Luwazi as the principal.
  - d) Nancy as the third party, Maria as the principal, and Luwazi as the agent.
11. Samson and Archie enter into a contract. A term in the contract stipulates that Samson is selling his bicycle to Archie in exchange for R 550. Identify the type of term in this contract:
- e) Naturalia.
  - f) Essentialia.
  - g) Incidentalia.
  - h) All of the above.
12. Samson and Archie enter into a contract pertaining to the sale of a bicycle. Although the parties have not expressly stated so, it is their true intention that the bicycle will be in good working condition upon delivery. Identify the way in which the parties' true intention can be incorporated into the contract:
- a) Expressly.
  - b) Tacitly.
  - c) Implied.
  - d) None of the above.
13. Samson and Archie enter into a contract pertaining to the sale of a bicycle. The contract provides the following special requirement concerning payment: "The purchase price of R 550 may be paid in monthly instalments with the last

instalment being made on 10 June 2020." Identify the type of term in this contract:

- a) Naturalia.
- b) Essentialia.
- c) Incidentalia.
- d) All of the above.

14. Samson and Archie enter into a contract pertaining to the sale of a bicycle. One of the terms of the contract provide that Samson is to deliver the bicycle to Archie on 12 June 2020. Identify the way in which the above term has been incorporated into the contract:

- a) Expressly.
- b) Tacitly.
- c) Implied.
- d) None of the above.

15. Sipho and Thando wish to enter into a contract of lease. Both parties have been advised by Lerato, a lawyer specialising in property law, that by signing the written contract, both parties will be bound by the contract as well as by the ordinary meaning and effect of the words of the contract. Identify the legal principle that Lerato discussed:

- a) Parol evidence rule.
- b) Extrinsic evidence rule.
- c) Caveat subscriptor rule.
- d) Par delictum rule.

16. Identify a defence to the caveat subscriptor rule:

- a) Bad faith.
- b) Misrepresentation.
- c) Prevention of performance.
- d) None of the above.

17. Johan and Henry enter into a contract for the sale of a white BMW motor vehicle. Subsequently the parties realise that the contract does not reflect their true intention as an error was made in the conclusion of the contract. The error was that the contract was to reflect the sale of a white Mercedes Benz and not a BMW motor vehicle. For this reason the parties wish to remedy the situation. Identify the applicable remedy in this respect:

- a) Ratification.
- b) Satisfaction.
- c) Implication
- d) Rectification.

18. Adrian wishes to purchase a Big Mac meal from McDonald's. In terms of the current lockdown regulations, he may only do so online. Accordingly, he navigates through the McDonald's website and is instructed to click on a certain icon in order to make use of McDonald's services. The clicking indicates acceptance of the terms of the contract offered by way of a linkage page. Thereafter he selects the Big Mac option and makes payment. Once this process is complete, Adrian waits 10-15 minutes before his delivery arrives. Identify the type of agreement that Adrian entered into:

- a) Unsigned agreements.
- b) Ticket-services.
- c) Clicked-wrapped agreements.
- d) None of the above.

19. In August 2019 Frieda and Imraan entered into a written contract of employment. The contract stipulates that Imraan is required to work only four hours daily. In May 2020, the parties enter into a dispute concerning Imraan's working hours. While Frieda acknowledges the written contract of employment, she argues that during July 2019 the parties agreed to an eight-hour work day for Imraan. This was allegedly captured in an unsigned document titled "Imraan's working hours". Imraan's lawyer tells him that, in terms of contract law, once a contract has been reduced to writing or integrated into a single complete document, the written document is the only record of the agreement and it is this document that is interpreted in order to determine the content of the contract. Identify the legal principle that Imraan's lawyer discussed:

- a) Parol evidence rule.
- b) Caveat subscriptor rule.
- c) All of the above.
- d) None of the above.

20. Terms can be incorporated into a contract in the following manner:

- a) Orally.
- b) In writing.
- c) Tacitly.
- d) All of the above.

21. Which of the following statements are correct?

- a) Any debt that arises from a bill of exchange or negotiable instrument prescribes after a period of three years.
- b) A debt from a mortgage bond prescribes after a period of 20 years.
- c) Release requires the bilateral consent of both debtor and creditor.
- d) Rescission and cancellation of a contract mean the same thing.
- e) In set-off, the debts owed between Bongiwe in her personal capacity and Nonkululeko in her professional capacity can be set off as long as the debts are of the same kind.

22. With regards to impossibility of performance, which of the following statements is incorrect:
- a) In the case of supervening impossibility of performance, the contract simply terminates between the parties.
  - b) Where performance becomes impossible due to the fault of one of the parties, breach of contract occurs providing the innocent party with remedies.
  - c) In the case of initial impossibility of performance, the contract does come into existence and then terminates later.
  - d) Objective impossibility of performance means any reasonable person in that position would have found performance to be impossible.
  - e) Subjective impossibility means that it is only impossible for a specific debtor to perform.
23. Which ONE of the following statements regarding novation is correct:
- a) Novation concerns the transferring of new rights to parties
  - b) Novation means that parties to a disputed contract conclude a new contract
  - c) Novation entails the creation of a new debt between the parties
  - d) Novation does not require a previous valid debt to be in existence
  - e) Novation is the same concept as compromise
24. The following statements concerning cession are incorrect:
- i. Cession requires the consent of all three parties;
  - ii. Cession may be prohibited in certain instances;
  - iii. Cession is defined as the transfer of rights and duties from one person to another;
  - iv. Formalities are required for cession to take place
- a) Only ii, iii and iv are incorrect
  - b) Only i, iii and iv are incorrect
  - c) All of the above are incorrect
  - d) Only i and ii are incorrect
  - e) Only ii and iv are incorrect
25. Which ONE if the following statements is correct:
- a) The prescription period for a debt arising from a cheque is 15 years;
  - b) Release means that the debtor absolves himself from liability;
  - c) Compromise requires the existing debt between the parties to be in dispute;
  - d) Merger means that a new debt replaces the old debt;
  - e) Set-off can take place between debts in respect of money and goods.
26. The following statements regarding cession are correct:

- i. The person to whom the right is transferred is called the cessionary;
  - ii. The person who transfers the right is called the debtor;
  - iii. The personal right is transferred to another creditor;
  - iv. Cession does not terminate or create a new obligation;
  - v. The law may prohibit cession in certain circumstances
- a) All of the above are correct
  - b) Only i, ii, iii and iv are correct
  - c) Only i, iii and v are correct
  - d) Only i, iii, iv and v are correct
  - e) Only ii, iii, iv and v are correct

27. A contract can be terminated by agreement between the parties in the following way:

- a) Cession
- b) Performance
- c) Cancellation
- d) Novation
- e) Rescission

28. When a contract is terminated by way of cancellation, it means the following:

- a) An act of withdrawing from a contract due to reasons other than breach of contract
- b) The co-operation of the creditor is required for the termination to take place
- c) No co-operation by the creditor is necessary – usually the debtor must refrain from doing something
- d) An act of withdrawing from the contract due to breach of contract
- e) The parties agree to end the contractual relationship amicably

29. The following statements regarding fulfilment of the contract are correct:

- i. Fulfilment means discharge of the duties between the parties;
  - ii. Once there is proper performance in terms of the contract by both parties – the contractual relationship ends
  - iii. Performance entails both a unilateral and bilateral act of the parties
  - iv. Fulfilment means that the contract is terminated
  - v. Performance of the obligation is considered to fulfilled when both parties have performed in terms of a bilateral juristic act
- a) Only i, ii, iii and iv are correct
  - b) Only ii, iii, iv and v are correct
  - c) Only i, ii, iv and v are correct
  - d) All of the above are correct
  - e) Only ii, iv and v are correct

30. In order for set-off to occur, the following requirements must be met:
- i. Debts must be of a similar nature
  - ii. Debts must arise in the future
  - iii. Debts must be liquidated
  - iv. Debts must be claimable (due and payable)
  - v. Debts must be between the same persons in the same capacities
- a) All of the above are true
  - b) Only i, iii and iv are correct
  - c) Only ii, iii, iv and v are correct
  - d) Only i, iii, iv and v are correct
  - e) Only i, ii, iv are correct

### Question one

The following is an example of a form of breach of contract:

- i. *Mora debitoris*
- ii. *Caveat subscriptor*
- iii. Supervening impossibility of performance
- iv. Parole evidence rule
- v. *Par delictum*

### Question 2

*Mora ex re* in respect of *mora debitoris* means:

- i. Where a specific date or time for performance has been stipulated in the contract and the debtor fails to perform on or before the appointed time, he is automatically in *mora*.
- ii. Where no exact date has been specified, the creditor can determine a date by demanding that the debtor perform before or on a certain date. Should demand in writing and give reasonable time. A demand is therefore necessary by the creditor before the debtor can be in *mora*.
- iii. The debtor must pay interest for being in *mora*
- iv. The debtor must send a letter to the creditor explaining why s/he is delayed.
- v. The debtor is prohibited from delivering goods to his/her ex partner.

### Question 3

Positive malperformance with reference to breach refers to:

- i. The content or quality of performance
- ii. The timing of the performance
- iii. Whether the debtor has a positive attitude whilst performing the work
- iv. Making the performance impossible to perform
- v. Performing better than what the creditor has expected.

#### Question 4

Sesh agrees to cater food for Vee's birthday on 1 July 2020. On 28 June 2020, Sesh calls Vee to inform her that he will no longer be catering the food for her birthday.

What type of breach of contract has occurred?

- i. Positive malperformance
- ii. *Mora debitoris*
- iii. Repudiation
- iv. Prevention of performance
- v. There is no breach of contract

#### Question 5

Claire agrees to pay her rental of R5000.00 every month to Phil on the 1<sup>st</sup> day of every month. For the month of July, Claire pays her rental on the 30 June. What type of breach of contract has occurred?

