



<b><u>FACULTY</u></b>	: Law
<b><u>DEPARTMENT</u></b>	: Practical Business Law
<b><u>CAMPUS</u></b>	: DFC
<b><u>MODULE</u></b>	: CLWCOB2 Construction Law 2B
<b><u>SEMESTER</u></b>	: Second
<b><u>EXAM</u></b>	: <b>SSA</b> January 2019

<b><u>DATE</u></b>	:	JANUARY 2019	<b><u>SESSION</u></b>	:
<b><u>ASSESSOR(S)</u></b>	:	MS N ISMAIL		
<b><u>MODERATOR</u></b>	:	MRS S HASSEN		
<b><u>DURATION</u></b>	:	3 HOURS	<b><u>MARKS</u></b>	: 100

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NUMBER OF PAGES: 17 PAGES

INSTRUCTIONS:

1. Answer all the 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.
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**QUESTION 1: Capacity to Act**

**(10)**

Indicate the contractual capacity in each instance **and** provide whose consent is required, if any, in order to enter into a valid contract.

- 1.1 Lee-Anne, an unrehabilitated insolvent, enters into a contract whereby she sells her car to Pedro for R300 000. (2)

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- 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. (2)

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- 1.3 Thabo, a six year old boy, sells his cellphone to his eighteen year old cousin, Thabiso, for R3 000. (2)

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- 1.4 Christabel, a fifteen year old unemancipated girl, sells her laptop to Vuyisani, a twenty year old man, for R4 000. (2)

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- 1.5 Shamona, who is married to Keshiv out of community of property, buys a house from Amber for R1 700 000. (2)

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**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. (1)

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

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 31<sup>st</sup> of December 2018. 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. (1)

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2.1.4 Millicent has paid a deposit to secure her holiday accommodation booking at the Radisson Red Hotel. In the event that she is unable to go on the holiday the hotel will retain her deposit. (1)

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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. (2)

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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. (2)

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2.2.3 Samantha concludes a contract with Jenna in terms of which Samantha will purchase Jenna's house upon her death. (2)

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**QUESTION 3: Breach of Contract and Remedies**

**(15)**

3.1 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.

3.1.1 Identify and discuss the form of breach of contract depicted above. (3)

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3.1.2 List the requirements that must be met for the form of breach of contract as identified in Question 3.1.1 above. (2)

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3.1.3 What remedies are available to Sheila in the event of such a breach?(3)

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3.1.4 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. Would he be guilty of breach of contract? Provide a reason for your answer. (2)

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- 3.2 Matilda orders 10 000 grey paving bricks from ABC Hardware for R7000. ABC Hardware delivers 10 000 red paving bricks to Matilda. Matilda refuses to accept delivery of the red paving bricks. Matilda is upset and makes it clear to Ian, from ABC Hardware, that she will not pay them a cent. Ian is adamant that Matilda should fulfil her obligations by making payment. Discuss in detail whether Matilda may withhold performance. (3)

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- 3.3 Indicate the most appropriate remedy or order that the injured party will be entitled to in the following instances.

- 3.3.1 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)

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- 3.3.2 Ashlin bought a car from Gavin for an amount of R300 000. Payment of the purchase price was made three weeks ago but Gavin failed to deliver the car to Ashlin to date. (1)

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**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. (1)

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4.1.2 Vijay owes R50 000 to SARS in respect of outstanding taxes. (1)

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4.1.3 A loan of R10 000 given to Sandy by her brother Andy. (1)

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

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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. Discuss the effect that the following circumstance has on prescription. (3)

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4.3 Provide two examples of a merger as a method of terminating obligations. (2)

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4.4 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)

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**QUESTION 5: The Contract of Lease**

**(15)**

Tshilidzi leases his flat to Jenni for a period of 15 years to be used for residential purposes.

5.1 Identify which party is the lessee. (1)

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5.2 List two *essentialia* of a contract of lease. (2)

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5.3 Are there any formalities required in a contract of this nature to be enforceable against third parties? Explain your answer. (2)

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5.4 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. Discuss the validity of this lease agreement with specific reference to its provisions on the rental price. (2)

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- 5.5 Assume that the leased property was agricultural land upon which Jenni grew sugarcane. Discuss the validity of this lease agreement if parties agreed that Jenni would compensate Tshilidzi by giving him 10% of her produce. (2)

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- 5.6 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 breach and what remedies are available to Jenni. (6)

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**QUESTION 6: The Contract of Sale**

**(20)**

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.

6.1 List the *essentialia* for a contract of sale.

(3)

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6.2 Identify and discuss which duty was breached by the seller.

(2)

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6.3 What must Wilfred prove before he will have a claim against Cars-R-Us?

(4)

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6.4 Indicate which remedies are available to Wilfred and what can be claimed with each of these remedies. (9)

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6.5 Would Wilfred have any claim against Cars-R-Us if the sale was subject to a *voetstoots* clause? Provide a reason for your answer. (2)

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**QUESTION 7: The Law of Agency**

**(10)**

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.

7.1 Identify which party is the mandatary. (1)

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7.3 List three duties of the mandatary. (3)

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- 7.4 A contract of mandate is terminated in the same way that other obligations are extinguished. List three other methods which would specifically terminate a contract of mandate. (3)

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

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### **QUESTION 8: Interpretation of the Contract**

**(10)**

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 and discuss the remedy that the parties may use in order to correct this error. (4)

[illegible]

## 8.2 Discuss the parole evidence rule.

(2)

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8.3 Define the *caveat subscriptor* rule and list three instances when it will be available as a defence. (4)

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**END OF EXAMINATION**

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**TOTAL: 100 MARKS**