



<b><u>FACULTY:</u></b>	<b>LAW</b>
<b><u>MODULE NAME:</u></b>	<b>COMMERCIAL LAW 1A</b>
<b><u>MODULE CODE:</u></b>	<b>KMR1A11 / COL41A1</b>
<b><u>ASSESSMENT:</u></b>	<b>SUPPLEMENTARY EXAM</b>

### **QUESTION ONE**

*[Breach of contract]*

*[Blackboard: Fill in the blank]*

Identify the form of breach of contract in each of the following scenarios:

- 1.1 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 **[positive malperformance]**.
- 1.2 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 **[repudiation]**.

### **QUESTION TWO**

*[Remedies for breach]*

*[Blackboard: Multiple choice]*

Choose the correct option:

- 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*?
  - a) **Execution of the contract and damages.**
  - b) Damages only.
  - c) Execution of the contract and cancellation.
  - d) 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:

- a) Only option (i) is correct.
- b) Options (i) and (iii) are correct.
- c) Options (i), (ii) and (iii) are correct.**
- d) 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:

- a) The contract between Jabu and Jamelia has now been cancelled.
- b) The contract between Jabu and Jamelia has now been cancelled and Jabu has committed breach of contract in the form of *mora creditoris*.
- c) The contract between Jabu and Jamelia has now been cancelled, and Jamelia has committed breach of contract in the form of *mora debitoris*.
- d) Jamelia has committed breach of contract in the form of *mora debitoris*.**

### **QUESTION THREE**

[Remedies for breach]

[Blackboard: True or False]

3.1 George and Gumede enter into a contract in terms whereof George will purchase a box full of household cleaner from Gumede. Gumede will deliver the household cleaner to George's house. The day before the delivery is meant to take place, Gumede phones George and tells him that delivery will not be taking place the following day. George is livid and he says to Gumede that he "has a good mind to cancel this contract". As a result thereof, the contract between the parties has been cancelled.

**False.**

3.2 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.

**False.**

3.3 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.

**True.**

### **QUESTION FOUR**

[Remedies for breach]

[Blackboard: Matching]

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

	<b>A: Question/statement</b>	<b>B: Answers/description</b>
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
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### **QUESTION FIVE**

[Remedies for breach]

[Blackboard: Fill in the blank]

Fill in the missing word/s:

- 5.1 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 **[reduced performance]** in favour of Molly.
- 5.2 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 **[Sheldon]** to prove the amount of damages suffered.

### Supplementary Exam Questions- Sam

Fill in the missing word:

1. If the principal [ratifies] 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 [principal] and the third party.

Match the column:

1.

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.

True or false:

1. 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. (False)
2. An agent who fraudulently misrepresents that he has authority can be held personally liable. (True)
3. 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. (false)

Multiple choice:

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.**

Identify the type of breach:

1. 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. (Positive malperformance – negative duty)
2. 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. (Prevention of performance by the debtor)

EXAM QUESTIONS – SERSH

#### MULTIPLE CHOICE

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.

### TRUE AND FALSE

1. Cession requires the consent of only the cedent and cessionary. The debtor's consent is not required. **(True)**
2. 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. **(False)**
3. Where a contract includes a bilateral juristic act, only one party needs to perform in order for the contract to be fulfilled. **(False)**

### MATCH THE COLUMNS

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.

### IDENTIFY TYPE OF BREACH COMMITTED

1. 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? **Positive Malperformance (1)**
2. 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?  
**Prevention of performance (1)**

### FILL IN THE BLANK

1. 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 **15 (fifteen)** years
2. **Merger** is when a person becomes both debtor and creditor of the same obligation.

### **X3 True or False Questions**

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

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

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. (False)

### **X3 Multiple Choice Questions**

Which is not a defense to rebut the caveat subscriptor 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 needs 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.

### **X2 Identify the Type of Breach**

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 [positive malperformance].

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 [repudiation].

### **X2 Fill in the Missing Word**

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 [ticket] cases.

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

### **X1 Match the Columns**

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

## **ESSAY QUESTIONS**

### **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)

Answer

1. Repudiation (1). Kiki has by words, withdrawn from the contract (1) without lawful justification (1).
2. Specific performance or cancellation. She can accept or reject the repudiation and the remedy will depend on how the student answers the questions. Mimi has not paid the R10 000 and therefore cannot claim damages. (1)

1 mark for spelling and format

## 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)

Answer:

1. Positive malperformance (1). Render defective performance (1) [Or done something he was not supposed to do].
2. Should claim damages (1) in the amount of the repairs needed to fix the BMW (1)