- i. *Mora debitoris*
- ii. Prevention of performance
- iii. Repudiation
- iv. There is no breach of contract
- v. *Mora creditoris*

#### Question 6

Mary hires Bo to tile her kitchen. They agree that Bo will tile the kitchen with blue tiles. Bo completes the kitchen but has tiled the kitchen with green tiles as he feels they will better suit Mary's kitchen and they were more expensive than the blue tiles. What type of breach of contract has occurred?

- i. There is no breach of contract because performance has been rendered.
- ii. Positive malperformance
- iii. Repudiation
- iv. Mistake
- v. *Mora debitoris*

#### Question 7

The two requirements for *mora debitoris* are:

- i. The debtor must perform and the debtor's performance must be incomplete.
- ii. The debtor's performance must delayed and the performance must be defective.
- iii. The debtor's performance must be delayed and performance must be claimable.
- iv. The debtor's performance must be delayed and performance must be impossible to perform later on.
- v. The debtor must contact the creditor and apologise for the delay.

### Question 8

Repudiation may be defined as:

- i. When a person withdraws from a contract by words or conduct through which a party to a contract indicates that he or she may not honour the obligations under the contract without lawful justification.
- ii. Withdrawing from a contract by words or conduct due to a legal excuse.
- iii. Drawing up an amendment to the original contract.
- iv. Where a party makes performance impossible to perform.
- v. A Latin term for 'reproduction'.

### Question 9

When breach of contract in the form of prevention of performance is committed by the creditor, the following occurs:

- i. The debtor's performance is made impossible by the culpable act of the creditor and can never be rendered.
- ii. The debtor makes his own performance impossible.
- iii. The creditor delays the debtor's performance but it is still possible to perform in the future.
- iv. The creditor informs the debtor that the debtor is no longer required to perform.
- v. The creditor prevents the debtor from getting married to another person.

### Question 10

A breach of contract may occur when:

- i. The parties have fulfilled the obligations of the contract.
- ii. The obligations by one of the parties is not achieved as a consequence of the fault of one of the parties.
- iii. The parties do not read the contract and have to draft a new one.
- iv. The parties require rectification of the contract.
- v. The parties agree through a handshake.

1. What is extinctive prescription?

- a) A person is released from obligations through passage of time and contractual obligations are terminated.
- b) A person acquire rights through a passage of time.
- c) A medical script.
- d) An agreement between two parties

2. The prescription period for an ordinary contractual debt is:

- a) 3 years.
- b) 6 years.
- c) 15 years.
- d) 30 years.

3. Withdrawing from a contract for reasons other than breach of contract is known as?
- a) Rescission.
  - b) Cancellation.
  - c) Personal right.
  - d) Assignment.
- 2.1 Generally speaking, which of the following remedies could be applicable in the instance of breach of contract in the form of *mora debitoris*?
- i) Execution of the contract and damages.
  - j) Damages only.
  - k) Execution of the contract and cancellation.
  - l) Specific performance and cancellation.
- 2.2 Vanessa and Neema entered into a contract in terms whereof Vanessa would purchase Neema's car. In terms of their agreement Vanessa had to make payment to Neema by no later than 4 July. By 6 July Vanessa had still not made payment. Under which of the following circumstances would Neema be able to cancel the contract:
- (i) If the breach committed by Vanessa is serious, in the instance where there is a time specified for performance and there is no cancellation clause.
  - (ii) Should there be no cancellation clause, if Neema first provides Vanessa with a notice of intention to cancel.
  - (iii) If their agreement contains a cancellation clause.
  - (iv) If Neema decides to make use of the remedy of specific performance she may also decide to cancel their contract.
- Which of the following is the correct option:
- e) Only option (i) is correct.
  - f) Options (i) and (iii) are correct.
  - g) Options (i), (ii) and (ii) are correct.
  - h) All of the above are correct.
- 2.3 Jabu and Jamelia enter into a contract in terms whereof Jabu will purchase knitted beanies and scarves from Jamelia. Jamelia will personally deliver the items to Jabu. Jamelia is meant to deliver the items by Friday morning at 10h00. By 12h00 she has still not arrived at Jabu's house. Jabu is very annoyed and when he phones Jamelia to hear where she is, he says to her that if she does not deliver the items within the next hour, he will cancel their contract. After an hour has expired, Jamelia has still not arrived at Jabu's house. Choose the correct statement:

- e) The contract between Jabu and Jamelia has now been cancelled.
  - f) The contract between Jabu and Jamelia has now been cancelled and Jabu has committed breach of contract in the form of *mora creditoris*.
  - g) The contract between Jabu and Jamelia has now been cancelled, and Jamelia has committed breach of contract in the form of *mora debitoris*.
  - h) Jamelia has committed breach of contract in the form of *mora debitoris*.
1. Thelma concludes a contract with Louise whereby Louise will purchase five vintage cars from a well-known collector, Henry Kingsley, on Thelma's behalf. Thelma authorises Louise to negotiate with Henry and to pay a maximum of R50 000 per car. The contract therefore will exist between:
- a) Henry and Thelma
  - b) Thelma and Louise
  - c) Louise and Henry
  - d) Thelma, Louise and Henry
  - e) None of the above
2. In terms of the doctrine of estoppel, the following requirements must be met:
- i. The principal, by words or conduct must have represented to the third party that the agent had authority to contract on the principal's behalf;
  - ii. The principal must be named or ascertainable;
  - iii. The representation must have been of such a nature that it could reasonably have been expected to mislead the third party;
  - iv. Ratification must take place within a reasonable time;
  - v. The third party must have relied/acted on the representation which was to his/her detriment.
- a) Only i, ii, iii and v are correct
  - b) Only ii, iii and iv are correct
  - c) Only i, iii and v are correct
  - d) Only i, iii, iv and v are correct
  - e) All of the above are correct
3. With regards to the doctrine of the undisclosed principal, which of the following statements is incorrect:
- a) If an agent has performed a juristic act on behalf of the principal without disclosing this fact, the principal can become a party to the contract in the agent's place.
  - b) The third party can decide if she wants to be bound to the agent or to the principal.
  - c) Once the third party makes a decision as to who he/she will hold liable, the third party is bound by it.

- d) Where the agent fails to disclose s/he is acting in a representative capacity, no contract is formed between the principal and the third party but in terms of the doctrine, the principal is entitled once an agreement is reached to step into the agent's shoes as the real party to the contract.
- e) In order for the doctrine to apply, the agent does not have to be authorised to contract on behalf of the principal.

Bobby has suffered serious patrimonial damage as a consequence of Andrew's breach of contract. Which one of the following would not be an available remedy for breach of contract for Bobby?

- A) damages
- B) rectification of the contract
- C) execution of the contract
- D) cancellation of the contract

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Where a defaulting party to a contract has committed a breach and the innocent party approaches the court for relief in the form of execution of the contract, which one of the following are not one of the possible orders which a court may declare?

- A) an interdict
- B) cancellation of the contract
- C) specific performance
- D) reduced performance

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Deborah is frustrated in her contractual relationship with Tsalo and is looking to cancel their contract. Which of the following would not be an instance where you can cancel a contract?

- A) cancellation because of repudiation
- B) cancellation where performance is prevented
- C) cancellation for specific performance
- D) cancellation because of positive malperformance

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Except for when there is a cancellation clause in the contract, when else can an innocent party cancel the contract due to default by the debtor?

- A) where the breach is specific and material
- B) where the breach is claimable and material
- C) where the breach is substantive and material
- D) where the breach is serious and material

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What is the main purpose of the remedy of damages for breach of contract?

- A) the innocent party must be placed in the position he or she would have been in had the contract been carried out
- B) the innocent party must be placed in the position of the defaulting party of the breach has been committed
- C) the innocent party must be placed in the position to fulfil his or her contractual obligations
- D) the innocent party is replacing the position to cancel the contract and claim at a minimum reduced performance

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Knowing that with a breach of contract a defendant is only liable for loss that can be foreseen by the parties. The test for this is consequently the following:

- A) having regard to the subject matter in terms of the contract, the harm must be foreseen and mitigated
- B) having regard to the subject matter in terms of the contract, the harm that was suffered can be said to have been reasonably foreseeable as a realistic possibility
- C) having regard to the subject matter in terms of the contract, the harm must be the exclusive consequence of all damages
- D) having regard to the subject matter in terms of the contract, the harm must be proven as the foreseen damages of he who alleges.

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James suffered a breach of contract by Mark and now wants to cancel the agreement in accordance with the cancellation clause in the contract. However, James is not sure what the consequences of cancellation are. Which one of the following would not be a consequence of cancellation?

- A) a claim for reduced performance under the contract
- B) both parties are relieved of the obligation where neither has performed
- C) restitution in that whatever has been performed must be returned
- D) termination of obligations

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Sipho has suffered a breach of contract by Lydia in the form of positive malperformance and now wants to cancel the contract. When will this breach be considered to be a material breach?

- A) where the defect is of such a serious nature that the creditor cannot be expected to abide by the contract
- B) where the defect is not present in a cancellation clause
- C) where the parties both have not considered the seriousness of the defect
- D) where the defect is not reflective of the content and quality for positive malperformance

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Calvin has recently suffered a breach of contract in the form of mora debitoris. Which remedy can be considered as a primary remedy for this breach of contract?

- A) damages
  - B) rectification of the contract
  - C) execution of the contract
  - D) cancellation of the contract
- 

When will the innocent party be able to cancel the contract for default by the creditor?

- A) where there is a specific date for performance which has lapsed
  - B) where there is a cancellation clause in the contract
  - C) where there is a notice of intention to cancel
  - D) where there is an interdict against the defaulting party
- 

Which is not a defense to rebut the caveat subscriber rule?

- A) fraud
- B) mistake
- C) undue influence
- D) estoppel

Provide the definition for the Parol evidence rule?

