



UNIVERSITY
OF
JOHANNESBURG

EXAMINATION

Surname: _____

Name: _____

Student Number: _____

Q 1	
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SUBJECT : CONSTRUCTION LAW 2B

CODE : CLWCOB2

DATE : 09 NOVEMBER 2020

DURATION : 3 HOURS

TOTAL MARKS : 100

EXAMINER : MISS N ISMAIL

MODERATOR : MRS S HASSEN

NUMBER OF PAGES : TWENTY ONE (21) PAGES

INSTRUCTIONS :

1. Answer all questions.
2. Questions must be answered on the question paper.
3. No marks will be awarded if answers are not written in full sentences.
4. Write legibly.

QUESTION 1: Capacity to Act

(10)

1.1 Lee-Anne, an unrehabilitated insolvent, enters into a contract whereby she sells her car to Pedro for R300 000.

1.1.1 Indicate the contractual capacity of Lee-Anne. (1)

No contractual capacity

Limited contractual capacity

Full contractual capacity

1.1.2 Indicate whose consent is required by Lee-Anne. (1)

Trustee

Spouse

Curator

Guardian

1.2 Kruben, a seventeen-year-old unemancipated boy, sells his house that he inherited from his late grandfather for R800 000 even though the house is worth R950 000.

1.2.1 Indicate the contractual capacity of Kruben. (1)

No contractual capacity

Limited contractual capacity

Full contractual capacity

1.2.2 Indicate whose consent is required by Kruben. (3)

Judges of the High Court

Guardian

Master of the High Court

All of the above

1.3 Thabo, a six-year-old boy, sells his phone to his eighteen-year-old cousin, Thabiso, for R3 000.

1.3.1 Indicate the contractual capacity of Thabo. (1)

No contractual capacity

Limited contractual capacity

Full contractual capacity

1.3.2 Indicate whose consent is required by Thabo. (1)

Trustee

Curator

Guardian

No consent is required

1.4 Christabel, a fifteen-year-old unemancipated girl, sells her laptop to Vuyisani, a twenty-year-old man, for R4 000.

1.4.1 Indicate the contractual capacity of Christabel. (1)

No contractual capacity

Limited contractual capacity

Full contractual capacity

1.4.2 Indicate whose consent is required by Christabel. (1)

Trustee

Curator

Guardian

No consent is required

QUESTION 2: Terms of the Contract (10)

2.1 Identify the following contractual terms.

2.1.1 David agrees to buy Sandile's farm as long as he will be able to draw water from the river adjacent to the farm. Identify the following contractual term. (1)

Modus

Supposition

Warranty

Penalty clause

2.1.2 Denise donates her house to the church on condition that the church uses it to provide shelter to homeless people. Identify the following contractual term. (1)

Modus

Supposition

Warranty

Penalty clause

2.1.3 The owners of a piece of land and WWE Construction have entered into an agreement in terms of which a mall is to be constructed by the 31st of December 2020. Parties agree that in the event that the mall is not completed by the agreed date, the owners of the land shall be entitled to deduct 10% of the construction price for every day that the mall remains incomplete after the agreed date. Identify the following contractual term. (1)

Modus

Supposition

Warranty

Penalty clause

2.2 Indicate whether the following clauses amount to either a resolutive condition, suspensive condition, resolutive time clause or a suspensive time clause.

2.2.1 Tebogo pays for his sister's university fees, however if she fails any modules he will no longer pay for her fees. Identify the type of clause depicted herein. (2)

Suspensive condition

Resolutive condition

Suspensive time clause

Resolutive time clause

2.2.2 A contract for the sale of land between Wim and Albert is subject to Albert obtaining a bank loan for not less than R800 000. Identify the type of clause depicted herein (2)

Suspensive condition

Resolutive condition

Suspensive time clause

Resolutive time clause

2.2.3 Samantha concludes a contract with Jenna in terms of which Samantha will purchase Jenna's house upon her death. Identify the type of clause depicted herein (2)

