



UNIVERSITY
OF
JOHANNESBURG

**EXAMINATION
MEMORANDUM**

Q 1	
Q 2	
Q 3	
Q 4	
Q 5	
Q 6	
Q 7	
Q 8	
Total	
%	

Surname: _____

Name: _____

Student Number: _____

SUBJECT : CONSTRUCTION LAW 2B

CODE : CLWCOB2

DATE : 12 NOVEMBER 2018

DURATION : 3 HOURS

TOTAL MARKS : 100

EXAMINER : MISS N ISMAIL

MODERATOR : MRS S HASSEN

NUMBER OF PAGES : 5 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

- 1.1 **No CC. No consent is required**
 - 1.2 **Limited. Spouse.**
 - 1.3 **Limited. No consent is required.**
 - 1.4 **Limited. Curator**
 - 1.5 **Full. No consent is required**
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QUESTION 2

- 2.1.1 ***Lex commissoria***
 - 2.1.2 **Forfeiture**
 - 2.1.3 **Penalty**
 - 2.1.4 **Warranty**

 - 2.2.1 **Suspensive condition**
 - 2.2.2 **Resolutive condition**
 - 2.2.3 **Resolutive time clause**
-

QUESTION 3

- 3.1.1 **Positive malperformance
incorrect performance**

 - 3.1.2 ***Mora creditoris*
failure to co-operate**
 - 3.1.2.1 **Any two of the following:**
 - 1. **Performance must be dischargeable**
 - 2. **Tender proper performance**
 - 3. **Failure to co-operate = delay**
 - 3.1.2.2 **No
No fault**

 - 3.2.1 **Prohibitory interdict**
 - 3.2.2 **Order for specific performance**
-

QUESTION 4

- 4.1.1 **3**
- 4.1.2 **30**
- 4.1.3 **6**
- 4.1.4 **15**

4.2 **Interrupted**
Lapse and start afresh
Service of process

- 4.3.1 **Set-off**
 - 4.3.2 **Any three of the following:**
Same nature;
Due and payable
Liquid
Same parties, same capacities
-

QUESTION 5:

- 5.1.1 **Devane**
- 5.1.2 **Maintain the property in a proper condition**
Use for purpose for which it was leased
- 5.1.3 **3 normal contractual remedies**
- 5.1.4 **Restore the property to the same condition in which it was received**
Reasonable wear and tear

5.2.1 **Pay rent**

5.2.2 **Landlord's tacit hypothec**

Award a maximum of three marks for a discussion hereof.

- **Provides security for rent**
- **May attach all movable goods on the leased premises that belong to the lessee**
- **Lessee is prevented from removing movable property**
- **If movable property is in the process of being transferred, it must be arrested before reaching its new destination**
- **Lessor may obtain an order of court to attach and sell the property of the lessee**

5.3 **No**

Nemo plus iuris rule

QUESTION 6

- 6.1.1 **The risk of accidental damage to an object sold passes from the seller to the purchaser when the contract is *perfecta***
Requirements for it are agreement on thing sold, agreement on purchase price and if the contract contains a suspensive condition, it must have already been fulfilled. Contract is *perfecta*.
Suli
- 6.1.2 **Performance rendered impossible by the party himself as a form of breach of contract and the seller would be liable for damages caused by his own fault**
- 6.2.1 **Warranty against latent defects**
Award a maximum of two marks for any two of the following:
The seller is liable for any latent defects which existed in the *merx* at the conclusion of the sale. A latent defect is a defect not readily discoverable by mere inspection. The defect must substantially impair the usefulness of the thing sold and render it unfit for the purpose of which it was bought.
- 6.2.2 ***Actio rehibitoria*: cancellation + restitution**
***Actio quanti minoris*: reduction**
- 6.2.3 **No**
It excludes the warranty against latent defects
-

QUESTION 7

- 7.1 **Senzo (1)**
- 7.2 **Mr Kale (1)**
- 7.3 **Compensate the mandatary for expenses incurred**
Pay the mandatary the agreed remuneration
- 7.4 **Any three of the following:**
Death of the mandator or mandatary
Sequestration of the estate of the mandator or mandatary
Insanity of the mandator or mandatary
Revocation by the mandatary
Renunciation by the mandatary
- 7.5 **Doctrine of the undisclosed principal**
If an agent enters into contract on behalf of the principal without disclosing his representative capacity = no contract between the principal and the third party
Once the representative reaches an agreement with the third party, the principal may step in the agent's shoes as the real party to the contract = third party can hold the principal liable.
Discretion:

Agent will be personally liable on the contract. The principal may demand performance from the third party, provided that the third party did not perform to the agent.

The undisclosed principal may elect to claim the performance promised to the agent. If the principal does not make his claim, the third party is liable to the agent

If the third party performs to the agent before the principal intervenes, the third party is discharged and performance to the principal cannot be enforced

Essentially, the third party can hold either the principal or agent liable. Once he makes a decision, he is bound by it

QUESTION 8: Theory based questions

(10)

8.1 Award a maximum of four marks.

- Words or symbols must be given ordinary grammatical meaning.
- The contract as a whole and the surrounding circumstances are taken into account.
- Ambiguous/ unclear words are interpreted in a manner least favourable to the party who stipulated it or is responsible for its drafting.
- The law uses various presumptions, such as;
 - Parties intend that their agreements are valid and enforceable: Courts attempt to interpret the contract in a manner that does not affect its validity.
 - Parties do not attempt to deviate from the common law unless expressly indicated.
- Written contracts are subject to the parol evidence rule.

8.2 The signatory is usually bound by the ordinary meaning and effect of the words which appear over his or her signature, as the signature signifies assent to the document

Misrepresentation, fraud, illegality, duress, undue influence and mistake

8.3 Defence of the incomplete contract

Applies to a reciprocal contract whereby parties have to perform simultaneously or where the plaintiff must perform before the defendant

It provides the defendant with a right to withhold his performance until he receives counter-performance from the plaintiff

END OF MEMORANDUM

TOTAL: 100 MARKS