- A) Once a document has been reduced to writing or integrated into writing, an audio recording of the document is necessary and that audio recording needs to be interpreted to determine the content of the contract.
- B) once a document has been signed it is the signed page which is the only record of the agreement that needs to be interpreted in order to determine the content of the contract.
- C) once a contract has been reduced to writing or integrated into a single complete document, the written document is the only record of the agreement and it is this document that is interpreted in order to determine the content of the contract.
- D) once a document has been integrated into a single complete contract, the written document is only a recording of the agreement and extrinsic evidence needs to be interpreted in order to determine the content of the contract.

Which two (2) requirements need to be proven for the rectification of a written document?

- A) The parties' true intention and that written document does not accurately reflect it.

- B) The written document and the reasonable error when the agreement was concluded.
- C) That which was stated incorrectly and the failure to comply with the law.
- D) The declaration of validity by the court and the application for non-compliance.

Joel and Hansel enter into an agreement in terms of which Joel will respray Hansel's BMW. They agree that the car is to be resprayed white. Subsequently, Joel resprays the car but has done so using both white and black spray as he is of the view that the combination of colours will better suit Hansel's car. What type of breach of contract has been committed?

- vi. Mora debitoris
- vii. Positive malperformance
- viii. Repudiation
- ix. Mistake

- 1.2 Joel and Hansel enter into an agreement in terms of which Joel will respray Hansel's BMW. They agree that the car is to be resprayed by no later than 20 July 2020. On 15 July 2020, Joel phones Hansel and informs him that he will no longer perform as agreed owing to the fact that he is moving to the United States of America on 17 July 2020. What type of breach of contract has been committed?
- a. Mora debitoris
  - b. Positive malperformance
  - c. Repudiation
  - d. Mistake
- 1.3 Pitso undertakes to pay his monthly rental of R 7500 to Thomas on the 1<sup>st</sup> day of each month. For the month of June, however, Pitso pays his rental on 30 May. What type of breach of contract has been committed?
- e) Repudiation
  - f) Mora creditoris
  - g) Mistake
  - h) There is no breach of contract

**True and false (10 marks – 10 QUESTIONS 1 MARK EACH)**

Positive malperformance only comprises of positive acts.

Caveat subscriptor is a form of breach of contract.

The requirements for *mora debitoris* are that the debtor's performance must be delayed and claimable.

---

An innocent party can claim damages as a result of the breach of the contract even where that innocent party has cancelled the contract or claimed execution thereof.

---

With an order for specific performance a court of law seeks fulfilment of the contract.

---

According to the defence of *exceptio non adimpleti contractus* one party cannot claim performance from the other party unless the prior party has performed as well.

---

The cancellation of the contract would only be available to an innocent party where there is a cancellation clause in the contract.

---

The rationale of damages as a remedy lies in the fact that an innocent party's patrimony should not be diminished by a breach of contract.

---

An innocent party cannot claim damages where he or she has cancelled the contract or claimed execution thereof even if that innocent party has suffered loss as a result of the defaulting party's breach.

---

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

---

The innocent party to the breach of contract has the duty to mitigate damages or limit the loss flowing from the breach.

---

The threat to cancel a contract does amount to a cancellation.

---

Execution of the contract and cancellation of the contract are to mutually exclusive remedies for breach of contract.

Click-wrapped agreements are similar to ticket cases, because the customer indicates awareness of the terms by clicking the icon on the website.

Rectification cannot be used to rectify a failure to comply with the law.

When interpreting a contract and there is ambiguity or uncertainty with a clause in the contract, the clause in question will be interpreted by the court in favour of the person who drafted it.

A contract can be incorporated in writing, or verbally, but not tacitly.

The Parol evidence rule applies only to certain written agreements.

In terms of the caveat subscriber rule a signatory is bound by the written agreement where s/he has signed it and is also bound by the ordinary meaning and effect of the words of the contract.

Fraud and illegality are defences to the caveat subscriber rule.

Tacit terms are terms which are incorporated into a contract by means of articulated (orally or in writing) declaration of intentions or terms agreed by the parties orally or in writing.

Express terms are terms which are incorporated into a contract by operation of law.

Implied terms are terms which are not expressed in words but are based on the parties true intentions or their intention as imputed by law.

Essentialia can be defined as terms that identify a contract as a specific contract.

Incidentalia can be defined as terms that are implied into a specific contract by law.

Naturalia may generally be excluded by agreement.

In an agency scenario, there will always be at least four parties involved.

An agent may always delegate his authority to another sub-agent.

André acts as agent for Michael. Michael was involved in a serious motor vehicle accident, and as a result Michael has become mentally incapacitated. The authority granted by Michael to André will terminate.

Laura as agent entered into a contract with Marky on behalf of Dan, the principal. Laura failed to inform Marky that she is acting on behalf of Dan. Marky may decide whether he wants to be bound to Laura or to Dan.

A third party may only rely on estoppel if he knew that the agent was not authorised to act.

Amber as agent entered into a contract with Tisetso on behalf of David, the principal. Amber failed to inform Tisetso that she is acting on behalf of David. David decides that he does indeed wish to be party to the contract. In terms of the doctrine of the undisclosed principal, David may replace Amber as party to the contract.

Chelsea as agent entered into a contract with Dibakiso on behalf of Noel, the principal. Chelsea failed to inform Dibakiso that she is acting on behalf of Noel. Noel decides that he does indeed wish to be party to the contract. In terms of the principle of estoppel, Noel may replace Chelsea as party to the contract.

Noma as agent entered into a contract with Keitumetse on behalf of Thabiso, the principal. Noma failed to inform Keitumetse that she is acting on behalf of Thabiso. Thabiso decides that he does indeed wish to be party to the contract. In terms of the doctrine of the undisclosed principal, Thabiso may replace Keitumetse as party to the contract.

Sheetal as agent entered into a contract with Rorisang on behalf of Niko, the principal. This contract that Sheetal had entered into was to purchase a vintage car, but Niko had instructed her to purchase a vintage motorcycle. In terms of the doctrine of the undisclosed principal, Niko will not be able to replace Sheetal as party to the contract.

1. Cession requires the consent of all three parties; debtor, cedent and cessionary.
2. Cession in terms of an agreement can never be prohibited.
3. In the case of delegation, only the debtor and creditor need to be in agreement for delegation to take place.
4. Assignment requires the consent of all three parties to the agreement.
5. In order for novation to take place, there does not need to be an existing valid contract between the parties.
6. In order for a compromise/settlement to be reached between the parties, there must be an existing valid agreement between them.
7. Release requires consensus from both the debtor and creditor.

8. Set-off may operate in respect of a debt which is only payable at a future date.
9. If a lessee purchases the leased property from the lessor, merger takes place.
10. A debt secured by a mortgage bond prescribes after 20 (twenty) years.
11. One of the requirements of *mora creditoris* is that the performance must no longer be possible.
12. In order for prevention of performance to constitute a breach of contract, performance must still be possible.
13. The requirements for repudiation include an act and an intention to repudiate.
14. Positive malperformance may comprise of a negative act or a positive act
15. A breach of contract relating to the quality of the debtor's performance constitutes *mora debitoris*
16. Supervening impossibility of performance will relieve the debtor's duty to perform as long as his performance was not delayed
17. Supervening impossibility of performance is a form of breach of contract
18. Default by the debtor or creditor are examples of forms of breach of contract
19. *Mora ex persona* means that the debtor or creditor is automatically in *mora* because a specific date or time for performance has been stipulated in the contract and the debtor/creditor has failed to perform on or before the appointed time.
20. *Mora ex re* is when the other party needs to determine a date of performance by demanding that the defaulting perform before or on a certain date.
21. Cession requires the consent of only the cedent and cessionary. The debtor's consent is not required.
22. Mel is instructed to build a table for Edith. Mel agrees to this, however she has too much other work and asks Kate to take over the job. Mel, Edith and Kate now agree to this arrangement. This is an example of Cession.
23. Where a contract includes a bilateral juristic act, only one party needs to perform in order for the contract to be fulfilled.
24. George and Gumedé enter into a contract in terms whereof George will purchase a box full of household cleaner from Gumedé. Gumedé will deliver the household cleaner to George's house. The day before the delivery is meant to take place, Gumedé phones George and tells him that delivery will not be taking place the following day. George is livid and he says to Gumedé that he "has a good mind to cancel this contract". As a result thereof, the contract between the parties has been cancelled.
25. Upon breach of contract, the innocent party may always choose whether they would like to cancel the contract and ask for specific performance, and optionally whether they would further like to claim damages.
26. André and Nomsa entered into an agreement in terms whereof Nomsa would cater for André's birthday party. On the day of the party Nomsa did not arrive with the food platters, and André had to urgently make use of Uber Eats to order

food for his guests. Uber Eats is expensive and André ended up paying R 1000 more than he would have paid to Nomsa for the catering. André will be able to claim damages in the amount of R 1000 from Nomsa as this loss that he had suffered was as a direct result of Nomsa's breach of contract.

27. If an agent, with the requisite authority, does not disclose to the third party that he/she is acting on behalf of the principle, the agent is automatically liable to the third party.
28. An agent who fraudulently misrepresents that he has authority can be held personally liable.
29. Where a person purports to conclude a juristic act on behalf of another person who does not exist, a valid legal relationship comes into existence

**Subtotal: [10]**

**Fill in the missing word/s (5 marks – 5 QUESTIONS 1 MARK EACH)**

The latin term for default by the debtor is \_\_\_\_\_.

Positive malperformance relates to the content or \_\_\_\_\_ of performance.

Cases relating to unsigned documents, like at sports stadiums, theatres, and bus services, whereby a supplier gives its customers a document, that sets out the terms and conditions of the supplier's business, but is not intended to be signed by the customer is often called [] cases.

The Parol evidence rule is also sometimes called, the extrinsic [] rule or the integration role.

The available contractual remedy claimed by an innocent party will depend on the nature and seriousness of the [] committed.