Suspensive condition

Resolutive condition

Suspensive time clause

Resolutive time clause

QUESTION 3: Breach of Contract and Remedies

(22)

3.1 Vusi hired Shane to paint the outside of his house on Sunday, 8 November 2020, at 09H00. On Friday and Saturday Vusi made numerous attempts to contact Shane via telephone calls, SMS, WhatsApp messages and email but he failed to respond. On Sunday, 8 November 2020 at 09H00, Vusi noticed that Shane updated his WhatsApp status to "En route to Ladysmith. YOLO! #HomeBound". Identify the form of breach depicted herein. (1)

Mora debitoris

Mora creditoris

Positive malperformance

Repudiation

Prevention of performance by the creditor

Prevention of performance by the debtor

3.2 Vusi hired Shane to paint the outside of his house. Shane arrives on the agreed day and time only to find out that Vusi has burnt his house down in a fit of rage after his favourite local soccer team, Kaizer Chiefs, lost the PSL (Premier Soccer League). Identify the form of breach depicted herein. (1)

Mora debitoris

Mora creditoris

Positive malperformance

Repudiation

Prevention of performance by the creditor

Prevention of performance by the debtor

3.3 Vusi hired Shane to paint the outside of his house. They agreed that Shane would paint the house grey and white on Sunday, 8 November 2020, at 09H00. On the agreed date, Shane paints the house black and white. Identify the form of breach depicted herein. (1)

Mora debitoris

Mora creditoris

Positive malperformance

Repudiation

Prevention of performance by the creditor

Prevention of performance by the debtor

3.4 Vusi hired Shane to paint the outside of his house. They agreed that Shane would paint the house on Sunday, 8 November 2020, at 09H00. Shane arrived on the agreed date and time to paint Vusi's house but could not gain access to the premises. Vusi's neighbour informed Shane that Vusi is on vacation in Zanzibar and there is no one to unlock the premises for him to paint the house. Identify the form of breach depicted herein. (1)

Mora debitoris

Mora creditoris

Positive malperformance

Repudiation

Prevention of performance by the creditor

Prevention of performance by the debtor

3.5 Vusi hired Shane to paint the outside of his house. They agreed that Shane would start painting the house on Sunday, 8 November 2020, at 09H00. However, Shane failed to pitch up at Vusi's house on the agreed date as he forgot. Identify the form of breach depicted herein. (1)

Mora debitoris

Mora creditoris

Positive malperformance

Repudiation

Prevention of performance by the creditor

Prevention of performance by the debtor

3.6 Vusi hired Shane to paint the outside of his house. They agreed that Shane would start painting the house on Sunday, 8 November 2020, at 09H00. However, Shane failed to pitch up at Vusi's house on the agreed date as he tested positive for Covid-19. True or False: The lack of performance by Shane constitute a breach of contract. (1)

True

False

3.7 Sheila, a tailor, has to sew or make alterations to a number of clothes for a few customers who will collect the clothing this evening. She experienced a power surge early this morning and the electricity does not want to go back on. She discovers that she is the only shop in the shopping centre without electricity and immediately calls her electrician, Fabio. She informs Fabio that she urgently needs electricity and he reassures her that he is on his way while speaking on the phone but he is actually still at home watching his favourite series. Fabio falls off to sleep while watching television and does not go to Sheila's shop at all.

3.7.1 Discuss *mora debitoris* as the form of breach of contract which Fabio was guilty of. (2)

3.7.2 Identify the requirements that must be met for *mora debitoris* to apply. (2)

The debtor must tender proper performance.

Performance must be delayed

Performance must be claimable

The creditor fails to give his co-operation which results in delay.

