



SUPPLEMENTRAY EXAMINATION

SUBJECT : CONSTRUCTION LAW 2B

CODE : CLWCOB2/CLWCO2B

DATE : NOVEMBER 2021

DURATION : 3 HOURS

TOTAL MARKS : 100

EXAMINER : MISS N ISMAIL

MODERATOR : MRS S HASSEN

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QUESTION 1: Multiple Choice Questions**(23)**

Answer the following questions by choosing the most correct statement in each instance.

1. The effect of the *caveat subscriptor* rule on a signatory who signs an agreement is that the:
 - a. signatory may decide whether to comply with the written agreement.
 - b. signatory is not bound by the written agreement.
 - c. signatory is bound by the written agreement.
 - d. None of the above

2. Several defences exist to rebut the *caveat subscriptor* rule. Which of the following is not such a defence?
 - a. Misrepresentation
 - b. Misinterpretation
 - c. Illegality
 - d. Mistake

3. Which of the following is a prerequisite of the parol evidence rule?
 - a. The agreement must not be reduced to writing or integrated into a single complete document.
 - b. The agreement must be concluded verbally.
 - c. No agreement must be entered into between the parties.
 - d. The agreement must be reduced to writing or integrated into a single complete document.

4. Which of the following provides a legitimate reason for a contract to be rectified?
 - a) To remedy a failure by one of the parties to comply with the law.
 - b) To remedy a reasonable error that transpired when the agreement was put into writing.
 - c) To ratify the contract.
 - d) None of the above.

5. In general terms, rectification means to -
 - a) correct something (usually an error).
 - b) approve or give formal consent to something or someone.
 - c) All of the above.
 - d) None of the above.

6. Identify the correct combination of requirements for a set-off agreement from the following:
 - i. Debts must be of a similar nature;
 - ii. Debts must be equal in sum;

- iii. Debts must be liquidated;
 - iv. Debts must be claimable;
 - v. Debts must be between the same persons.
- a) Only i, ii, iii are correct.
 - b) Only iii and v are correct.
 - c) Only i, ii, iii and iv are correct.
 - d) Only i, iii, iv and v are correct.
7. Xolani and Boeta-Joe enter into an agreement for the R500 that Xolani owes Boeta-Joe to be extinguished and replaced with an obligation for Xolani to deliver his new pair of Nike sneakers, also worth R500 to Boeta-Joe. What is such an agreement called?
- a) Merger;
 - b) Settlement;
 - c) Novation;
 - d) Set-off.
8. The following statements regarding cession are correct:
- i. Cession is where a party to a contract transfers his rights and duties to a third party;
 - ii. Cession is where a debtor delegates his duties towards a creditor to a third party;
 - iii. To effect cession no formalities are required;
 - iv. With cession, the debtor's permission is not required for its validity.
- a) All of the above are correct
 - b) Only i and iv are correct
 - c) Only ii and iv are correct
 - d) Only iii and iv are correct
9. Trudy enters into an agreement to purchase Karel's vintage rocking chair for R200 00.00 and immediately pays the purchase price. According to the agreement Karel needs to deliver the chair the following day before 1 pm. The night before delivery is to take place, a lightning storm hits Karel's home, which catches fire and the chair is completely destroyed. The contract is consequently terminated. What is the reason for the termination of their contract?
- a) Initial impossibility of performance
 - b) Supervening impossibility of performance
 - c) Prevention of performance
 - d) Breach of contract