---

Where a party has rendered defective or an incomplete performance, and innocent party may be granted an order for [] performance.

---

*Exceptio non adimpteti contractus* is the defence of the [] contract.

The onus or burden of proof is always on the plaintiff to prove damages for breach of contract, he who alleges must [ ].

---

Generally with a breach of contract the law provides redress in the form of [ ] where an innocent party's rights are infringed.

---

The \_\_\_\_\_ Act contains an important exception to the parol evidence rule.

Rectification is permissible if there was a \_\_\_\_\_ when the agreement was put into writing.

A written contract may be improved in order to record the parties' true \_\_\_\_\_.

Incorporation of a contractual term may be express, tacit or \_\_\_\_\_.

A condition is a contractual term that indicates whether a contract will start, continue to operate or terminate, and the consequences of the contract dependent on the occurrence, or non-occurrence of a specific \_\_\_\_\_ future event.

Jasmin as agent entered into a contract with Sammy on behalf of Moses, the principal. Jasmin failed to inform Sammy that she is acting on behalf of Moses. The parties to the contract are Sammy and [ ].

Martin as agent entered into a contract with Moonsamy on behalf of Rajesh, the principal. As a general principle of agency, there will be no rights and liabilities between Martin and [ ].

Molly as agent entered into a contract with Kanye on behalf of Moshesh, the principal. Molly did not have the authority to enter into this agreement. Moshesh is however satisfied with the agreement that Molly entered into and wishes to be party thereto. Moshesh can validate Molly's actions by means of [ ].

Mandate is an example of a way in which [ ] can be given by the principal.

In an agency scenario, there will always be an amount of at least [ ] parties involved.

1. Where performance becomes impossible without the fault of any of the parties, the obligation between them is [ ].
  2. The extinguishing of similar debts between two parties is known as, [ ].
  3. Delegation requires the [ ] of all three parties.
  4. A debt arising from a bill of exchange prescribes after [ ] years.
  5. Extinctive prescription starts running from the day the [ ] becomes due.
  6. The Latin term for default by the creditor is
  7. ..... is where a party tries without lawful justification to withdraw from the contract by words or conduct, or where the party gives notice that he or she cannot or will not perform
  8. Where a party is automatically in *mora* because s/he has failed to perform on a specific date or time as stated in the contract, this is known as *mora ex* [ ]
  9. The ..... is the party who is responsible for performing an obligation in terms of the contract
  10. Where a party breaches a contract by committing positive malperformance, s/he has rendered incomplete, improper or ..... performance
  11. The prescription period for any debt owed to the State and arising from an advance or loan of money, or a sale or lease of land by the state to the debtor is [ ] years
  12. [ ] is when a person becomes both debtor and creditor of the same obligation.
  13. Mike and Molly enter into a contract in terms whereof Mike will purchase ten rare comic books from Molly at a purchase price of R 200 each. On 12 July 2020 Molly meets Mike at a specific coffee shop as agreed upon to deliver the comic books. Instead of the ten comic books agreed upon, Molly only delivers eight comic books. Molly insists that Mike pay her the agreed total amount of R 2 000. Mike feels that it wouldn't be fair to pay for ten comic books, as he only received eight. Until the matter has been resolved, Mike refuses to make any payment to Molly, and Molly proceeds to institute legal action against Mike. A court will, in all probability, grant an order of \_\_\_\_\_ in favour of Molly.
  14. Sheldon and Penny entered into an agreement in terms whereof Penny would provide fresh cheesecakes for Sheldon's engagement party. On the day of the engagement party Penny did not arrive with the cheesecakes, and Sheldon had to urgently send his fiancé Amy with his credit card to the Cheesecake Factory to buy cheesecakes. Sheldon is of the opinion that he suffered a loss by having to purchase cheesecakes last minute from the Cheesecake Factory, and that it would have been cheaper had Penny provided the catering as agreed upon. Sheldon would like to claim damages from Penny and he plans to institute legal action. Once the matter goes to court, the onus will be on \_\_\_\_\_ to prove the amount of damages suffered.
1. If the principal [ ] an act done by an agent then the principal is held liable.

2. If an agent concludes a contract on behalf of the principal, with the required authority, the contract exists between the [ ] and the third party.

**Matching of columns (2 x 5 marks – 10 MARK TOTAL)**

|                               |   |
|-------------------------------|---|
| specific performance          | – execution of the contract               |
| interdict                     | – to force or restrain a defaulting party |
| lex commissoria               | – cancellation clause                     |
| repudiation                   | – intention to reject contractual duties  |
| notice of intention to cancel | – place the debtor in mora ex persona     |

**3 additional answers:**

- performance is delayed
- claiming damages
- reduced performance

---

|                                   |  |
|-----------------------------------|--|
| patrimonial loss                  | – diminished estate as a consequence of breach   |
| casual connection                 | – damages suffered and the breach of contract    |
| foreseeable damage                | – limitation of loss                             |
| restitution                       | – that which has been performed must be returned |
| exceptio non adimpleti contractus | – both parties need to perform simultaneously    |

**3 additional answers:**

- time is of the essence
- primary remedy
- mora creditoris

|                         |  |
|-------------------------|--|
| Caveat subscriptor      | - bound by the ordinary meaning of words |
| Unsigned agreement      | - ticket services                        |
| Consumer Protection Act | - exception to the Parol evidence rule   |
| Rectification           | - a reasonable error                     |

Ratification - to approve or give formal consent

3 Additional answers

- content of a contract
- contract is void
- consider evidence outside the written contract

|    | <b>A:<br/>Question/statement</b>   | <b>B:<br/>Answers/description</b>             |
|----|--|---|
| 1. | Legislation that applies to click-wrapped agreements.  | Electronic Communication and Transactions Act |
| 2. | A defence to rebut the caveat subscriber rule.   | Illegality                                    |
| 3. | To correct a mistake in a contract.  | Rectification                                 |
| 4. | To approve or give formal consent to a contract after its formation.   | Ratification                                  |
| 5. | An unsigned document that does not require rectification to be declared valid, but rather condonation for non-compliance of a statute. | Unsigned will                                 |
| 6. |  | Unsigned contract of sale                     |
| 7. |  | Prevention of performance                     |
| 8. |  | Consumer Protection Act                       |

**Subtotal:[5]**

|    | <b>A:<br/>Question/statement</b>  | <b>B:<br/>Answers/description</b> |
|----|---|-----------------------------------|
| 1. | A guarantee against latent defects is included in the contract by operation of law. Identify the manner of incorporation of the above term into a contract. | Implied term                      |
| 2. | The exact nature of a motor vehicle is provided in a contract of sale. Identify the   | Express term                      |

|    |   |              |
|----|---|--------------|
|    | manner of incorporation of the above term into a contract.  |              |
| 3. | Terms that classify a contract as a contract of, for example, insurance. Identify the type of term.   | Essentialia  |
| 4. | Terms which the law attaches to every contract of a particular class.   | Naturalia    |
| 5. | A contracting party accepts absolute responsibility for proper performance relating to the absence of defects in the warrantor's product or service. Identify the contractual term. | Warranty     |
| 6. |   | Penalty      |
| 7. |   | Incidentalia |
| 8. |   | Tacit term   |

[Blackboard: Matching]

Match the question/statement in column A to the most accurate answer/description in column B:

|     | A:<br>Question/statement   | B:<br>Answers/description  |
|-----|--|--|
|     | Example of authority by the operation of law.                          | Authority of the curator of a person that has been declared mentally unfit |
|     | Example of authority given by the principal.                           | Mandate  |
| 9.  | Instance where authority will lapse.                                   | Revocation by the principal  |
| 10. | Principal may approve agent's action without authority in this manner. | Ratification   |
| 11. | Duty of the principal.   | To remunerate the agent  |

**Additional/alternative answers to also be provided in column B:**

|                               |               |                            |
|-------------------------------|---------------|----------------------------|
| Renunciation by the principal | Rectification | To remunerate the mandator |
|-------------------------------|---------------|----------------------------|

Match the question/statement in column A to the most accurate answer/description in column B:

|    | A:<br>Question/statement   | B:<br>Answers/description                               |
|----|--|---|
| 1. | Agent acts on behalf of the principal but fails to inform the third party of such. | Doctrine of the undisclosed principal may be applicable |
| 2. | A director acting on behalf of a company is an example of...                       | Agency.   |
| 3. | Requirement for valid agency.  | Authority.  |
| 4. | In an agency scenario, the party acting on behalf of another.                      | Agent   |
| 5. | May be applicable when the agent acts without authority.                           | Estoppel  |

**Additional/alternative answers to also be provided in column B:**

|   |         |             |
|---|---------|-------------|
| Doctrine of <i>caveat subscriptor</i> may be applicable | Mandate | Third party |
|---|---------|-------------|