3.7.3 Assume for this question only, that Fabio did not fall off to sleep but actually was involved in a motor vehicle collision and was rushed to hospital with serious injuries. Discuss whether Fabio would be guilty of breach of contract. (2)

3.8 Aggie orders 15 boxes of foxy grey tiles from ZYX Hardware for R10 000. ZYX Hardware delivers 15 boxes of charcoal grey tiles to Aggie. Aggie refuses to accept delivery of charcoal grey tiles. Matilda is upset and makes it clear to Tumi, the manager from ZYX Hardware, that she will not pay them a cent. Tumi is adamant that Aggie should fulfil her obligations by making payment. Discuss in detail whether Aggie may withhold performance. (4)

3.9.1 Shirley agreed to paint Ben's house on 1 May 2018 but failed to do so. Ben sent a notice of demand to Shirley asking her to perform within two weeks and warned her about the consequences of non-compliance. Shelley did not perform to date. (1)

Cancellation

An order for specific performance

Prohibitory interdict

Damages

3.9.2 Jenny is leasing a shop in Northcliff Corner, from Jack, for a period of three years. The contract of lease prohibits subletting, however, Jenny intends on subletting Jack's shop to Ken. (1)

Cancellation

An order for specific performance

Prohibitory interdict

Damages

3.9.3 Chloe leased a flat in Volksrust from Jack for a period of two years. The contract of lease prohibits any pets being on the leased premises and if contravened the contract would terminate. However, Chloe moves in with her dog, Snookums, and cat, Fabio. (1)

Cancellation

An order for specific performance

Prohibitory interdict

Damages

3.10 Choose the requirements to be met in order to claim damages. More than one answer may be selected. (4)

Patrimonial loss

Foreseeable loss

Duty to mitigate loss

Causal connection between the breach of contract and the loss suffered

Unforeseeable loss

Interdict

3.11 Shelley agreed to deliver car parts to Sam on 1 October 2020 but Shelley did not perform to date. Identify the type of mora that applies in this situation. (1)

Mora ex re

Mora ex persona

QUESTION 4: Transfer and Termination of Personal Rights (10)

4.1 Provide the periods of prescription for the following:

4.1.1 Sipho is entitled to R6 000 from Kazi which is due to him in the form of a cheque which has bounced. Identify the applicable prescription period. (1)

3 years

6 years

15 years

30 years

4.1.2 Vijay owes R50 000 to SARS in respect of outstanding taxes. Identify the applicable prescription period. (1)

3 years

6 years

15 years

30 years

4.1.3 A loan of R10 000 given to Sandy by her brother Andy. Identify the applicable prescription period. (1)

- 3 years
- 6 years
- 15 years
- 30 years

4.1.4 A debt of R500 000 owed to Mira by Shania arising from the sale of land. Identify the applicable prescription period. (1)

- 3 years
- 6 years
- 15 years
- 30 years

4.2 Kleenex Industrial Solutions is a company that provided a loan of R200 000 to one of its directors, Sue, after following all the necessary procedures. Indicate what effect the following circumstance has on prescription. (1)

The prescription period would be delayed.

The prescription period would be interrupted.

4.3 Sibongile purchases 300 cloth masks from Mathabo for R3000. However, Sibongile wishes to donate 300 masks to the local clinic. Therefore, Sibongile transfers her right to receiving the masks to the clinic. Identify the applicable legal principle dealing with the transfer of rights.

- Delegation
- Cession
- Compromise
- Assignment

4.4 Keneilwe hires Bubbles Mobile Pet Grooming to come to his home on Friday, 06 November 2020, to wash and groom his cat, Ginger. On Tuesday, 03 November 2020, Ginger runs out of the yard and is hit by a car and dies. Identify the method of termination of obligations. (1)

Novation

Merger

Release

Supervening Impossibility of performance

4.5 Abel and Mbali enter into a contract whereby Abel must sew Mbali a matric ball dress according to her specifications for R20 000. The dress must be ready for collection on 1 November 2020. On 1 November 2020 Mbali collects her dress from Abel which she finds to be just perfect. She then pays him R20 000 via an EFT before leaving his shop. Identify the method of termination of obligations.