10. Kwena Productions (Pty) Ltd and Mbali Management Services (Pty) Ltd enter into a contract for the superstar Baba-Blesser - who is signed under Mbali Managements Services, to perform at Kwena Productions' "Wena Slay-Queen Festival". However, unknown to the contracting parties Baba-Blesser passed on (died) three days before the conclusion of the contract from a drug overdose. The contract is consequently terminated. What is the reason for the termination of their contract?
- a) Supervening impossibility of performance
 - b) Prevention of performance
 - c) Initial impossibility of performance
 - d) Breach of contract
11. Nivashan who lives and works in Pretoria wants to be close to his family in Cape Town for Diwali celebrations. Consequently, Nivashan enters into a rental contract with Tyson for his Blouberg beachside apartment for three days at R1000 a day, payable in full the day before Diwali. However, Tyson needs to provide Nivashan with his banking details to pay for the rental. On Diwali, Tyson has still not shared the information with Nivashan. The contract is consequently terminated. What is the reason for the termination of their contract?
- a) Supervening impossibility of performance
 - b) Prevention of performance
 - c) Positive malperformance
 - d) Initial impossibility
12. Which one of the following statements regarding prescription is incorrect?
- a) 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 will only prescribe after a period of 15 years;
 - b) A debt arising from a bill of exchange or other negotiable instrument or a notarial contract will only prescribe after a period of 6 years;
 - c) A debt secured by mortgage bond, judgment debt, a debt in respect of any taxation imposed or levied by or under the law will only prescribe after a period of 30 years;
 - d) Any other debt, except where a statute provides otherwise will only prescribe after a period of 3 years.
13. Firebrick Construction (Pty) Ltd is indebted to Thala Electricals CC for the amount of R100 000 for electrical work done on a variety of their building projects. On 11 October 2021, Firebricks Construction acquired one hundred percent of Thala Electrical's shareholding. This is known as a -
- a) Merger;
 - b) Settlement;
 - c) Novation;
 - d) Set-off.

14. Which of the following are correct forms of prescription?

- i. Recission prescription;
 - ii. Acquisitive prescription;
 - iii. Extinctive prescription;
 - iv. Inquisitive prescription.
-
- a) Only i is correct;
 - b) All of the above are correct;
 - c) Only ii and iii are correct;
 - d) Only i, iii and iv are correct;
 - e) Only iii and iv are correct.

15. Complete the following statement: "Prescription will start running as soon as...":

- i. ... the contract is formulated;
 - ii. ... the claim becomes enforceable;
 - iii. ... the claim is liquidated;
 - iv. ... the obligation is discharged;
 - v. ... the debt becomes due.
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- a) Only ii and iv are correct
 - b) Only i, iii and iv are correct
 - c) Only ii and iii are correct
 - d) Only ii and v are correct

16. Which of the following is not a guideline which is usually considered by courts when interpreting contracts?

- a. Interpretation is a matter of law, not fact.
- b. The meaning of a word or provision must be determined by examining its language in the light of its factual context.
- c. The purpose of contract interpretation is to ascertain the objective meaning of the language in issue, not the common intention of the parties.
- d. Only a judge can interpret the true meaning of a contract.

17. Meghan agrees to cater for Portia's birthday party on 21 August for R5000. Portia and Meghan agree that Meghan will make two chicken dishes and two vegetarian dishes. In respect of repudiation, which of the following statements are correct?

- i. Meghan calls Portia on 20 August and tells Portia that she will not cater for her birthday.
- ii. Meghan denies that a contract came into existence and says she will not perform.
- iii. Meghan makes two chicken dishes and one vegetarian dish for the party and delivers it on 21 August.
- iv. Portia sees an advertisement on 20 August that informs him that Meghan is actually going to be catering for another event on 21 August and will not be catering for Portia's birthday party.