Match the Columns

|            |   |
|------------|---|
| Cession    | The transfer of personal rights from one party to another.  |
| Delegation | The transfer of duties from one party to another.   |
| Assignment | The transfer of rights and duties from one party to another.  |
| Novation   | Parties to a valid and existing contract conclude a second contract with the intention of terminating and substituting the existing contract with the second one. |
| Release    | Bilateral juristic act based on consensus between debtor and creditor.  |
|            | The same person becomes both debtor and creditor of the same debt.  |
|            | The correcting of a mistake in a contract.  |
|            | Extinguishing of similar debts.   |

|  |  |
|--|--|
| Extinctive prescription                  | The extinguishing of a right through the passage of time.                                  |
| Merger                                   | The same person becomes both debtor and creditor of the same debt.                         |
| Compromise                               | Agreement between parties to settle an existing dispute between them.                      |
| Set-off                                  | Extinguishing of similar debts.  |
| Supervening Impossibility of performance | Performance becomes impossible after conclusion of the contract due to an Act of God.      |
|  | Performance is absolutely impossible at the time of the conclusion of the contract.        |
|  | Court order that prohibits a party from acting or continuing to act in a specified manner. |
|  | The gaining of a right through a passage of time.  |

|   |   |
|---|---|
| 1. <i>Mora debitoris</i>  | A. Default by the debtor<br>B. Default by the creditor<br>C. Prevention of performance<br>D. Italian cheese                                   |
| 2. Two requirements for repudiation are an act and.....   | A. An intention to repudiate<br>B. Performance must be claimable<br>C. Performance must become impossible to render<br>D. Unhappiness         |
| 3. For positive malperformance, the breach of contract relates to....   | A. The quality of the performance<br>B. The timing of the performance<br>C. The happiness of the creditor<br>D. The unhappiness of the debtor |
| 4. In the event of repudiation, a party may without justification try to withdraw from a contract through words or..... | A. Conduct<br>B. Telepathy<br>C. Palm reading<br>D. An excuse   |
| 5. In the event of prevention of performance by the creditor, the debtor's performance is rendered.....                 | A. Impossible<br>B. Supervening impossibility of performance<br>C. Possible<br>D. Voidable  |

|   |  |
|---|--|
| 1. <i>Mora ex persona</i>   | A. Where no exact date has been specified, the creditor can determine a date by demanding in writing that the debtor perform before or on a certain date.<br>B. Where a specific date or time for performance has been stipulated in the contract and the debtor fails to perform on or before the appointed time.<br>C. Prevention of performance<br>D. An ex girlfriend/boy friend |
| 2. Where the debtor renders incomplete or defective performance.  | A. Positive malperformance<br>B. Default by the debtor<br>C. Discharge<br>D. Unhappiness   |
| 3. One of the requirements for <i>mora creditoris</i> is...   | A. That the debtor must render performance<br>B. That the creditor makes performance impossible to render<br>C. That the happiness of the creditor<br>D. That the unhappiness of the debtor  |
| 4. When the obligations of the contract are not fulfilled due to the fault of one of the parties, this constitutes... | A. Breach of contract<br>B. Discharge<br>C. Delict<br>D. An excuse   |
| 5. One of the forms of breach of contract.  | A. Repudiation<br>B. Supervening impossibility of performance<br>C. Par delictum<br>D. Voidable  |

|  |   |
|--|---|
| Acquisitive prescription                 | Acquiring a right through the passage of time   |
| Supervening impossibility of performance | Performance becomes impossible after conclusion of the contract due to an Act of God and no fault of any of the parties |
| Assignment                               | The transfer of rights and duties from one party to another.  |

|                          |   |
|--------------------------|---|
| Fulfilment of a contract | The proper performance of contractual obligations ends the contractual relationship |
| Cancellation             | Withdrawing from the contract due to breach of contract                             |
|                          | Transfer of rights from one party to another.                                       |
|                          | The losing of rights through the passage of time                                    |
|                          | A contract is void.   |

Match the question/statement in column A to the most accurate answer/description in column B:

|    | A:<br>Question/statement   | B:<br>Answers/description                                |
|----|--|--|
| 1. | The remedy of reduced performance  | The defence of <i>exception non adimpleti contractus</i> |
| 2. | When a cancellation clause in a contract may be relied upon                          | Breach does not have to be serious nor material          |
| 3. | When cancellation may take place where there is no cancellation clause in a contract | Breach needs to be serious and material                  |
| 4. | When cancellation of a contract takes place  | Restitution needs to take place                          |
| 5. | Remedy for breach of contract that cannot be relied upon on its own                  | Damages  |

**Additional/alternative answers to also be provided in column B:**

|                                       |                                 |                            |
|---------------------------------------|---------------------------------|----------------------------|
| Doctrine of the undisclosed principal | Repudiation needs to take place | Cancellation of a contract |
|---------------------------------------|---------------------------------|----------------------------|

|                                       |  |
|---------------------------------------|--|
| Doctrine of the undisclosed principal | If an agent has performed a juristic act on behalf of the principal without stating this fact to the third party, the principal can become a party to the contract in the agent's place. |
| Estoppel                              | If 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.  |
| Ratification             | The validation/approval by the principal of a juristic act concluded on his/her behalf by the agent who did not have authority to do so.   |
| Termination of authority | Change in status of principal  |
| Contract of mandate      | When one party undertakes to perform a commission or task (mandate) for another by way of a contract.  |
|                          | If 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. |
|                          | If an agent has performed a juristic act on behalf of the principal with disclosing this fact, the agent becomes liable to the third party.  |
|                          | The principal and the third party acquire rights and duties in terms of the contract/juristic act.   |

|    | <b>A:</b><br><b>Question/statement</b>   | <b>B:</b><br><b>Answers/description</b> |
|----|--|---|
| 1. | The primary purpose when creating contracts is their _____ or discharge by due and proper performance. | Fulfilment                              |

|    |   |                         |
|----|---|-------------------------|
| 2. | When the intended result is not achieved as a consequence of the fault of one of the parties, that party commits _____. | Breach of contract      |
| 3. | The party who is entitled to performance of the obligation is known as the _____.                                       | Creditor                |
| 4. | The two requirements of _____ are that the specified performance must be delayed and claimable.                         | Mora debitoris          |
| 5. | Where the party, for example, tries without justification to withdraw from the contract is a form of _____.             | Repudiation             |
| 6. |   | Debtor                  |
| 7. |   | Mora creditoris         |
| 8. |   | Positive malperformance |

**Subtotal: [10]**

**Identify types of terms: (20 marks – 10 QUESTIONS – 2 MARKS EACH)**

Tyson and Jermaine agree that Tyson will purchase Jermaine's exotic guitar for a Hundred thousand Rand if the Covid-19 pandemic lockdown is lifted. This term is a [ ] [ ].

---

Creative Designs Pty (Ltd) agrees with 4IR Technologies Pty (Ltd) to design futuristic devices to complement the new artificial intelligence system embedded in 4IR Technologies' devices if they receive the government tender to supply these devices. This term is a [ ] [ ].

---

Wally undertakes to provide Jamieson with all the tools you will need to build Jamieson's new house on his birthday. This term is a [ ] [ ].

---

Commando Pty (Ltd) undertakes to stop supplying missiles to the company Denel on the first day of spring this year. This term is a [ ] [ ].

---

Bobby enters into an agreement with Tammy, for the use of Bobby's mansion to film Tammy's new movie "How I Passed Commercial Law 1A" – till the end of the production. This term is [ ] [ ].

---

Mallisa agrees with Norman that she may continue to provide him with coffee beans for the duration of the month of May. This term is a [ ] [ ].

---

Zippo fully agrees to operate Zeno's oil-production factory 24 hours a day and that Zippo will pay Zeno 1000 Rand for each hour that production is halted. This term is a [ ] [ ].

---

Thokozile and Themba have a contract for the transportation and delivery of coal. According to the contract, if the train does not arrive at 10h00 every day, Thokozile will pay Themba R500 for each time the train is not on time. This term is a [ ] [ ].

---

Sizwe will give Thandi her mother's pearl necklace, when her mother has died. This term is a [ ] [ ].

---

Bonnie will rent Brendan's flat for a period of one year, if Brendan get the job in eSwatini. This term is a [ ] [ ].

---

Justin, a building contractor, enters into a contract with Jameson, his employer, for the construction of a townhouse near Houghton. The contract stipulates that should one of them breach this contract, the other will be able to cancel the contract immediately.

In terms of the contract of sale entered into between Siya and Doreen, Siya assures Doreen that the motor vehicle has undergone the required inspections and will perform as agreed.

Once Shay obtains a Bachelor's degree he will be eligible to receive the sum of R 50 000 from his mother.

Thandi agrees to give Jason piano lessons for the next five months.

Daniel and Shaun enter into a lease agreement wherein Daniel agrees that Shaun will rent Daniel's flat for the next ten months.

Fisher and John enter into a contract for the sale of a male goat. Subsequently, John tries to amend the agreement so that it may reflect the sale of a female goat. Fisher reminds John that, in terms of the contract, the contract cannot be amended unless the amendment is recorded in writing and signed by both parties.

A contract of sale stipulates the following: "A party who is in breach of the contract forfeits all performance already rendered in terms of the contract."

Frank Zoro undertakes to give his wife, Zelda Zoro, R1 000 000 once he wins the lotto.

Adam undertakes to give Reggie his BMW motor vehicle if the lockdown ends in July.

Fantastic Attorneys Inc. enters into a five-year contract of lease with Redefine Properties on 18 June 2020.

Michael and Moloi want to start a business that produces and sells hand sanitizers. As Michael is the only one with money to invest in the business, they agree that Moloi will only start drawing a salary once the business makes a profit of at least R 5 000 per month. This is a

Michael and Moloi want to start a business that produces and sells hand sanitizers. As Michael is the only one with money to invest in the business, they agree that Moloi will only start drawing a salary after the passing of five months. This is a.

Michael and Moloi want to start a business that produces and sells hand sanitizers. They agree that Michael will continue providing start-up capital to fund the business until the lockdown is lifted to a certain extent and the country is on alert level 1. This is a

Manny and Gloria enter into an agreement in terms whereof Manny will revamp and modernise Gloria's kitchen. They agree that should the revamping process not be complete by 12 July 2020, Manny will have to pay R 2 500 to Gloria. This is

Jermaine and Jabu enter into an agreement in terms whereof Jermaine will sell his 1950s vintage Ford Mustang to Jabu. They undertake that should one of them breach this agreement, the other will be able to cancel the agreement immediately. This is a

Gloria undertakes to provide her niece and her niece's fiancé with R 5 000 as a wedding gift upon the conclusion of their marriage at the end of the year. This is a

Neyo and Rihanna agree that Rihanna can work at Neyo's record label for the next six months. This is a

Moses agrees to buy Pieter's off-road mountain bike. This transaction is subject to the sale of the mountain bike that Moses currently owns. This is a

Karen undertakes that Ginger may inherit her collection of vintage records when she passes away, as Ginger loves music and has always admired Karen's records. This is a

Lenny agrees that Kenny may make use of his extra laptop until his (Kenny's) business takes off and he starts to make a profit. This is a

- 1 This sale of land is dependent upon the buyer obtaining a loan for R500 000 from a registered bank or building society in South Africa.
- 2 An extract from an agreement states the following: The lessor leases the dwelling situated at 2 African Street, Port Elizabeth, to the lessee for the sum of R4000 per month for the duration of 2020. The lessee's right to lease the premises will come to an end should she marry or give birth to any children.
- 3 John Smith undertakes to give his son, James Smith, R100 000 on 31 December 2020.
- 4 Anny Godso agrees to give R50 000 to her daughter, Melinda, on the death of Anny's father, David Godso.
- 5 The employer agrees to employ the employee to pick beans on the employer's farm, Monte Vista, at a rate of R250 per day until 30 September 2020.
- 6 Should either party breach any of their obligations in terms of the contract of this agreement, then the harmed party may cancel this agreement on giving the other party five days' written notice.