(1)

Novation

Merger

Release

Discharge

4.6 Sven is declared insolvent. His trustee offers to pay 25 cents for every rand that Sven owes his creditor, Andy. Andy accepts this offer. Identify the method of termination of obligations. (1)

Novation

Merger

Release

Compromise

4.7 Siya bought a fridge from Kathlego for R5 000. Siya had to pay off the fridge in monthly instalments. To date, he paid Kathlego an amount of R4 800 in total. He has not made any payment to her for the past three months as he has lost his job. Kathlego informs Siya that he does not have to make payment of the remaining R300 owed to her. Siya is appreciative of Kathlego's kindness. Identify the method of termination of obligations. (1)

Novation

Merger

Release

Discharge

QUESTION 5: The Contract of Lease

(15)

5.1 Tshilidzi leases his flat to Jenni for a period of 15 years to be used for residential purposes. Identify which party is the lessee. (1)

Jenni

Tshilidzi

5.2 Tshilidzi leases his flat to Jenni for a period of 15 years to be used for residential purposes. Are there any formalities required in a contract of this nature to be enforceable against third parties? Explain your answer. (3)

5.3 Tshilidzi leases his flat to Jenni for a period of 15 years to be used for residential purposes. Assume that the lease agreement provides that, from time to time, Tshilidzi may unilaterally determine the amount of rent to be paid by Jenni depending on how she takes care of the property and the frequently fluctuating prices on the rental market. He justifies his position by stating that the volatility of rent on the rental market renders it unnecessary and uneconomical to agree on a fixed amount of rent or on a specific formula in order to determine the amount of rent to be paid. Indicate the validity of this lease agreement with specific reference to its provisions on the rental price. (1)

Valid

Void

Voidable

Unenforceable

5.4 Assume that the pipes from the geyser are leaking and as a result is causing damage to the wall, wooden floors and Jenni's furniture in her bedroom. Despite numerous requests Tshilidzi fails to repair the leaking pipes. Indicate which duty Tshilidzi has breached. (1)

The duty to deliver the leased property to the lessee

The duty to maintain the leased property

The duty to ensure the lessee's undisturbed use and enjoyment of the leased property

5.5 Assume that the pipes from the geyser are leaking and as a result is causing damage to the wall, wooden floors and Jenni's furniture in her bedroom. Despite numerous requests Tshilidzi fails to repair the leaking pipes. Indicate which remedies are available to Jenni. (3)

An interdict

Cancellation

Damages

Reduction in purchase price

Actio empti

Lessee repairs the property herself and claim cost of repair from the lessor

- 5.6 Tshilidzi leases agricultural land upon which Jenni grew sugarcane for a period of 15 years. Indicate the validity of this lease agreement if parties agreed that Jenni would compensate Tshilidzi by giving him 10% of her produce. (1)

Valid

Void

Voidable

Unenforceable

- 5.7 Robin leases a bachelor flat to Thabang. If Thabang leases the flat to Sizwe, this is an example of _____. (1)

assignment

cession

sublease

eviction

- 5.8 Gino is renting a house from Vincent for a period of 12 months. After a period of three months Christopher bought the house and informs Gino that he must vacate the premises within one week. Choose the correct option. (1)

Gino has to leave as "*huur gaat voor koop*" only protects a lessee of movable goods.

Gino has to leave as the new owner's right is stronger than Jorge's right in terms of his

lease agreement.

Gino does not have to leave as the doctrine "*huur gaat voor koop*" protects him.

Gino has to leave as "*huur gaat voor koop*" is only applicable in long term leases.

5.9 The lessor is entitled to a _____ over the movable property of a lessee when the lessee has failed to pay the rental amounts due. (1)

tacit hypothec

mortgage bond

notarial bond

cessionary right

5.10 Which of the following options is an example of a valid contract of lease. (1)

Dumisani lets his garden cottage to Maria and in return she will clean his house and garden three times a week.

John lets his car to Daniel, who will pay him R1000 a month. Daniel became the owner of the car when they concluded the contract of lease.

An oral contract of lease between the owner of the farm and a lessee for a period of thirteen years.

Jabulani lets his TV set to Sandy for a period of ten months and in return she must take good care of it without having to pay him a cent.