- a. i, ii, iii are correct.
 - b. i, ii, iv are correct.
 - c. ii and iii are correct.
 - d. All the above are correct.
18. Which of the following is NOT a requirement for *mora creditoris*?
- a. The creditor must fail to give his co-operation.
 - b. The debtor must render performance.
 - c. Performance must be dischargeable.
 - d. Performance must be impossible.
19. Ron agrees to deliver a Mazda CX3 motor vehicle to Don on 5 August by 10H00. Don pays the agreed price of R350 000 to Ron. On 5 August, Ron wakes up late and rushes to deliver the car. Ron drives recklessly over the speed limit and in order to get the car to Don on time. Whilst on route, Ron crashes the car into a tree and the car is damaged beyond repair. What type of breach of contract has Ron committed?
- a. Prevention of performance.
 - b. *Mora debitoris*.
 - c. *Mora creditoris*
 - d. Positive malperformance.
20. Caroline works at CupCakez Catering. In terms of her employment contract, she is only allowed to make and sell cupcakes for the company. Her friend, Max, privately asks if Caroline can make 100 cupcakes for Max for her birthday. Caroline agrees that she will make the cupcakes for Max during her normal working hours and use all the work resources (baking products) to make her private order. What type of breach of contract is this?
- a. *Mora debitoris*.
 - b. Repudiation.
 - c. Positive malperformance.
 - d. There is no breach of contract.
21. What is a breach of contract?
- a. Where one party acts contrary to the terms of the contract without lawful justification and causes another party a loss.
 - b. Where one party acts according to the terms of the contract and performs as agreed.
 - c. Where one party acts contrary to the terms of the contract but there is a lawful justification.
 - d. A contract that allows both parties to perform reciprocally.
22. Which of the following instances are correct regarding when a contract can be cancelled?
- i. Cancellation due to positive malperformance

- ii. Cancellation due to rescission
 - iii. Cancellation due to restitution
 - iv. A cancellation clause in the contract
 - v. Cancellation due to *mora debitoris*
- a) Only i, iv and v are correct
 - b) All of the above is correct
 - c) Only i, ii and iii are correct
 - d) Only iii, iv and v are correct
23. Which of the following are incorrect possible court orders which may be granted in terms of an application for the execution of a contract?
- i. An order for *mora creditoris*.
 - ii. An order for reduced performance.
 - iii. An order for specific performance.
 - iv. An order for prevention of performance.
 - v. An order for patrimonial loss.
- a) Only i, ii, iv and v are incorrect
 - b) Only ii, iii and v are incorrect
 - c) Only i, iv and v are incorrect
 - d) All of the above is incorrect
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QUESTION 2: True or false

(11)

1. To rectify means to approve or give formal consent to something.
2. The debtor is the person who needs to perform an obligation under the contract.
3. Where Frank transfers his personal right to Colin and John is the person who needs to perform under this contract, Colin is known as the cessionary.
4. Where there is an agreement between Sandoka (Pty) Ltd and Gencore (Pty) Ltd for the transfer of both rights and duties this will constitute an assignment.
5. Cancellation is an act of withdrawing from a contract due to reasons other than a breach of contract.
6. In a contract between Mary and Susan, where Susan owes Mary performance in the form of 10 goats and Mary waives the obligation for Susan to deliver the 10 goats in total. This is known as release.
7. Mo agrees to deliver a Porsche motor vehicle to Sadio on 20 July. Mo warrants that he will deliver the vehicle on or before the agreed date. On 20 July, there is bad rain which causes some of the roads to flood and Mo does not deliver the car. In terms of this scenario, Mo will not be held liable for breach of contract because there is a legal justification for the delay.

8. In terms of repudiation, the defaulting party must have a lawful justification in order to be held liable for breach of contract.
 9. The remedy of cancellation for repudiation does not require a materially important obligation where the contract contains a cancellation clause.
 10. Mika sends Gibraltar an email stating that she will not be able to perform at her birthday party anymore due to an opportunity to perform at this year's BET Awards ceremony in the United States of America, which is taking place on Gibraltar's birthday. This would be a repudiation of a materially important obligation.
 11. Marcus is a rally driver and enters into a contract with Tito to deliver a specifically customised Mercedes Benz to him on or before the national rally race at 13H00 on 20 September 2021. Tito defaults in his performance to deliver the Mercedes Benz to Marcus by the specific date to perform. Marcus would be entitled to cancel the contract due to *mora debitoris*.
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QUESTION 3: Fill in the missing word

(12)