- 7 Bandile provides Jake with the assurance that the tools sold to Jake will not rust for five years from the date of purchase.
- 8 Harry rents a farm from Jeff for 10 years.
- 9 The builder agrees to complete the work on the property by 1 December 2020. The builder will pay the owner an amount of R600 for every day from 1 December 2020 that the work has not been finished.
- 10 Penny agrees to allow her daughter, Susan, to live in her Sea Point apartment until she completes her LLB degree at the University of Cape Town.
  1. Jackie allows Tim to farm on her property until her son, James, obtains his BSC Agriculture degree from the University of Stellenbosch. This is a
  2. Thabo will pay Rhys R5000 upon Celine's death. This is a
  3. Isabel hires Aron as a personal trainer. Isabel pays Aron R2000 per month up front. Aron informs Isabel that if she misses a session, she will lose the money already paid for the month. This is a
  4. The contract between Jane and John contains the following provision: "Any violation of the provisions stipulated in Clause 11 above shall be sanctioned by the payment of R1000 by the defaulting party." This is a
  5. Njabulo sells his 2010 VW Polo to Shaawn and gives her an assurance that the vehicle is still in proper working condition. This is a
  6. Stacey rents her apartment in Sophiatown to Kedi for R4000 a month until 31 December 2020. This is a
  7. The contract between Boitumelo and Masai for the sale of land states the following: "The sale is subject to Masai obtaining a loan for 60% of the purchase price within 60 days of signing the contract with Bogus Bank Ltd". This is a
  8. The contract between Amy and Michele states the following: "This contract can only be amended in writing by the parties to the contract". This is a
  9. Karabo agrees to buy her sister, Lindi, a pair of Nike Air Maxes if she passes her driver's license test the first time. This is a
  10. Jimmy may rent Dimitri's house until Dimitri's death. This is a
  11. Blue Bank Ltd agrees to give Super Strikers Football Club R1 million if they win the African Football tournament that will be hosted on 20 June 2020.
  12. Yash agrees that Kam may use his Commercial Law 1A textbook until the end of the first semester.
  13. Shreya agrees to buy Keyura an iPhone 11 if Keyura gets 80% or above in her Commercial Law 1A exam being written on 4 June 2020.

14. Yugan hires Sesh to build a bar in his house. Should Sesh not finish building the bar within 3 weeks of starting the project, he must pay Yugan R500 for every day he is delayed.
15. Kubash and Vee agree to offer their healthcare services to rural communities. Their agreement stipulates that should they wish to alter the terms of the contract, it must be done in writing.
16. Ronnie agrees to deliver 100kgs of potatoes to Peter every week. Peter agrees that he will pay Ronnie R2000 after every delivery. Should either party not perform as required, the contract will be cancelled.
17. Thegesh is employed at Data Dynamics Ltd. The contract states that should he commit any crime whilst he is employed, the contract will be terminated.
18. Javi is employed at Telesure Ltd for a period of 3 years.
19. Sam agrees that should she commit a breach of contract, she will not be allowed to claim back what she has performed in terms of the contract.
20. Milly agrees to give her son her house when she dies.

**Subtotal: [20]**

**Identify type of breach (5 marks – 5 QUESTIONS 1 MARK EACH)**

Identify which type of breach of contract is applicable in the given scenarios:

1. Johnny sells a cow to Ron and undertakes to deliver the cow to Ron's premises on 10 June 2020. On 10 June 2020 Johnny goes on a two-day holiday and forgets to deliver the cow. This is an example of?
2. Johnny sells a cow to Ron and undertakes to deliver the cow to Ron's premises on 10 June 2020. Ron undertakes that on 10 June 2020 he will open the gate to his premises to allow Johnny to deliver the cow. On 10 June 2020 Johnny proceeds to deliver the cow but is unable to do so as nobody opened the gate to Ron's premises. This is an example of?
3. Johnny sells a cow to Ron and undertakes to deliver the cow to Ron's premises on 10 June 2020. On 10 June 2020 Johnny kills the cow before delivery could be made. This is an example of?
4. Lupton Construction CC, a construction company, enters into a building contract with Helmut, the employer. In terms of the contract, Lupton Construction CC is to commence with the building project on Monday 1 June 2020. One week before the commencement date, Lupton Construction CC informs Helmut that it will no longer perform in terms of the building contract. This is an example of?

5. Jack undertakes to go up the hill to fetch a bucket filled with ten liters of water for Jill. Jack came down with only 500 milliliters of water in the bucket. This is an example of?

Annie and Anton enter into an agreement in terms whereof Annie will purchase Anton's car. In terms of their agreement Annie must pay the purchase price of R 50 000 into Anton's bank account by no later than Friday, 29 May 2020. By Saturday morning, 30 May 2020, no payment had been made into Anton's bank account. This form of breach is ?

Annie and Anton enter into an agreement in terms whereof Annie will purchase Anton's car. In terms of their agreement Annie must pay the purchase price of R 50 000 into Anton's bank account by no later than Friday, 29 May 2020. By Saturday morning, 30 May 2020, no payment had been made into Anton's bank account. Annie had repeatedly requested Anton's bank account details but he ever provided same to her. This form of breach is?

Onalena and Obakeng enter into an agreement in terms whereof Obakeng will rent a room in Onalena's house. They agree that the first month's payment will be R 10 000 – R 5 000 deposit and R 5 000 rent. On the first day of the month, Obakeng pays R 7 000 to Onalena. This form of breach is ?

Mokone and Mohammed enter into an agreement in terms whereof Mokone will deliver a consignment of 10 000 facemasks to Mohammed. In terms of their agreement, the delivery is scheduled for Friday. On the previous Monday, however, Mokone phones Mohammed and informs him that he will no longer be delivering the masks on Friday. In fact, he proceeds to inform Mohammed that he will not be delivering the masks at all. This form of breach is ?

Eric and Erica are set to get married on Saturday, 6 June 2020. They have entered into a contract with Sugar and Spice Caterers to provide the catering for their wedding. Sugar and Spice Caterers erroneously wrote the date of the wedding down as 16 June, and on Eric and Erica's wedding day of 6 June, there is no food for the guests to eat. This form of breach is ?

1. Keagan enters into a contract with Lindobuhle in terms of which he will sell her a vintage bicycle for R1200. The parties agree that Keagan will deliver the bicycle to Lindobuhle on 3 May 2020 at the University of Johannesburg Fountain at 12:00. Keagan goes shopping with his friend James on the day and completely forgets to meet Lindobuhle to deliver the bicycle to her. Lindobuhle stands at the fountain waiting all day and Keagan never pitches. What type of breach of contract has been committed by Keagan?
  
2. Melissa hires Gemma to renovate her kitchen. They agree that Gemma will replace all the existing white tiles in the kitchen will turquoise tiles. Gemma

replaces the white tiles with pink tiles. Melissa is furious. She did not give Gemma permission to do that, as the contract stated that the tiles must be turquoise. What type of breach of contract has been committed by Gemma?

3. Andrew sees an advertisement for French Bull dog puppies in his local newspaper. He has always wanted one and therefore decides to purchase one from Bennie. Andrew goes to collect the puppy from Bennie's house one morning. Andrew enters the area where the puppies are kept, the puppy pen, but does not see a small bowl of water right in front of him. He slips on the bowl and falls on the puppy, killing the puppy instantly. What type of breach has been committed?
4. Katlego has a catering company. Julia hires Katlego's catering company to cater for her daughter's 21<sup>st</sup> birthday party on 1 June 2020. Exactly one week before the birthday party, Katlego send Julia an email indicating that the company will no longer be able to cater for the event and does not provide reasons for doing so. What type of breach has been committed by Katlego?
5. Manny employs Phil to paint the inside of his new apartment in Braamfontein. They agree that Phil will start with the painting on 2 June 2020 at 8:00. Phil arrives at the apartment at 8:00 on 2 June to start the painting job but Manny is not there to allow Phil entry. Phil sits outside the apartment all day waiting for Manny and Manny does not arrive. What type pf breach has been committed by Manny?
6. Clarke is hired by Bruce to paint his house with white paint by 10 June 2020. Clarke finishes painting the house but has used a grey paint.
7. Desmond enters into a credit agreement to purchase a microwave. He agrees that the payment of the installment is due on the 1<sup>st</sup> of every month. In July, Desmond forgets to pay his installment on 1 July and pays it on 10 July.
8. DJ Khaled agrees to play music at Justin's house on 30 June 2020, for R10 000. On 20 June 2020, DJ Khaled phones Justin and informs him that he is not going to play music at Justin's house.
9. Claire requires her staircase fixed in her house. She hires Phil to come and fix the staircase on 15 July 2020. Claire agrees to pay R5000 for his services. When Phil arrives on 15 July 2020, he finds that Claire's house is locked and her phone is off when he tries to call her. He cannot fix the staircase as a result of not gaining access to the house.
10. Cecile is looking to buy a puppy for her daughter. She finds a Bulldog that she thinks her daughter would love. Frank, the owner of the Bulldog, agrees to sell it for R5000. Cecile and Frank agree that Cecile will pay Frank the R5000 now and that she will come pick up the dog the next day. That evening, Frank poisons the Bulldog, which dies.