None of the above.

5.11. Any one of the following. Indicate to what extent can compensation for improvements made to movable property and urban tenements be claimed in the following instances:

5.11.1 A lessee of a car bought and replaced a tire of the car when it burst, at no fault of the lessee, on the highway. Indicate to what extent can compensation for improvements made to the leased property be claimed. (1)

No compensation of expenses

Full compensation of expenses

5.11.2 The lessee removed an ordinary light fitting from the entrance hall of the leased house and replaced it with a crystal chandelier worth R35 000. (1)

Full compensation of expenses

No compensation of expenses

QUESTION 6: The Contract of Sale

(17)

6.1 True or false: The seller has to be the owner of the thing sold to conclude a valid contract of sale.

6.2 True or false: No formalities need to be complied with when concluding a contract for the sale of land.

6.3 True or false: The aedilician remedies include the *actio quanti minoris* and the *actio empti*.

6.4.1 Jakes agrees to sell “something” in his house to Tertia for R500. Indicate the validity of this agreement. (1)

Valid

Void

Voidable

Unenforceable

6.4.2 Boeing has just designed a new aircraft model which will be available on the market in February 2021. South African Airways has concluded a contract with Boeing in Johannesburg agreeing that they will buy one aircraft of the specific new model from Boeing for R80 000 000. Indicate the validity of this agreement. (1)

Valid

Void

Voidable

Unenforceable

6.5.1 Zelda takes her laptop to IT Solutions for a software upgrade. While the laptop is being worked on by IT Solutions, Zelda sells it to Olga. Zelda notifies the technician at IT Solutions that she sold the laptop to Olga and that Olga will collect the laptop directly from IT Solutions. Identify which form of delivery takes place in this contract of sale.

Attornment

Constitutum possessorium

Actual delivery

Symbolic delivery

Delivery with the long hand

Delivery with the short-hand

6.5.2 Chris and Cayou conclude a contract of sale in terms of which Chris will sell his skateboard to Cayou for R500. Chris physically hands the skateboard to Cayou. Identify which form of delivery takes place in this contract of sale.

Actual delivery

Attornment

Constitutum possessorium

Symbolic delivery

Delivery with the long hand

Delivery with the short-hand

6.5.3 Firoza sells her yacht to Musa. The yacht is currently docked at the Knysna Marina. Firoza simply points out which yacht it is that she sold to Musa. Identify which form of delivery takes place in this contract of sale.

Delivery with the long hand

Attornment

Constitutum possessorium

Actual delivery

Symbolic delivery

Delivery with the short-hand

6.5.4 Shiburi and Clement conclude a contract of sale in terms of which Shiburi sells his tractor to Clement for R200 000. Shiburi physically hands the keys of the tractor to Clement. Identify which form of delivery takes place in this contract of sale.

Symbolic delivery

Attornment

Constitutum possessorium

Actual delivery

Delivery with the long hand

Delivery with the short-hand

- 6.6 Wilfred purchased a 2012 VW Polo Vivo from Cars-R-Us for R100 000. A week after delivery of the car, Wilfred realised that the car is consuming a lot of petrol and took it to Jacobus, his mechanic, for inspection. Jacobus informed Wilfred that the petrol pump had a hairline crack. Wilfred was unaware of the defect at the time of the sale and did not discover the defect upon reasonable inspection. Identify which duty was breached by the seller. (1)

The warranty against latent defects

The warranty against patent defects

The warranty against eviction

The warranty against good quality goods

- 6.7 Indicate which of the following should a party to a contract of sale prove before he will have a claim against the other party for a breach of the warranty against latent defect? (2)

Immaterial defect in the *merx*

The defect existed at the time of conclusion of the contract

The defect was patent

The purchaser was unaware of the defect at the time of conclusion of the contract

The seller was unaware of the defect at the time of conclusion of the contract

- 6.8 Indicate what can be claimed with the *actio empti* as a remedy. (3)

