



**PROGRAMME** : BCOM  
**MODULE** : COMMERCIAL LAW 1A  
**CODE** : COL41A1/KMR1A11  
**DATE** : 27 MAY 2019  
Winter Examination  
**DURATION** : 8:30-10:30  
**TOTAL MARKS** : 80

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**EXAMINER** : DR. S. HUNEBERG; MR. J. LENONG;  
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**MODERATOR** : PROF. J. CALITZ  
**NUMBER OF PAGES** : 4 (including this one)

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**INSTRUCTIONS:**

1. Answer all the questions in your script.
  2. Write clearly and legibly.
  3. Leave a line open between each answer (for example, between questions 1.1 and 1.2).
  4. Ensure the correct use of grammar and spelling.
  5. Please indicate the name of your lecturer on your answer booklet.
  6. Please hand in your question paper separately at the door.
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## QUESTION 1

- 1.1. Provide the definition for the following terms:
- 1.1.1 Cession (2)
  - 1.1.2 Set-off (2)
  - 1.1.3 Extinctive Prescription (2)
- 1.2 Contractual terms are classified as *essentialia*, *naturalia* and *incidentalia* for the purpose of providing a guideline for the analysis of different types of contracts. Define these terms:
- 1.2.1 *Essentialia* (2)
  - 1.2.2 *Naturalia* (2)
  - 1.2.3 *Incidentalia* (2)
- 1.3 Distinguish between *prevention of performance by the creditor* and *mora creditoris* as specific forms of breach of contract. (4)
- 1.4 The words '*terms*' and '*conditions*' are often used in contracts. Is there a difference between these concepts or do they have the same meaning and can be used interchangeably? Explain. (3)
- 1.5 Haleema concludes a contract with Jabu whereby Jabu will purchase five vintage cars from a well-known collector, Henry Kingsley, on Haleema's behalf. Haleema authorises Jabu to negotiate with Henry and to pay a maximum of R50 000 per car. Answer the following questions:
- 1.5.1. Name the term used to describe the above three-party relationship. (1)
  - 1.5.2. What are the correct legal names for Haleema, Jabu and Henry? (3)
  - 1.5.3. Assume that Jabu did not **disclose** to Henry that he was acting on Haleema's behalf and purchased the cars for R50 000 each. Is there a valid and binding contract between Haleema and Henry? Explain. (5)
- 1.6 Under which circumstances can the non-defaulting or prejudiced party cancel a contract due to breach of a contract in the form of *mora debitoris*. (3)
- 1.7 Explain when a party may claim damages if breach of contract has occurred. (2)

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**SUB-TOTAL**

**[33]**

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## QUESTION 2

Identify the type of contractual terms listed below:

- 2.1 Allan sells his house to Brian for R2 000 000. The contract has the following provision: "This sale is subject to Brian obtaining a loan for 80% of the purchase price (R1 600 000) from JFK Bank within 60 days from the signing of the contract." (2)

- 2.2 Daniel leases his farm to Oliver. The parties agree that as soon as Daniel's son, Jack, obtains his Bachelor of Science Agriculture degree, the contract between Daniel and Oliver will dissolve, as Jack will be farming on this land. (2)
- 2.3 Mary undertakes that she will buy Susan a new house after her husband Patrick's death. (2)
- 2.4 Neville rents Raj's house for a period of one (1) year. When this period of a year expires, Neville will have to vacate the house. (2)
- 2.5 William sells a stud bull to Harry. William gives an undertaking that the bull is capable of breeding. (1)
- 2.6 John the builder has undertaken to build a house for Eunice. John assures Eunice that the house will be completed by 1 June 2015. If the house is not completed by this time, John has agreed to pay Eunice an amount of R5 000 per month. (2)
- 2.7 Jack gives Jane a cheque. The cheque is payable 90 days after Jack's death. (2)
- 2.8 Harry hires a farm from Jeff for 10 years. (2)

**[15]**

### **QUESTION 3**

Joe is employed as an accountant by a construction company, "We Build Incorporated". Joe is in charge of only ordering tipping trucks, bulldozers and scaffolding needed on the construction sites, on behalf of "We Build Inc." Whilst surfing the web, Joe spots a "Crane 500s" on sale for a mere R500 000 and buys it immediately, thus exceeding his authority. Mr Brick (Joe's boss) was not aware of the transaction nor gave permission for this purchase. He however finds that this particular crane will be useful in a current building project.

- 3.1 Identify the requirements that must be met for a valid ratification of Joe's act. (5)
- 3.2 Explain the legal consequences of ratification (2)

**[7]**

### **QUESTION 4**

Marco, a building contractor undertakes to build a house for Luke on 1 January 2018. Marco and Luke agree that the house will be completed by 1 June 2018. Marco starts the construction of the house on the 1<sup>st</sup> of January but then stops working on building the house in April that year. Luke now has to rent an apartment for R7000 a month until the house is completed as well as pay his bond instalment in the sum of R8000 a month from June 2018.

- 4.1 Is Marco in breach of contract? Explain your answer by identifying the type of breach that has occurred in the above set of facts. (3)
- 4.2 Identify the remedies that Luke may institute against Marco in this specific instance. **Give reasons for your answer.** (5)

4.3 If the parties had never agreed to a specific date for the completion of the house, how would your answer to 4.2. above differ? **Give reasons for your answer.** (2)  
[10]

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**SUB-TOTAL** [32]

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## QUESTION 5

Rashida hired *Akalwayas* (Pty) Ltd to handle the catering at her wedding reception lunch. In terms of the contract *Akalwayas* (Pty) Ltd agreed to provide the starters, main course as well as dessert for a total cost of R50 000. However, two weeks before the reception, Rashida receives a call from *Akalwayas* (Pty) Ltd advising her that they are unable to cater for the wedding reception and will not be delivering any of the food.

Write a **letter** to Rashida answering the following questions:

- 5.1 Rashida knows that what *Akalwayas* (Pty) Ltd have done is in breach of the contract she has with them. Name and explain to Rashida the type of breach of contract committed by *Akalwayas* (Pty) Ltd. (3)
- 5.2 Rashida believes that one has to prove certain requirements in order to succeed proving this type of breach. Identify the requirements for this type of breach for Rashida. (2)
- 5.3 Rashida needs some advice regarding the ways in which she can remedy this breach committed by *Akalwayas* (Pty) Ltd. What are Rashida's options once *Akalwayas* (Pty) Ltd have committed this type of breach? (3)
- 5.4 Taking into account your answer in 5.3. above, indicate whether, based on the set of facts, the contract is automatically terminated. (2)
- 5.5 Cancellation is considered a drastic remedy in our law. Explain to Rashida whether she may cancel the contract with *Akalwayas* (Pty) Ltd in this specific instance. Motivate your answer by referring to the set of facts above. (2)
- 5.6 Can Rashida get an order of *specific performance* against *Akalwayas* (Pty) Ltd? (1)

**Format (1)**

**Clarity of expression (1)**

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**GRAND-TOTAL** [15]  
[80]

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