11. Moira acquires the services of John to deliver 100kgs of chicken and 100kgs of mixed vegetables on 1 July 2020. They agree that Moira will pay John R10 000 once delivery has been made to Moira's house on 1 July 2020. On 1 July 2020, John arrives at Moira's house with 50kgs of chicken and 50kgs of mixed vegetables. What type of breach of contract has John committed?
12. Logan goes to Scott's bike dealership to purchase a pre-owned motor bike. Logan sees a 2016 Yamaha motorbike for only R20 000. He gives Scott the money and they agree that Logan will fetch the motorbike the next day. That evening, Scott forgets to turn off the heating in the dealership and the dealership explodes, destroying Logan's motorbike. Logan arrives the next day to take delivery of his vehicle, but Scott is not at the dealership. What type of breach of contract has Scott committed?
13. Monageng and Moses enter into an agreement in terms whereof Monageng will provide Moses will nine platters of food for Moses' birthday party. On the day of Moses' birthday party, Monageng delivers seven platters of food to Moses' house. This form of breach is \_\_\_\_\_.
14. Jessie and Jamie enter into an agreement in terms whereof Jessie will deliver fifteen boxes of hand sanitizer to Jamie's office. In terms of their agreement, Jessie will deliver the hand sanitizer this coming Wednesday. On the day before the scheduled delivery, Jessie sends a WhatsApp message to Jamie and informs him that no delivery will take place. Jessie is very clear in the WhatsApp message that delivery will not take place in future either. This form of breach is \_\_\_\_\_.
15. Sally starts working for a rival of her former employer, Tech Savvy (Pty) Ltd, which is in direct breach of a restraint of trade clause of her previous employment contract she had with them.
16. Alon is selling one of his show horses to Fran for R50 000. The parties enter into a valid contract and they agree that Alon will deliver the show horse to Fran on 1 July 2020. After concluding the contract, Alon realizes that the horse is insured with his insurer for R90 000. He therefore poisons the horse before delivery to Fran as he knows that he can get far more money from his insurer.
17. Kuli enters into an agreement with Arizona Pty (Ltd) for discounted travelling deals, which will be delivered via coupons on the first day of every month. On the 2<sup>nd</sup> of May 2020, Arizona(Pty) Ltd has still not delivered a single coupon to Kuli. This type of breach of contract is [].
18. Petronella is an independent contractor who paints houses. Geoffrey enters into an agreement with Petronella to paint his house on the 1<sup>st</sup> of May 2020, for the amount of 20,000 Rand. On the 1<sup>st</sup> of May, when Petronella arrives at the house, Geoffrey is not at home and the gates of the house are locked. Geoffrey's wife who is at home, does not want to allow Petronella onto the premises and states that Geoffrey said that nobody should be allowed onto the premises in his absence. This type of breach of contract is [].

19. DJ Superstep is a world-renowned disc jockey. Loco Investments (Pty) Ltd enters into an agreement with DJ Superstep to perform at their gala event on the 1<sup>st</sup> of June 2020. However, Detrick the CFO of Loco Investments discovers on DJ Superstep's Twitter account that he is promoting a performance in Dubai on the 1<sup>st</sup> of June 2020. Loco Investments now fears that DJ Superstep will not perform at their gala event. This type of breach of contract is [ ].
20. Mandi Truck Hire (Pty) Ltd entered into an agreement with Petrol Paul (Pty) Ltd, to fill up their trucks with 80 litres of petrol every day at a rate of 12 Rand a litre. Upon a random inspection of the fuel tanks of the trucks, Frank an employee of Mandi Truck Hire (Pty) Ltd, discovers that the trucks have only been filled with 70 litres of petrol. This type of breach of contract is [ ].
21. Devon is a wildlife farmer in the Northern Cape province. Ntando enters into an agreement with Devon for the purchase of a prized Kudu bull, named Ashanti. The purchase price was set at 1 million Rand. Ntando, ran into some financial difficulty and is unable to pay the required sum. Ntando, sneaks onto Devon's farm and shoots the bull – Ashanti. Devon is now unable to perform under the contract. This type of breach of contract is [ ].
22. Samila enters into a contract with Dodo for the construction of a complete backroom, which she wants to rent out. According to their agreement, Dodo will complete the construction and deliver the building on 01 June 2020. Dodo indeed delivers the building as per the contract. However, after Samila took delivery of the backroom on 1 June 2020, she noticed that no doors or windows were installed. This type of breach of contract is [ ].
23. Thami and Priscilla enters into an agreement for Thami to be the exclusive distributor of Priscilla's perfume in the Republic of South Africa. According to their agreement, Thami's distribution will commence with the launch of Priscilla's new line of perfume called 'Press-Me' on 30 June 2020. However, on the 26 June 2020, Priscilla holds a press conference to introduce her new South African distributor partnership with David Klanie, who is also Thami's main competitor in the perfume distribution industry. This type of breach of contract is called [ ].
24. Yvette sells a white BMW motor vehicle to Ian and undertakes to have the motor vehicle delivered to Ian's place of residence on 23 July 2020. On 23 July 2020 Yvette goes in for a leg operation and fails to arrange for the delivery of the motor vehicle. This is an example of [ ]
25. Yvette sells a white BMW motor vehicle to Ian and undertakes to deliver the motor vehicle to Ian's place of residence on 23 July 2020. On 23 July 2020 Yvette delivers a black BMW motor vehicle to Ian. This is an example of [ ]

**Subtotal: [5]**

**Short questions on breach and remedies: (2 x 5 marks – 2 QUESTIONS 5 MARKS EACH)**

1.

In light of the current lockdown regulations, Pietso, a manager of a large company, is required to supply his staff with face masks. He approaches Edmund, a face-mask manufacturer, in order to purchase face masks. The parties subsequently enter into a contract of sale in respect of 5000 face masks. In terms of the contract, Edmund is required to deliver the 5000 face masks to Pietso on 17 June 2020. On 17 June 2020, Edmund completely forgets to deliver the face masks to Pietso because he was binge watching “The Tiger King” series on Netflix. As a result, Pietso is unable to supply his staff with face masks. He does not, however, suffer any loss.

Pietso is aware of the fact that Edmund, as debtor, has breached the contract. More particularly, the form of breach of contract applicable in this scenario is *mora debitoris*. Discuss (i) the requirements to be proven by Pietso; (ii) the application of the requirements to the set of facts; (iii) and the remedy/ies available to Pietso.

2.

In light of the current lockdown regulations, Pietso, a manager of a large company, is required to supply his staff with face masks. He approaches Edmund, a face-mask manufacturer, in order to purchase face masks. The parties subsequently enter into a contract of sale in respect of 5000 face masks. In terms of the contract, Edmund is required to deliver the 5000 face masks to Pietso on 17 June 2020. On 10 June 2020, Edmund emails Pietso and informs him that he is unable to make and deliver the face masks. He ascribes this inability to the fact that he does not have the necessary finances to purchase the material required to make the face masks. As a result, Pietso is unable to supply his staff with face masks. He does not, however, suffer any loss.

Pietso is aware of the fact that Edmund has breached the contract. More particularly, the form of breach of contract applicable in this case is *repudiation*. Discuss (i) the requirements to be proven by Pietso; (ii) the application of the requirements to the set of facts; (iii) and the remedy/ies available to Pietso.

Jonas and Jody enter into a contract in terms whereof Jody will purchase ten horses from Jonas at a purchase price of R 20 000 each. On 20 May 2020 Jonas arrives at Jody’s farm with horse trailers to deliver the horses. Instead of the ten horses agreed upon, Jonas only delivers eight horses. Jonas insists that Jody pay him the agreed total amount of R 200 000. Jody feels that it wouldn’t be fair to pay for ten horses, as she only received eight. Until the matter has been resolved, Jody refuses to make any payment to Jonas.

(i) What type of breach of contract has been committed by Jonas? (1)

- (ii) Which remedy is available to Jonas to ensure payment, and what would the possible result of exercising this remedy be? (3)

Anban and Andrea enter into a contract in terms whereof Andrea will deliver fresh meat to Anban for a family celebration that he is hosting. In terms of their contract Andrea will deliver the meat on Friday, as Anban is having the celebration on Saturday. Andrea only delivers the meat on Saturday evening after the celebration is over. Anban is very upset at the state of affairs as he had no food ready to host his family, and he had to hastily order Uber Eats at a great additional expense.

- (i) What type of breach of contract has been committed? (1)
- (ii) Which remedy/ies is/are available to Anban, and what are the consequences thereof? (3)

## QUESTION 1

Tom undertakes to transport a ton of bricks from Jack's construction site in Lenasia to Lindani's site in Pretoria by midday 15 May 2020. When Tom arrives to pick up the bricks from Jack's yard, he discovers that the bricks have not arrived from the manufacturing site yet. This delay, which is beyond Tom's control, causes him to deliver the ton on bricks to Lindani's site one day later than agreed upon. Answer the following questions:

1. Is Tom in breach of the contract? Explain your answer. (2)
2. Would your answer to the above question be different if the reason for Tom's delay was that he stopped on the way at this girlfriend's house to stay the night? (2)

1 mark for spelling and grammar

## QUESTION 2

Jabulani enters into a contract with Simon in terms of which Jabulani will purchase an ox from Simon for R5000. Simon agrees to deliver the ox on 31 May 2020. On 31 May 2020, Simon arrives at Jabulani's farm and delivers a bull instead of an ox. Jabulani is furious and comes to you for legal advice.