Specific performance

Rescission

Restitution

Cancellation

Damages

Reduction of the purchase price

- 6.9 Ken subdivided his property situated in Cape Town. On 10 June 2020, Ken enters into a contract of sale in respect of the subdivided portion with Lenny. They agree that Lenny may start to build on the property on 1 July 2020. For this purpose, Ken hands Lenny a key to the gate of the property. On 30 September 2020 Lenny is notified that the property has been registered in his name at the Deeds Office. Transfer of ownership in respect of the subdivided portion of the property took place on: (1)

10 June 2020 since the transfer of ownership takes place on the date of conclusion of the contract.

1 July 2020 since the transfer of ownership takes place on the date on which the property is symbolically delivered to Lenny.

30 September 2020 since the transfer of ownership takes place on registration of the property in Lenny's name.

No valid contract was concluded between Ken and Lenny.

- 6.10 A clause in a contract of sale that excludes the seller's liability for latent defects is a/an _____. (1)

actio redhibitoria

huur gaat voor koop

voetstoots clause

vis maior

QUESTION 7: The Law of Agency

(10)

- 7.1 Khaled, a businessman, enters into an agreement with his financial advisor, Cedrick, to purchase 50 000 shares in Sesfikile Enterprises and 20 000 shares in Celkom on his behalf. Identify which party is the mandatary. (1)

Cedrick

Khaled

- 7.2 Assume that Cedrick enters into a contract of sale of the shares with Sesfikile Enterprises and Celkom but fails to disclose that he is acting on behalf of Khaled. Fully discuss the consequences of the contract. (3)

- 7.3 Gugu is appointed as an agent of We-R-Loans Company. Mr Shiloh, one of the directors has instructed her and given her authority to receive applications for loans. She sees an opportunity to make some extra money and charges a fee of R50 per application without the Board of Directors permission. After a couple of months, some of the customers complained to Mr Shiloh about this “application fee” and Mr Shiloh discovered that Gugu has been acquiring these extra unauthorized benefits. Which duty has Gugu breached? (1)

The duty not to exceed the terms of the mandate

The duty to perform the mandate personally

The duty to carry out the mandate

The duty to act with care and skill

The duty to act in good faith

- 7.4 Kent, a businessman, enters into an agreement with his financial advisor, Frikkie, to purchase 20 000 shares in Simunye Enterprises and a further 30 000 shares in Telekom on his behalf. Frikkie purchased 25 000 shares in Simunye Enterprises, instead of 20 000 shares as instructed by Kent. Indicate which duty Frikkie breached. Provide a reason for your answer. (1)

The duty not to exceed the terms of the mandate

The duty to perform the mandate personally

The duty to carry out the mandate

The duty to act with care and skill

The duty to act in good faith

- 7.5 Identify the duties of the mandator. (2)

The duty not to exceed the terms of the mandate

The duty to perform the mandate personally

The duty to carry out the mandate

The duty to act with care and skill

To pay the mandatary the agreed remuneration

The duty to act in good faith

To compensate the mandatary for expenses

The duty to render accounts

The duty to account

- 7.6 A contract of mandate is terminated in the same way that other obligations are extinguished. Identify two other methods which would specifically terminate a contract of mandate. (2)

Death of either party

Equilibrium of the estate of either party

Mental deficiency of the mandator or mandatary

Rectification by the mandatory

Repudiation by the mandatary

QUESTION 8: Interpretation of the Contract

(6)

- 8.1 Sarah purchases Brendan's vehicle with registration number HM 76 LL GP. One week after the contract has been signed and concluded, Brendan notices that the registration number of the vehicle had been incorrectly typed in the contract as HM 67 LL GP. Identify the remedy that the parties may use in order to correct this mistake. (1)

Ratification

Rectification

Repudiation

Restraint of trade

- 8.2 Discuss the parol evidence rule. (2)

- 8.3 Identify three defences to the *caveat subscriptor* rule (3)

misinterpretation

forgery

legality

duress

undue influence

mistake

END OF EXAMINATION

TOTAL: 100 MARKS