1. Where written agreements do not reflect the true _____ of the parties (due to an error), rectification is permissible.
2. According to the *caveat subscriptor* rule, a _____ is bound by the written agreement where she or he has signed it.
3. The signatory is bound by the _____ meaning & effect of the words of the contract, according to the *caveat subscriptor* rule.
4. In terms of fulfilment or discharging of a contract with a unilateral act suggest that no co-operation by the_____ is necessary.
5. With supervening impossibility of performance, the contract is terminated between the parties after its conclusion, because _____ becomes objectively impossible due to an external factor.
6. Once cession is effective, only the _____ can claim the debt.
7. With a delegation, the debtor delegates his/her _____ towards a creditor to a third party.
8. With damages, a defendant will only be liable for the loss that can be _____ by the parties.
9. A defendant's _____ is limited to the loss that is naturally and generally flowing from the breach or that which was actually foreseen by the parties.
10. An innocent party can claim. _____ as a result of breach of contract even where they have cancelled the contract or claimed execution thereof if a loss has been suffered.
11. The test for limiting damages is having regard to the subject matter in terms of the contract, whether the harm that was suffered can be said to have been _____ foreseeable as a realistic possibility.
12. According to the legal principle, he who alleges must prove, the onus is on the _____ to prove damages.

QUESTION 4: Capacity (6 marks)

1.1 Shoba, an unrehabilitated insolvent, enters into a contract whereby she sells her beach house to Petronela for R5 000 000.

1.1.1 Indicate the contractual capacity of Shoba. (1)

No contractual capacity

Full contractual capacity

Limited contractual capacity

1.1.2 Indicate whose consent is required by Shoba. (1)

Spouse

Curator

Guardian

Trustee

1.2 Siphokazi, a five-year-old child, sells his iPad to his eighteen-year-old cousin, Beyonce, for R1 500.

1.2.1 Siphokazi is a/an -

Infans

Minor

Major

1.2.2 Indicate the contractual capacity of Siphokazi. (1)

Limited contractual capacity

Full contractual capacity

No contractual capacity.

1.2.3 Indicate whose consent is required by Siphokazi. (1)

Master of the High Court

Curator

Guardian

No consent is required

1.3 Christopher, a fifteen-year-old unemancipated child, sells her laptop to Vusimuzi, a twenty-year-old man, for R6 000. Indicate the contractual capacity of Christopher. (1)

No contractual capacity

Full contractual capacity

Limited contractual capacity.

QUESTION 5: Terms (1 mark x 4 = 4 marks)

1. In accordance with the contract of sale concluded between Paul and Saul, Paul assures Saul that the motor vehicle has undergone the required inspections and will perform as agreed.
2. Zelda, a building contractor, enters into a contract with Thami, her employer, for the construction of a townhouse near Wildropark. The date of completion is set at 23 October 2021. If the construction is not completed by 23 October 2021, the contract stipulates that Zelda will have to pay R2000 to Thami for every calendar month she takes thereafter to complete the construction.
3. A contract of lease contains the following clause: "A party who is in breach of the contract forfeits all performance already rendered in terms of the contract."
4. A clause from a non-disclosure contract reads as follows: "Any variation, amendment or alteration to this contract must be reduced to writing and signed by both parties."

QUESTION 6: Conditions & time clauses (2 marks x 4 = 8 marks)

1. All parties will be released from their contractual obligations to perform to each other in person when the President of the Republic of South Africa declares a national lockdown in accordance with the Disaster Management Act of the country.
- 2.
3. Celeste and Derek enter into an agreement to appoint Celeste as the official make-up artist of Derek. According to their agreement, Celeste will hold this position up until 10H00 on the 25th of December 2021.
4. Hubble and Partners Inc entered into a ninety-nine-year contract of lease with Growthpoint Properties on 15 October 2021.
5. Ethan undertakes to give his cousin, Frank, R1 250 000 if he wins more than R3 000 000 in the lotto.

QUESTION 7: Column A & B (12 marks)

Match the description with the corresponding term or concept.