- 1 Explain to Jabulani the type of breach that Simon's conduct amounts to. (2)
- 2 Explain to Jabulani whether he may cancel the contract in this instance. (2)

## 1 MARK SPELLING AND GRAMMAR

Question one

Joe has been hired by Nancy to build and install five new cupboards for her kitchen. Nancy agrees to pay Joe R5000 for his work and they both agree that he will take three weeks to complete the job. Joe begins working immediately and completes three cupboards, however after ten days he stops working on the remaining cupboards and does not complete the work as agreed. Nancy is upset and comes to you for advice.

Answer the following questions:

- a. Explain what type of breach of contract Joe has committed (2)
- b. In your opinion, which remedy would Nancy claim? Provide a reason for your answer (2).

1 mark awarded for spelling and format

#### Question Two

Cherry Blossom Ltd orders 10 000 boxes of hand sanitizer from Mentos Ltd, a pharmaceutical company. In the contract, both parties agree that Mentos Ltd will deliver the stock of sanitizer within 2 weeks of signing the agreement. They agree that the total price of the stock is R500 000, which will be paid once delivery is made. The agreement is signed on 1 June 2020. On 15 June 2020, Cherry Blossom Ltd has not received its stock from Mentos Ltd and have not heard anything from them. Cherry Blossom Ltd comes to you for advice. Answer the following questions:

- a. Explain what type of breach has been committed (2)
- b. Briefly advise which remedies are available to Cherry Blossom Ltd. (2)

1 mark awarded for spelling and format

#### **QUESTION ONE**

On 15 June 2020, Kiki agrees to cater food for Mimi's 21<sup>st</sup> birthday on 1 July 2020. They both agree that Kiki will cater meat and vegetarian dishes. The meat dishes will include chicken, beef and pork, whilst the vegetarian dishes will comprise of potatoes, mushrooms and mixed vegetables. They further agree that Kiki will deliver the food on Mimi's birthday. Mimi agrees to pay Kiki R10 000 after the food has been delivered. Ten days after entering into the agreement, Kiki sends an SMS to Mimi informing her that she is not going to cater the food for Mimi's birthday. Mimi comes to you for advice.

Answer the following questions:

1. Explain the type of breach of contract committed by Kiki (3)
2. What remedy would you advise Mimi to claim as a result of the breach of contract by Kiki? (1)

A further 1 mark for format and spelling (1)

#### **QUESTION TWO**

Ross takes his car into Joey's garage to fix it. Ross owns a BMW X5 and wishes to change some parts in his car so that it will run smoothly. Ross agrees with Joey that Joey will only use genuine BMW approved parts to fix the car. Ross agrees to pay Joey R15 000 for the parts and labour involved in installing the parts. Joey finds VW parts that are cheaper to buy, which means he can get more money for the labour. The VW parts are not BMW approved parts. Ross pays Joey the R15 000 when he picks up the car. A few days later, the car breaks down and Ross finds out that Joey had not used BMW approved parts. Answer the following questions:

1. Explain what type of breach of contract has been committed. (2)
2. Explain what remedy Ross should pursue. (2)

A further 1 mark for format and spelling (1)

Marianne and Suzelle enter into a contract in terms whereof Marianne will purchase Suzelle's collection of do-it-yourself (DIY) equipment. In terms of their contract Suzelle will deliver the equipment to Marianne's house this coming Saturday, and Marianne will in turn bring the purchase price in cash to Suzelle's house on Sunday. On Sunday when Marianne arrives at Suzelle's house no one is home. Marianne rings the bell and also tries to phone Suzelle, but to no avail. Marianne is not able to provide Suzelle with the cash as per their contract.

(i) What type of breach of contract has been committed and by whom? (2)

(ii) Which remedy is available to the innocent party? (2)

Spelling and grammar (1)

2 Kubash and Keenan entered into a contract in terms whereof Kubash will provide the catering services for Keenan's twenty-first birthday. Keenan's birthday is on Monday, 20 July but his party will take place on Saturday, 18 July. Due to an administrative error on Kubash's side he plans and prepares all of the dishes to be ready for, and delivered on, Monday, 20 July. On the Saturday of Keenan's twenty-first birthday party there is no food to serve to the guests, and Keenan has to urgently order food from McDonald's.

(i) What type of breach of contract has been committed? (1)

(ii) Which remedy/ies is/are available to Keenan, and what are the consequences thereof? (3)

Spelling and grammar (1)

### Question 1

Vicky hires James, a builder, to carry out some building renovations on her house. They enter into a valid contract and agree that James will charge R200 000 for all the renovations and Vicky will give him R100 000 when he starts and another R100 000 after the renovations are completed. James starts the renovations, but after 2 (two) months he stops all his work. Vicky is furious with James as she has paid a lot of money and she is now left with an incomplete house.

1. Identify and explain the remedies that Vicky is entitled to in terms of the law. (3)
2. Vicky would like to bring an application in court for damages. State the legal term used to describe this party in a civil matter. (1)

1 mark for spelling and grammar

### Question 2

Bob, a builder, is instructed by Karabo 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 Karabo's bathroom with black and white tiles. He completes the job and sends Karabo an invoice for the agreed amount of R10 000. Karabo is unhappy as this is not what she instructed Bob to do.

Identify and explain the type of breach committed by Bob. (4)

1 mark for spelling and grammar

Khwezi is the owner of Khwezi's Stables (Pty) Ltd. Through her company, Khwezi rents out stable spaces for horses. Tau, who just recently acquired the racing horse 'Legs of Thunder Skosana' is looking for a place to accommodate his horse. Tau approaches Khwezi for her services and they enter into a contract. According to their contract, Tau will deliver the horse to the stables at any time and in return he will share with Khwezi 10 percent of Legs of Thunder Skosana's winnings. Further according to the contract, Tau must also transfer Khwezi's share of any and all winnings within one hour after each race.

On 1 July 2020, Legs of Thunder Skosana wins the Rothman's July Derby and pockets 10 million Rand in winnings. In all the excitement, Tau forgets to transfer Khwezi's share of the winnings. The next day, Tau calls Khwezi in order to make arrangement for the transfer period however, Khwezi refuses his offer and informs him that he is in breach of their contract. Khwezi now wants to sue Tau for breach of contract.

**Answer the following questions:**

1. Identify the type of breach involved. (1)
2. Explain to Tau through its definition, why the type of breach mentioned in question 1 could be applicable to his situation. (3)

One mark for spelling and grammar.

Ambuwani is a data science entrepreneur who enters into an agreement with Johannesburg Supreme University, commonly known as JSU. According to their agreement, Ambuwani will deliver laptops to each of JSU's students within one month of signing the agreement. The agreement further states that JSU will provide Ambuwani with the names and addresses of all of its students within a reasonable time. The agreement also states that JSU will only pay Ambuwani after the successfully confirmed delivery of 100 laptops.

One month after the signing of the agreement JSU still has not provided Ambuwani with the details of the students. Ambuwani now wants to cancel the agreement due to breach of contract in the form of default by the creditor.

**Answer the following questions:**

1. Under which circumstances would Ambuwani have access to the remedy of cancellation of the contract for default by the creditor?
2. Noting the reference to "reasonable time" would Ambuwani be able to cancel the agreement for default by the creditor?

One mark for spelling and grammar.

Kgomotso entered into a contract with Giv-a-lot (Pty) Ltd, for the delivery of her all-natural, homemade cosmetic products for more than five years now. According to this agreement, Give-a-lot will collect and deliver Kgomotso's online orders, within 48 hours of a customer placing an order.

However, the increase in e-commerce generally has grown Giv-a-lot's business exponentially, month-on-month. Consequently, since the 1<sup>st</sup> of June 2020, Kgomotso has been receiving multiple complaints from customers of products either not being delivered or that deliveries have taken more than the promised 48 hours. As a small business owner, Kgomotso now needs assistance on how to deal with her contract with Giv-a-lot.

1. Noting the facts above, which primary remedy would you recommend to Kgomotso and why? (2)

2. Which additional combination remedy would Kgomotso also have access to and what would she have to prove in order to access this remedy?

1 mark for spelling and grammar

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Alet is a magician from Soweto. Balela, is the organiser and owner of the television show Jozi's Got Talent. Balela approaches Alet to appear on the show during the next live broadcasting of the show. Alet agrees to appear for a fee of R10 000 and the parties accordingly enter into a contract. However, two days before the broadcasting of the show, Alet boards a plane to Beijing, China. Balela is informed of this after one of the producers of the show shared one of Alet's social media post. Balela now fears that Alet will not honour her obligations under the contract.

1. From your knowledge of what the breach repudiation is, why could Alet potentially be guilty of this breach? (3)
2. Other than repudiation of a materially important obligation, when else can Balela cancel the agreement for repudiation? (1)

1 mark for spelling and grammar

### **Essay question 1**

Hannif undertakes to transport 10 grand pianos from Susan's music shop in Helderkruin to Reggie's music shop in Johannesburg CBD by 1pm on 14 June 2020. When Hannif arrives to collect the grand pianos from Susan's music shop, he decides to sit in for a music lesson which ends at 5pm. This delay causes him to deliver the 10 grand pianos to Reggie's music shop one day later than agreed upon. Answer the following questions:

1. Explain what type of breach of contract has Hannif committed? (2)
2. Would your answer to the above question be different if the reason for Hannif's delay was that upon reaching Susan's music shop, he discovered that the grand pianos had not arrived from the factory yet. (2)

Spelling and grammar (1)

### **Essay question 2**

Lance undertakes to install four aluminium windows in Walter's bedroom. Walter agrees to pay Lance R 45 000 for his work and they both agree that Lance will take three weeks to complete the installation. Lance begins to work on the project immediately. After installing two windows, however, he stops working on the remaining

windows and does not complete the installation as agreed. Walter is upset and comes to you for advice. Answer the following questions:

1. Explain what type of breach of contract has Lance committed (2)
2. In your opinion, which remedy would Walter claim? Provide a reason for your answer (2).

Spelling and grammar (1)