STUDY UNIT 13 - PERFORMANCE MUST BE POSSIBLE

2 types of Impossibility

- Performance may be impossible for everyone i.e. absolute or objective impossibility.

- It may be impossible for 1 debtor concerned, although not for other people i.e. relative or subjective impossibility.

  eg.: A sells B Ferrari car, if car already belongs to C case of relative impossibility - only B cannot deliver car. C can still deliver car.

  eg.: If car is destroyed before sale concluded

  absolute impossibility. No one can deliver car.

Consequences of Subjective Impossibility:

If performance is objectively possible, in fact it is impossible for 1 debtor to perform has no effect on contract.

Debtor remains liable to creditor, he cannot carry out his obligations results breach of contract - he will be held liable in damages.

Consequences of Objective Impossibility:

If performance impossible at time of contracting no obligation results with regard to 1 performance ie. void.

Obligation regarding counter-performance will also be void even if possible. CONTRACT IS VOID.

Damages: may the aggrieved party recover his loss if loss was suffered?

De Wet & Van Wyk: Fault is the only basis on which innocent party should be able to claim damages.
he can claim his negative damages on I basis of delict (misrep) which I other party committed.

General principle:
(1) I innocent party may recover damages, there must have been a culpable (intentional or negligent) misrep on I part of I defendant.
(2) Principle applicable not only to sale, but also to all other contracts

Restitution: see w/s. (1) (2)

STUDY UNIT 14/ CONCLUSION OF I CONTRACT
ITS PERFORMANCE & ITS OBJECT MUST BE LAWFUL
See w/s.

DISTINCTION BET WAGERS & OTHER CONTRACTS
If a party has no financial or legally recognised interest in I outcome of I contract apart from I prize he is liable to win if I result is in his favour, such an interest is absent & I contract is a wager. Only the intention of I parties can decide if a contract is a wager. See w/s.

Law attaches 3 possible legal consequences to wagers:
(i) Some are entirely valid & enforceable, eg wagers for not against public policy such as wagers which depend completely on I outcome of a game of skill & in which at least one of I parties has an interest.
(2) Most wagers are unenforceable, but not void
(3) Some are prohibited by statute & void

A reason why most wagers are against public policy is because society is of the opinion wagers encourage wastefulness & prodigality which is regarded as harmful to individuals, families & society.

STUDY UNIT 15

THE PERFORMANCE MUST BE LAWFUL

Discuss the presumption that parties intended the agreement to be carried out in a lawful manner?

The performance must be legally possible.

The performance is unlawful, contract is void, ie without legal consequences which the parties contemplated.

Where an agreement can be carried out in 2 ways, 1 of which is lawful & 1 other unlawful, there is a presumption that parties intended the agreement to be carried out in a lawful manner.

Explain what is meant by unlawful performances.

Performance is unlawful if it is contrary to a rule of positive law, good morals or public policy. eg a contract to commit a crime.
Performance which are contrary to good morals (contra bonos mores)

What is regarded as good behaviour in community must be determined. Performance regarded as contrary to good morals is restricted mainly to cases of sexual misbehaviour, in particular extramural intercourse. e.g. A promises to have sex with B if B will give her a house.

Agreements contrary to public policy
see w/s.

Agreements in restraint of trade
see w/s

Study Unit 16:
The object of an agreement must be lawful: Justa causa

Justa causa:

1. causa is the serious intention to be bound by the contract.
2. causa must be justa in the sense that parties must have a lawful object in concluding a contract. Justa causa affects both the requirement of consent and the requirement of lawfulness. If there is no reason or purpose of the contract is unlawful (turpis) contract is void. — ex turpi causa non oritur actio (from an immoral cause no action arises)

Both parties must have the same illegal purpose in mind if one party not aware of other party's motive, contract does not have an illegal purpose.