Column A		Column B	
1.	Performance becomes impossible, without fault by any of the parties, after the conclusion of the contract.	A.	Cancellation
2.	A manner of extinguishing the debts owed reciprocally by two parties.	B.	Prevention of performance by the debtor
3.	The signatory is bound by the written agreement where she or he has signed it.	C.	Restitution
4.	The prescription period of a debt arising from a bill of exchange.	D.	Cession
5.	The transfer of rights from one person to another.	E.	An order for reduced performance
6.	The prescription period of any debt owed to the State and arising from an advance or loan of money.	F.	Subjectively
7.	A court order whereby a party is instructed to perform their contractual obligation as agreed upon in the contract.	G.	Merger
8.	Parties to the contract must return any performance received.	H.	<i>Caveat subscriptor</i> rule
9.	For supervening impossibility to occur, performance must be _____ impossible.	I.	An order for specific performance

10.	The act of withdrawing from a contract due to breach of contract.	J.	Objectively
11.	To give formal consent after conclusion of the juristic act.	K.	6 years
12.	The debtor's performance is rendered impossible by the creditor.	L.	15 years
		M.	Prevention of performance by the creditor
		N.	Initial impossibility
		O.	Set-off
		P.	Cessionary
		Q.	3 years
		R.	Ratification
		S.	Rectification
		T.	Supervening impossibility
		U.	Release
		V.	Delegation

QUESTION 8: Short Question (3 marks)

1. Tshegofatso owes Nino R50 000 for a loan that was given to her. Despite demands, Tshegofatso fails to pay Nino. Nino serves a summons upon Tshegofatso and claims payment of the amount owed. Discuss the effect that the above circumstance has on prescription. (3)

QUESTION 9: Application Questions (3 questions x 7 marks each =21)

9.1 Nawe and Tsho are both barley farmers from Taung in the Northern Cape. During the draught of 2018 Tsho's crops were totally devastated. Nawe who had a great number of reserves left in silos borrowed 150 tonnes of barley to Tsho at the prevailing market price on 30 August 2021 - to keep him and his farm afloat. On 10 September 2021, a locust plague destroyed all of Nawe's crops and Tsho, in turn, borrowed him 80 tonnes of barley at the prevailing market price on 12 September 2021. Consequently, Nawe only delivered 70 tonnes to Tsho on 18 October 2021. Answer the following questions.

1. Identify and define the agreement which terminates some of the obligations between Nawe and Tsho? (3)
2. What requirements need to be present for this method of terminating personal rights between Nawe and Tsho? (4)

9.2 Zarah purchased a 2019 VW Polo TSI from Susan for R250 000. The contract has been reduced to writing. Answer the following questions:

1. A dispute arises between Zarah and Susan regarding the sale of the vehicle. Susan indicates that she is willing to provide oral evidence (verbal testimony) in court in order to clarify the terms of the contract. Advise Susan whether she may provide oral evidence in court, fully discussing the parole evidence rule. (3)
2. Assume that two months after purchasing the vehicle from Zarah, Susan notices that the contract of sale reflects the purchase price of R25 000 instead of R250 000. The reflection of the incorrect purchase price in the written contract was due to a typing error. Identify and discuss the concept to remedy this error. Your answer should include a definition and requirements of the applicable concept. (4)

9.3 Njabulo sells a racehorse to Shawn for R100 000. Before delivery of the horse to Shawn, Njabulo remembers that the horse is insured for R200 000. He therefore instructs his employee to poison the horse as he stands to receive more from the insurance claim than from the sale. Answer the following questions:

1. Identify the type of breach depicted in this scenario. (2)
2. Indicate which remedy/remedies would be the most appropriate for Shawn in this instance and which remedies may not be utilized. (3)
3. Assume for this question only that on the day before the racehorse is to be delivered by Njabulo, the horse gets attacked by lions from the neighbouring farm and dies. Explain to Njabulo and Shawn what consequence would this have on the contract in this instance. (2)

END OF EXAMINATION

TOTAL: 100 MARKS